UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 21, 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 11. 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 7, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 24, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 31, 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 12 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 JULY 31, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 17-23604-A-13 MELE VILINGIA — ORDER TO SHOW CAUSE 7-5-17 [21]

- □ 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 June 29 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

2. 17-23806-A-13 FREDERICK MARANIA — MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY 7-3-17 [16]
RDW-1

- □ Telephone Appearance
- □ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

To the extent the motion asks the court to terminate the automatic stay, the motion is moot for two reasons. First, as noted below by virtue of 11 U.S.C. § 362(c)(4), the automatic stay never went into effect in this case. There is nothing to terminate. Second, even if the stay had gone into effect, it expired when the case was dismissed on June 26. See 11 U.S.C. § 362(c)(1) & (2).

The court, however, will confirm the absence of the automatic stay from the date the case was filed through the date it was dismissed.

11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has expired or has not gone into effect by virtue of 11 U.S.C. § 362(c)(3) & (c)(4). See also 11 U.S.C. § 362(c)(4)(A)(ii).

Before filing this case on June 6, 2017, the debtor filed two earlier cases, Case Nos. 16-23700 and 17-21976, which were dismissed on July 7, 2016 and April 7, 2017, respectively. Both cases were dismissed within one year of the filing of the current case. Hence, section 362(c)(4) is applicable which provides that no automatic stay is created by the filing of a petition by an individual debtor when that debtor has filed two earlier cases that were dismissed within the prior year. And, while the debtor could have filed a motion to request that the stay be imposed, the debtor filed no such motion and the 30-day deadline to file such a motion has expired. See 11 U.S.C. § 362(c)(4)(B).

To the extent the motion requests relief from the codebtor stay of 11 U.S.C. § 1301, the motion will be denied. First, given the dismissal, that stay has expired. Second, to the extent the motion asks that the codebtor stay be annulled, nothing in section 1301 authorizes the court to do anything other than terminate the stay and no other authority suggesting that the court may grant such relief has been presented to the court.

To the extent the motion asks for prospective and in rem relief, the motion will be denied. Given the applicability of section 362(c)(4), no such relief

is necessary. Further, the movant is the owner of the subject property, not a creditor secured by it. Hence, 11 U.S.C. § 362(d)(4) is not applicable.

3. 17-23119-A-13 JUDY/GARY WROTEN — MOTION TO VALUE COLLATERAL
MOH-1
VS. EXETER FINANCE CORP. — 7-6-17 [25]

- ☐ 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 valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $7,437 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $7,437 of the respondent's claim is an allowed secured claim. When the respondent is paid $7,437 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

4. 17-23320-A-13 LLOYD/KRISTIE ACKERMAN — MOTION TO VALUE COLLATERAL
MOH-1
VS. LENDMARK FINANCIAL SERVICES, LLC — 7-7-17 [19]

- ☐ 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 valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the

subject property had a value of $2215 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $2215 of the respondent's claim is an allowed secured claim. When the respondent is paid $2215 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

5. 14-27232-A-13 SPENCER/VANESSA GRIMENSTEIN — ORDER TO SHOW CAUSE 7-5-17 [139]

- □ Telephone Appearance
- □ Trustee Agrees with Ruling

Tentative Ruling: Ocwen Loan Servicing L.L.C. transferred its proof of claim to Keybank Real Estate Capital but failed to pay the $25 transfer fee to the clerk of court. Therefore, the chapter 13 trustee is ordered to deduct from any dividend due to Ocwen/Keybank the sum of $25 and remit it to the clerk. When the remainder of the dividend due Ocwen/Keybank is paid to the creditor the trustee shall send notice of the $25 payment to the clerk. Such notice shall advise Ocwen/Keybank that it shall not declare a default or assess any late charge now or in the future, whether or not this case is completed, as a result of the $25 paid to the clerk. Ocwen/Keybank shall credit the debtor with the $25 as if it had been paid to Ocwen/Keybank.

6. 16-20750-A-13 MARCOS EVANGELISTA
MRL-3 — MOTION TO MODIFY PLAN 5-8-17 [54]

- □ Telephone Appearance
- □ Trustee Agrees with Ruling

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

First, the debtor has failed to make $1,366 of the 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, 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 post-petition arrears owed to the Class 1 claim of Navy Federal Credit Union. 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).

7. 16-26950-A-13 JEFFERY KAHN
JDM-4
VS. MATHEW M. LAKOTA — OBJECTION TO CLAIM 5-30-17 [74]

□ Telephone Appearance
□ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

As conceded by the claimant, the claim is not entitled to priority. Therefore, it is allowed as a nonpriority unsecured claim. The objection that the claim exceeds the original judgment amount will be overruled. As stated in the response and the amended claim, the difference is pre-petition interest, fees and costs.

8. 14-21961-A-13 TERRY/ALISON YOUMANS — MOTION FOR ADMINISTRATIVE EXPENSES
JHW-1 — 5-8-17 [35]

□ Telephone Appearance
□ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor assumed a vehicle lease with the movant in connection with the confirmation of a plan. That plan provided for the revesting of the property of the estate in the debtor upon confirmation. After confirmation, the leased matured and the debtor incurred approximately $3,900 in lease charges that were not paid by the debtor. This motion seeks payment of these charges as an administrative expense.

