

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Chief Bankruptcy Judge
Sacramento, California

September 21, 2004 at 9:00 a.m.

THE CALENDAR IS DIVIDED INTO THREE PARTS. THE COURT WILL FIRST HEAR CONTESTED MOTIONS AND OBJECTIONS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULES 3007-1(d)(1) OR 9014-1(f)(1). THESE MATTERS, CALENDAR ITEMS 1-34 WILL BE CALLED FOR HEARING BEGINNING AT 9:00 A.M. EACH OF THESE MATTERS HAS A TENTATIVE RULING.

THE NEXT PORTION OF THE CALENDAR, ITEMS 35-43, ARE MOTIONS AND OBJECTIONS NOTICED FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULES 3007-1(d)(2) OR 9014-1(f)(2). THESE ITEMS WILL BE CALLED BY THE COURT BEGINNING NO EARLIER THAN 10:30 A.M. EACH MATTER IN THIS SECOND CALENDAR GROUP IS SET FOR A PRELIMINARY LAW AND MOTION HEARING. IF NO ONE APPEARS TO CONTEST ONE OF THESE MATTERS, THE COURT MAY DISPOSE OF IT. IF THERE IS OPPOSITION, THE COURT WILL SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE RECORD FURTHER. IF THE COURT SETS A FINAL HEARING IN MATTERS 35 THROUGH 43, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE WHICH IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON OCTOBER 19, 2004 AT 9:00 A.M. OPPOSITION TO THE MATTER ON CALENDAR MUST BE FILED AND SERVED BY SEPTEMBER 28, 2004 AND ANY REPLY MUST BE FILED AND SERVED ON OCTOBER 5, 2004. THE MOVING PARTY IS TO GIVE NOTICE OF THE CONTINUED HEARING AND THESE DEADLINES.

THE LAST PORTION OF THE CALENDAR, ITEMS 44-106, WILL NOT BE HEARD BY THE COURT. BELOW IS A FINAL RULING FOR EACH OF THESE MATTERS. THE "FINAL RULING" WILL BE APPENDED TO THE MINUTES. THE FINAL RULING MAY NOT BE A FINAL ADJUDICATION OF THE MERITS OF A MATTER. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MAY SO ADVISE THE COURTROOM DEPUTY CLERK AND THE FINAL RULING WILL BE VACATED IN FAVOR OF THE CONTINUANCE OR THE STIPULATION. IF YOU CANNOT SO ADVISE THE COURTROOM DEPUTY CLERK AT THE HEARING, MAKE PROVISION FOR VACATING THE FINAL RULING IN YOUR ORDER.

WITHIN EACH PORTION OF THE CALENDAR, CASES ARE ARRANGED BY THE LAST TWO DIGITS IN THEIR CASE NUMBERS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN THREE DIFFERENT LOCATIONS ON THIS CALENDAR.

IF THE COURT CONCLUDES THAT FED.R.BANKR.P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, ABSENT GOOD CAUSE, IT WILL BE SET FOR HEARING ON SEPTEMBER 21, 2004 BEGINNING AT 1:30 P.M. BEFORE JUDGE McMANUS.

September 21, 2004 at 9:00 a.m.

MATTERS TO BE HEARD BEGINNING AT 9:00 A.M.

1. 02-30917-A-13L SANDRA JACKSON CONT. HEARING - MOTION TO
SLJ #2 MODIFY CHAPTER 13 PLAN AND TO
CONFIRM MODIFIED PLAN II
6-17-04 [68]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion to modify the confirmed plan will be denied and the objection will be sustained.

The proposed amendment seeks to reduce monthly plan payments from \$188.03 to \$10 for the period from November 2003 through December 2004. The plan payment will then increase to \$200 for the period from January 2005 through February 2006.

The objecting creditor's collateral was valued previously at \$3,095. During the case, it has depreciated \$1,437.50. It has been paid \$915 to date through the plan.

The court rejects the creditor's argument that a plan may not be modified in order to reduce payments to secured creditors. Such a modification is permitted by 11 U.S.C. § 1329(a)(1) which permits the debtor to increase or decrease payments on claims of particular class provided for by the plan. The plan may also be modified to extend or reduce the time for such payments. See 11 U.S.C. § 1329(a)(2).

As long as the present value of the creditor's secured claim is paid in full over a reasonable period, the plan passes muster under 11 U.S.C. § 1325(a)(5). The cases cited state only that the total amount paid on the secured claim cannot be reduced. For example, the court on prior occasions as not permitted debtors modify the interest rate on a secured claim once that rate has been set in the original plan. Nor has the court permitted the debtor to provide for payment of a secured claim in the original confirmed plan then modify it to surrender the vehicle. See In re Nolan, 232 F.3d 538 (6th Cir. 2000).

Nothing prevents a modification that increases or decreases the plan payment which in turn increases or decreases the period of time it will take to pay a secured claim.

However, whether it is the original plan or a modified plan, the plan must preserve the creditor's interest in its collateral. See 11 U.S.C. § 1325(a)(5)(B)(I).

Absent the consent of the secured creditor, a chapter 13 plan modifying a secured claim cannot be confirmed unless it will pay the present value of the secured claim as well as permit the creditor to retain the lien securing the claim. A plan effectively denies a secured creditor its security if it does not provide an income stream that keeps pace with the depreciation of its collateral as well as the accrual of interest. Accord In re Cook, 205 B.R. 437, 442-43 (Bankr. N.D. Fla. 1997) (confirmation denied when plan would pay debtor's attorney's fees in advance of car lender because depreciation would exceed payments to the secured creditor in the early months of the case). Other courts, most notably In re Johnson, 63 B.R. 550 (Bankr. D. Colo. 1986) and In re Kennedy, 177 B.R. 967 (Bankr. S.D. Ala. 1995), have held that the

13 cases. Rule 9006(b)(3) does not restrict extensions of the time to file proofs of claim in chapter 11 cases. Consequently, under Rule 9006(b)(1), the court may permit a creditor to file a proof of claim in a chapter 11 case after the bar date established under Rule 3003 has expired if excusable neglect prevented the filing of a timely proof of claim.

In Pioneer, the Supreme Court determined what constituted excusable neglect under Rule 9006(b)(1). That decision has little or no applicability here. In a chapter 13 case, Rule 9006(b)(1) is not applicable; Rules 9006(b)(3) and 3002(c) are applicable. And, as noted above, Rule 3002(c) does not permit enlargement of the time to file proofs of claim after the expiration of the deadline even when excusable neglect is present.

Notwithstanding their plain and unequivocal language, however, the Bankruptcy Rules may not be applied in a way that deprives a party of its constitutional rights. See Reliable Elec. Co., Inc. v. Olson Constr. Co., 726 F.2d 620, 623 (10th Cir. 1984); In re Rogowski, 115 B.R. 409, 412-14 (Bankr. D. Conn. 1990). The Fifth Amendment provides that "[n]o person . . . shall . . . be deprived of . . . property, without due process of law. . . ." In Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), the Supreme Court held that "[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

The claimant here asserts that because it did not receive notice of the filing of the petition or the deadline for filing proofs of claim in time to file a timely proof of claim. It maintains that it would be unfair if it is precluded from filing a claim and participating in the case.

The analysis here turns on whether the claimant will be deprived of a property right if it is not allowed to file a proof of claim despite the expiration of the deadline to file a proof of claim. The creditor's argument that it will be deprived of due process is premised upon the contention that if it is not allowed to file a late claim, the debtor's obligation to it will be discharged. This premise is incorrect.

As to the debtor's discharge of their personal liability to the creditors, 11 U.S.C. § 1328(a) provides in relevant part: "*As soon as practicable after completion by the debtor of all payments under the plan . . . the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title. . . .*"

The debtor had a duty to accurately schedule or list all debts, In re Barnett, 42 B.R. 254, 256 (Bankr. S.D. N.Y. 1984), and to follow court orders. If the debtor failed to schedule the creditor or to list its correct mailing address, and as a result the creditor did not receive notice of the bar date in time to file a proof of claim, the debtor's plan does not provide for the creditor's claim. In re Harris, 64 B.R. 717, 719 (Bankr. D. Conn. 1986) ("Distributions under Chapter 13 plans are made only to creditors with allowed claims."); In re Van Hierden, 87 B.R. 563, 564 (Bankr. E.D. Wis. 1988). It would require a tortured reading of 11 U.S.C. § 1328(a) to find that where a creditor is deprived of the opportunity to hold an allowed claim by a debtor's negligence or misfeasance, its claim is provided for by a plan. Southtrust Bank of Ala. v. Gamble (In re Gamble), 85 B.R. 150, 152 (Bankr. N.D. Ala. 1988); In re Cash, 51 B.R. 927, 929 (Bankr. N.D. Ala. 1985) ("[I]t would be a strained construction to view the plan as providing for a debt owed to a creditor, when

the debtor omits the debt and creditor from the Chapter 13 Statement.”).

To discharge a debtor's personal liability for a claim in a chapter 13 case, the plan must provide for that claim. To provide for the claim, the creditor must be given notice so that it has the opportunity to participate in the chapter 13 case and the plan must provide for the creditor's claim. If this did not occur in this case, the claim will not be discharge discharged. This result may warrant the creditor seeking relief from the automatic stay. Cf. In re Lee, 182 B.R. 354 (Bankr. S.D. Ga. 1995); Southtrust Bank of Alabama v. Thomas (In re Thomas), 883 F.2d 991 (11th Cir. 1989), *cert. denied*, 497 U.S. 1007 (1990).

3. 04-25420-A-13L ANDREW/ELLIE POLNEY HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
9-1-04 [25]
- Telephone Appearance
 - Trustee Agrees with Ruling

Tentative Ruling: The petition will be dismissed.

The court granted the debtor permission to pay the filing fee in installments. An installment in the amount of \$48 was due on August 24, 2004. It was not paid.

