UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

September 4, 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 15. 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 OCTOBER 9, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 24, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 1, 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 16 THROUGH 23 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 SEPTEMBER 17, 2018, AT 2:30 P.M.

Matters to be Called for Argument

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

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The claimant filed a timely proof of claim for a home loan. That proof of claim demands a total of $177,229.07 including a prebankruptcy arrearage of $37,972.25.

The objection asserts that a prebankruptcy loan modification agreement somehow satisfied the arrears. A copy of the agreement is appended to the objection. Nevertheless, the debtor has not rebutted the presumptive validity of the proof of claim.

First, the loan modification is not signed by the claimant. Its signature by the claimant was a condition to its effectiveness. Section 2, part C provides: "I understand that the Loan Documents will not be modified unless and until (i) I receive from the Lender a copy of this Agreement signed by the Lender. . . ."

Second, the agreement does not "satisfy" the arrears. Rather, it provides for their inclusion in the principal balance and the reamortization of the loan. See section 3, part B of Agreement. As a result of the capitalization of the arrears and the reamortization, when the loan matures on November 1, 2035, the debtor will owe a balloon payment of approximately $111,564.10.

2. 17-25404-A-13 MARIA AZTIAZARAIN — MOTION TO CONVERT OR TO DISMISS CASE
JPJ-2 — 7-2-18 [101]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None.

3. 18-24150-A-13 STEVEN ADAMS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 8-14-18 [31]

- ☐ 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 either successfully prosecuting an objection to the Class 1 claim or selling or refinancing the collateral for such claim in order to pay it. The debtor has not demonstrated the probability of success of an objection nor shown that a sale or refinance is likely and will net sufficient funds to pay the Class 1 claim. Therefore, the debtor has not met the burden of proving the plan's feasibility as required by 11 U.S.C. § 1325(a)(6).

Second, the trustee will object to all of the debtor's Cal. Civ. Pro. Code § 703.140(b) exemptions claimed on Schedule C. The trustee argues that because the debtor is married and because the debtor's spouse has not joined in the chapter 13 petition, the debtor must file his spouse's waiver of right to claim exemptions. See Cal. Civ. Pro. Code § 703.140(a)(2). This was not done.

A debtor's exemptions are determined as of the date the bankruptcy petition is filed. Owen v. Owen, 500 U.S. 305, 314 (1991); see also In re Chappell, 373 B.R. 73, 77 (B.A.P. 9th Cir. 2007) (holding that "critical date for determining exemption rights is the petition date"). Thus, the court applies the facts and law existing on the date the case was commenced to determine the nature and extent of the debtor's exemptions.

11 U.S.C. § 522(b)(1) permits the states to opt out of the federal exemption statutory scheme set forth in section 522(d). In enacting Cal. Civ. Pro. Code § 703.130, the State of California opted out of the federal exemption scheme relegating a debtor to whatever exemptions are provided under state law. Thus, substantive issues regarding the allowance or disallowance of a claimed exemption are governed by state law in California.

California state law gives debtors filing for bankruptcy the right to choose (1) a set of state law exemptions similar but not identical to the Bankruptcy Code exemptions; or (2) California's regular non-bankruptcy exemptions. See Cal. Civ. Pro. Code §§ 703.130, 703.140. In the case of a married debtor, if either spouse files for bankruptcy individually, California's regular non-bankruptcy exemptions apply unless, while the bankruptcy case is pending, both spouses waive in writing the right to claim the regular non-bankruptcy state exemptions in any bankruptcy proceeding filed by the other spouse. See Cal. Civ. Pro. Code § 703.140(a)(2).

Here, the debtor is asserting the exemptions of Cal. Civ. Pro. Code § 703.140(b), which require a spousal waiver. That waiver was not filed with the petition. As a result, the debtor has no allowable exemptions. Without exemptions, the debtor's nonexempt assets total more than $348,000. Because the plan does not provide for payment in full of unsecured creditors but only $73,237.29, the plan does not comply with 11 U.S.C. § 1325(a)(4).

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 60 days, the case will be dismissed on the trustee's ex parte application.

4. 18-24150-A-13 STEVEN ADAMS
NLL-1
U.S. BANK TRUST, N.A. VS.

