

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Sacramento, California

**July 11, 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 10. 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 AUGUST 15, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 1, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 8, 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 11 THROUGH 19 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 JULY 18, 2016, AT 2:30 P.M.

**Matters to be Called for Argument**

1. 15-25707-A-13 JEANNINE SILVA MOTION FOR  
RLC-2 RELIEF FROM AUTOMATIC STAY  
ED CARBAHAL VS. 6-27-16 [41]
- ☐ Telephone Appearance  
☐ Trustee Agrees with Ruling

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, 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 granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following sale. The movant is secured by an abstract of judgment encumbering the debtor's real property. The debtor has proposed and confirmed a plan that does not provide for the payment of the movant's claim. 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 it is entitled to attorney's fees in connection with the enforcement of this claim, the court awards none. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be not be waived.

2. 16-20819-A-13 MELANIE HAMPTON-BANFORD MOTION TO  
CA-4 CONFIRM PLAN  
5-18-16 [49]
- ☐ Telephone Appearance  
☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make \$599 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, the debtor has not satisfied the burden of proving that the plan will pay unsecured creditors the present value of what they would receive in a chapter 7 liquidation. While the motion is accompanied by a liquidation analysis, it is based on an unauthenticated opinion of value from a real estate professional. The professional has not authenticated the opinion in an affidavit or a declaration.

3. 16-22722-A-13 ROBERT/STACY TURNER OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
6-9-16 [13]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

Both are based on the failure to provide financial records to the trustee. Those records were furnished to the trustee on July 5 and the hearing continued to determine whether the records suggested a basis for objecting to confirmation. As the trustee has not supplemented his objection/motion, the court concludes that there is no basis for dismissal or denying confirmation.

4. 16-21140-A-13 BEHARI PRASAD MOTION TO  
PGM-2 CONFIRM PLAN  
5-25-16 [35]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make \$300 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, the plan has contradictory treatment of claims secured by the property on Riverscape Court. As to three different liens, the plan provides for claims in Class 2, 3, and 5. That is, one lien will be paid as a secured claim, another as a priority claim, and the last lien will be satisfied by surrender of the property. If the debtor intends to surrender the property to one secured creditor, it must be surrendered to all.

5. 16-22552-A-13 BOWEN/NADINE RIDEOUT OBJECTION TO  
JPJ-2 EXEMPTIONS  
6-13-16 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be overruled.

The trustee objects to the debtor's claimed homestead exemption pursuant to Cal. Civ. Pro. Code § 704.730(a)(3) in the amount of \$105,581 on the ground that the debtor is not 65 years of age or older, is not disabled, and is not 55 years of age or older with income of not more than \$25,000.

However, one of the debtor's was disabled as of May 15, 2005 as is evidenced by an award of social security benefits. This evidence is consistent with Schedule I. That award creates a rebuttable presumption that the debtor has a disability that prevents substantial gainful employment. The trustee has offered nothing to rebut the presumption.

6. 15-28558-A-13 ROBERT STANLEY  
MET-2

MOTION TO  
MODIFY PLAN  
5-28-16 [55]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make \$3,075 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, while the court disagrees that "good faith" as required by 11 U.S.C. § 1325(a)(3) requires a debtor to turn over future income, the feasibility of the plan hinges on the ability of the debtor to collect and overdue account. There is no convincing evidence of such. See 11 U.S.C. § 1325(a)(6).

7. 12-22065-A-13 BETTY CHANDLER  
MET-2

MOTION TO  
MODIFY PLAN  
6-4-16 [34]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan specifies that the trustee shall pay to the FTB on account of a Class 2 secured any amounts not needed to pay the FTB's Class 5 priority claim. There are three problems. First, the FTB has not filed a secured claim. Second, even if one were filed, this would result in dividends that are not in equal monthly installments as required by 11 U.S.C. § 1325(a)(5)(B)(iii)(II). This is due to the fact that priority claims are not paid equal monthly installments; hence anything not paid to a priority claim and diverted to a secured claim will not be an equal monthly installment. Third, because secured claims are paid before priority claims, it will not be possible, at least going forward, to divert a dividend payable on a priority claim to a secured claim.

