

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

October 17, 2016 at 1:30 p.m.

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THIS CALENDAR IS DIVIDED INTO TWO PARTS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN BOTH PARTS OF THE CALENDAR. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 10. 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 NOVEMBER 14, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 31, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 7, 2016. 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 11 THROUGH 18 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 OCTOBER 24, 2016, AT 2:30 P.M.

October 17, 2016 at 1:30 p.m.

**Matters to be Called for Argument**

1. 15-27000-A-13 KEENAN/YAO-JANE HEATH MOTION TO  
ALF-7 MODIFY PLAN  
9-2-16 [72]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

While the motion is presented as if the debtor will be increasing the amount of the plan payment, there will be a net decrease over the entire plan term. This is despite a reduction of expenses in the monthly budget filed by the debtor and despite the fact that those expenses should be reduced even further to account for the repayment of a 401k loan, the surrender of a vehicle, and reduced household expenses. Given the reduction in expenses, the debtor has not demonstrated a need to modify the plan. The court concludes that, in the absence of material and unanticipated circumstances, there is no cause to modify the plan and the attempt to do so is in bad faith. See 11 U.S.C. § 1325(a)(3).

Further, the debtor's use of a tax refund that was required to be paid to the trustee in violation of the confirmed plan corroborates the conclusion that the modified plan has been proposed in good faith. Even assuming the debtor had a greater need for the refund, the plan should have been modified before it was used. To ask for a retroactive modification without documenting the prior need only exacerbates the lack of good faith.

Finally, the debtor also breached the confirmed plan by not turning over to the trustee an employment bonus.

2. 16-23904-A-13 JOHN/SANDRA BUTLER MOTION TO  
NF-1 CONFIRM PLAN  
9-1-16 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make \$3,184 of 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, Local Bankruptcy Rule 3015-1(b)(6) provides: "Documents Required by Trustee. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

Third, 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 the post-petition arrears owed to Wells Fargo Home Mortgage on its Class 1 home loan. 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).

3. 16-23904-A-13 JOHN/SANDRA BUTLER OBJECTION TO  
NF-2 CLAIM  
VS. SETERUS, INC. 9-1-16 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be sustained in part.

Federal National Mortgage Association, by its agent Seterus, has filed a proof of claim demanding payment of \$81,363.52. The claim is purportedly secured by real property located in Michigan.

The debtor objects to the claim on two grounds.

First, the debtor sold the property to a third party on June 1, 2009. The debtor quitclaimed the property to the third party. Given the use of a quitclaim and given that there is no evidence with the objection that the claim was satisfied in connection with the sale, the court concludes the sale was subject to the existing mortgage in favor of the claimant.

Because of the sale, the debtor asks that the claim be disallowed as a secured claim in this case. It is not secured by property in which the debtor has an interest. The court agrees.

Secondly, the debtor asks that the claim be disallowed in its entirety because the proof of claim does not "sufficiently authenticate and substantiate" the claim. The court disagrees on this point.

The claim attaches a recent payment history, describes the loan, and attaches the note and the mortgage signed by the debtor. This is a sufficient showing to entitle the claim to prima facie validity. The debtor has not come forward with any evidence, other than the transfer of the security, to rebut that presumption.

Therefore, the claim will be allowed as an unsecured claim.

4. 14-22818-A-13 JOSEPH/DARLENE ROWLEY MOTION TO  
SJS-1 INCUR DEBT  
9-16-16 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

sustained.

The debtor seeks to borrow approximately \$150,000 in order to purchase a home. Repayment of the loan will require a monthly payment of approximately \$926.48 over 30 years.

Because no evidence accompanies the motion demonstrating that the debtor has the financial ability both to repay the loan and complete the plan, the motion will be denied. And, there is good reason to be concerned about the continued viability of the plan. The debtor has failed to make a monthly plan payment.

5. 14-29629-A-13 DARON HAIRABEDIAN MOTION TO  
DSH-15 APPROVE LOAN MODIFICATION  
9-13-16 [57]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed, as required by Local Bankruptcy Rule 3015-1(i)(C)(III), to file an updated budget showing current income and expenses taking into account the proposed modification. Without this information the debtor cannot prove that with the proposed modification the plan will remain feasible.

6. 16-24135-A-13 JAMES OLIVER ORDER TO  
SHOW CAUSE  
9-30-16 [59]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**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 September 26. While the delinquent installment was paid on October 6, 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.

7. 15-20144-A-13 MORGAN FAY OBJECTION TO  
PGM-3 NOTICE OF MORTGAGE PAYMENT CHANGE  
8-29-16 [65]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

Although neither the debtor nor the creditor have cited the provision of the Servicemembers Civil Relief Act of 2003 which limits interest to 6%, both the debtor and the creditor are in agreement that because the debtor is on active military duty, SCRA prevents the creditor from increasing the interest rate on

this variable rate home loan to more than 6%.

