

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Sacramento, California

December 21, 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 7. 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 JANUARY 25, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JANUARY 11, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JANUARY 19, 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 8 THROUGH 15 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 DECEMBER 28, 2015, AT 2:30 P.M.

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Matters to be Called for Argument

1. 15-25202-A-13 CLENT/LINDA CLARK MOTION TO
PLG-2 CONFIRM PLAN
11-6-15 [48]

- ☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

The debtor has failed to make \$697 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).

Additionally, even though the plan provides for the assumption of an unexpired lease with William Wagley and provides at section 3.01 that the debtor will pay directly to Mr. Wagley all post-petition lease payments whether or not the plan has been confirmed, the debtor has failed to pay the rent due for the months of October, November and December 2015. This default of the plan and the lease also indicates the plan is not feasible.

2. 15-28002-A-13 KANIKA REED OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
11-25-15 [20]

- ☐ 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 will be conditionally denied.

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$516 is less than the \$531 in dividends and expenses the plan requires the trustee to pay each month.

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

3. 15-27624-A-13 JOHN JUDD

ORDER TO
SHOW CAUSE
12-4-15 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of \$77 due on November 30 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

4. 15-28133-A-13 PETER LADD
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN
11-25-15 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to give the trustee financial records for his employment/business. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). 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).

5. 15-23745-A-13 STEPHEN ADAMS
ET-2

MOTION TO
CONFIRM PLAN
11-3-15 [53]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment, beginning in plan month 7, of \$1,018.27 is less than the \$3,468.13 in dividends and expenses the plan requires the trustee to pay each month.

Second, to pay the dividends required by the plan at the rate proposed by it will take 600 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Third, even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from

6.	15-21258-A-13	ELIZABETH GOMEZ	OBJECTION TO
	JPJ-3		CLAIM
	VS. FIDELITY NATIONAL TITLE COMPANY		11-3-15 [78]

7. 11-42797-A-13 VICTOR OYEYEMI MOTION TO
MAC-3 MODIFY PLAN
11-8-15 [70]

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Second, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$1,964.70 is less than the \$2,124.00 in dividends and expenses the plan requires the trustee to pay each month.

Third, with the failure to provide for prior payments and with the shortfall in future payments as explained above, to pay the dividends required by the plan at the rate proposed by it will take 652 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Fourth, the plan is internally inconsistent. While it states its duration will be 60 months, the plan provides for only 56 monthly payments.

Fifth, 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 Bank of America 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).

THE FINAL RULINGS BEGIN HERE

8. 15-28900-A-13 RONNA FLAIG ORDER TO
SHOW CAUSE
11-30-15 [10]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The order to show cause will be discharged and the case will remain pending.

The debtor did not pay the petition filing fee of \$310, as required by Fed. R. Bankr. P. 1006(a), when the petition was filed. Nor did the debtor request permission to pay the fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The failure to pay the filing fee or to arrange for its payment in installments is cause for dismissal. See 11 U.S.C. § 1307(c)(2). However, after the issuance of the order to show cause, the delinquent fee was paid in full. No prejudice was caused by the late payment.

9. 15-28901-A-13 ERIN PENLAND ORDER TO
SHOW CAUSE
11-30-15 [10]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The order to show cause will be discharged and the case will remain pending.

The debtor did not pay the petition filing fee of \$310, as required by Fed. R. Bankr. P. 1006(a), when the petition was filed. Nor did the debtor request permission to pay the fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The failure to pay the filing fee or to arrange for its payment in installments is cause for dismissal. See 11 U.S.C. § 1307(c)(2). However, after the issuance of the order to show cause, the delinquent fee was paid in full. No prejudice was caused by the late payment.

10. 15-28905-A-13 RUTH MANLEY ORDER TO
SHOW CAUSE
11-30-15 [11]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The order to show cause will be discharged and the case will remain pending.