4. 02-31125-A-13L HERMAN PLAIR CONT. HEARING - MOTION FOR
EE #1 RELIEF FROM AUTOMATIC STAY
FIRST BANK, VS. 8-9-04 [65]
- Telephone Appearance
 - Trustee Agrees with Ruling

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay three monthly post-petition installments through July 2004. This is cause to terminate the automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 434-435 (B.A.P. 9th Cir. 1985).

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Fobian v. Western Farm Credit Bank (In re Fobian), 951 F.2d 1149, 1153 (9th Cir. 1991); Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are

denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed \$750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of \$750.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

5. 04-20825-A-13L WILLIAM RUSSI CONT. HEARING - MOTION TO
PVT #4 CONFIRM AMENDED CHAPTER 13 PLAN
6-16-04 [41]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion to confirm the chapter 13 plan will be denied and the objection will be sustained in part.

To the extent the trustee objects to venue, the objection will be overruled. Venue lies in any district in which the debtor has a principal place of business or his principal assets are located. The debtor's income is derived from an interest in a corporation operating in the Sacramento area. This satisfies the requirements of 28 U.S.C. § 1408(1).

If the debtor remains in default of the payment provisions of the proposed plan (the trustee shall inform the court at the hearing), the plan will not be confirmed because, in that event, it is obviously not feasible as required by 11 U.S.C. § 1325(a)(6). As of the last hearing, the evidence indicated that the plan payments were current.

Confirmation is also subject to approval of the compromise (see Docket Control No. PVT-5). However, as indicated in this ruling and the ruling on the motion to approve the compromise that compromise will not be approved for two reasons.

The objection that the plan does not satisfy 11 U.S.C. § 1325(a)(4) will be sustained. The debtor has not proven that unsecured creditors will receive the present value of what they would receive in a chapter 7 liquidation. While the analysis by the debtor in the reply filed July 30 is persuasive, it does not address the value of the debtor's 50% interest in Food Service Specialists,

Inc. The Schedule B indicates that this interest has an "unknown" value. However, in arguing that venue is proper, the debtor informed the court that it was this interest that gives him the bulk of his income. The reply nevertheless states that the debtor "expects to establish to the Trustee's satisfaction that this asset would have no realizable value for a Chapter 7 estate." However, there is no evidence of such. And, because the debtor has the burden of proving compliance with section 1325(a), the consequences for this paucity of evidence falls on the debtor. See Meyer v. Hill (In re Hill), 268 B.R. 548, 552 (B.A.P. 9th Cir. 2001).

The objection that the plan, and the related compromise, discriminates unfairly against general unsecured creditors will also be sustained. See 11 U.S.C. § 1322(b)(1). Ms. Russi's claim is secured by several judicial liens created by the charging orders entered by the state court more than 90 days prior to the petition. Because they are judicial liens and not security interests, 11 U.S.C. § 552(a) did not cut off those liens as of the petition date. Consequently, money due to the debtor from the entities served with the charging orders remains impressed with those judicial liens. See Cal. Civ. Proc. Code §§ 697.710 & 708.320.

As the court understand's the compromise, assuming no default under its terms, all parties acknowledge that Ms. Russi will receive less than the full amount of her secured claim. She will be paid directly by a third party who in turn will receive the funds from one the entities in which the debtor has an interest.

The concern arises if there is a default. According to her proof of claim, only \$72,800 of Ms. Russi's claim is secured by the judicial liens. The remaining \$32,699 is unsecured. However, under the terms of the settlement, this amount will be paid in full while other unsecured claims will receive nothing.

The parties attempt to argue that this is of no consequence because the unsecured portion of the claim will only be paid from the entities served with the charging liens. However, when the petition was filed, the income streams due the debtor from the entities served with the charging orders was chargeable with only the \$72,800 due to Ms. Russi. This settlement potentially ups that amount to \$105,000. The present value of the difference is an amount that should be paid to all creditors in order to satisfy section 1325(a)(4) (see above). If the court confirms the plan and approves the compromise, this amount will be paid to Mr. Russi if the compromise is performed but paid to Ms. Russi if it is not. The unsecured creditors lose out unfairly.

In other words, the argument that the plan and compromise do not discriminate unfairly ignores the failure of the plan to pay the present value of the income streams to the other unsecured creditors. By assuming the other unsecured creditors are not entitled to these income streams, the debtor and Ms. Russi argue that the possible payment of those streams to her in the event of a default is not unfair. However, the premise of the argument is false.

6. 04-20825-A-13L WILLIAM RUSSI
PVT #5

CONT. HEARING - MOTION TO
APPROVE COMPROMISE OF CONTROVERSY
WITH FIRST NATIONAL BANK OF
NORTHERN CALIFORNIA
7-9-04 [52]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied. As noted in the ruling on PVT-4, the proposed settlement could result in the payment of \$32,200 (\$105,000 - \$72,800 = \$32,200) above the amount of the Ms. Russi's secured claim. This differential, assuming it is derived from entities that would otherwise pay the money to Mr. Russi, would otherwise go to all unsecured creditors. This aspect of the settlement, then, works a preference in favor of Ms. Russi to the detriment of other similarly situated creditors. The problem is compounded by the fact the plan does not require the debtor to pay the differential to Class 7 unsecured creditors even if Ms. Russi is paid at the at discounted amount. The other unsecured creditors lose no matter what.

And, if the settlement is breached, this court is required to issue a judgment for \$105,000 in favor of Ms. Russi and against the debtor even if the case is dismissed. This will occur without the filing of an adversary proceeding. No adversary proceeding, no judgment.

7. 04-20825-A-13L WILLIAM RUSSI
PVT #6

CONT. HEARING - DEBTOR'S MOTION
FOR RELIEF FROM STAY RE STATE
COURT ACTION
7-9-04 [50]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied. The motion essentially seeks relief to obtain state court approval and implementation of the compromise the court has rejected for the reasons explained in the rulings for PVT-4 and PVT-5.

8. 04-23430-A-13L KENNETH GARCIA
CRR #1

HEARING - MOTION TO
MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
8-18-04 [20]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion to modify the confirmed plan will be denied and the objection will be sustained.

The proposed plan violates the anti-modification provision in 11 U.S.C. § 1322(b)(2). The plan proposes to skip the August plan payment. Because the trustee is making the debtor's ongoing mortgage payments, this means that the trustee will be unable to make a mortgage payment on August 25. In other words, the plan is prospectively modifying a loan secured only by the debtor's home. This violates section 1322(b)(2).

9. 03-29734-A-13L WAYNE HUDSON
DRB #2

HEARING - MOTION TO
CONFIRM MODIFIED CHAPTER 13 PLAN
8-9-04 [37]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion to modify the confirmed plan will be denied and the objection will be sustained.

The plan is not feasible. The objecting creditor's secured claim has not been modified by the plan. The plan provides for the claim in Class 1, meaning that the plan is curing a pre-petition arrearage only. Therefore, the debtor must perform all obligations imposed by the note and the deed of trust, including the payment of insurance. The plan also requires that insurance be obtained by the debtor if a contract requires it.

As noted in the objection, the debtor has failed to pay for insurance. This is a breach of the agreement with the objecting creditor and it indicates that the debtor has failed to perform all requirements of the proposed plan.

10. 04-26835-A-13L EDWARD/SONIA ZEISSLER
KCC #1

HEARING - OBJECTION TO
CONFIRMATION OF PLAN
BY AMERICAN GENERAL FINANCE
8-13-04 [20]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection is sustained in part.

First, the objection to the motion under 11 U.S.C. § 522(f)(1)(B) will be sustained. To the extent that the motion is directed at the all terrain vehicle, the motion must be denied because the vehicle is not a household furnishing or good, wearing apparel, appliance, book animal, musical instrument, jewelry, or crop. To the extent the motion is premised on the assertion that other household items secure the claim, the motion will be denied because there is no evidence of such.

Second, the plan does not pay unsecured claims in full and it will take longer than 36 months to pay the promised dividends. The objecting creditor holds both a secured and an unsecured claim. The debtor is proposing to pay the objecting creditor's secured claim in full even though the claim is secured by a luxury item - a recreational vehicle. This violates 11 U.S.C. § 1325(b) because disposable income is being dissipated to preserve property that is not necessary to the debtor's maintenance or livelihood. Also, the payment of this claim causes the plan to exceed 36 months without good cause. The vehicle should be surrendered.

The court does not reach the remaining objections.

The debtor has 15 days from service of an order sustaining the objection to file an amended or modified plan and a motion to confirm it. Once filed, the debtor shall set the motion for hearing on the earliest possible available hearing date consistent with Local Bankruptcy Rule 9014-1(f)(1) (as amended 12/23/02). If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

11. 02-31646-A-13L EDITH/MICHAEL GRABOWSKI HEARING - MOTION TO
JLK #2 AVOID LIEN
VS. NCO FINANCIAL SYSTEMS 8-3-04 [17]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The movant obtained a judgment against the debtor then recorded an abstract of judgment. However, according to Schedule A, the debtor owns no real estate. Consequently, no real property is encumbered by a judicial lien.

The motion proceeds on the premise that the judicial lien encumbers the debtor's personal property, all of which has been claimed as exempt. However, recording an abstract of judgment does not create a judgment lien on personal property. Such a lien is created by filing a notice of judgment lien with the Secretary State. See Cal. Civ. Proc. § 697.510(a). And, even if such a notice had been filed, it would encumber only business personal property, such as accounts receivable, equipment, and inventory. See Cal. Civ. Proc. § 697.530. Schedule B identifies no such personal property.

Consequently, this motion is seeking to avoid a lien that apparently does not exist. The motion does not demonstrate that any real or personal property that is exempt is encumbered by a judicial lien.

12. 04-25447-A-13L BARRY/DIANE HILL HEARING - MOTION TO
MAS #1 CONFIRM AMENDED CHAPTER 13
PLAN BEFORE CONFIRMATION
8-3-04 [15]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion to confirm the chapter 13 plan will be denied and the objection will be sustained.