OBJECTION TO
CONFIRMATION OF PLAN
8-16-18 [37]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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 to the extent and for the reasons stated in the ruling on the trustee's objection (JPJ-1) which is incorporated by reference.

5. 18-24151-A-13 KIM/MINDY EVANS
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN
8-14-18 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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 in part.

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6). Schedules I and J show that the debtor will have monthly income of $1,160 and net income of -$599; the plan requires a monthly payment of $4,988.

Second, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor failed to disclose all income received during the six month period prior to bankruptcy on Form 122C-1. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Third, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $14,248 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay nothing to unsecured creditors.

The objection to the treatment of a home equity line in Class 2 rather than Class 1 will be overruled. Nothing prevents a debtor from accelerating the payment of an equity line.

6. 18-24151-A-13 KIM/MINDY EVANS
AP-1
JPMORGAN CHASE BANK, N.A. VS.

OBJECTION TO
CONFIRMATION OF PLAN
8-16-18 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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 to the extent and for the reasons stated in the ruling on the trustee's objection (JPJ-1) which is incorporated by reference.

7. 16-25154-A-13 CRAIG/MARQUITA TOMASEK
MS-3

MOTION TO
INCUR DEBT
8-11-18 [65]

- ☐ 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 motion will be denied. The debtors ask the court to retroactively approve a loan incurred after the filing of the petition. The loan was used to purchase a vehicle. Local Bankruptcy Rule 3015-1(i)(1) and the confirmed plan required prior approval of such a loan. No reason is given for the failure to obtain prior approval other than the fact that the debtors failed to do so.

8. 17-22962-A-13 EBI FINI
MAC-2

MOTION FOR
SANCTIONS
7-5-18 [53]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This is the debtor's third chapter 13 case. The first, Case No. 15-24321, was filed on May 29, 2015 and dismissed on May 31, 2016. The second, Case No. 16-27988, was filed on December 2, 2016 and dismissed on January 21, 2017. The current case was filed on April 30, 2017.

Thus, when this case was filed, the debtor had filed two earlier cases which were both dismissed within prior year.

Because two prior cases that were dismissed within one year of the filing of the current case, the automatic stay did not go into effect when this petition was filed. See 11 U.S.C. § 362(c)(4). Instead, it was incumbent on the debtor to make a motion to impose the stay. While the debtor did this on May 1, 2017, and while the court ruled on May 15, 2017 that it would impose the stay except as to the IRS, the debtor did not lodge an order granting the motion until August 27, 2018. And, even though an order was lodged belatedly (which the court entered August 27), there was no automatic stay from April 30 to May 15, 2017. The automatic stay was effective in this case from May 15, 2017.

The debtor and Akram Fini are former spouses. Their marital dissolution proceeding has been pending since April 2012. On March 20, 2017, the Superior Court entered a judgment in the divorce. This was shortly before this case was filed. [The motion for relief from the automatic stay by Akram Fini incorrectly asserts the judgment was entered on May 8, 2017.]

The divorce judgment awarded the former family home to Akram Fini as well as a $120,000 to be taken from the debtor's CalPERS retirement accounts, an equalizing payment of $111,962, $10,000 in attorney's fees, and two apartments located in Iran. The debtor was awarded his CalPERS pension benefits.

Although written notice of the filing of the bankruptcy was not filed in the divorce until June 9, 2017, the Superior Court's file includes a May 2, 2017 document titled "Findings and Order After Hearing," noting that this case had been filed. In the order, the Superior Court noted that it had reserved the issue of the manner in which the equalizing payment would be made. It also determined that interest would accrue on such payment upon the debtor's failure to make a $500 payment on account of the equalizing payment.

Thereafter, Akram Fini and her attorney, despite being told of the bankruptcy case, sought a further order in the Superior Court on May 30, 2017 to collect an equalizing payment required by the divorce judgment.

The Superior Court heard this request for relief on June 27, 2017. No party has included in this court's record the Superior Court's order following the June 27 hearing. According to Akram Fini's divorce counsel, the order provided only that the $120,000 awarded his client could be taken from the 401k and 457 accounts at CalPERS. No additional fees were awarded nor did the court issue any further order regarding the collection of the equalizing payment. This interpretation of the order is not disputed by the debtor in this motion for sanctions.

