

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

May 9, 2017 at 1:00 p.m.

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1. [17-21213](#)-B-13 MORGAN PROVIDENCE MOTION TO VALUE COLLATERAL OF
 MRL-1 Mikalah R. Liviakis SANTANDER CONSUMER USA, INC.
 See Also #13 4-10-17 [[13](#)]

Final Ruling: No appearance at the May 9, 2017, hearing is required.

The Debtor having filed a Notice of Withdrawal for the pending Motion to Value 2015 Jeep Patriot, Collateral of Santander Consumer USA Inc., an Illinois Corporation, the withdrawal being consistent with any opposition filed to the Motion, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion to Value is dismissed without prejudice.

The court will enter an appropriate minute order.

May 9, 2017 at 1:00 p.m.

2. [16-20016](#)-B-13 CYNTHIA PAYSINGER MOTION TO MODIFY PLAN
PGM-3 Peter G. Macaluso 3-31-17 [[45](#)]

Final Ruling: No appearance at the May 9, 2017, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on March 31, 2017, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *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 *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on March 31, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

3. [17-20925](#)-B-13 DANIEL FERRO
JPJ-1 Jeffrey S. Ogilvie

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
4-19-17 [[15](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

The court's decision is to overrule the objection and confirm the plan provided that the below issues are resolved as asserted by the Debtor in his response to the Trustee's objection.

First, the Debtor has claimed an interest in real property, various personal property, and business equipment and inventory as exempt under California Code of Civil Procedure § 703.140(b). However, the Debtor is married and must file a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2) in order to claim those exemptions. A review of the court's docket shows that a spousal waiver was filed on April 25, 2017.

Second, the Debtor has not provided clarification as to the "Non-filing spouse Rental Expenses" in the amount of \$875.00 listed under Line #43 of Form 122C-2 and has not provided the Trustee with a copy of his current business licenses and January 2017 bank statement for his business checking account. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Provided that the above issues are resolved as asserted by the Debtor, the plan filed February 14, 2017, will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a). The objection will be overruled and the plan will be confirmed.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the May 9, 2017, hearing is required.

The Motion to Confirm Second Amended Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the second amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on March 22, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the May 9, 2017, hearing is required.

The Motion for Order Approving Loan Modification has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *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 *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$1,182.51 a month to \$1,163.28 a month. The modification will include all amounts and arrearages that will be past due as of the modification effective date less any amounts paid to the lender but not previously creditor to the Debtor's loan. The new principal balance as of the modification effective date that will be due and payable is \$208,469.65. The interest rate of 3.5000% began to accrue on the new principal balance as of March 1, 2017. The maturity date will be March 1, 2057. The modification will not affect the distribution to unsecured creditors who were originally to be paid no less than 0.00% in the original Chapter 13 plan.

The motion is supported by the Declaration of Suzanne G. Erickson. The Declaration affirms the Debtor's desire to obtain the post-petition financing. Although the Declaration does not state the Debtor's ability to pay this claim on the modified terms, the court finds that the Debtor will be able to pay this claim since it is a reduction from the Debtor's current monthly mortgage payments.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the May 9, 2017, hearing is required.

The Motion to Confirm First Amended Plan Filed on March 27, 2017, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the first amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on March 27, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

Final Ruling: No appearance at the May 9, 2017, hearing is required.

The Motion to [Approve Loan Modification] has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to permit the loan modification requested.

Debtors seek court approval to incur post-petition credit. PNC Mortgage ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtors' fixed interest rate over the life of the loan from the current 5.7500% to 4.2500%. The amount payable under the note and the security instrument as of the modification effective date is \$443,902.77. This amount consists of any unpaid amounts loaned to the borrow by the lender plus any interest, arrearage, and other amounts capitalized. The interest rate of 4.2500% will begin to accrue on the new principal balance as of April 1, 2017. The maturity date will be March 1, 2047. The modification does not affect the distribution to unsecured creditors who will remain at no less than 0.00%.