The debtor did not pay the petition filing fee of \$310, as required by Fed. R. Bankr. P. 1006(a), when the petition was filed. Nor did the debtor request permission to pay the fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The failure to pay the filing fee or to arrange for its payment in installments is cause for dismissal. See 11 U.S.C. § 1307(c)(2). However, after the issuance of the order to show cause, the delinquent fee was paid in full. No prejudice was caused by the late payment.

11. 15-27138-A-13 DWIGHT/GWENDOLYN HAMILTON OBJECTION TO
CONFIRMATION OF PLAN
OCWEN LOAN SERVICING, L.L.C. VS. 11-6-15 [38]

Final Ruling: The objection will be dismissed without prejudice.

First, the objection pertains to the plan filed on September 24, 2015. The court sustained the trustee's objection to that plan at a hearing on November 23 and in an order filed December 1. Because the plan will not be confirmed, the creditor's objection is moot.

Second, to the extent not moot, the objection is untimely. The Notice of the Commencement of the Case was served on the creditor with the proposed plan. The notice directed the creditor to file and serve any objection to confirmation no later than November 5 and to set it for hearing on November 23. The creditor filed it on November 6 and set it for hearing on December 14.

Third, the objection does not comply with Local Bankruptcy Rule 9014-1 because when filed it was not accompanied by a separate proof/certificate of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents does not satisfy the local rule. The proof/certificate of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar. Given the absence of the required proof/certificate of service, the objecting party has failed to establish that the motion was served on all necessary parties in interest.

Fifth, an objection placed on the calendar by the objecting party for hearing must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c). The purpose of the docket control number is to insure that all documents filed in support and in opposition to the objection are linked on the docket. This linkage insures that the court, as well as any party reviewing the docket, will be aware of everything filed in connection with the objection.

This objection has no docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the objection that have not been brought to the attention of the court. The court will not permit the objecting creditor to profit from possible confusion caused by this breach of the court's local rules.

12. 15-24175-A-13 REBECCA WEBER MOTION TO
MG-3 CONFIRM PLAN
11-4-15 [60]

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.

13. 15-24175-A-13 REBECCA WEBER MOTION FOR
PCJ-1 RELIEF FROM AUTOMATIC STAY
SOLANO FIRST FEDERAL CREDIT UNION VS. 10-7-15 [34]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be denied.

This case was filed on May 22, 2015. Hence, since the filing, five monthly installments have fallen due under the terms of the home loan owed to the movant.

The amended plan filed by the debtor provides for this home loan in Class 1. Class 1 claims receive two dividends from the trustee. First, the trustee pays the ongoing monthly installment (whether or not the plan is confirmed) and, second, the trustee pays (after confirmation) a dividend to cure any default under the loan. The plan has not yet been confirmed.

The trustee's response to the motion indicates that he has paid the five monthly installments that have fallen due since the case was filed.

Therefore, because the home is necessary to the debtor's personal financial reorganization, and because there is no default under the terms of the proposed plan, there is no cause to terminate or modify the automatic stay.

The parties shall bear their own fees and costs. 11 U.S.C. § 506(b).

14. 15-28294-A-13 CHARLES HOWSON ORDER TO
SHOW CAUSE
12-2-15 [28]

Final Ruling: The order to show cause will be discharged and the case will remain pending.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the \$79 installment when due on November 25. However, after the issuance of the order to show cause, the delinquent installment, as well as the remainder of the filing fee, was paid. No prejudice was caused by the late payment.

15. 10-50998-A-13 PAULINE MARZETTE MOTION FOR
EGS-1 RELIEF FROM AUTOMATIC STAY
BAYVIEW LOAN SERVICING, L.L.C. VS. 11-21-15 [54]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be dismissed as moot.

The court confirmed a plan on August 12, 2013. That plan provides for the movant's claim in Class 4.

"Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Because the plan has been confirmed and because the case remains pending under chapter 13, the automatic stay has already been modified to permit the movant to proceed against its collateral.