Akram Fini and her attorney then sent a letter on July 25, 2017 to CalPERS. It put CalPERS on notice that Akram Fini was entitled to $120,000 in benefits held at CalPERS in the debtor's name. It also noted that the Superior Court's order of June 9, 2017 made clear that a further order could be issued compelling CalPERS to pay over pension benefits due to the debtor to satisfy his obligation to make the equalizing payment to Akram Fini.

While the July 25 letter did not prompt CalPERS to divert any of the debtor's pension accounts to Akram Fini, it advised the parties that it was placing a hold on the pension accounts until it received a further court order clearly spelling out the interest of each former spouse in the pension accounts.

Because the debtor continued to not make the equalizing payment, among other things, on August 10, 2017, Akram Fini and her attorney sought sanctions, attorney's fees, and interest. On October 3, 2017 she was awarded $10,000 in attorney's fees and the interest.

In February 2018 Akram Fini and her attorney obtained a writ of execution to collect the $10,000. The writ was levied on the debtor's bank accounts and approximately $195 was garnished.

Despite knowing of the bankruptcy case, Akram Fini and her attorney have not returned the garnished funds nor asked the Superior Court to vacate its orders enforcing payment of the equalizing payment and entered after May 15, 2017.

Not until this motion was filed did Akram Fini seek to modify the automatic stay. That motion, however, seeks relief only to complete the transfer of the former family home and to obtain the $120,000 in pension benefits awarded to Akram Fini. The motion for relief from the automatic stay seeks no relief regarding the enforcement of the Superior Court's ordered equalizing payment.

The court concludes that the acts of Akram Fini and her attorney after May 15, 2017 (the date the court imposed the automatic stay) violated the automatic stay insofar as they were attempts to collect the equalizing payment. It was not a violation of the automatic stay to seek court orders to compel the conveyance of the former family home or to collect the debtor's pension benefits to the extent awarded to Akram Fini (the $120,000). Nor did it violate the stay to demand that CalPERS hold the $120,000.

This means that the Superior Court's orders after May 15, 2017 awarding fees attributable to or on account of the debtor's failure to make the equalizing payment, the award of interest on such sum, and the issuance of process such as writs of execution or garnishment were are void. Nonetheless, because the debtor delayed for more than a year lodging an order imposing the automatic stay, the court will award no sanctions for this conduct other than to require the repayment of the levied funds from the debtor's bank account. Akram Fini shall further notify CalPERS that no pension accounts should be withheld from the debtor on account of the nonpayment of the equalizing payment absent a further court order.

9. 17-22962-A-13 EBI FINI — MOTION FOR RELIEF FROM AUTOMATIC STAY
PGM-1
AKRAM FINI VS. — 7-17-18 [58]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to enforce her claim to ownership of the subject real property and to $120,000 of the debtor's pension accounts at CalPERS. These do not represent debts of the debtor or claims of the movant; the former family home and $120,000 of the pension accounts are property of the movant. The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

The court incorporates by reference its ruling on the debtor's motion for sanctions, MAC-2.

10. 18-22889-A-13 SHEILA FRANCOIS
AMC-3
ARVEST CENTRAL MORTGAGE CO. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-6-18 [35]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

The debtor and her spouse have filed a total of eight chapter 13 petitions in this court since 2015. Each has filed four petitions. The short lives of these many cases are summarized below.

Case No.	Chp.	Debtor	Date Filed	Disposition
2018-22889	13	Sheila Francois	5/9/2018	Pending
2018-22064	13	Sheila Francois	4/6/2018	Dismissed 4/17/2018 Failure to file documents
2017-27355	13	Eric Francois	11/6/2017	Dismissed 2/28/2018 Failure to make plan payments
2017-25761	13	Eric Francois	8/30/2017	Dismissed 10/11/2017 Failure to file documents
2016-22083	13	Eric Francois	4/1/2016	Dismissed 6/15/2016 Not eligible under § 109(h)
2015-24192	13	Eric Francois	5/26/2015	Dismissed 1/27/2016 Failure to confirm a plan
2015-22278	13	Sheila Francois	3/23/2015	Dismissed 4/20/2015 Failure to file documents
2015-20434	13	Sheila Francois	1/22/2015	Dismissed 2/20/2015 Failure to file documents