The motion is supported by the Declaration of Richard C. Caylor and Gerine L. Caylor. The Declaration affirms the Debtors' desire to obtain the post-petition financing. Although the Declaration does not state the Debtors' ability to pay this claim on the modified terms, the court finds that the Debtors will be able to pay this claim since the interest rate is a reduction from the Debtors' current interest rate.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtors' ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

The court will enter an appropriate minute order.

Tentative Ruling: The Motion to Confirm Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the amended plan.

First, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. Pursuant to Schedule A/B, the total amount of non-exempt equity is approximately \$70,192.17, not including the cost-of-sale of real property or Chapter 7 trustee's fees. However, the Debtor's plan does not list any priority unsecured creditors and is proposing a 0% dividend to general unsecured creditors.

Second, the terms for payment of the Debtor's attorney's fees are unclear. Section 2.07 of the plan specifies a monthly payment of \$0.00 for administrative expenses and it is not possible to pay the balance of the Debtor's attorney's fees and any other administrative expenses through the plan with a monthly payment specified at \$0.00.

Third, the Debtor has not addressed the Trustee's concern that was heard and sustained on March 14, 2017, regarding the value of real property located at 8982 Emsdale Way, Sacramento, California. The Debtor valued the property at \$238,750.00 and the Trustee valued the property at \$275,930.00 to \$286,157.00. In her opposition, the Debtor argues that she is not required to provide a Broker Price Opinion (BPO) and that she will only obtain a BPO if the Trustee files an adversary proceeding and files an injunction ordering her to do so.

The court disagrees with the Debtor. Valuation of property pursuant to 11 U.S.C. § 506(a) and Federal Rule of Bankruptcy Procedure 3012 are contested matters and do not require the filing of an adversary proceeding. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien, that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). As such, the Debtor is ordered to provide a BPO, which would assist in the determination of whether unsecured creditors are receiving as much as they would in a Chapter 7 proceeding.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

9. [12-30454](#)-B-13 BRIAN/NERA CRAWFORD
DMB-1 David M. Brady

MOTION TO RECONSIDER DISMISSAL
OF CASE
3-23-17 [[95](#)]

DEBTOR DISMISSED:
01/26/2017
JOINT DEBTOR DISMISSED:
01/26/2017

Tentative Ruling: The Motion to Reconsider Court's Dismissal on Trustee's Motion to Dismiss Chapter 13 Case has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is to determine the matter at the scheduled hearing.

The Debtors do not state specific grounds for relief from the order dated January 26, 2017, that dismissed the case. Dkt. 83. There is no evidence of either mistake or excusable neglect to justify the court vacating the order dismissing the case. See Fed. R. Civ. P. 60(b) and 9024.

Instead, Debtors assert that they fell behind on plan payments to due a series of unfortunate events. It began in August 2013 when Joint Debtor's mother became unemployed and the Debtors had to help support her. In April 2014, Joint Debtor underwent back surgery that resulted in her being on disability for approximately 12 weeks. In 2015, Debtor's salary was reduced by 5% for the period of January 30, 2015, through April 30, 2015. In February 2015, Joint Debtor's mother became involved with an abusive individual that impacted the Debtors financially, mentally, and physically. In July 2015, Joint Debtor suffered a mental breakdown causing her to leave work for three months. When she returned to work on October 2015, she was informed that her salary would decrease by 10% and her salary was not increased until October 2016, but even then the increase was only by 7%.

From February 5, 2015, through October 27, 2016, the Chapter 13 Trustee filed six Notices of Default and Applications to Dismiss Case during the pendency of the case. The Debtors cured the default on all but the last Notice of Default. Because of this, the court dismissed the Debtors' case on January 26, 2017.

The Chapter 13 Trustee filed a response stating that should the court enter an order vacating dismissal of the case, that the refund in the amount of \$20.02 be returned by the Debtors to the Trustee. Additionally, the Trustee is amenable to the court vacating the dismissal on condition that the Debtors pay off the plan in full by May 25, 2017, since the case will be in month 60 when this motion is heard. If the Debtors fail to pay off the plan, the Trustee requests that the case be dismissed without further notice or hearing on the Trustee's ex parte application.