8. 16-23077-A-13 ADRIAN/VICTORIA OLDHAM  
MET-1  
VS. UMPQUA BANK

MOTION TO  
VALUE COLLATERAL  
6-9-16 [12]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

According to the debtors, their business inventory and business equipment have a value of \$21,745. However, this opinion is based on the liquidation value given to the debtors by West Auctions. There are two problems.

The debtors are simply repeating the opinion of another. This is hearsay and will not be considered by the court.

Second, the relevant valuation standard is not a liquidation value. Because the debtor is operating a business and selling the inventory at retail and suing the equipment, the cost of replacing that inventory and the cost of replacing the business equipment are the relevant valuation standards. See 11 U.S.C. § 506(a)(1).

9. 16-23290-A-13 RICARDO VEGA

ORDER TO  
SHOW CAUSE  
6-24-16 [22]

- ☐ 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 June 20. While the delinquent installment was paid on June 29, 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.

10. 16-22291-A-13 CHRISTOPHER DILLER

ORDER TO  
SHOW CAUSE  
6-23-16 [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 \$77 installment when due on June 13. While the delinquent installment was paid on June 22, 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.

**THE FINAL RULINGS BEGIN HERE**

11. 16-22206-A-13 JACQUELINE/ROBERT COONEY MOTION TO  
HDR-2 CONFIRM PLAN  
5-27-16 [32]

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

12. 16-22206-A-13 JACQUELINE/ROBERT COONEY COUNTER MOTION TO  
HDR-2 DISMISS CASE  
6-27-16 [49]

**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 debtor dismissed the underlying motion to confirm a plan before the trustee filed his opposition and this counter-motion. Therefore, when filed, there was nothing to oppose or to counter. Therefore, both the opposition and the counter-motion will be dismissed without prejudice.

13. 15-28150-A-13 RODNEY/JESSICA SPEARMAN OBJECTION TO  
ACK-1 CLAIM  
VS. CONSUMER PORTFOLIO SERVICES, INC. 5-25-16 [21]

**Final Ruling:** The hearing has been continued to August 29, 2016 at 1:30 p.m.

14. 15-27060-A-13 ROOSEVELT/JANICE MOTION TO  
MET-1 WHITEHURST MODIFY PLAN  
5-28-16 [21]

**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.

15. 16-20477-A-13 ROBIN DIMICELI MOTION TO  
SR-1 CONFIRM PLAN  
3-30-16 [28]

**Final Ruling:** This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). 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 plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

16. 15-26281-A-13 STEPHEN TRUMAN OBJECTION TO  
EXEMPTIONS  
3-9-16 [52]

**Final Ruling:** The court continues the hearing to August 1, 2016 at 1:30 p.m. to consider this matter with the debtor's motion to dismiss the case. The written record is closed and has not been reopened by the continuance.

17. 15-26281-A-13 STEPHEN TRUMAN MOTION TO  
HSM-5 APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY  
6-13-16 [134]

**Final Ruling:** The court continues the hearing to August 1, 2016 at 1:30 p.m. to consider this matter with the debtor's motion to dismiss the case. The written record is closed and has not been reopened by the continuance.

18. 15-26281-A-13 STEPHEN TRUMAN MOTION TO  
HSM-6 APPROVE COMPENSATION OF CHAPTER 7  
TRUSTEE  
6-13-16 [139]

**Final Ruling:** The court continues the hearing to August 1, 2016 at 1:30 p.m. to consider this matter with the debtor's motion to dismiss the case. The written record is closed and has not been reopened by the continuance.

19. 16-20891-A-13 HILARIO HERNANDEZ ORDER TO  
SHOW CAUSE  
6-22-16 [54]

**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 court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the \$76 installment when due on June 17. However, after the issuance of the order to show cause, the remainder of the filing fee was paid full. No prejudice was caused by the late payment.