First, the plan is not feasible. The debtor admitted at the first meeting that her monthly income is \$4,000 rather than the \$5,000 reported on Schedule I. With the reduced income, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

Second, the court does not understand the proposed treatment of the secured claim held by ABN. The plan refers to it being in Class 1, Class 3, and Class 4. Which is it? Was the claim in default when the petition was filed? Is the collateral being surrendered?

13. 04-20249-A-13L NORMA/JOHN CRANSHAW HEARING - MOTION TO CONFIRM
FF #3 DEBTOR'S SECOND AMENDED PLAN
8-9-04 [51]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion to confirm the chapter 13 plan will be denied and the objection will be sustained.

The debtor has failed to carry the burden of proving the feasibility of the plan. The debtor's plan proposes to make monthly plan payments for 57 months, then complete the plan with a lump sum payment exceeding \$28,000 derived from the sale or refinance of their residence. The monthly plan payments, after deducting trustee's fees, the debtor's attorney's fees, and the ongoing mortgage payment, make virtually no headway toward retiring pre-petition arrears and debt.

There is no evidence that the debtor is able or likely to complete such a sale or refinance. This paucity of evidence is made more serious by the fact that the debtor filed an earlier unsuccessful chapter 13 petition.

The debtor has not established feasibility. The debtor had the burden of proof of all essential elements of plan confirmation and this burden has not been satisfied. Meyer v. Hill (In re Hill), 268 B.R. 548, 552 (B.A.P. 9th Cir. 2001).

14. 03-20755-A-13L GENE/CLAVISS NUGENT AMH #1 HEARING - MOTION TO APPROVE FIRST MODIFIED PLAN 8-18-04 [36]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion to modify the confirmed plan will be denied and the objection will be sustained.

Taking into account the stream of payments promised by the plan and the amount of claims to be paid, the plan will not be completed within 60 months as required by 11 U.S.C. § 1322(d). It will take 67 months to complete the plan.

15. 04-20955-A-13L DEBORAH ENOS DBJ #2 HEARING - MOTION RE: CONFIRMATION OF SECOND AMENDED CHAPTER 13 PLAN 8-4-04 [24]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion to confirm the chapter 13 plan will be denied and the objection will be sustained.

The plan is not feasible whether or not the debtor has the ability to make the monthly plan payment. The stream of payments will not pay the dividends promised by the plan over the term of the plan. The plan does not comply with 11 U.S.C. § 1325(a)(6). To pay those dividends will take 58, not 42, months.

16. 04-25456-A-13L PRISCILLA ZAIRIS NLE #2 HEARING - OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE 8-19-04 [28]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection that the plan does not satisfy 11 U.S.C. § 1325(a)(4) will be

overruled. The amended schedules show that the debtor has no interest in the previously scheduled real estate and that her remaining assets have no nonexempt value.

The objection pursuant to 11 U.S.C. § 1325(b), however, will be sustained. The debtor's pay stub indicates that Schedule I understates the debtor's gross income. Consequently, the debtor is not committing all disposable income to the plan.

17. 04-26956-A-13L KEVIN/PATSY LANE HEARING - MOTION FOR
CYB #1 CONFIRMATION OF DEBTORS'
CHAPTER 13 PLAN
8-9-04 [14]
- Telephone Appearance
 - Trustee Agrees with Ruling

Tentative Ruling: The motion to confirm the chapter 13 plan will be denied and the objection will be sustained.

First, there is no evidence that the debtor will be able to make the stream of payments required by the plan. Specifically, the plan's feasibility depends on the debtor's ability to make a lump sum payment in the amount of more than \$22,000 and the end of 24 months. The plan does not identify the source of this payment and there is no evidence of an ability to make this payment. Therefore, the debtor has not sustained the burden of proving compliance with 11 U.S.C. § 1325(a)(6).

Second, the plan does not comply with 11 U.S.C. § 1325(b). Even though the debtor is not paying unsecured claims in full, the debtor is proposing a plan length of just 24 months. The plan must last a minimum of 36 months.

The debtor has 15 days from service of an order sustaining the objection to file an amended or modified plan and a motion to confirm it. Once filed, the debtor shall set the motion for hearing on the earliest possible available hearing date consistent with Local Bankruptcy Rule 9014-1(f)(1) (as amended 12/23/02). If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

18. 04-26956-A-13L KEVIN/PATSY LANE HEARING - OBJECTION TO
NLE #1 CONFIRMATION OF PLAN BY TRUSTEE
8-18-04 [18]
- Telephone Appearance
 - Trustee Agrees with Ruling

Tentative Ruling: The court's ruling on this objection is incorporated into the ruling on Docket Control No. CYB-1. The objection will be sustained.

19. 03-25558-A-13L LYLE FANTON CONT. HEARING - MOTION TO
MET #1 MODIFY PLAN
6-29-04 [41]
- Telephone Appearance
 - Trustee Agrees with Ruling

Tentative Ruling: The motion to modify the confirmed plan will be denied and

to surrender the restaurant equipment and not assume the leases. Consequently, just how the plan will be funded is not clear.

The court does not reach the remaining objections raised by the trustee.

As to the joinder in the objection filed by Community National Bank, the court considers it as an independent objection. It will be overruled. The bank complains that the amended plan provides for the surrender of its collateral but that it provides no compensation for its use for approximately nine months. First, the bank is entitled to nothing more than the return of its collateral or the payment of its present value. See 11 U.S.C. § 1325(a)(5). Second, if it was entitled to adequate protection pending confirmation, it failed to obtain an order providing for that protection. Third, there is no evidence that its collateral has depreciated in value. Fourth, *if* its collateral has depreciated or if there is some other basis for an award of adequate protection, there might be a basis for allowing an administrative claim. However, no motion to allow such an administrative claim as required by 11 U.S.C. § 503.

22. 04-25062-A-13L SHIRLEY PANTALEO HEARING - MOTION FOR
PE #1 CONFIRMATION OF FIRST
AMENDED CHAPTER 13 PLAN
8-13-04 [22]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted provided the plan is further amended as indicated below.

11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. If the plan is further amended to provide a 41% dividend to unsecured creditors, the plan will comply with 11 U.S.C. §§ 1322 and 1325(a) and will be confirmed. This further amendment requires no change to the plan payment or the number of plan payments. Rather, given the payment, the proposed length, and the dividend payable on secured and prior claims, if any, the stream of plan payments will permit the trustee to pay a 41% dividend to unsecured creditors.

23. 04-23765-A-13L DANIEL/CINDY ANON HEARING - MOTION TO
MAS #1 CONFIRM AMENDED CHAPTER 13
PLAN BEFORE CONFIRMATION
7-26-04 [46]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion to confirm the chapter 13 plan will be denied and the objection will be sustained.

First, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive \$129,500 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only \$105,532.50 to unsecured creditors.

Second, the plan is no longer feasible. See 11 U.S.C. § 1325(a)(6). The court has terminated the automatic stay to permit the holders of a security interest in the debtor's motel business to foreclose on their security. Thus, the

debtor's will be unable to sell that business (or an interest in it) as proposed by the plan.

24. 03-22869-A-13L JON/RITA KINGSBURY HEARING - RENEWED MOTION
MWB #5 FOR ORDER APPROVING SECOND
MODIFICATION TO CONFIRMED
CHAPTER 13 PLAN
8-4-04 [97]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion to modify the confirmed plan will be denied and the objection will be sustained in part.

The plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$1,250. The plan does not comply with 11 U.S.C. § 1325(a)(6).

The objection that the plan will exceed 60 months in length will be overruled. Given the amended IRS claim, the plan can be completed within 60 months.

25. 01-27474-A-13L LINDA WASHINGTON CONT. HEARING - MOTION FOR
AC #2 RELIEF FROM AUTOMATIC STAY ETC
WELLS FARGO BANK, VS. 8-5-04 [64]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay three monthly post-petition installments through August 2004. This is cause to terminate the automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 434-435 (B.A.P. 9th Cir. 1985).

While opposition was filed, it does not contest that there has been a post-petition default. Instead, the debtor is attempting to refinance the property in order to the movant's claim in its entirety. However, the court approved a refinance in June and there is no evidence before the court that permits it to conclude that a refinance will close anytime soon.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Fobian v. Western Farm Credit Bank (In re Fobian), 951 F.2d 1149, 1153 (9th Cir. 1991); Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does

make plan payments totaling \$67. The plan does not comply with 11 U.S.C. § 1325(a)(6).

Third, the feasibility of the plan is called further into doubt by the fact that Schedule J shows disposable income but the plan requires a plan payment in excess of \$2,000.

29. 03-28682-A-13L JAYESH/NICOLE PATEL HEARING - ORDER TO SHOW
CAUSE FOR FAILURE TO TENDER FEES
8-26-04 [30]
- Telephone Appearance
 - Trustee Agrees with Ruling

Tentative Ruling: The motion for relief from the automatic stay filed by Jodi Thornton will be dismissed without prejudice because it was not accompanied by the \$150 filing fee.

30. 03-21183-A-13L BILLY TIMMONS HEARING - MOTION FOR
MPD #1 RELIEF FROM AUTOMATIC STAY
GUILD MORTGAGE CO., VS. 8-24-04 [46]
- Telephone Appearance
 - Trustee Agrees with Ruling

Tentative Ruling: The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay three monthly post-petition installments August 2004. This is cause to terminate the automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 434-435 (B.A.P. 9th Cir. 1985).