The Debtors filed a response to the Trustee's objection and state that they have sufficient funds in their Tri Counties Bank to pay off the plan in full. The Debtors state that they will hand deliver a cashier's check to the Chapter 13 Trustee on May 4, 2017.

The matter will be determined at the scheduled hearing.

PACIFIC SERVICE CREDIT UNION
VS.

Tentative Ruling: The 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 respondent and other parties 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 to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court's decision is to grant the motion to modify the stay for the limited purpose of providing information to Volkswagen of America and the Trustee shall continue to make payments on account of the claim unless and until a further order otherwise is entered or the Trustee receives notification from Pacific Service Credit Union that the loan has been paid.

Pacific Service Credit Union ("Movant") seeks to modify the automatic stay with respect to an asset identified as a 2013 Volkswagen Passat with TDI diesel engine, VIN ending in 4274 (the "Vehicle"). The moving party has provided the Declaration of Jeff Rodgers to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The motion is brought for the limited purpose of providing Volkswagen Group of America the lien pay off amount and other financial information so that the Movant's lien may be satisfied and the Debtors may obtain a California Emission Compliant vehicle. The Movant's request is made in response to Volkswagen Group of America's "Consent to Release Information Needed for Vehicle Buyback." Dkt. 73, exh. C.

Opposition

Debtors have filed an opposition. First, the Debtors assert that they are current on plan payments and that cause does not exist for lifting the stay. Second, Debtors state that Volkswagen Group of America has offered them a total of \$23,889.89 in restitution and vehicle return amount. The Debtors state that since Volkswagen Group of America intends to directly pay Movant the Vehicle's outstanding loan amount from the \$23,889.89, there would only remain \$1,416.84 for distribution to the Debtors. Debtors assert that they need at least \$7,500.00 to purchase a 2017 Chevrolet Silverado otherwise they will need to retain the 2013 Volkswagen Passat.

Discussion

The motion by Movant is not to repossess, dispose of, or sell the Vehicle. Instead, the motion is for the limited purpose of providing Volkswagen of America with a lien pay off amount and financial information. In other words, Movant does not seek to terminate the automatic stay but rather to modify it.

The court shall issue an order modifying the automatic stay to allow Pacific Service Credit Union, and its agents, representatives and successors to provide financial information related to the Vehicle to Volkswagen of America.

The Trustee shall continue to make payments on account of the claim unless and until a further order otherwise is entered or the Trustee receives notification from Pacific Service Credit Union that the loan has been paid.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

11. [15-25874](#)-B-13 PENNE USHER
ALF-1 Ashley R. Amerio

MOTION TO MODIFY PLAN
3-28-17 [[22](#)]

Final Ruling: No appearance at the May 9, 2017, hearing is required.

The Debtor's Motion to Confirm First Modified Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on March 28, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

12. [15-25582](#)-B-13 ASHWANI MAYER AND POOJA MOTION TO DISMISS CASE
JM-1 VERMA 4-7-17 [[149](#)]
Peter G. Macaluso

Final Ruling: No appearance at the May 9, 2017, hearing is required.

Freshko Produce Services, Inc. having filed a Notice of Withdrawal of Motion to Dismiss Case, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from calendar.

The court will enter an appropriate minute order.

13. [17-21213](#)-B-13 MORGAN PROVIDENCE
JPJ-1 Mikalah R. Liviakis
See Also #1

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
4-13-17 [[17](#)]

Tentative Ruling: This matter was continued from May 2, 2017. The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was originally filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

Feasibility depends on the granting of a motion to value collateral of Chrysler Capital for money loaned. Pursuant to Local Bankr. R. 3015-1(j), the Debtor must file, set for hearing, and serve on the respondent creditor and the Trustee a stand-alone motion to value the collateral. No such motion has been filed.

The motion to value collateral of Santander Consumer USA, Inc. at Item #1 was for a 2015 Jeep Patriot and is unrelated to the money loaned by Chrysler Capital. The motion at Item #1 was withdrawn by the Debtor.

The plan filed February 28, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan 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.

The court will enter an appropriate minute order.