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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

In re
JORDAN MARINKOVIC BAUMAN,
Debtor.

Case Nos. 12cv2476 - IEG (RBB)
12cv2482 - IEG (BLM)

Bankruptcy Case No: 11-11223-PB

JORDANA BAUMAN,
Appellant,

**ORDER VACATING DISMISSAL
AND REMANDING TO THE
BANKRUPTCY COURT FOR
FURTHER PROCEEDINGS.**

vs.

THOMAS H. BILLINGSLEA, JR.,
CHAPTER 13 TRUSTEE, et al.,
Appellees.

MEL M. MARIN,
Appellant,

vs.

THOMAS H. BILLINGSLEA, JR.,
CHAPTER 13 TRUSTEE, et al.,
Appellees.

Before the Court are two appeals arising from the same underlying Chapter 13 bankruptcy proceeding. Appellants, Debtor Jordana M. Bauman and her brother, Mel M. Marin, each appeal the bankruptcy court's September 12, 2012 dismissal

1 order. For the reasons below, the dismissal order is **VACATED**, and the matter is
2 **REMANDED** to the bankruptcy court for further proceedings consistent herewith.

3 **BACKGROUND**

4 Debtor Bauman filed a voluntary Chapter 13 bankruptcy petition on July 5,
5 2011. [See Doc. No. 22, (Excerpts of Record (“E.R.”)) at 63.] On August 1, 2011,
6 Debtor’s brother, Marin, filed a motion asserting standing as a creditor on behalf of a
7 family trust. [E.R. at 64.] On August 5, 2011, Debtor filed a proposed Chapter 13
8 plan (the “Plan”). [E.R. at 65.] On August 12, 2011, the Chapter 13 Trustee filed
9 objections to confirmation of the Plan and a motion to dismiss pursuant to 11 U.S.C.
10 §1307(c)(5), both noticed for hearing on October 19, 2011. [Id.] On August 19,
11 2011, creditor Wells Fargo Bank, N.A., filed objections to confirmation, also noticed
12 for hearing on October 19, 2011. [Id.] On September 6, 2011, Bauman filed an
13 opposition to the objections and motion to dismiss. [Id.] On October 19, 2011, the
14 bankruptcy court took the objections and motion to dismiss under submission
15 without ruling on the validity of either. [E.R. at 66.]

16 Nearly a year later, on September 12, 2012, the bankruptcy court issued a
17 short written order dismissing Bauman’s petition on grounds that “[m]ore than
18 enough time ha[d] elapsed for debtor to step forward and correct all the deficiencies
19 in her proposed plan . . . [and that she] ha[d] failed to show how amendment might
20 salvage her plan.” [E.R. at 67.] By the present appeals, Debtor and her brother
21 request that the bankruptcy court’s dismissal order be vacated.¹

22 **DISCUSSION**

23 **A. Jurisdiction and Standard of Review**

24 The Court has jurisdiction over appeals from final judgments of the
25

26 ¹ Appellants’ voluminous motion practice in this matter, both before the
27 bankruptcy court and on appeal, has approached vexatiousness. And the Court is well-
28 aware of Appellant Marin’s “extensive history of frivolous litigation.” *Marin v.*
Escondido Care Center, 2012 WL 5463688, at *2 (S.D. Cal. Nov. 7, 2012); *see also id.*
at *2 n.3, 4. Accordingly, Appellants are hereby cautioned that unchecked, frivolous
motion practice may result in a vexatious litigant order.

1 bankruptcy court, *see* 28 U.S.C. § 158(a)(1); *In re City of Desert Hot Springs*, 339
2 F.3d 782, 787 (9th Cir. 2003), and reviews findings of fact for clear error and
3 conclusions of law *de novo*, *see* FED. R. BANKR. P. 8013(a); *In re Int’l Fibercom,*
4 *Inc.*, 503 F.3d 933, 940 (9th Cir. 2007).

5 **B. The Bankruptcy Court’s Dismissal Order is Void**

6 Dismissal of Chapter 13 petitions is governed by § 1307(c), which requires:
7 (1) notice and a hearing; and (2) a showing of cause. *See* 11 U.S.C. § 1307(c).
8 Here, neither requirement was met and thus dismissal was improper.

9 **1. Inadequate Notice and Hearing**

10 “Pursuant to 11 U.S.C. section 1307(c), a Chapter 13 case can only be
11 dismissed ‘after notice and a hearing.’” *In re Krueger*, 88 B.R. 238, 241 (9th Cir.
12 BAP 1988) (quoting 11 U.S.C. section 1307(c)). Per statute, “‘after notice and a
13 hearing’ means: ‘such notice as is appropriate in the particular circumstances and
14 such opportunity for a hearing as is appropriate in the particular circumstances.’” *Id.*
15 (quoting 11 U.S.C. section 102(1)(A)). “The essential point is that the court should
16 give counsel a meaningful opportunity to be heard.” *In re Rosson*, 545 F.3d 764,
17 775 (9th Cir. 2008). But although this statutory “concept of notice and a hearing is
18 flexible,” “dismissal . . . [is] not appropriate where substantive issues are to be
19 determined.” *In re Tennant*, 318 B.R. 860, 870 (9th Cir. BAP 2004) (citing *In re*
20 *Minkes*, 237 B.R. 476, 478-79 (8th Cir. BAP 1999)).