While opposition was filed, it admits the default. The debtor asks for time to cure the default by providing for the post-petition default in a modified plan. However, there is no evidence explaining why this default occurred and demonstrating that the problem will not recur. Further, because the existing plan already commits all of the debtor's disposable income, the debtor must explain, but has failed to explain, how the debtor will be able to perform a plan that requires the debtor to make ongoing payments as well as cure an even larger defaulted secured claim.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Fobian v. Western Farm Credit Bank (In re Fobian), 951 F.2d 1149, 1153 (9th Cir. 1991); Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The

this provision will be sustained. The proofs of claim (which were filed by National City Home Loan Services) indicate that this creditor's claims arose after October 1994. Thus, the debtor is proposing to pay interest on the arrears on two post-October 1994 secured home mortgages. Prior to the incurring of these debts, the Bankruptcy Code was amended to include 11 U.S.C. § 1322(e). Section 1322(e) overrules Rake v. Wade which had required the payment of interest on interest arrears. The loans in question were made after the effective date of section 1322(e). Therefore, the creditor's loan documentation must require interest to be paid on arrears if it is to receive interest on arrears. There is no evidence that such is the case. Therefore, the debtor is unnecessarily paying interest on this secured claim while paying unsecured creditors less than 100% of their claims. Given the objection, this does not comply with section 1325(b).

Finally, the proposed plan payment is not sufficient for the trustee to make the ongoing mortgage installments to the Class 1 home loan claims. This means that the plan does not comply with 11 U.S.C. § 1322(b)(2) because it modifies loans secured only by the debtor's residence.

32. 00-31084-A-13L CAMERON/MARY MILLER HEARING - RENEWED MOTION TO
CLH #5 MODIFY PLAN
8-3-04 [86]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion to modify the confirmed plan will be denied and the objection will be sustained.

The plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$1,649.52. The plan does not comply with 11 U.S.C. § 1325(a)(6).

33. 04-23288-A-13L JOHN SCANNELL HEARING - MOTION FOR
AJP #2 CONFIRMATION OF AMENDED
CHAPTER 13 PLAN
8-11-04 [32]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion to confirm the chapter 13 plan will be denied and the objection will be sustained.

First, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive \$63,061 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only \$3,750 to unsecured creditors.

Second, the debtor is retaining the collateral of Wells Fargo. However, the plan does not provide a treatment for this creditor's secured claim that is either acceptable to the creditor or which will result in payment in full with a market rate of interest. The plan does not comply with 11 U.S.C. § 1325(a)(5)(A) or (B).

Third, the debtor has not provided an itemized list of the assets in the Scannell Family Trust B nor explained his interest in the trust or the assets in the trust. Without this information, the debtor cannot demonstrate that the

plan complies with 11 U.S.C. § 1325(a)(4) nor that there is cause under 11 U.S.C. § 1322(d) for the plan to exceed 36 months in length.

34. 99-31396-A-13L MARK FLYNN
NLE #1

HEARING - TRUSTEE'S OPPOSITION TO
DEBTOR'S OBJECTION TO TRUSTEE'S
FINAL REPORT AND ACCOUNT
8-18-04 [50]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The debtor's objection to the trustee's final report and account will be overruled.

First, contrary to the assertion in the objection, the trustee paid the claim of Vallejo Garbage Service as represented in the final report and as required by the confirmed plan. The cancelled check clearly demonstrates that payment was made.

Second, to the extent the debtor objects to the claim and amended claims of FTB Mortgage Services/First Horizon because of the added fees and costs, the objection must be overruled. The debtor's counsel agreed to these fees and costs on behalf of the debtor. Further, based on its review of the file, the court cannot say the fees and costs were unreasonable.

Third, the debtor's primary objection appears to be that elements of FTB Mortgage/First Horizon's claim should be disallowed and not paid. However, no objection to its proofs of claim were filed. In the absence of an objection, the claim was deemed allowed. See 11 U.S.C. § 502(a). Furthermore, General Order 97-02, ¶ 6, which is incorporated into the debtor's plan, provided:

"(a) Prior to the expiration of the deadline to object to proofs of claims (see subparagraph (b) below), the Trustee shall pay claims as specified in the confirmed plan unless the Trustee is served with an objection to the claim which is set for hearing within 60 days of its service. Until the objection is adjudicated or settled, the Trustee shall cease paying dividends on account of the objectionable claim. If the objection is overruled, at the request of the claimant or the Trustee, the court may make provision for payment of any dividends not paid while the objection was pending.

(b) Any other objections to claims shall be filed, served, and set for hearing no later than 90 days after service by the Trustee of the Notice of Filed Claims. The Notice of Filed Claims shall be filed and served by the Trustee upon the debtor and the debtor's attorney, if any, no later than the longer of 250 days after the order for relief or 180 days after plan confirmation. Any proof of claim not timely objected to shall continue to be paid by the Trustee pursuant to the terms of the confirmed plan.

(c) Nothing herein shall prevent the debtor, the Trustee, or any other party in interest from objecting to a proof of claim after the expiration of the deadline for objections specified in subparagraph (b) above. However, any objection filed after the expiration of that deadline shall not, if sustained, result in any order that the claimant refund amounts paid on account of its claim."

FTB Mortgage filed a proof of claim on November 22, 1999 in the amount of

\$121,988.32 with an arrearage of \$27,833.66. The claim indicates that it was secured by real estate.

The claim was amended on November 7, 2000. The total claim remained at \$121,988.32 but the pre-petition arrears increased to \$30,753.52.

The proof of claim was amended a second time on February 16, 2001 to increase the total amount demanded to \$122,758.32 and to increase the pre-petition arrearage to \$31,523.52.

The debtor's plan provided for the cure of the pre-petition arrearage. While the plan indicated that the arrearage was \$27,162, the proof of claim filed by the creditor, not the plan, determined that amount of the claim.

On March 5, 2001, First Horizon filed a "supplemental" claim for \$770 for attorneys' fees. The supplemental claim was signed by First Horizon on March 2, 2001. However, on July 2, 2001, First Horizon withdrew this supplemental proof of claim.

On August 23, 2002, counsel for the debtor and the trustee stipulated that the trustee should pay FTP Mortgage \$31,523.52 plus interest at the rate of 8% per annum. Thus, any discrepancy between the plan, which indicated the arrears were \$27,162, and the second amended proof of claim, which indicated the arrears were \$31,523.52, was cleared up.

The trustee filed and served the Notice of Filed Claims on or about March 9, 2000. The 90-day period to object to claims expired on or about June 6, 2000. No objection to First Horizon's proof of claim was made by that deadline and no objection has been filed since the deadline expired. Therefore, the trustee was obligated by the plan to pay the claim as required by the plan and as clarified by the August 23, 2002 stipulation.

The trustee's final report and account indicates that he paid \$31,523.52 on account of the FTB Mortgage/First Horizon's claim together with 8% interest or an additional \$6,249. In other words, the trustee paid exactly what the plan required and what the debtor's attorney of record instructed him to pay.

The objection to the final report will be overruled.

MATTERS TO BE HEARD BEGINNING AT 10:30 A.M.

35. 03-22212-A-13L DOUGALS/MERRITT POTTER HEARING - MOTION TO
SJE #1 REFINANCE HOME LOAN
(INCUR DEBT)
9-1-04 [91]

Telephone Appearance

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 United States 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.

36. 04-27819-A-13L DANIEL SIDHU HEARING - MOTION
WAJ #1 REQUIRING DEBTOR TO ASSUME
MONIER BUILDING PROJECTS, VS. OR REJECT LEASE AND FOR
ADEQUATE PROTECTION
9-1-04 [17]

Telephone Appearance

Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the 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.

37. 04-28019-A-13L CLIFF WHITE HEARING - MOTION TO
PGM #1 AVOID LIEN THAT IMPAIRS
VS. CREDIT WEST CORPORATION EXEMPTION
9-3-04 [10]

Telephone Appearance

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 United States 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.

38. 03-25720-A-13L JAMES SIMPSON HEARING - MOTION FOR
DRW #2 RELIEF FROM AUTOMATIC STAY
JP MORGAN CHASE BANK AS TRUSTEE, VS. 8-25-04 [107]

Telephone Appearance

Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the 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.

39. 04-28020-A-13L JASBIR/JATINDER SAMRA HEARING - MOTION TO
JMG #1 ANNUL AND MODIFY THE AUTOMATIC
STAY
9-3-04 [24]

Telephone Appearance

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the 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.

40. 02-31722-A-13L HENRY/SANDRA WOODSON HEARING - MOTION TO
DRB #21 CONFIRM MODIFIED CHAPTER 13 PLAN
8-30-04 [173] O.S.T.

Telephone Appearance

Because less than 28 days' notice of the hearing was given by the debtor, the creditors, the trustee, the United States 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 or exigent circumstances require that the motion be resolved immediately. If no opposition is offered at the hearing, the court will take up the merits of the motion.

41. 04-26734-A-13L ERIK/MARY LAO HEARING - MOTION FOR
DD #1 RELIEF FROM AUTOMATIC STAY ETC
CITIZENS AUTO FINANCE, INC., VS. 8-12-04 [17]

Telephone Appearance

Because less than 28 days' notice of the hearing was given by the moving creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-

FINAL RULINGS BEGIN HERE

45. 01-21501-A-13L BRIGITTE PETERSON HEARING - MOTION TO
DLM #4 MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
8-13-04 [34]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents 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). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

46. 04-27501-A-13L KEVIN/KIMBERLY LEWIS HEARING - MOTION TO
CONFIRM CHAPTER 13 PLAN
8-27-04 [8]

Final Ruling: The motion will be dismissed without prejudice.

First, the notice of the hearing fails to give the location of the courthouse, and fails to explain how a party in interest would go about opposing the motion. This information is required by Local Bankruptcy Rule 9014-1(d)(2) & (3).

Second, only 25 days of notice of the hearing was given. General Order 03-03, ¶ 8(a) and (b) require that motions to amend and modify chapter 13 plans be noticed for hearing exclusively pursuant to Local Bankruptcy Rule 9014-1(f)(1). The general order is incorporated by reference into the plan. Local Bankruptcy Rule 9014-(f)(1) permits motions to be set on 28 days of notice and it also requires that written opposition be filed 14 days prior to the hearing. Rule 9014-1 also provides that this notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Fed.R.Bankr.P. 2002(b) requires a minimum of 25 days' notice of the deadline for objections to confirmation. If Rule 9014-1(f)(1)(ii) requires that written opposition be filed 14 days prior to the hearing and Rule 2002(b) requires 25 days' notice of the deadline for opposition, then the debtor must give 39 days' notice of the hearing.

