

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

January 4, 2016 at 1:30 p.m.

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THIS CALENDAR IS DIVIDED INTO TWO PARTS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN BOTH PARTS OF THE CALENDAR. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 8. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2) [eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE FEBRUARY 8, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JANUARY 25, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 1, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 9 THROUGH 15 IN THE SECOND PART OF THE CALENDAR. INSTEAD, THESE ITEMS HAVE BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON JANUARY 11, 2016, AT 2:30 P.M.

January 4, 2016 at 1:30 p.m.

**Matters to be Called for Argument**

1. 15-25809-A-13 ELIZABETH ANDRADE MOTION TO  
FF-3 MODIFY PLAN  
11-20-15 [45]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied and the objection will be sustained.

First, the debtor has failed to make \$11,947.07 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, to pay the dividends required by the plan at the rate proposed by it will take 88 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Third, even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the post-petition arrears owed to Safe Credit Union on account of its Class 1 home loan. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

2. 15-29409-A-13 JOHN CLEMM MOTION FOR  
RWD-1 RELIEF FROM AUTOMATIC STAY  
WERKING, INC. VS. 12-21-15 [16]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The movant alleges that it acquired title to the subject property at a foreclosure sale and thereafter gave notice to the occupants to vacate the property. This bankruptcy, and earlier bankruptcy cases filed this debtor and another person, have frustrated attempts to take possession of the property by pursuing and enforcing an unlawful detainer judgment.

To the extent this motion seeks to terminate the automatic stay, the motion will be denied because it is moot. The case was dismissed on December 14. Upon that dismissal, the automatic stay expired as a matter of law. See 11 U.S.C. § 362(c)(1)-(2).

To the extent this motion seeks "in rem" relief pursuant to 11 U.S.C. § 362(d)(4) the motion will be denied. 11 U.S.C. § 362(d)(4) provides that:

"On request of a party in interest and after notice and a hearing, the court

shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . . with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.”

Relief under 11 U.S.C. § 362(d) (4) will be denied because the movant is not “a creditor whose claim is secured by an interest in such real property,” for purposes of 11 U.S.C. § 362(d) (4). The movant is the owner of the property. According to the motion, the movant purchased the property at the pre-petition foreclosure sale. The movant does not hold a debt secured by the property. Relief under section 362(d) (4) is available only to creditors who are secured by the property. Ellis v. Yu (In re Ellis), 523 B.R. 673, 678-80 (B.A.P. 9th Cir. 2014). The movant is not secured by the property. The movant is the owner of the property.

Finally, in rem relief sought under some other theory, including under 11 U.S.C. § 105, will be denied because such relief requires an adversary proceeding. Johnson v. TRE Holdings LLC (In re Johnson), 346 B.R. 190, 195 (B.A.P. 9th Cir. 2006).

3. 15-28646-A-13 LESLIE SAWYER MOTION TO  
AP-1 CONFIRM TERMINATION OR ABSENCE OF  
STAY  
12-18-15 [26]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted in part.

To the extent the motion asks for confirmation that the automatic stay never became effective in this case pursuant to 11 U.S.C. § 362(c) (4), the motion will be denied.

Section 362(c) (4) provides that the automatic stay is not triggered by the filing of a petition by an individual if that individual has filed two prior cases that were dismissed within one year of the filing of the most recent petition. Here, the debtor has filed two prior cases but the oldest case was dismissed on October 20, 2014, more than 1 year prior to the filing of the most recent case on November 6, 2015. Thus, the automatic stay went into effect when this case was filed.

However, the court will confirm the absence of the automatic stay from and after December 7. Because the second case filed by the debtor was dismissed within 1 year of this case, 11 U.S.C. § 362(c) (3) is applicable. The debtor filed an earlier chapter 13 case that was dismissed within the prior year to November 6, the automatic stay arising in this case had a duration of 30 days absent an extension ordered by the court. See 11 U.S.C. § 362(c) (3). The debtor filed no motion to extend the stay beyond the 30<sup>th</sup> day. Because more than 30 days has passed since the filing of this case, the court will confirm,

pursuant to 11 U.S.C. § 362(j), the absence of the automatic stay as of December 7.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

4. 15-20565-A-13 REV KENNETH ANDERSON MOTION TO  
KG-12 MODIFY PLAN  
11-18-15 [128]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied and the objection will be sustained in part.

The plan fails to provide for \$6,927.57 in payments already made by the debtor. By not including such payments, the proposed plan will not pay the total dividends due to creditors. Without these payments, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

The objection concerning the debtor's attorney's fees has been made moot by the granting of the compensation motion, KG-13.

5. 15-26169-A-13 JOANN WARDLAW MOTION TO  
SDB-1 MODIFY PLAN  
11-23-15 [19]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied and the objection will be sustained.

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$2,086 is less than the \$2,143 in dividends and expenses the plan requires the trustee to pay each month.

6. 15-23873-A-13 JACQUELINE FREEMAN MOTION TO  
DRE-5 CONFIRM PLAN  
11-12-15 [43]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted and the objection will be overruled.

The objection asserts that because the plan does not provide a junior home loan secured by the debtor's home, it may not be confirmed.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the debtor adequately fund the plan with future earnings or other future income that is paid over to the trustee (section 1322(a)(1)), provide for payment in full of priority claims (section 1322(a)(2) & (4)), and provide the same treatment for each

claim in a particular class (section 1322(a)(3)). But, nothing in section 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may, at the option of the debtor, include. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (section 1322(b)(2)), cure any default on a secured claim, including a home loan (section 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (section 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options: (1) provide a treatment that the debtor and secured creditor agree to (section 1325(a)(5)(A)), provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the plan (section 1325(a)(5)(B)), or surrender the collateral for the claim to the secured creditor (section 1325(a)(C)). However, these three possibilities are relevant only if the plan provides for the secured claim.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. See 11 U.S.C. § 362(d)(1).