The debtor argues that the creditor has increased the interest to more than 6% in two Notice of Payment Changes dated January 6, 2016 and April 13, 2016. However, examination of those Notices indicates that principal and interest has remained at \$930.14 a month throughout the period covered by these notices. This is a payment that includes interest at the rate of 6% per annum as reflected in Notice of Payment Change dated November 30, 2015. The November notice adjusted interest based on the debtor's military service.

While the January 6, 2016 and April 13, 2016 notices increased the total monthly payment from \$1,271.78 to \$1,288.20 to \$1,467.92, the only reason for the increase was an increase in insurance and taxes that were being impounded. The debtor's argument that to the contrary seems to be based on the assertion that the escrow component of the monthly payment is \$277.89. Therefore, the debtor argues, any additional increase must be an increase in the interest component of the payment.

However, the \$277.89 was the escrow component due during the month when the debtor's pre-petition arrearage began to accumulate, April 2013. It has been higher throughout the bankruptcy. The debtor has presented no evidence that the escrow component has not increased at any point since the bankruptcy case was filed.

The parties shall bear their own fees and costs.

8. 16-25647-A-13 JAMES ARNOLD MOTION FOR  
FWP-1 RELIEF FROM AUTOMATIC STAY O.S.T.  
CHARLES J. SYLVA AND SALLY 9-30-16 [12]  
PEABODY REVOCABLE TRUST VS.

- ☐ Telephone Appearance  
☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted pursuant to 11 U.S.C. § 362(d)(1).

The debtor leased land from the movant. The debtor grazed horses and stored personal property on the land. The debtor's right to the leased land has been terminated under the terms of the lease but the debtor has abandoned the horses and property. This is cause to permit the movant to deal with the horses and property as abandoned property under applicable nonbankruptcy law.

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

9. 14-29053-A-13 TANESHIA WRAY MOTION TO  
PLG-3 MODIFY PLAN  
9-2-16 [60]

- ☐ Telephone Appearance  
☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make \$420 of 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, the plan also is not feasible because it fails to provide for all of the debtor's prior payments. Without those payments, the plan will not pay the promised dividends.

10. 16-24090-A-13 ALEX ENGLISH

ORDER TO  
SHOW CAUSE  
9-27-16 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**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 September 22. While the delinquent installment was paid on September 28, 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.

**FINAL RULINGS BEGIN HERE**

11. 11-47635-A-13 TERRY/DENISE GEDATUS MOTION TO  
SLE-1 APPROVE COMPENSATION OF DEBTORS'  
ATTORNEY  
9-13-16 [62]

**Final Ruling:** This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the 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 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The motion seeks approval of \$2,070 in additional fees and \$20.88 incurred principally in connection obtaining a home loan modification and related plan modification. While the latter arguably was compensated by the flat fee elected by counsel pursuant to Local Bankruptcy Rule 2016-1, obtaining the loan modification was not. Therefore, the court concludes that 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.

12. 15-22547-A-13 TINA CLARK MOTION TO  
BLG-3 APPROVE LOAN MODIFICATION  
8-26-16 [56]

**Final Ruling:** The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. There is no outstanding objection to the relief requested and the court will not materially alter the relief requested. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006).

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

13. 15-27860-A-13 DEVONNE WILLIAMS MOTION TO  
TAG-1 MODIFY PLAN  
9-1-16 [28]

**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 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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. 16-24764-A-13 ANGELO/BRENDA WILLIAMS ORDER TO  
SHOW CAUSE  
9-26-16 [57]

**Final Ruling:** The order to show cause will be discharged because it is moot. The case was dismissed on September 30.

15. 16-24273-A-13 RACHEL LUNDE MOTION TO  
JSO-4 CONFIRM PLAN  
9-6-16 [38]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

16. 16-24074-A-13 FRANCISCO ESQUIVIAS AND MOTION TO  
ROSA GUZMAN VALUE COLLATERAL  
VS. AMERICREDIT FINANCIAL SERVICES, INC. 8-8-16 [34]

**Final Ruling:** The hearing has been continued to October 31, 2016 at 1:30 p.m.

17. 16-25880-A-13 MERCEDES MARTIN MOTION FOR  
DBJ-1 EXEMPTION FROM COMPLETION OF  
CREDIT COUNSELING  
9-19-16 [11]

**Final Ruling:** This motion for a waiver of the requirement that the debtor receive a prebankruptcy credit counseling briefing has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), General Order 05-03, ¶ 8(a), 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter

will be resolved without oral argument.

The motion will be granted.

The debtor suffers from dementia. Given the debtor's incapacity, she is unable with reasonable effort to participate in the counseling required by 11 U.S.C. § 109(h) and cause exists for a waiver of that requirement. See 11 U.S.C. § 109(h) (4).

18. 16-22893-A-13 EMILY CARROLL  
NUU-1

MOTION TO  
APPROVE LOAN MODIFICATION  
9-19-16 [29]

**Final Ruling:** This motion to modify a home loan 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.