Third, the motion and proposed plan were not served on the United States Trustee as required by Fed.R.Bankr.P. 2002(b) & (k), 3015(b), 9034, as well as the United States Trustee Guidelines for Region 17, § 1.1.

Fourth, the proof of service indicates that the motion, but not the notice of hearing, was served on creditors. Thus, there is no evidence that anyone received notice of the hearing.

Fifth, the plan includes a valuation motion concerning the collateral of Triad. A valuation motion is a contested matter and it must be served like a summons and a complaint. See Fed.R.Bankr.P. 9014 incorporating by reference Fed.R.Bankr.P. 7004. Service of this valuation motion did not comply with

Fed.R.Bankr.P. 7004(b)(3) and 9014(b). The motion must be served to the attention of an officer, a managing or general agent, or other agent authorized by appointment or law to receive service of process for the respondent creditor. This motion was simply sent to the corporation. Cf. ECMC v. Repp (In re Repp), 307 B.R. 144 (BAP 9th Cir. 2004) (service in accordance with Fed.R.Bankr.P. 2002(b) does not satisfy the service requirements of Fed.R.Bankr.P. 7004(b)).

47. 04-20103-A-13L JOSEPH/LACY RIPOLL HEARING - MOTION TO
WW #3 CONFIRM SECOND MODIFIED
CHAPTER 13 PLAN
8-5-04 [57]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents 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). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

48. 01-25905-A-13L DENNIS LOWE HEARING - MOTION TO
WW #7 AMEND ORDER ON MOTION RE
ADDITIONAL FEES AND EXPENSES
8-13-04 [73]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, 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). 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 additional fees represent 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 the Chapter 13 Fee Guidelines, if applicable.

49. 02-33407-A-13L CAROLYN LOVE HEARING - DEBTOR'S MOTION TO
JSH #2 MODIFY CONFIRMED PLAN
8-12-04 [44]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents 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). The defaults of these respondents are entered and

the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

50. 04-26007-A-13L WILLIAM/CATHY SOUDERS HEARING - MOTION FOR
ORDER CONFIRMING DEBTORS'
FIRST AMENDED CHAPTER 13 PLAN
8-16-04 [14]

Final Ruling: The motion will be dismissed without prejudice.

First, the motion and proposed plan were not served on the United States Trustee as required by Fed.R.Bankr.P. 2002(b) & (k), 3015(b), 9034, as well as the United States Trustee Guidelines for Region 17, § 1.1.

Second, the plan includes valuation motions concerning the collateral of Bay View Auto Finance and Wells Fargo Auto Finance. A valuation motion is a contested matter and it must be served like a summons and a complaint. See Fed.R.Bankr.P. 9014 incorporating by reference Fed.R.Bankr.P. 7004. Service of these valuation motions did not comply with Fed.R.Bankr.P. 7004(b)(3) and 9014(b). The motion must be served to the attention of an officer, a managing or general agent, or other agent authorized by appointment or law to receive service of process for the respondent creditor. These motion were simply sent to the corporations. Cf. ECMC v. Repp (In re Repp), 307 B.R. 144 (BAP 9th Cir. 2004) (service in accordance with Fed.R.Bankr.P. 2002(b) does not satisfy the service requirements of Fed.R.Bankr.P. 7004(b)). Wells Fargo Auto Finance waived this defect but Bay View Auto Finance did not.

Third, the proof of service does not indicate that the chapter 13 trustee was served with the notice of hearing. Notice is therefore defective.

51. 04-26407-A-13L PHILLIP MILLER HEARING - OBJECTION TO
NLE #1 CONFIRMATION OF PLAN BY TRUSTEE
8-12-04 [11]

Final Ruling: This objection to confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor 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). The debtor's default is entered and the matter will be resolved without oral argument.

The objection will be sustained.

First, the objection to the deduction for a 401K plan is sustained. Voluntary contributions to a 401k plan during the pendency of a Chapter 13 plan deprives unsecured creditors of disposable income. The issue of whether a Chapter 13 debtor may make ongoing voluntary contributions to a pension plan has been addressed by several courts. Those courts have generally found that continued voluntary contributions to a retirement plan deprives unsecured creditors of a portion of a debtor's disposable income. See In re Festner, 54 B.R. 532 (Bankr. E.D. N.C. 1985), In re Fountain, 142 B.R. 135 (Bankr. E.D. Va. 1992), In re Ward, 129 B.R. 664 (Bankr. W.D. Okl. 1991), In re Bruce, 80 B.R. 927 (Bankr. C.D. Ill. 1987). One court, Matter of Colon Vazquez, 111 B.R. 19

(Bankr. D. P.R. 1990), has permitted a debtor to continue to contribute to a pension during the pendency of a case. The facts of that case, however, indicate that Puerto Rican law required the debtor to make the contribution. Such is not the case here, or least the debtor has not proven such.

Second, the debtor is repaying by a payroll deduction a loan from a retirement plan. A plan which permits a debtor to repay an obligation secured by a non-income producing not necessary to the plan sacrifices disposable income which could go to unsecured creditors in order to salvage an asset which will produce nothing for the unsecured creditors. Nor does such an asset provide for the debtor's present support. "Although investments may be financially prudent, they certainly are not necessary expenses for the support of the debtors or their dependents. [Footnote omitted.] Investments of this nature are therefore made with disposable income; disposable income is not what is left after they are made." In re Lindsey, 122 B.R. 157, 158 (Bankr. M.D. Fla. 1991). See also, In re Festner, 54 B.R. 532, 533 (Bankr. E.D. N.C. 1985); N.Y. City Emp. Retirement System v. Villarie (In re Villarie), 648 F.2d 810, 812 (2d Cir. 1981); In re Jones, 138 B.R. 536 (Bankr. S.D. 1991). Here the debtors wish to repay a loan secured by a 401k plan even though general unsecured claims are not being paid in full. The court recognizes that the failure to repay this loan will cause adverse tax consequences to the debtors. Any tax liabilities, however, may be paid through a Chapter 13 plan or outside of the plan. 11 U.S.C. § 1305(a).

Although the Ninth Circuit has not ruled on this issue, the Sixth and Third Circuits have held that a debtor cannot repay pension or retirement loans while in a chapter 13. Harshbarger v. Pees (In re Harshbarger), 66 F.3d 775, 777 (6th Cir. 1995); Tierney v. Dehart (In re Tierney), 195 F.3d 177 (3d Cir. 1999). In Tierney, the court held:

"[R]epayment of amounts withdrawn from retirement accounts is not reasonably necessary for a debtor's maintenance or support, requiring that payments be made, if at all, only after satisfaction of all unsecured debts. [Citations omitted.] . . . If the Debtors do not make the proposed payments, the retirement systems will deduct the balance owed from their retirement accounts. The payments, even if classified as debt payments, therefore, will increase their retirement benefits rather than repay the retirement systems or ensure the viability of either pension system. In effect, the payments are contributions to the Debtors' retirement accounts. Voluntary contributions to retirement plans, however, are not reasonably necessary for a debtor's maintenance or support and must be made from disposable income. [Citations omitted.] As one bankruptcy court explained in refusing to confirm a plan that proposed to make mortgage payments on non-residential property rather than satisfy unsecured creditors, "[a]lthough investments may be financially prudent, they certainly are not necessary expenses for the support of the debtors or their dependents. Investments of this nature are therefore made with disposable income; disposable income is not what is left after they are made. In re Lindsey, 122 B.R. 157, 158 (Bankr. M.D. Fla. 1991). Debtors' proposed payments, regardless of their financial prudence, must be understood as being made out of "disposable income" under the terms of their proposed plans."

In re Tierney, 195 F.3d at 180-181. The court agrees with this holding. Therefore, the plan, which pays a 30% dividend on unsecured claims, does not comply with 11 U.S.C. § 1325(b).

Third, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured

creditors would receive \$9,636 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only \$6,163 to unsecured creditors.

The debtor has 15 days from service of an order sustaining the objection to file an amended or modified plan and a motion to confirm it. Once filed, the debtor shall set the motion for hearing on the earliest possible available hearing date consistent with Local Bankruptcy Rule 9014-1(f)(1) (as amended 12/23/02). If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

52. 04-24910-A-13L SCOTT MANNING HEARING - OBJECTION TO
LJB #1 DEBTOR'S PROPOSED CHAPTER 13 PLAN
8-16-04 [23]

Final Ruling: The objection will be dismissed as moot. The case was converted to chapter 7 on August 18.

53. 04-26314-A-13L MECHELLE RABOT HEARING - OBJECTION TO
NLE #1 CONFIRMATION OF PLAN BY TRUSTEE
8-10-04 [27]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor 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). The debtor's default is entered and the matter will be resolved without oral argument.

The objection will be sustained.

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6). First, Schedule I and J does not include the debtor's business budget despite the fact that she and her spouse are self-employed. Without providing this information, the debtor cannot meet the burden of proving feasibility. Second, the debtor's monthly living expenses are unrealistically low. For example, for a household of eight people, the debtor has budgeted only \$40 for health insurance, \$100 for utilities, and \$560 for food. Third, the debtor has under-budgeted an installment payment on a car loan. With the payment at the correct level, the debtor has even less disposable income than projected.

The debtor has 15 days from service of an order sustaining the objection to file an amended or modified plan and a motion to confirm it. Once filed, the debtor shall set the motion for hearing on the earliest possible available hearing date consistent with Local Bankruptcy Rule 9014-1(f)(1) (as amended 12/23/02). If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

54. 03-33915-A-13L BOBBY/LOIS GWYNN HEARING - TRUSTEE'S OBJECTION TO
LJL #2 CLAIM OF CHASE MANHATTAN BANK USA
8-3-04 [67]

Final Ruling: The objection will be dismissed as moot. The claimant withdrew the duplicate claim objected to by the trustee.