7. 14-28677-A-13 CHRISTOPHER/ELIZABETH MOTION TO  
EJS-5 MORRIS MODIFY PLAN  
11-24-15 [75]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** None. Appearances required.

8. 15-28793-A-13 REGINALD JEFFERSON ORDER TO  
SHOW CAUSE  
12-18-15 [17]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of \$79 due on December 14 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

**THE FINAL RULINGS BEGIN HERE**

9. 13-23600-A-13 RANDALL HILL MOTION TO  
PGM-6 MODIFY PLAN  
11-24-15 [77]

**Final Ruling:** This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

10. 15-27000-A-13 KEENAN/YAO-JANE HEATH MOTION TO  
AFL-3 CONFIRM PLAN  
11-20-15 [41]

**Final Ruling:** The debtor has voluntarily dismissed the motion.

11. 14-25913-A-13 BARBARA JACKSON MOTION TO  
SDB-1 MODIFY PLAN  
11-19-15 [25]

**Final Ruling:** This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

12. 15-20565-A-13 REV KENNETH ANDERSON MOTION TO  
KG-13 APPROVE COMPENSATION OF DEBTOR'S  
ATTORNEY  
11-19-15 [138]

**Final Ruling:** This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf.

Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The plan filed May 29, 2015 was confirmed by the court. While that plan specified at section 2.07 that administrative expenses were to be paid at the rate of \$45 a month, section 2.06 indicated that, although the debtor's attorney elected to be paid pursuant to Local Bankruptcy Rule 2016-1, the attorney would be paid no fees through the plan.

The failure to provide for fees was an error. First, the attorney's Rule 2016(b) (Docket 100) disclosure specified that \$2,500 was to be paid through the plan, Second, Rights and Responsibilities Agreement (Docket 101) specified the \$2,500 was to be paid pursuant to Local Bankruptcy Rule 2016-1 and through the plan.

The debtor proposed a modified plan on November 18 corrects this issue by requiring payment of the \$2,500 through the plan.

Normally, fees sought pursuant to Local Bankruptcy Rule 2016-1 are not approved by fee application. They are approved in connection with the confirmation of then the original plan confirmed by the debtor. Here, the original plan provided for no compensation, whether pursuant to Local Bankruptcy Rule 2016-1 or otherwise. Therefore, the court now will authorize compensation pursuant to the Local Rule but such compensation shall be payable only if a modified plan is confirmed that provides for such compensation.

13. 15-25365-A-13 DEA MCKEE MOTION TO  
MC-1 MODIFY PLAN  
11-24-15 [30]

**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 granted on the condition that the plan is further modified in the confirmation order to account for all prior payments, and the dates of those payments, made by the debtor under the terms of the prior plan. Also, the language requested by the trustee clarifying the amounts to be paid for the debtor's attorney's fees shall be included in the order. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

14. 15-21667-A-13 KENNETH BEALL MOTION TO  
MC-1 MODIFY PLAN  
11-24-15 [43]

**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 granted on the condition that the plan is further modified in the confirmation order to account for all prior payments, and the dates of those payments, made by the debtor under the terms of the prior plan. As

further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

15. 15-28574-A-13 JOHN DYNOWSKI  
JPJ-1

MOTION TO  
COMPEL AND REQUEST FOR DOCUMENTS  
12-18-15 [21]

**Final Ruling:** The court continues the hearing to January 25, 2016 at 1:30 PM.

Attorney Leslie Richards filed this case on behalf of the debtor. The District Court for Eastern District of California has no record of this attorney being admitted to the bar of this court.

Attorney Leslie Richards has not filed the disclosure statement required by Fed. R. Bankr. P. 2016.

Attorney Leslie Richards failed to appear at the meeting of creditors on December 17. The debtor appeared alone.

Therefore, it is ordered:

Attorney Leslie Richards shall file and serve on the chapter 13 trustee and the U.S. Trustee no later than January 11, 2016 a disclosure under Fed. R. Bankr. P. 2016(b).

If attorney Leslie Richards has been admitted to bar of the Eastern District of California, counsel shall file and serve a declaration no later than January 11, 2016 giving the date of such admission and a copy of any certificate or other documentation issued by the court clerk confirming such admission.

If attorney Leslie Richards has not been admitted to bar of the Eastern District of California, counsel shall file and serve a declaration no later than January 11, 2016 identifying by date, name of debtor, and case number every bankruptcy petition filed in the Eastern District of California since November 3, 2007.

Attorney Leslie Richards shall appear at a hearing on January 25, 2016 at 1:30 PM and show cause sanctions should not be assessed against counsel for the failure to file timely a Rule 2016(b) disclosure, failing to appear at the December 17 meeting of creditors, and filing this case without being a member of the bar of the Eastern District of California. The hearing on January 25, 2016 at 1:30 PM shall be in courtroom 28 located on the seventh floor of the U.S. Courthouse, 501 I Street, Sacramento, California. Counsel shall appear at the hearing in person. However, if counsel appears in person at the continued meeting of creditors on January 21, 2016 at 2:00 PM, counsel may appear at the January 25 hearing by telephone.