

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 19, 2015 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 5. 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 23, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 2, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 9, 2015. 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 6 THROUGH 13 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 26, 2015, AT 2:30 P.M.

October 19, 2015 at 1:30 p.m.

Matters to be Called for Argument

1. 15-25319-A-13 KENNETH HARPER MOTION TO
JPJ-1 CONVERT OR DISMISS CASE
8-28-15 [34]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None. Personal appearances by counsel and the debtor required (that is, no telephone appearances permitted). At the end of the calendar the debtor will be sworn and required to testify and address the following issues: Is "Chic Steppers" a business operated by the debtor? Is it a proprietorship, partnership, or corporate entity owned, whole or in part, by the debtor? Does the debtor maintain an Internet site, social media account for Chic Steppers? Is "Chic Steppers" the same as or different from "Chaic Enterprises"? Counsel for the debtor shall produce at the hearing the debtor's last filed income tax return.

Counsel for U.S. Trustee is requested to be present.

2. 15-25319-A-13 KENNETH HARPER MOTION TO
RJ-6 CONVERT TO CHAPTER 11 CASE
10-5-15 [50]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None. Personal appearances by counsel and the debtor required (that is, no telephone appearances permitted). At the end of the calendar the debtor will be sworn and required to testify and address the following issues: Is "Chic Steppers" a business operated by the debtor? Is it a proprietorship, partnership, or corporate entity owned, whole or in part, by the debtor? Does the debtor maintain an Internet site, social media account for Chic Steppers? Is "Chic Steppers" the same as or different from "Chaic Enterprises"? Counsel for the debtor shall produce at the hearing the debtor's last filed income tax return.

Counsel for U.S. Trustee is requested to be present.

3. 15-27442-A-13 PATTI MINH-PHUONG TRAN MOTION TO
MRL-1 EXTEND AUTOMATIC STAY
10-2-15 [13]

- ☐ 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.

As to the IRS, the motion will be denied.

Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 7346, Philadelphia, PA 19101-7346; (2) United States Attorney, for the IRS, 501 I Street, Suite 10-100, Sacramento, CA 95814; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

Service in this case is deficient because the IRS was not served at the first address.

The motion also will be denied as to all creditors on the merits.

This is the second chapter 13 case filed by the debtor. A prior case, Case No. 14-30849, was dismissed within 2 days of the filing of the current case. The prior case was dismissed because the debtor was unable to make the plan payments required by her confirmed plan. She was approximately three months in default.

A review of the schedules in both cases reveals that the debtor's net income in the first case was \$1,680 and now is \$1,659. Hence, the debtor's financial situation is approximately the same. And, the plan in each case committed this net income to the plan. However, in the first case, the debtor was unable to maintain those plan payments. The explanation given in this motion is that the debtor did not understand when her payments were due. This explains a late payment but not the failure to make three monthly plan payments.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case.

Section 362(c)(3)(B) allows a debtor to file a motion requesting the continuation of the stay. A review of the docket reveals that the debtor has filed this motion to extend the automatic stay before the 30th day after the filing of the petition. The motion will be adjudicated before the 30-day period expires.

In order to extend the automatic stay, the party seeking the relief must demonstrate that the filing of the new case was in good faith as to the creditors to be stayed. For example, in In re Whitaker, 341 B.R. 336, 345 (Bankr. S.D. Ga. 2006), the court held: "[T]he chief means of rebutting the presumption of bad faith requires the movant to establish 'a substantial change in the financial or personal affairs of the debtor . . . or any other reason to conclude' that the instant case will be successful. If the instant case is one under chapter 7, a discharge must now be permissible. If it is a case under chapters 11 or 13, there must be some substantial change."

Here, it appears that the debtor was unable to maintain plan payments in the

first case. This motion does not establish that the debtor will be any more successful in this case. The debtor's financial situation is unchanged and she has not satisfactorily explained her failure to maintain payments in the first case. The court cannot conclude that this case is more apt to succeed.

