UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

January 17, 2017 at 1:30 p.m.

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 7. 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 13, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JANUARY 30, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 6, 2017. 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 8 THROUGH 9 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 23, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 16-28321-A-13 BENJAMIN/BRANDEE AHLSON — MOTION TO EXTEND AUTOMATIC STAY
DBL-1 — 12-21-16 [10]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be denied.

The motion represents that the debtor filed one prior case that was dismissed within 1 year of the current case. Therefore, the debtor asks for an extension of the automatic stay beyond the 30th day after the filing of the most recent case pursuant to 11 U.S.C. § 362(c)(3). Absent an extension, the automatic stay will expire on January 20, 2017.

This misrepresents the facts. The debtor filed two prior cases, Case Nos. 15-24644 and 16-25418. The former was dismissed on August 15, 2016 and the latter was dismissed on December 15, 2016. Hence, both were dismissed within one year of the filing of the current case on December 20, 2016.

As a result, 11 U.S.C. § 362(c)(4), not section 362(c)(3) is applicable. There is no automatic stay in this case unless one is imposed by the court. Therefore, the court will deem the motion brought under section 362(c)(4).

A party in interest, including the debtor, may request that the court impose the automatic stay despite the filing and dismissal of multiple prior petitions. See 11 U.S.C. § 362(c)(4)(B). Such a request must be made with notice and a hearing and must be made within 30 days of the filing of the petition. To obtain the automatic stay, the party in interest must demonstrate that the latest case has been filed in good faith. If shown, the court may impose conditions on the imposition of the automatic stay.

This motion was made within 30 days of the filing of the current case. The issue is whether the case was filed in good faith. Section 362(c)(4)(D) invokes a presumption that the case was "filed not in good faith." The debtor has not explained why they failed to make plan payments in two prior cases and why they failed to attend the meeting of creditors in the second case. Absent a coherent explanation for these failures the court concludes that the debtor failed to obey court orders in the prior cases without any excuse. The court cannot conclude that this case is more apt to succeed than the prior two cases.

2. 15-25344-A-13 HEATHER MILLAR
MWB-4

MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
12-27-16 [43]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion seeks approval of $1,732.50 in additional fees and costs of $31.40 incurred principally in connection with motions to both sell and purchase residential property. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and Local Bankruptcy Rule 2016-1, if applicable.

3. 12-31251-A-13 ADRIENNE HENNING
PGM-5

OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
12-1-16 [80]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part. The request for fees will be denied.

According to the creditor's proof of claim, the post-petition ongoing installment payment is $1,829.46 which is comprised of $1,314.14, principal and interest, and $515.32 in escrow impounds for taxes and insurance.

According to the notice of payment change filed October 25, 2016, the escrow impounds decreased from $515.32 to $379.55 yet the monthly installment payment increased from $1,829.46 to $2,271.75. The court can discern no reason from the notice of payment change for the increase in the installment given the decrease in the escrow impounds.

The objection states the ongoing monthly installment is $1,643.10. Why and how the debtor comes to this conclusion is a mystery and is contradicted by the proof of claim to which the debtor has not objected. The court concludes the installment payment was $1,829.46 at least up until the effective date of the notice of payment change.

The objection also disputes the increase of the installment payment to $2,271.75. The court agrees that the notice of payment change fails to document an increase from $1,829.46. To the contrary, because the escrow

impounds decreased by $135.77 (from $515.32 to $379.55), the monthly installment should be decreased to $1,693.69 ($1,829.46 - $135.77).

This ruling does not mean that a higher amount is not owed; it means only that the creditor has not complied with Fed. R. Bankr. P. 3002.1. As a matter of arithmetic, the notice is incorrect because it has demanded an increased installment payment even though the escrow impounds have decreased.

Therefore, the objection will be sustained in part. Effective 21 days after the date of notice of payment change, the monthly installment amount decreased to $1,693.69. See Fed. R. Bankr. P. 3002.1(b).

The request for attorney's fees will be denied. The objection does not prove that the amount demanded is not owed under the note and deed of trust. It proves only that the creditor has not complied with Rule 3002.1(c), i.e., its notice does not document the demanded payment increase. For that reason, the court concludes the objection is not an action on a contract. It is based only on the Bankruptcy Code and Rules. No fees can be awarded for such actions. Cf. Bos v. Bd. of Trustees, 818 F.3d 486 (9th Cir. 2016).

4. 16-27762-A-13 YVONNE MANCILLA — ORDER TO SHOW CAUSE 12-28-16 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: 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 $79 installment when due on **December 23.** While the delinquent installment was paid on December 30, the fact remains 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.

5. 16-27069-A-13 MARIA TORRES LOPEZ — ORDER TO SHOW CAUSE 12-29-16 [52]

- ☐ 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 $76 due on December 27 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

6. 08-32094-A-13 AIDA/JAIME SALDIVAR — MOTION TO AVOID JUDICIAL LIEN
WSS-3
VS. AMERICAN GENERAL FINANCIAL SERVICES — 1-3-17 [67]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be dismissed without prejudice.

