

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

July 20, 2018 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 4. 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 20, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 6, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 13, 2018. 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 5 THROUGH 7 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 30, 2018, AT 2:30 P.M.

July 20, 2018 at 1:30 p.m.

**Matters to be Called for Argument**

1. 17-25404-A-13 MARIA AZTIAZARAIN MOTION TO  
HLG-4 WITHDRAW AS ATTORNEY  
6-22-18 [91]
- Telephone Appearance  
 Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted. Counsel for the debtor seeks to withdraw because the debtor wishes to discharge her but has not provided her with the name of substitute counsel. Consequently, Local Bankruptcy Rule 2017-1(e) required counsel to file a motion in order to obtain permission from the court prior to withdrawing. In response, the debtor affirms her desire to discharge counsel and find new counsel. Therefore, the motion will be granted. Counsel shall provide the debtor with all of her property and original records as well as a copy of her file within 7 days of the hearing. Counsel shall lodge a proposed order.

2. 18-21651-A-13 ALAN MILLSPAUGH MOTION TO  
JLW-3 CONFIRM PLAN  
6-7-18 [50]
- Telephone Appearance  
 Trustee Agrees with Ruling

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

The objecting creditor leased a vehicle to the debtor. That lease expired before this case was filed. The plan nonetheless attempts to provide for the lease as if it were a secured claim and pay the creditor the present value of its alleged claim. Because the claim is a leased, the debtor must comply with 11 U.S.C. § 365 in order to retain the vehicle. Because the lease has expired, the debtor no longer has any rights under section 365 to assume the lease and cure any default while maintaining lease payments. At most, if there is an unexpired option to purchase the vehicle in the lease, 11 U.S.C. § 108 provides the debtor with a short extension of time to exercise that option. However, the terms of the option cannot otherwise be modified in a plan by treating the claim as if were a conventional secured claim.

3. 13-26081-A-13 ELAINE WEBB OBJECTION TO  
PGM-6 CLAIM  
VS. ADVOCATES RX, INC. 6-6-18 [79]
- Telephone Appearance  
 Trustee Agrees with Ruling

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

This case was filed on May 1, 2013. The confirmed plan provides for a secured claim of Veritas Financial in Class 2C. An order on a related valuation motion was entered on August 12, 2013. This means that because the collateral for the claim, after deducting senior liens, had no value, this secured claim was reduced to \$0.

When Veritas did not file a proof of claim, the debtor filed one on its behalf on January 31, 2014.

Although Veritas' secured claim was reduced to \$0, it was allowed as a nonpriority unsecured claim. Even though the plan requires no dividend be paid on nonpriority unsecured claims, the plan requires the debtor to make plan payments for 60 months. Because all secured and priority claims were paid, funds remain to pay a dividend to holders of nonpriority unsecured claims.

On April 16, Advocates RX filed a notice that Veritas had transferred the claim to it. No assignment, either of the note or the deed of trust has been filed. A review of the original loan documentation indicates that Veritas was the original lender.

The trustee reports that because no objection was filed to Veritas/Advocates' proof of claim until June 6, 2018, a \$13,485.52 dividend was paid to it.

The debtor now objects because Advocates has filed no proof of an assignment. Advocates responds by admitting that it lacks any documentation for an assignment. However, the few documents produced in response to the objection indicate that Advocate funded the debtor's loan, ostensibly through Veritas, and that Veritas serviced the loan and passed the debtor's payments to Advocate. It is clear that Advocate is the actual creditor and entitled to payment on the claim.

4. 18-23795-A-13 DENNIS GARRETT MOTION TO  
BB-1 EXTEND AUTOMATIC STAY  
6-20-18 [10]

- Telephone Appearance
- Trustee Agrees with Ruling

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

This case was filed on June 18, 2018. Because the debtor filed an earlier chapter 13 case that was dismissed within the prior year to June 18, the automatic stay arising in this case had a duration of 30 days unless extended by the court. See 11 U.S.C. § 362(c)(3). The debtor filed this motion in order to extend the stay beyond the 30<sup>th</sup> day. While the motion was filed before the 30 days expired, the debtor set it for hearing two days after the 30-day period.

Because this motion was filed within the 30-day period but set for hearing outside of the 30-day period, the automatic stay expired and it is too late to extend or impose it in this case. See 11 U.S.C. § 362(c)(3)(B).

**FINAL RULINGS BEGIN HERE**

5. 17-25404-A-13 MARIA AZTIAZARAIN OBJECTION TO  
MAA-1 CLAIM  
VS. OCWEN LOAN SERVICING, LLC 6-22-18 [89]

**Final Ruling:** The debtor's request for a continuance is granted. The hearing is continued to September 4, 2018 at 1:30 p.m. The debtor should note that this will provide an opportunity to correct some deficiencies. First, the objection refers to Claim No. 5 which was not filed by Ocwen. Second, the original hearing was set on 25 days of notice. This is insufficient. See Fed. R. Bankr. P. 3007 and Local Bankruptcy Rule 3007-1. Either 30 days (no written response to the objection is required) or 44 days (no written response to the objection is required) of notice are required. Third, the objection was not served on the creditor at the address listed in the proof of claim. Fourth, no evidence is included with the objection establishing any of its factual assertions.

6. 18-22926-A-13 JOSEPH RAQUIZA MOTION FOR  
RDN-1 RELIEF FROM AUTOMATIC STAY  
U.S. BANK TRUST, N.A. VS. 6-20-18 [17]

**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 (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 pursuant to 11 U.S.C. § 362(d)(1). The movant purchased the subject property at a nonjudicial foreclosure sale before the bankruptcy case was filed. Under California law, once a nonjudicial foreclosure sale has occurred, the trustor has no right of redemption. Moeller v. Lien, 25 Cal. App.4th 822, 831 (1994). In this case, therefore, the debtor has no right to ignore the foreclosure and to attempt to reorganize the former secured claim.

Also, the movant gave notice to the debtor to quit the premises and, when he failed to do so, filed an unlawful detainer action. A judgment was entered in favor of the movant before the case was filed. It was awarded possession of the property.

The debtor has no apparent right to reorganize the movant's debt because of the foreclosure and he has no right to possession of it. This is cause to terminate the automatic stay.

Finally, after the case was filed, the movant entered into a stipulation with a nondebtor occupant of the property to vacate the property. The judgment was then modified after this bankruptcy case was filed. While it is doubtful that this act against a nondebtor was a violation of the automatic stay, the stay is annulled to ratify the modification of the judgment insofar as it dealt with the nondebtor occupant.

Because the movant is not an over-secured creditor, 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.

7. 15-24459-A-13 THOMAS/HEATHER PINTO MOTION FOR  
JHW-1 RELIEF FROM AUTOMATIC STAY  
SANTANDER CONSUMER USA, INC. VS. 6-15-18 [92]

**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 (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 pursuant to 11 U.S.C. §362(d)(1). The movant financed the purchase of a vehicle. It received a purchase money security interest in it. The vehicle has been destroyed in an accident. As required by the security documentation, the debtor insured the vehicle from such loss and named the movant as an additional insured. The movant asks by this motion that it be permitted to demand and apply the insurance to its outstanding claim. This is cause to modify the automatic stay. However, any surplus shall be returned to debtor, not the trustee.

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