55. 04-25115-A-13L JANIS PATTEN-HENRY HEARING - MOTION TO
SJJ #1 CONFIRM FIRST AMENDED PLAN
8-19-04 [33]

Final Ruling: The motion will be dismissed without prejudice.

The proof of service indicates that the motion and all related documents were served on November 2, 2003. On that date, the documents had not yet been written and executed. Thus, the proof of service is obviously not accurate. Consequently, there is no reliable proof that the documents were served with the minimum notice required by Fed. R. Bankr. P. 2002(b), Local Bankruptcy Rule 9014-1(f)(1), and General Order 03-03 ¶ 8(a) & (b).

56. 04-28115-A-13L GREGORY/LISA CHANNEL HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL, CONVERSION OR
IMPOSITION OF SANCTIONS
8-18-04 [7]

Final Ruling: The order to show cause will be discharged and the petition shall remain pending. The master mailing list was filed on August 20.

57. 04-21616-A-13L DANETTE/CARLOS HANSON HEARING - MOTION TO
JMO #3 CONFIRM SECOND AMENDED CHAPTER
13 PLAN AND MOTIONS TO VALUE
COLLATERAL OF KEY POINT CREDIT
UNION, WELLS FARGO FINANCIAL
CALIFORNIA, INC., ET AL.
8-17-04 [49]

Final Ruling: The motion will be dismissed without prejudice.

The plan includes valuation motions concerning the collateral of Key Point Credit Union, Wells Fargo Financial, and GE Capital. A valuation motion is a contested matter and it must be served like a summons and a complaint. See Fed.R.Bankr.P. 9014 incorporating by reference Fed.R.Bankr.P. 7004. Service of these valuation motions did not comply with Fed.R.Bankr.P. 7004(b)(3) and 9014(b). The motion must be served to the attention of an officer, a managing or general agent, or other agent authorized by appointment or law to receive service of process for the respondent creditor. These motion were simply sent to the corporations. Cf. ECMC v. Repp (In re Repp), 307 B.R. 144 (BAP 9th Cir. 2004) (service in accordance with Fed.R.Bankr.P. 2002(b) does not satisfy the service requirements of Fed.R.Bankr.P. 7004(b)).

Any deadline to confirm a plan is extended for a period of 45 days.

58. 04-23419-A-13L WANDA NICKS HEARING - MOTION TO
PGM #1 CONFIRM DEBTOR'S FIRST AMENDED
PLAN AND MOTION TO VALUE
COLLATERAL OF AMERICREDIT
8-9-04 [31]

Final Ruling: The motion will be dismissed without prejudice.

General Order 03-03, ¶ 8(a) and (b) require that motions to amend and modify chapter 13 plans be noticed for hearing exclusively pursuant to Local Bankruptcy Rule 9014-1(f)(1). The general order is incorporated by reference into the plan. Local Bankruptcy Rule 9014-(f)(1) permits motions to be set on

28 days of notice and it also requires that written opposition be filed 14 days prior to the hearing. Rule 9014-1 also provides that this notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Fed.R.Bankr.P. 2002(b) requires a minimum of 25 days' notice of the deadline for objections to confirmation. If Rule 9014-1(f)(1)(ii) requires that written opposition be filed 14 days prior to the hearing and Rule 2002(b) requires 20 days' notice of the deadline for opposition, then the debtor must give 39 days' notice of the hearing.

Also, even if the foregoing were not a problem, the debtor gave 23 days of notice of this hearing but the notice of hearing informed respondents that written opposition was due 14 days prior to the hearing. When less 28 days notice is permitted, the applicable rule is Local Bankruptcy Rule 9014-1(f)(2). It specifies that respondents need file no written opposition. They are required only to appear at the hearing.

59. 03-29921-A-13L MARK KOLB HEARING - TRUSTEE'S OBJECTION TO
LJL #1 CLAIM OF CITI CARD
8-3-04 [59]

Final Ruling: This objection to the proof of claim of Citi Card has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection is sustained. The creditor has filed two different proofs of claim for the same debt. The first was filed on March 26, 2004. The second proof of claim was filed on June 3, 2004. The later proof of claim does not indicate that it is amending or replacing the earlier proof of claim. However, from the information in the proofs of claim, it is clear that they are duplicative. Therefore, the earlier proof of claim is disallowed and the latest proof of claim is allowed.

60. 03-24822-A-13L AUGUST/IDRIA HARTER HEARING - APPLICATION RE:
WW #4 ADDITIONAL FEES AND EXPENSES IN
CHAPTER 13 CASE (\$3,614.42)
8-13-04 [68]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, 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). 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 additional fees represent 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 the Chapter 13 Fee Guidelines, if applicable.

61. 04-23122-A-13L SHEILA HATFIELD CONT. HEARING - MOTION FOR
CWN #1 RELIEF FROM AUTOMATIC STAY
SELECT PORTFOLIO SERVICING, VS. 8-2-04 [25]

Final Ruling: The motion will be dismissed as moot. The petition was dismissed on August 31, 2004.

62. 04-20128-A-13L THOMAS/THERESA ALTMAN HEARING - DEBTORS' MOTION TO
JCK #1 MODIFY DEBTORS' CONFIRMED
CHAPTER 13 PLAN
8-11-04 [23]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents 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). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

63. 03-23530-A-13L ROBERT ROMERO HEARING - DEBTOR'S OBJECTION TO
SDB #1 CLAIM OF JOHN COMPAGNO M.D. C/O
RCW ASSOCIATES
8-10-04 [15]

Final Ruling: The objection will be dismissed without prejudice.

The notice of the hearing indicates that written opposition must be filed 14 court days prior to the hearing. This misstates the requirement of Local Bankruptcy Rule 3007-1(d)(1) which requires that written opposition be filed 14 calendar days prior to the hearing when 44 days or more of notice is given. Here, only 43 days' notice was given. Therefore, the movant has impermissibly accelerated the date by which written opposition must be filed.

64. 03-20631-A-13L BARBARA TAXARA HEARING - DEBTOR'S MOTION TO
BJT #1 MODIFY PLAN
8-13-04 [33]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents 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). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

65. 03-33031-A-13L DANIEL/JUDY DALY
LJL #2

HEARING - TRUSTEE'S OBJECTION TO
CLAIM OF TUEL & GARMAN FOR
SACRAMENTO INFINITI INC.
8-3-04 [77]

Final Ruling: This objection to the proof of claim of Tuel & Garman has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection is sustained. The creditor has filed two different proofs of claim for the same debt. The first was filed on April 6, 2004. The second proof of claim was filed on May 24, 2004. The later proof of claim does not indicate that it is amending or replacing the earlier proof of claim. However, from the information in the proofs of claim, it is clear that they are duplicative. Therefore, the earlier proof of claim is disallowed and the latest proof of claim is allowed.

66. 01-23932-A-13L ALFONSO/ANGELA GAYTAN
SAC #6

HEARING - MOTION TO
MODIFY PLAN AFTER CONFIRMATION
8-2-04 [88]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents 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). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

67. 04-26832-A-13L GREGORY COLOSIO
NLE #1

HEARING - OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
8-20-04 [14]

Final Ruling: This objection to confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor 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). The debtor's default is entered and the matter will be resolved without oral argument.

Taking into account the stream of payments promised by the plan and the amount of claims to be paid, the plan will not be completed within 60 months as required by 11 U.S.C. § 1322(d). It will take 74 months to complete the plan.

The debtor has 15 days from service of an order sustaining the objection to file an amended or modified plan and a motion to confirm it. Once filed, the debtor shall set the motion for hearing on the earliest possible available

hearing date consistent with Local Bankruptcy Rule 9014-1(f)(1) (as amended 12/23/02). If the debtor fails to meet either deadline, the case will be dismissed on the trustee's ex parte application.

68. 04-22034-A-13L CINDY GUMPY HEARING - MOTION TO
DRE #2 CONFIRM SECOND AMENDED
CHAPTER 13 PLAN
8-10-04 [44]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing states that written opposition was due 28 court days prior to the hearing. This misstates the requirements of Local Bankruptcy Rule 9014-1(f)(1). It requires that written opposition be filed and served 14 calendar days prior to the hearing. The notice of hearing, then, impermissibly accelerated the deadline for written opposition.

69. 03-26339-A-13L ARMON/SONIA NEWTON HEARING - MOTION FOR
JMP #1 RELIEF FROM AUTOMATIC STAY
CITIFINANCIAL MORTGAGE COMPANY, INC., VS. 8-13-04 [43]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor 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). The debtor's default is entered and the matter will be resolved without oral argument.

The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay two monthly post-petition installments. This is cause to terminate the automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 434-435 (B.A.P. 9th Cir. 1985).

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Fobian v. Western Farm Credit Bank (In re Fobian), 951 F.2d 1149, 1153 (9th Cir. 1991); Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed \$750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of \$750.

70. 04-26639-A-13L GEORGE POLYZOS HEARING - MOTION FOR
HSM #1 RELIEF FROM AUTOMATIC STAY ETC
VINCENT LODUCA, VS. 9-3-04 [24]

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 seeks leave to conclude a state court trial with the understanding that no judgment or settlement would be enforceable against the debtor as a personal obligation or as a claim in this chapter 13 case. Instead, any judgment or settlement will be enforced against insurance coverage, if any, of the debtor. The debtor has filed a nonopposition to the motion.

The court concludes there is cause pursuant to 11 U.S.C. § 362(d)(1) to permit the state court litigation to go forward as provided in this court's order in Case No. 03-33322-B-7 and under the conditions stated above and in the motion. The stay is also annulled to the extent necessary to ratify actions and orders taken and entered since the filing of the chapter 13 petition.

The parties are to bear their own fees and costs in connection with this motion.