This motion seeks to avoid a judicial lien on the debtor's home on the ground that it impairs an exemption in that property. However, the exemption impaired was not claimed until December 30, 2016 and there is nothing on the docket indicating that creditors were served with the amended Schedule C or given notice of it.

Therefore, the motion will be denied because amended Schedule C filed December 30 was not served on any of the creditors or the trustee informing them of the changed exemption. Dockets 28 & 29. Parties in interest have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, it is premature to conclude that the debtor has an exemption in the subject property. Without an exemption, the judicial lien cannot impair an exemption.

7. 14-28894-A-13 ARMANDO SERRANO — MOTION TO RECONSIDER DISMISSAL OF CASE
DJC-3 — 12-30-16 [72]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be denied.

This case was dismissed on September 2, 2014 as a result of the notice of default filed and served by the trustee on October 27, 2016. This dismissal procedure is authorized by Local Bankruptcy Rule 3015-1(g). According to that notice, through October 2016, the debtor failed to make plan payments totaling $9,281. The notice of default also demanded the additional $4,641 due in November 2016, a total of $13,922.

This notice of default procedure, as authorized by Local Bankruptcy Rule 3015-1(g), provides:

(1) If the debtor fails to make a payment pursuant to a confirmed plan, including a direct payment to a creditor, the trustee may mail to the debtor and the debtor's attorney written notice of the default.

(2) If the debtor believes that the default noticed by the trustee does not exist, the debtor shall set a hearing within twenty-eight (28) days of the mailing of the notice of default and give at least fourteen (14) days' notice of the hearing to the trustee pursuant to LBR 9014-1(f)(2). At the hearing, if the trustee demonstrates that the debtor has failed to make a payment required by the confirmed plan, and if the debtor fails to rebut the trustee's evidence, the case shall be dismissed at the hearing.

(3) Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.

(4) If the debtor fails to set a hearing on the trustee's notice, or cure the default by payment, or file a proposed modified chapter 13 plan and motion, or perform the modified chapter 13 plan pending its approval, or obtain approval of the modified chapter 13 plan, all within the time constraints set out above, the case shall be dismissed without a hearing on the trustee's application.

Thus, a debtor receiving a Notice of Default has three alternatives. (1) Cure the default within 30 days of the notice of default as well as pay the additional payment that would come due during the 30-day period to cure the default. (2) Within 30 days of the notice of default, file a motion to confirm a modified plan and a modified plan in order to cure/suspend the default stated in the notice of default. (3) Contest the notice of default by setting a hearing within 28 days of the notice of default on 14 days of notice to the trustee.

Here, the debtor opted to cure the default by paying it to the trustee on November 23. However, the debtor paid only $9,281 due through October and neglected to pay the additional $4,641 due in November. As a result, on December 7 the trustee filed a declaration certifying that the default had not been cured and requested dismissal. The next day the court dismissed the case.

This motion seeks to vacate the dismissal but it fails to demonstrate any cause, such as excusable neglect, for doing so. The debtor and the debtor's attorney were duly served with the notice of default. The notice of default was accurate. That is, it stated the amount in default as well as the additional amount that would fall due during the cure period and the total

amount to cure (the amount in default plus the next payment. The debtor tendered only the first amount, the amount past due, without tendering the next payment. He has no excuse other than he was mistaken as to the amount due to the trustee.

While he made a mistake, the debtor's mistake was not excusable.

First, the notice of default expressly informed the debtor of the amount in default, the amount of the next payment, the total of both such amounts. How the debtor made a mistake is a mystery.

Second, the court notes that the notice of default was not the first one served on the debtor. The trustee served an earlier notice of default on August 3, 2016. In that notice the amount in default was stated as $9,274 (which was comprised of the plan payments due in July and August 2016), the next payment for August was $4,641, and the total to cure was stated at $13,915. The debtor paid both amounts on or before August 30. Hence, the earlier notice of default demanded nearly the same amount in default as demanded in the second notice of default. Both notices also demanded the next payment. In connection with first notice, the debtor paid both amounts. He understood that notice and paid the total amount.

The court concludes the debtor understood the second notice of default as well but was simply unable to comply with its terms.

FINAL RULINGS BEGIN HERE

8. 12-37675-A-13 MICHAEL SMITH — MOTION TO MODIFY PLAN
MET-1 — 12-8-16 [38]

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 debtor, 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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th 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.

9. 16-23390-A-13 JOE/VICTORIA RODRIGUEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 12-16-16 [29]
CAPITAL ONE AUTO FINANCE VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee 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 (9th 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 (9th 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 pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess and to obtain possession of its personal property security, and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has proposed a plan that does not provide for the payment of the movant's claim. Further, the debtor has not paid the claim under the terms of the contract with the movant. Because the debtor has not paid the movant's claim, and will not pay it in connection with the chapter 13 case, there is cause to terminate the automatic stay.

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).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.