The movant seeks to terminate the automatic stay in order to foreclose a deed of trust encumbering the debtor's home. In Eric Francois' cases, he claimed an interest in that home. However, according to the loan documentation, the debtor owns the home with her mother, Artie Times. Nonetheless, by virtue of the debtor's four cases and her spouse's four cases and his claimed interest in the home, the movant has been unable to enforce its rights against the home despite the debtor's failure to make loan payments. This default now totals more than $50,000.

A review of the docket reveals that the debtor never moved under 11 U.S.C. § 362(c)(4) to extend the automatic stay beyond the 30th day after the May 9, 2018 petition date. Because the debtor's prior case was dismissed within one year of May 9, section 362(c)(3) provided that the automatic stay expired in 30 days. The 30-days was not extended by the court because the debtor failed to request an extension. Therefore, the motion will be denied as moot to the extent it asks the court to terminate the automatic stay. There is no automatic stay to terminate.

However, the motion will be granted insofar as the movant seeks relief under 11 U.S.C. § 362(d)(4). 11 U.S.C. § 362(d)(4) provides that:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . . with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property."

Section 362(d)(4) implicates 11 U.S.C. § 362(b)(20). Section 362(b)(20) is an "in rem" exception to the automatic stay. If the court grants relief in this case under section 362(d)(4), but then another petition is filed by any debtor who claims an interest in the subject real property, section 362(b)(20) provides that the automatic stay does not operate in the second case so as to prevent the enforcement of a lien or security interest in the subject real property. The exception to the automatic stay in the second case is effective for 2 years after the entry of the order under section 362(d)(4) in the first case.

A debtor in the subsequent bankruptcy case, however, may move for relief from the in rem order. The request for relief from the in rem order may be premised upon "changed circumstances or for other good cause shown. . . ."

Here, the debtor filed three prior chapter 13 cases. Her spouse filed four chapter 13 cases. All cases were filed after 2015. All of these prior cases were dismissed for reasons indicating that the debtor and her spouse are unable to perform a chapter 13 plan. They are filing successive cases in a tag team fashion to acquire the automatic stay without any intention or ability to confirm and perform a chapter 13 plan.

Given the filing of eight chapter 13 cases in quick succession, the court concludes that the debtor is engaged in a scheme to delay, hinder or defraud the movant in the enforcement of its claim against the property. This scheme involves multiple bankruptcy filings affecting the property which the debtor has failed to diligently prosecute. Accordingly, relief under 11 U.S.C. § 362(d)(4) is warranted.

Therefore, the court will grant relief from the automatic stay that will be effective for a period of two years in any future case filed by anyone claiming an interest in the subject property, provided the recordation requirements of section 362(d)(4) are satisfied by the movant or its successor. The codebtor stay of 11 U.S.C. § 1301 is likewise terminated to permit the movant to enforce its claim in the home even though a nondebtor may assert an interest in it.

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

11. 18-24990-A-13 SHERYL CALALANG — MOTION FOR RELIEF FROM AUTOMATIC STAY
MWM-313 — 8-14-18 [12]
6801 LEISURE TOWN ROAD APTS INVESTORS VS.

- ☐ 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 movant leased residential real property to the debtor. Prior to the filing of the petition, the movant successfully prosecuted an unlawful detainer action in state court and was awarded possession of the subject property.

Given the filing of the unlawful detainer judgment and the notice to quit that necessarily preceded it, the debtor's right to possession has terminated and there is cause to terminate the automatic stay. In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989). The debtor no longer has an interest in the subject property which can be considered either property of the estate or an interest deserving of protection by section 362(a).

The stay is modified to permit the movant to seek possession of the property. No fees and costs are awarded. The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived.

12. 18-24194-A-13 JUSTIN WARD
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
8-14-18 [13]

- ☐ 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.

The debtor failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

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 60 days, the case will be dismissed on the trustee's ex parte application.

13. 18-23795-A-13 DENNIS GARRETT
DWE-1
M&T BANK VS.

