UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 5, 2018 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 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 APRIL 2, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY MARCH 19, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 26, 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 9 THROUGH 10 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 MARCH 12, 2018, AT 2:30 P.M.

Matters to be Called for Argument

1. 17-28001-A-13 ARLENE DISESSA — ORDER TO SHOW CAUSE 2-14-18 [39]

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 February 9. While the delinquent installment was paid on **February 16**, 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.

2. 18-20022-A-13 DEBORAH/WILLIAM BISHOP — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 2-13-18 [24]
JPJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained and the motion to dismiss the case conditionally denied.

First, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Sierra Central Credit Union in order to strip down or strip off its secured claim from its collateral. No such motion has been filed, served, and granted. Absent a successful motion the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Second, the Class 2 treatment proposed for Sierra Central Credit Union's claim materially differs from what is required by a stipulation between the debtor and the creditor.

Third, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $577 is less than the $589.70 in dividends and

expenses the plan requires the trustee to pay each month. The problem is even more pronounced if the monthly payment to Sierra Central Credit Union required by the aforementioned stipulation is included in the calculation.

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

3. 14-22339-A-13 CRISELDA SARIO — MOTION TO MODIFY PLAN
JMC-3 — 1-8-18 [46]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion refers to two different plans filed by the debtor and is unclear which one the debtor seeks to confirm. Further, the plan filed on January 8 is not on the mandatory form required by Local Bankruptcy Rule 3015-1(a) (effective on and after December 1, 2017, in all cases regardless when filed).

4. 16-22739-A-13 JOEY/SHEILA NUQUI — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
CYB-3 — 2-9-18 [49]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor's attorney, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor, 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 granted.

The motion seeks approval of $3,025 in additional fees incurred principally in connection with the modification of a mortgage and the related modification of the plan. 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.

5. 16-20640-A-13 MICHAEL/EMMA POST — MOTION TO MODIFY PLAN
PLG-4 — 1-26-18 [76]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection sustained. The monthly plan payment is specified in the Additional Provisions but no such provision has been effectively attached to the proposed plan.

6. 17-21146-A-13 JENNIFER CAMPBELL — MOTION TO MODIFY PLAN
HLG-3 — 1-26-18 [42]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the proposed plan is unsigned in violation of Fed. R. Bankr. P. 9011(a).

Second, the plan proposes to reduce the interest rate payable on two secured claims. Nothing in 11 U.S.C. § 1329 permits a modified plan to reduce the rate previously approved in a confirmed plan. Also, because the two claims are for real property taxes, 11 U.S.C. § 511 requires an 18% rate.

Third, with these claims paid at the rate of 18%, it will take 77 months to complete the plan, well in excess of the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

7. 17-23161-A-13 FELIPE/AVELINA MIGUEL — OBJECTION TO NOTICE OF POST-PETITION MORTGAGE FEES, EXPENSES, AND CHARGES
PGM-2 — 1-18-18 [45]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled as moot.

After this objection was filed, the creditor voluntarily withdrew the November 6, 2017 Notice of Postpetition Mortgage Fees, Expenses and Charges. Had the creditor not done so, the court would have overruled the objection on the merits.

The creditor demands in the Notice $250 in attorney fees for preparing the proof of claim and the loan history, as well as another $350 in nonattorney fees for preparing and filing the claim/loan history.

The debtor complains that the Notice does not contain any billing records or other evidence substantiating the reasonableness of these fees. The debtor correctly notes that under Fed. R. Bankr. P. 3002.1(d), the Notice does not constitute prima facie evidence of the validity and amount of the fees demanded in the Notice. See Fed. R. Bankr. P. 3001(f) and 3002.1(d).

The objection is not accompanied by any evidence that the fees are

unreasonable. Rather, the debtor merely argues the creditor has not proven the fees are reasonable.

While the court agrees that the creditor has the ultimate burden of proving the fees are reasonable, it is not required to do so unless there is an objection. And, when an objection is filed, it would be a good idea for the objecting party to come forward with at least a suggestion as why they are unreasonable.

And, in this case, a perusal of the proof of claim and the loan history indicates the fees are reasonable.

First, over the last several years, the national rules have been amended to require home lenders to provide a great deal of information in the proof of claim and in the attachments and supplements to it.

For instance, in 2011 Rule 3001(c) was amended to require secured creditors include in a proof of claim the amount to cure a pre-petition default in the proof of claim, attach an itemized statement of the interest, fees, expenses, and charges, and attach an escrow account statement showing the account balance and any amount owed.

Once a proof of claim is filed, the creditor must file two different notices. When the contract installment changes after a bankruptcy case is filed, whether because of an interest rate change, a escrow account adjustment, or any other reason, the Notice required by Fed. R. Bankr. P. 3002.1(b) must be filed.

Also, when a home lender incurs any post-petition fees, expenses, or charges that are chargeable to the debtor under the loan, the notice required by Fed. R. Bankr. P. 3002.1(c) must be filed. This is the type of notice at issue in this case.

Finally, at the conclusion of a chapter 13 case, when the trustee reports that the debtor has cured a home lender's claim and maintained contract installment payments, the lender is required to object if it disputes that a default has been cured or that all post-petition amounts have been paid. See Fed. R. Bankr. P. 3002.1(f)-(h).

If a lender fails to provide the information required by the proof of claim or these notices, it can be precluded from demanding payment of amounts otherwise due. See Fed. R. Bankr. P. 3001(c)(2)(D) and 3002.1(h).

Here, the note and deed of trust indicate that the creditor is entitled to reasonable fees and costs when necessary to protect its collateral and right to payment.

The loan history appended to the proof of claim begins in 2011 and runs through the May 9, 2017 petition date. That history together with the other historical financial information in the proof of claim obviously required significant time to prepare. For that time, the creditor has charged a flat rate of $600, comprised of attorney and nonattorney fees. On its face, the charge is reasonable, at least in the absence of something suggesting the contrary.

The court has made this ruling even though the creditor voluntarily dismissed its Notice. It has done so because counsel for the debtor demanded his fees and costs for bringing the objection. This ruling explains why the court finds the objection without merit. Because it is without merit, no fees and costs will be awarded.

8. 17-23793-A-13 RANJIT SINGH
JPJ-2

MOTION TO
CONVERT OR TO DISMISS CASE
10-31-17 [44]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case converted to one under chapter 7.

This case was filed on June 5, 2017. The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This fact suggests to the court that the debtor either does not intend to confirm a plan or does not have the ability to do so. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

Also, the debtor has failed to pay to the trustee approximately $**1,563** as required by the last proposed plan. The inability of the debtor to confirm and a plan and make plan payments is prejudicial to creditors and suggests that no plan will be feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

After a review of the schedules, the court concludes that conversion rather than dismissal is in the best interests of creditors because there is in excess of $63,000 of equity in unencumbered, nonexempt assets that will benefit creditors if liquidated by a trustee.

FINAL RULINGS BEGIN HERE

9. 13-32912-A-13 CYNTHIA EVANS — MOTION TO MODIFY PLAN 1-29-18 [129]
SS-7

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.

10. 17-27975-A-13 SUKHRAJ/FAWN DULAI — ORDER TO SHOW CAUSE 2-12-18 [37]

Final Ruling: The order to show cause will be discharged as moot. The case was dismissed on February 20.