71. 03-26941-A-13L SHEILA TAYLOR HEARING - TRUSTEE'S OBJECTION TO
LJL #1 CLAIM OF NORTH VALLEY COLLECTION
BUREAU
8-3-04 [57]

Final Ruling: This objection to the proof of claim of North Valley Collection Bureau has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The last date to file a timely proof of claim was November 11, 2003. The proof of claim was filed on December 23, 2003. Pursuant to 11 U.S.C. § 502(b)(9) and Fed.R.Bankr.P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir.

1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

72. 04-27944-A-13L PATRICK/BOBBI DAVIS SW #1 HEARING - OBJECTION TO CONFIRMATION OF PLAN AND COLLATERAL VALUATION MOTION BY GENERAL MOTORS ACCEPTANCE CORP. 8-16-04 [9]

Final Ruling: The parties have resolved this matter by stipulation.

73. 03-22346-A-13L MICHEL TYREE JKG #1 AMERIQUEST MORTGAGE CO., VS. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC 8-19-04 [90]

Final Ruling: The motion will be dismissed without prejudice.

First, the motion does not comply with Local Bankruptcy Rule 9014-1 (effective Dec. 23, 2002) because when it was filed it was not accompanied by a separate proof of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof 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.

Second, the debtor's current counsel was not served with the motion as required by Fed. R. Bankr. P. 7004(b)(9) and 9014(b).

Third, the notice of hearing states that written opposition was due 14 court days prior to the hearing. In fact, Local Bankruptcy Rule 9014-1(f)(1) requires that opposition be filed and served 14 calendar days prior to the hearing.

74. 04-25247-A-13L PATRICK MCKENZIE RLE #1 HEARING - OBJECTION TO CONFIRMATION OF DEBTOR'S AMENDED CHAPTER 13 PLAN BY BELLCO CREDIT UNION 8-24-04 [40]

Final Ruling: The objection will be dismissed as moot. The court has already sustained the trustee's objection to the proposed plan. Therefore, whether or not these additional objections have merit, the plan will not be confirmed.

75. 02-33149-A-13L CHERYL ASHER LJP #1 CONT. HEARING - OBJECTION TO ANY CLAIM OF WENDOVER FUNDING SERVICES IN ANY AMOUNT GREATER THAN \$23,200.00 3-15-04 [38]

Final Ruling: The court concludes that the nature of the evidence is best considered at an evidentiary hearing with all witnesses testifying in person. The parties shall appear on October 19, 2004 at 1:30 p.m. with their witnesses. Each side will be given 90 minutes to present all evidence, argument and objections. The court strongly urges each side to prepare a summary of the accounting evidence such as a spreadsheet showing all payments made and the

accrual of interest.

76. 02-33149-A-13L CHERYL ASHER
LJP #2
- CONT. HEARING - MOTION TO
CONFIRM DEBTOR'S MODIFIED
CHAPTER 13 PLAN
3-4-04 [35]

Final Ruling: The court concludes that the nature of the evidence is best considered at an evidentiary hearing with all witnesses testifying in person. The parties shall appear on October 19, 2004 at 1:30 p.m. with their witnesses. Each side will be given 90 minutes to present all evidence, argument and objections. The court strongly urges each side to prepare a summary of the accounting evidence such as a spreadsheet showing all payments made and the accrual of interest.

77. 04-26853-A-13L NINA BURNSIDE-HOPSON
WW #2
- HEARING - MOTION TO
APPROVE ATTORNEY FEES (\$2,500.00)
8-11-04 [15]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, 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). 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 additional fees represent 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 the Chapter 13 Fee Guidelines, if applicable.

78. 03-28057-A-13L GARY DUNHAM
MWB #4
- HEARING - MOTION FOR
ORDER PARTIALLY DISALLOWING
CLAIM OF IRS.
8-4-04 [41]

Final Ruling: This objection to the proof of claim of the IRS has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The claim will be reduced to \$8,155 to reflect the lower tax liability owed for 2002 as the result of the amended return filed by the debtor.

79. 03-28057-A-13L GARY DUNHAM
MWB #5
- HEARING - MOTION FOR
ORDER APPROVING MODIFICATION TO
CONFIRMED CHAPTER 13 PLAN
8-4-04 [33]

Final Ruling: This motion to modify a plan has been set for hearing on the

notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents 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). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

80. 03-28057-A-13L GARY DUNHAM HEARING - MOTION FOR
MWB #6 ORDER PARTIALLY DISALLOWING
CLAIM OF FRANCHISE TAX BOARD
8-4-04 [38]

Final Ruling: This objection to the proof of claim of the Franchise Tax Board has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained. The claim will be reduced to \$2,360 to reflect the lower tax liability owed for 2002 as the result of the amended return filed by the debtor.

81. 03-28057-A-13L GARY DUNHAM HEARING - SECOND MOTION FOR
MWB #7 APPROVAL OF ATTORNEYS FEES
AND COSTS (\$2,827.50)
8-6-04 [44]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, 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). 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 additional fees represent 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 the Chapter 13 Fee Guidelines, if applicable.

82. 03-20561-A-13L JAMES/KIM ROBINSON HEARING - MOTION TO
GG #1 APPROVE DEBTORS' AMENDED PLAN
7-28-04 [40]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents to file written opposition at least 14 days

notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents 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). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

87. 04-26673-A-13L SEAN/ANDREA NELSON
DGN #1

HEARING - OBJECTION TO
DEBTORS' MOTION TO VALUE
COLLATERAL OF GREAT BASIN F.C.U.
8-19-04 [10]

33 days 2003 Chevy Blazer
D-\$14,000 C-\$16,045

Final Ruling: This objection to confirmation and to the valuation of the creditor's collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor 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). The debtor's default is entered and the matter will be resolved without oral argument.

The objection to the \$14,000 valuation of the objecting creditor's collateral, a motor vehicle, is sustained in part. The plan includes a motion by the debtor urging a \$14,000 valuation. The valuation motion includes the declaration of the debtor testifying that the subject vehicle has a value of \$14,000. A debtor may testify regarding the value of property owned by the debtor. Fed.R.Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

The creditor maintains that the value of the vehicle should be determined by the \$16,045 "private party value" suggested by the Kelley Blue Book. The private party valuation database of the Kelley Blue Book gives the value "you might expect to pay for a used car when purchasing from a private party." This value does not include warranties, inventory storage, and reconditioning charges as does the retail valuation in the Kelley Blue Book. The court agrees that this is a good method of ascertaining the replacement value of a vehicle as required by Rash v. Associates Commercial, 138 L.Ed.2d 148 (1997).

The court concludes the replacement value of the vehicle was \$16,045 on the date of the petition. Because the plan does not provide for the payment of this amount, the objection is sustained.

88. 03-20775-A-13L JESSE/KELLY LOWE
MPD #2
MTG. ELECTRONIC REGIS. SYS., INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-24-04 [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 is granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to

conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's residence. The plan requires that the post-petition note installments be paid directly to the movant. The debtor has failed to pay twelve monthly post-petition installments. This is cause to terminate the automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 434-435 (B.A.P. 9th Cir. 1985).

While opposition was filed it suffers from numerous problems not the least of which is that it does not dispute the default. Instead, the debtor's attorney has filed a declaration containing nothing but hearsay and stating only that the "will attempt to cure the delinquency by or before the date of hearing." Why did the debtor fail to make 12 monthly mortgage payments? How can the debtor possibly cure a \$25,000 delinquency even though the plan commits all disposable income. There are no answers to these basic questions and the time to provide those answers has passed by.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Fobian v. Western Farm Credit Bank (In re Fobian), 951 F.2d 1149, 1153 (9th Cir. 1991); Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed \$750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of \$750.

The 10-day period specified in Fed.R.Bankr.P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

89. 03-31377-A-13L LOIS LEADBETTER
LJL #1

HEARING - TRUSTEE'S OBJECTION TO
OBJECTION TO CLAIM OF PACIFIC
SERVICES CREDIT UNION
8-3-04 [38]

Final Ruling: This objection to the proof of claim of Pacific Services Credit Union has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection is sustained. The creditor has filed two different proofs of claim for the same debt. The first was filed on December 18, 2003. The second proof of claim was filed on February 26, 2004. The later proof of claim does not indicate that it is amending or replacing the earlier proof of claim. However, from the information in the proofs of claim, it is clear that they are duplicative. Therefore, the earlier proof of claim is disallowed and the latest proof of claim is allowed.

90. 03-32080-A-13L DONALD/KRISTINE HIGGINS
MWB #4
VS. DONALD/CAROL STAIR

HEARING - MOTION TO
AVOID LIEN
8-17-04 [97]

Final Ruling: The parties have continued the hearing to October 5, 2004 at 9:00 a.m.

91. 04-24583-A-13L ROLANDO/AURORA GUEVARA

HEARING - MOTION FOR
CONFIRMATION OF FIRST
AMENDED CHAPTER 13 PLAN
8-18-04 [18]

Final Ruling: The motion will be dismissed without prejudice.

First, the motion and proposed plan were not served on the United States Trustee as required by Fed.R.Bankr.P. 2002(b) & (k), 3015(b), 9034, as well as the United States Trustee Guidelines for Region 17, § 1.1.

Second, the motion does not comply with Local Bankruptcy Rule 9014-1 (effective Dec. 23, 2002) because when it was filed it was not accompanied by a separate proof of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof 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.

Third, the notice of the hearing gives inaccurate and insufficient notice of the deadline for opposition. It states that written opposition is due five court days prior to the hearing. Because 28 days or more of notice of the hearing was given, Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002) is applicable. It requires that written opposition be filed 14 calendar days prior to the hearing. Consequently, parties in interest were told to file written opposition after the deadline for filing it.

92. 04-25784-A-13L PAUL/DIANA CONTRERAS
GW #2

HEARING - MOTION FOR
APPROVAL OF DEBTORS' ATTORNEY
FEES AND COSTS (\$2,270.00)
8-24-04 [15]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, 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). 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 additional fees represent 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 the Chapter 13 Fee Guidelines, if applicable.