First, in California Franchise Tax Board v. Jones (In re Jones), 420 B.R. 506 (BAP 9th Cir. 2009), the court determined that confirmation of a chapter 13 plan providing for the revesting of property of the estate in the debtor meant that a creditor was not prevented from enforcing a post-petition tax claim against the property of the debtor because it was no longer property of the estate.

If estate no longer exists, as it does not exist in this case, the chapter 13 estate cannot incur an administrative expense. The expense cannot possibly preserve an estate that does not exist. See section 5.01 of confirmed plan.

Second, even if the court were to follow the "modified estate preservation" approach suggested in In re Jackson, 403 B.R. 95, 99-100 (Bankr. D. Id. 2009) and hinted at by the Ninth Circuit in California Franchise Tax Board v. Jones (In re Jones), 921 F.3d 921 (9th Cir. 2011), the estate was emptied of at least the property on hand at confirmation which would have included the vehicle subject to the lease. Hence, the post-petition expenses associated with that vehicle did not preserve the estate and the creditor is able to enforce its claims against any property not in the estate. There is no need to resort to whatever remains in the bankruptcy estate to satisfy its claim.

Third, in In re Parmentor, 527 F.3d 606 (6th Cir. 2008), the court concluded that the confirmation of a chapter 13 plan that assumed a vehicle lease and required the debtor to make direct lease payments obligates only the debtor, not the bankruptcy estate. Therefore, the estate incurs no administrative liability for post-assumption breach damages. This is on all fours with the circumstances of this case.

9. 13-26465-A-13 DARREN COCREHAM — MOTION TO MODIFY PLAN
PGM-3 — 6-12-17 [93]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

To pay the dividends required by the plan at the rate proposed by it will take 72 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

10. 17-22978-A-13 MORGAN MITCHELL — OBJECTION TO CONFIRMATION OF PLAN
USA-1
INTERNAL REVENUE SERVICE VS. — 5-25-17 [19]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained.

The debtor has not filed income tax returns for 2013, 2014, 2015, and 2016. The returns are delinquent.

Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becoming effective, the Bankruptcy Code did not require chapter 13 debtors to file delinquent tax returns. If a debtor did not file tax returns, the trustee might object to the plan on the grounds of lack of feasibility or that the plan was not proposed in good faith. See, e.g., Greatwood v. United States (In re Greatwood), 194 B.R. 637 (9th Cir. B.A.P. 1996), *affirmed*, 120 F.3d. 268 (9th Cir. 1997).

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors.

In this case, the meeting of creditors was held and concluded. While it is possible for the deadline to file the delinquent returns to be extended, to receive an extension the trustee hold the meeting of creditors open. See 11 U.S.C. § 1308(b). The trustee did not hold the meeting open. Hence, the deadline for filing the delinquent returns has expired and it is impossible for the debtor to comply with section 1308.

There are two consequences to a failure to comply with section 1308. The failure is cause for dismissal. See 11 U.S.C. § 1307(e). Also, 11 U.S.C. § 1325(a)(9) and an uncodified provision of BAPCPA found at section 1228(a) of the Act provide that the court cannot confirm a plan if delinquent returns have not been filed with the taxing agency and filed with the court. This has not been done and so the court cannot confirm any plan proposed by the debtor.

11. 17-21188-A-13 TANISHA MAVY
TLM-1
VS. UNIVERSAL ACCEPTANCE CORP.

MOTION TO
VALUE COLLATERAL
5-19-17 [55]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor asks the court to value a vehicle at $373, based on an appraisal by a car dealer. However, the appraisal is the trade-in value, or the value the dealer would pay for the car. The court is required to value the car at its retail value, or the value a retail merchant would sell a similar car to the debtor taking into account its condition. See 11 U.S.C. § 506(a)(1).

FINAL RULINGS BEGIN HERE

12. 16-26325-A-13 DIANA CABELLO — MOTION TO MODIFY PLAN
PGM-2 — 6-12-17 [41]

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.

13. 14-25147-A-13 MATTHEW KELLOGG AND VERONICA SANCHEZ — MOTION TO MODIFY PLAN
PGM-2 — 6-7-17 [78]

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.

14. 17-22863-A-13 CAITLIN MILLS — MOTION TO VALUE COLLATERAL
LBG-1
VS. EXETER FINANCE CORP. — 6-14-17 [20]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor 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 trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the

subject property had a value of $3,500 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $3,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $3,500 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

15. 17-22297-A-13 JAMES/JENNIFER MEJINO — OBJECTION TO CLAIM
MC-1
VS. FORD MOTOR CREDIT COMPANY, L.L.C. — 5-24-17 [27]

Final Ruling: This objection to the proof of claim of Ford Motor Credit Company has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained and the claim disallowed as secured but allowed as a nonpriority unsecured claim.

Prior to the filing of this case, the claimant repossessed the vehicle securing its claim. Hence, when the case was filed, it had taken the collateral and applied the proceeds from its disposition to its claim. And, although it also recorded an abstract of a judgment, the debtor owns no real estate to which it could attach. Hence, when the case was filed, any claim was unsecured.