OBJECTION TO CONFIRMATION OF PLAN
8-16-18 [101]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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.

The plan provides for several secured claims in the additional provisions. These provisions are vague and indicate that the debtor will make several future plan modifications in order to pay claims. This is nothing more than a plan to have a plan. Because the court cannot determine that each secured claim will be paid in full as required by 11 U.S.C. § 1325(a)(5)(B), the court will not confirm the plan.

14. 18-21496-A-13 DANILO SESE
PGM-3

MOTION TO CONFIRM PLAN
7-23-18 [73]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the objections will be overruled on the condition the plan is modified to include a cure of the post-petition installment due but not paid to the Class 1 claim.

The objection to the length of time necessary to sell the home securing the Class 1 claim will be overruled. The plan provides for a period of no more than 12 months from the petition date.

15. 18-24196-A-13 HATEM ABDINE

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
8-14-18 [14]

- ☐ 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 debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor failed to disclose the sale of a vehicle prior to bankruptcy in response to question 18 on the Statement of Financial Affairs. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Second, the nonstandard provisions of the plan make provision for post-petition arrears that are neither specified nor claimed by the secured creditors.

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 60 days, the case will be dismissed on the trustee's ex parte application.

FINAL RULINGS BEGIN HERE

16. 18-23806-A-13 LISA THOMPSON — MOTION TO VALUE COLLATERAL
PGM-2
VS. CAPITAL ONE AUTO FINANCE — 8-6-18 [28]

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 debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $4,500 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $4,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $4,500 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.

17. 16-26714-A-13 PAULA HUTCHINSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
ROBERT CHAN VS. — 8-1-18 [95]

Final Ruling: The motion will be dismissed without prejudice.

Fed. R. Bankr. P. 9013 and 9014(a) provide that a request for an order shall be made by motion. Fed. R. Bankr. P. 9014(b) further provides that a motion must be served in the manner provided for service of a summons and a complaint. Fed. R. Bankr. P. 7004(b) permits service of a summons and a complaint by first class mail.

In a chapter 13 case, the trustee is a party in interest in all matters and must be served with all motions.

When the person served is the debtor, the debtor and the debtor's attorney both must be mailed the summons and complaint. See Fed. R. Bankr. P. 7004(b)(9) & (g). Here, the motion was served only on the debtor's attorney. Nothing has been filed by or on behalf of the debtor that might be considered a waiver of this service defect.

Therefore, service is defective and the motion must be dismissed without prejudice.

18. 15-24316-A-13 JOSE BENITEZ — MOTION TO MODIFY PLAN
PGM-1 — 7-23-18 [31]

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.

19. 18-23744-A-13 RYAN/CHRISTINE FINNECY — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 8-16-18 [20]

Final Ruling: At the request of the trustee, the hearing is continued to September 17, 2018 at 10:00 a.m. to permit the continued meeting of creditors to be concluded.

20. 18-23364-A-13 BARRY RAASS — MOTION TO CONFIRM PLAN
SLH-1 — 7-25-18 [19]

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 (9th 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 (9th 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.

21. 18-24188-A-13 VINCENT/WENDY CHALK — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 8-16-18 [13]

Final Ruling: At the request of the trustee, the hearing is continued to September 17, 2018 at 10:00 a.m. to permit the continued meeting of creditors to be concluded.

22. 17-23597-A-13 STEVEN DE LA ROSA
MB-1

MOTION TO MODIFY PLAN
7-20-18 [44]

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.

23. 14-30299-A-13 RICHARD SCHRIVER
PGM-1

MOTION TO SUBSTITUTE, FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE AND FOR EXEMPTION FROM SECTION 1328 CERTIFICATE
8-7-18 [67]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) 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 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 debtor, 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 in part.

The debtor died on June 1, 2018. His spouse, who is not a debtor in this case, will make the remaining plan payments. On condition that such payments are made, and given the death of the debtor, a discharge will be issued by the clerk after the completion of plan payments and after the approval of the trustee's final report and account provided the debtor's spouse executes the 11 U.S.C. § 1328 certificate. The requirement that the debtor take a course on personal financial management will be waived.