93. 03-32785-A-13L MATTHEW BUCHANAN AND
SDB #2 LISA RAMUN

HEARING - MOTION TO
MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
8-12-04 [27]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents 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). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

94. 04-23987-A-13L PATRICIA NOGLE
PGM #1

HEARING - MOTION TO
CONFIRM AMENDED PLAN AND
MOTION TO VALUE COLLATERAL
8-6-04 [35]

Final Ruling: This motion to confirm an amended plan and to value collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents 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). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion to confirm the amended plan will be granted. There are no timely objections to the amended plan. 11 U.S.C. § 1323 permits the debtor to amend the plan any time prior to confirmation. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is therefore confirmed.

The valuation motion concerning the collateral of United Consumer Finance 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 \$100 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, \$100 of the respondent's claim is an allowed secured claim. When the respondent is paid \$100 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.

95. 03-22389-A-13L LIBRADA SOLORZANO HEARING - MOTION FOR
MPD #1 RELIEF FROM AUTOMATIC STAY
HOMECOMINGS FINANCIAL NETWORK, INC., VS. 8-25-04 [45]

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 is granted in part pursuant to 11 U.S.C. § 362(d)(1). The debtor has failed to pay approximately four monthly post-petition installments. The debtor does not deny that this post-petition default has occurred. Instead, the debtor agrees to pay this default within a short period of time. The debtor has demonstrated to the satisfaction of the court that this cure is likely to be paid. If the debtor has not paid all post-petition arrears, including the September and October installments, by the last day of the grace period for the October installment, the stay will be terminated on the ex parte application of the movant (if supported by a sufficient declaration establishing a default of the order). Upon service of the order on the debtor, debtor's counsel, and the trustee, the movant is authorized to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. Because there was a post-petition default outstanding when the motion was filed, the court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Fobian v. Western Farm Credit Bank (In re Fobian), 951 F.2d 1149, 1153 (9th Cir. 1991); Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant

to Local Bankruptcy Rule 9014(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed \$750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of \$750.

Any fees and costs awarded shall be paid through the plan on condition that the movant's proof of claim is amended and served on the trustee.

96. 04-26690-A-13L JOSEPH CONVINGTON, II HEARING - OBJECTION TO
NLE #1 CONFIRMATION OF PLAN BY TRUSTEE
8-20-04 [20]

Final Ruling: The court continues the hearing to October 19, 2004 at 9:00 a.m. when the court will also consider the debtor's motion to confirm an amended plan. If the trustee has objections to that amended plan, they should be filed and served no later than October 5.

97. 03-21991-A-13L DANIEL GROVE HEARING - MOTION FOR
MPD #1 RELIEF FROM AUTOMATIC STAY
STATE STREET BANK & TRUST COMPANY, VS. 8-25-04 [71]

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. The default alleged in the motion has been cured by the debtors. No reply has been filed disputing the evidence of the cure. In order to establish cause pursuant to 11 U.S.C. § 362(d)(1) for relief from the automatic stay, it must be shown that the debtor has failed to abide the terms of the confirmed plan. That is, the debtor must have defaulted under the terms of the plan to the detriment of the movant. See Anaheim Sav. & Loan Ass'n v. Evans, 30 B.R. 530, 531 (B.A.P. 9th Cir. 1983). Given the absence of an outstanding, material default, there is no cause to terminate the automatic stay.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. Because there was a post-petition default outstanding when the motion was filed, the court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Fobian v. Western Farm Credit Bank (In re Fobian), 951 F.2d 1149, 1153 (9th Cir. 1991); Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award

of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed \$750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of \$750.

Any fees and costs awarded shall be paid through the plan on condition that the movant's proof of claim is amended and served on the trustee.

98. 03-21991-A-13L DANIEL GROVE HEARING - MOTION TO
JJF #2 CONFIRM 2ND AMENDED PLAN
8-9-04 [66]

Final Ruling: The motion will be dismissed without prejudice.

First, the notice of the hearing indicates that written opposition must be filed 14 court days prior to the hearing. This misstates the requirement of Local Bankruptcy Rule 9014-1(f)(1) which requires that written opposition be filed 14 calendar days prior to the hearing when 28 days or more of notice is given. Therefore, the movant has impermissibly accelerated the date by which written opposition must be filed.

Second, the proof of service does not indicate that the proposed plan was served. Since the motion does not adequately summarize all plan terms, this makes notice and service defective. See Fed.R.Bankr.P. 3015(d) & (g).

99. 04-22091-A-13L ROSANNA FLORENTINO HEARING - OBJECTION TO
NLE #2 CONFIRMATION OF PLAN BY TRUSTEE
7-20-04 [26]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor 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). The debtor's default is entered and the matter will be resolved without oral argument.

Fed.R.Bankr.P. 4003(a) requires that exemptions be claimed in the schedules filed pursuant to Fed.R.Bankr.P. 1007 and 11 U.S.C. § 521(1). Rule 1007 requires these schedules to be filed with the petition or within 15 days of the filing of the petitions. Fed.R.Bankr.P. 1007(c). Here, the petition was filed on March 2, 2004. The schedules, including Schedule C, were due no later than March 17. The schedules, excluding Schedule C, were not filed until April 20. Schedule C was filed on July 12. Schedule C attempted to exempt equity in assets totaling \$3,350. There are no priority claims on Schedule E. The plan proposes to pay nothing on general unsecured claims.

Because the exemptions were not timely claimed, Schedule C was of no effect. "Unless and until a debtor files a timely claim of exemptions . . . as required by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, there is no 'list of property claimed exempt' for the trustee or creditors to oppose." Petit v. Fessenden, 80 F.3d 29, 33 (1st Cir. 1996). See also In re Gregoire, 210 B.R. 432 (Bankr. D. R.I. 1987).

The failure to claim timely exemptions has an impact on the analysis required by 11 U.S.C. § 1325(a)(4). Section 1325(a)(4) requires the debtor to pay to unsecured creditors no less than they would receive in a chapter 7 liquidation on the effective date of the plan. The plan defines its effective date as the date the petition was filed. If the debtor is entitled to no exemptions, and if there is property that could have been exempted, the return to unsecured creditors will obviously increase accordingly. Here, because the debtor has not effectively claimed exemptions, unsecured creditors would receive \$3,350 in a liquidation.

The debtor has two alternatives.

The debtor may file a motion seeking to retroactively extend the time for filing Schedule C and claiming exemptions. Such a request may be made pursuant to Fed.R.Bankr.P. 9006(b)(1) and 9024. If it can be shown, for example, that the failure to timely claim exemptions was due to excusable neglect, the court may permit the debtor to claim the late claimed exemptions.

Alternatively, the debtor may move to amend the plan which pays a dividend based on the absence of any exemptions.

100. 04-22091-A-13L ROSANNA FLORENTINO
NLE #3

HEARING - TRUSTEE'S OBJECTION TO
EXEMPTION
7-20-04 [29]

Final Ruling: This objection to the debtor's claim of exemption has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the debtor 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). The debtor's default is entered and the matter will be resolved without oral argument.

For the reasons explained in the ruling made in connection with Docket Control No. NLE-2, the debtor did not timely claim exemptions. They are disallowed.

101. 01-34692-A-13L CASEY/BRANDIE BAKER
JSO #2

HEARING - MOTION FOR
ORDER APPROVING ADDITIONAL
ATTORNEY FEES AND COSTS
(\$1,348.00)
8-25-04 [39]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the debtor, the United States Trustee, 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). 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 additional fees represent 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 the Chapter 13 Fee Guidelines, if applicable.

102. 04-26792-A-13L GREGORY/JAN WALKER
SDB #1

HEARING - DEBTOR'S MOTION FOR
ORDER VALUING COLLATERAL OF
SCHOOLS FINANCIAL CREDIT UNION
8-10-04 [12]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee and the 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). The defaults of the trustee and the 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) is 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 \$10,365 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, \$10,365 of the respondent's claim is an allowed secured claim. When the respondent is paid \$10,365 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.

103. 04-27492-A-13L BARRY/BARBARA BANKS
MAS #1
HEARING - OBJECTION TO
CONFIRMATION OF PLAN, OPPOSITION
TO MOTIONS TO AVOID LIENS, AND
MOTION TO DISMISS CASE AS A BAD
FAITH FILING BY LOOMIS BASIN
VETERINARY CENTER LARGE ANIMAL
SERVICES, INC.
8-23-04 [10]

Final Ruling: The objection and motion will be dismissed as moot. The petition was dismissed on September 13, 2004.

104. 03-31593-A-13L SHARI BONNARD
AMH #1
HEARING - MOTION TO
APPROVE FIRST MODIFIED PLAN
8-11-04 [31]

Final Ruling: This motion to modify a plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) (effective Dec. 23, 2002). The failure of the trustee, the creditors, the United States Trustee, and all other potential respondents 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). The defaults of these respondents are entered and the matter will be resolved without oral argument.

The motion will be granted. No objections to confirmation have been filed. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

105. 04-27697-A-13L ALAN/LINDA ZINK
NLF #1
HEARING - OBJECTION TO
CONFIRMATION OF CHAPTER 13
PLAN AND TO MOTION TO VALUE
COLLATERAL OF SIERRA CENTRAL C.U.
8-17-04 [10]

Final Ruling: The continues the hearing to October 5, 2004 at 9:00 a.m. at the request of the debtor. In continuing the hearing, the court does not reopening any time periods specified in Local Bankruptcy Rule 9014-1(f)(1).

106. 03-21198-A-13L JARVIS VALDEZ
LJL #1
HEARING - TRUSTEE'S OBJECTION TO
CLAIM OF CAMPBELL SOUP F.C.U.
8-3-04 [14]

Final Ruling: This objection to the proof of claim of Campbell Soup Federal Credit Union has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(d)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained and the claim is allowed as a general unsecured claim. The claim is based on the pre-petition signature loan made to the debtor for a vacation. Such claims are not entitled to priority status. 11 U.S.C. § 507.