4. 15-27442-A-13 PATTI MINH-PHUONG TRAN MOTION TO
MRL-2 VALUE COLLATERAL
VS. AMERICAN HONDA FINANCE CORP. 10-2-15 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of \$7,897 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, \$7,897 of the respondent's claim is an allowed secured claim. When the respondent is paid \$7,897 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

5. 13-22788-A-13 RACHAEL AMARAL MOTION TO
MRL-1 SELL
9-23-15 [45]

- ☐ 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 to sell real property will be granted on the condition that the sale proceeds are used to pay all liens of record in full in a manner consistent with the plan. If the proceeds are not sufficient to pay liens of record in full (including liens ostensibly "stripped off"), no sale may be completed without the consent of each lienholder not being paid in full.

THE FINAL RULINGS BEGIN HERE

6. 13-26320-A-13 JANIE APODACA MOTION TO
BLG-2 MODIFY PLAN
9-4-15 [37]

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 (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 modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

7. 13-36134-A-13 CHRISTOPHER/RENEE WADE MOTION TO
JPJ-4 MODIFY PLAN
9-11-15 [78]

Final Ruling: The motion will be granted.

The opposition filed October 5 will be stricken. It has been filed by an attorney who is not attorney of record for the debtor. More important, the document states only that opposition will be filed before the hearing. That is not good enough. Because the motion was set on more than 28 days' notice, written opposition was due on October 5. What was filed was a statement that opposition would be filed. No extension has been granted.

The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329. Because there is a confirmed plan, the trustee may propose a modified plan provided there are substantial changes warranting a modification. As indicated by the trustee, the debtor's income has increased from \$3,128.56 (according to Schedules I and J) when the case was filed, to \$8,508.93 according to the debtor's 2014 income tax return and pay advices for the first quarter of 2015. This is sufficient to feasibly increase the monthly plan payment by \$390 a motion which is sufficient to pay unsecured creditors in full.

8. 15-25240-A-13 MARVIN/KAREN MURASE MOTION TO
PGM-1 CONFIRM PLAN
9-3-15 [27]

Final Ruling: The court continues the hearing to November 16, 2015 at 1:30 p.m. and directs the debtor to file and serve admissible evidence addressing the trustee's objection under 11 U.S.C. § 1325(b) by November 2; the trustee's reply is due November 9.

9. 15-26251-A-13 JENNIFER SALAZAR OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
9-10-15 [23]

Final Ruling: The objection and motion will be dismissed as moot. The case was dismissed on October 13 pursuant to the court's earlier conditional order because the debtor failed to pay a filing fee installment.

10. 15-27255-A-13 ROBERT CLAYCAMP MOTION TO
LBG-2 VALUE COLLATERAL
VS. FIRST U.S. COMMUNITY CREDIT UNION 9-17-15 [12]

Final Ruling: The court orders the hearing continued October 20, 2015 at 2:00 p.m. in courtroom 33.

11. 15-26657-A-13 ROBERT/LEE-ANN MAHAN ORDER TO
SHOW CAUSE
9-28-15 [75]

Final Ruling: The order to show cause will be discharged because it is moot.

Upon conversion to chapter 7, the conversion fee as well as the remainder of the case filing fee was paid in full.

12. 15-26663-A-13 JENNIFER TUNISON ORDER TO
SHOW CAUSE
9-28-15 [15]

Final Ruling: The order to show cause will be discharged because it is moot.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the \$79 installment when due on September 23. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

13. 11-43770-A-13 FRANK CROOKS AND ZORINA MOTION FOR
SJS-1 DEL ROSARIO CROOKS EXEMPTION FROM FINANCIAL
MANAGEMENT COURSE ETC
9-25-15 [38]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing informs potential respondents that written opposition must be filed and served within 14 days prior to the hearing if they wish to oppose the motion. Because less than 28 days of notice of the hearing was given (24 days' notice was given), Local Bankruptcy Rule 9014-1(f)(2) specifies that written opposition is unnecessary. Instead, potential respondents may appear at the hearing and orally contest the motion. If necessary, the court may thereafter require the submission of written evidence and briefs. By erroneously informing potential respondents that written opposition was required and was a condition to contesting the motion, the moving party may have deterred a respondent from appearing. Therefore, notice was materially deficient.