21 Here, the bankruptcy court dismissed for failure to correct purported
22 deficiencies that had never been identified as substantively valid. With these
23 “substantive issues [yet] to be determined,” dismissal was inappropriate. *Id.* at 870;
24 *see also In re Minkes*, 237 B.R. at 478-79 (reversing bankruptcy court dismissal
25 order because “[n]o notice was given to the debtor of the deficiencies with his plan,
26 with an opportunity to either argue that the plan was not deficient or to correct the
27 plan to meet the perceived problems”).

28 “Moreover, notice is not only a statutory requirement, but a constitutional

1 requirement as well.” *In re Krueger*, 88 B.R. 238, 241. “The due process clause of
2 the Fifth Amendment requires that due process be provided before property can be
3 taken.” *Id.* “An elementary and fundamental requirement of due process in any
4 proceeding which is to be accorded finality is notice reasonably calculated, under all
5 of the circumstances, to apprise interested parties of the pendency of the action and
6 afford them an opportunity to present their objections.” *Mullane v. Central Hanover*
7 *Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *In re Leeward Subdivision Partners*,
8 LLC, 2010 WL 6259983, at *9 (9th Cir. BAP 2010) (same).

9 Here, the bankruptcy court took under submission contested objections
10 without identifying which, if any, warranted rebuttal, much less correction, by
11 Appellants. Then, nearly a year later, the bankruptcy court issued a dismissal order,
12 which faulted Appellants for failing to correct those purported deficiencies even
13 though they had never been identified as warranting correction. By failing to
14 identify which purported deficiencies warranted a response, the bankruptcy court left
15 Appellants without any meaningful opportunity to respond and thereby violated due
16 process. *See In re Rosson*, 545 F.3d at 776 (due process violated where “overall
17 process provided by the bankruptcy court failed to afford [debtor] a meaningful
18 opportunity to be heard”); *In re Dunn*, 2010 WL 6451888, at *7 (9th Cir. BAP 2010)
19 (finding bankruptcy court’s failure to provide adequate notice a violation of due
20 process). Accordingly, the bankruptcy court’s dismissal order is not only statutorily
21 improper, but void as a deprivation of due process. *In re Krueger*, 88 B.R. at 241
22 (“An order is void if it is issued by a court in a manner inconsistent with the due
23 process clause of the Fifth Amendment.”).

24 **2. Inadequate Showing of Cause**

25 Furthermore, the bankruptcy court’s dismissal order failed to require a
26 sufficient showing of cause. The order’s basis for cause is denial of plan
27 confirmation under §1307(c)(5), which “requires, at a minimum, that the court must
28 afford a debtor an opportunity to propose a new or modified plan following the

1 denial of plan confirmation.” *In re Nelson*, 343 B.R. 671, 675-676 (9th Cir. 2006).
2 Because the bankruptcy court failed to identify the purported deficiencies in the
3 Plan, Bauman had no an opportunity to propose a new or modified plan addressing
4 those purported deficiencies. Without that opportunity, dismissal pursuant to
5 §1307(c)(5) was improper. *Id.*; accord *In re Eardley*, 2009 WL 7809924, at * (9th
6 Cir. BAP 2009) (a “court ordinarily must afford a debtor an opportunity to amend a
7 plan before dismissing a chapter 13 case for ‘cause.’”); *In re Minkes*, 237 B.R. at
8 478 (“we disagree that the filing of one unconfirmable plan, in and of itself, is
9 sufficient cause for dismissal of a Chapter 13 case.”).

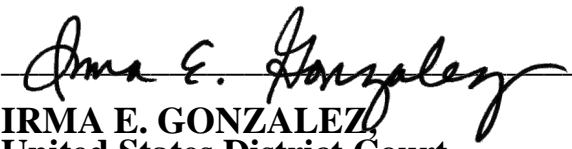
10 In sum, the Court finds the bankruptcy court’s dismissal both statutorily
11 improper under §1307(c) and constitutionally improper because of a violation of due
12 process. Accordingly, the bankruptcy court’s dismissal order is **VACATED**. *In re*
13 *Krueger*, 88 B.R. at 241 (a district court “properly vacate[s] [a] dismissal order . . .
14 issued in violation of the Debtor’s due process rights.”).

15 **CONCLUSION**

16 For the reasons above, the Court hereby **VACATES** the bankruptcy court’s
17 September 12, 2012 dismissal order and **REMANDS** to the bankruptcy court for
18 further proceedings consistent herewith.

19 **IT IS SO ORDERED.**

20 **DATED:** August 29, 2013


IRMA E. GONZALEZ,
United States District Court

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