

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Chief Bankruptcy Judge
Sacramento, California

October 5, 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 1-37 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 38-41, 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 11:00 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 38 THROUGH 41, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE WHICH IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON NOVEMBER 2, 2004 AT 9:30 A.M. IN COURTROOM 34 BEFORE JUDGE HOLMAN. OPPOSITION TO THE MATTER ON CALENDAR MUST BE FILED AND SERVED BY OCTOBER 19, 2004 AND ANY REPLY MUST BE FILED AND SERVED ON OCTOBER 26, 2004. THE MOVING PARTY IS TO GIVE NOTICE OF THE CONTINUED HEARING AND THESE DEADLINES.

THE LAST PORTION OF THE CALENDAR, ITEMS 42-121, 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 OCTOBER 19, 2004 BEGINNING AT 1:30 P.M. BEFORE JUDGE McMANUS.

October 5, 2004 at 9:00 a.m.

MATTERS HEARD BEGINNING AT 9:00 A.M.

1. 04-20901-A-13L OROBOSA IDEHEN HEARING - MOTION TO
CYB #1 MODIFY CHAPTER 13 PLAN
8-24-04 [34]

- 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 is not feasible as required by 11 U.S.C. § 1325(a)(6). The plan requires the debtor to fund a \$78,000 lump sum payment to the trustee from the sale or refinance of the debtor's residence. However, the court has terminated the automatic stay in favor of the creditor with a lien on the residence and it will be lost in a foreclosure. Consequently, the debtor does not have the ability to raise the \$78,000.

2. 04-23705-A-13L SHERRI KEMP HEARING - OBJECTION TO
NLE #2 CONFIRMATION OF SECOND AMENDED
PLAN BY TRUSTEE
8-31-04 [49]

- 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 does not comply with 11 U.S.C. § 1322(b)(2) because it modifies a home loan. The debtor has proposed a plan that requires the trustee to make the ongoing mortgage payments to the home lender. However, the plan payment for the first three months is, or was, insufficient to make the ongoing mortgage payment. This is a modification of the home loan in violation of section 1322(b)(2).

If the debtor is attempting to characterize the amended plan as an attempt to cure a post-petition default on the mortgage, the court concludes the plan is simply not feasible as required by 11 U.S.C. § 1325(a)(6). The debtor was unable to perform her original plan. That plan required a monthly plan payment large enough to permit the trustee to pay the ongoing mortgage payment with a sufficient amount remaining to pay expenses and pre-petition claims. Now, the default under the mortgage consists of more than a \$14,000 pre-petition arrearage plus the accumulating post-petition default. The court finds no credible evidence that the debtor will not be able to dig herself out of an even deeper financial hole.

Second, 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 85 months to complete the plan.

Third, the debtor is retaining the collateral of Beneficial. 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).

Fourth, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$1,400. The plan does not comply with 11 U.S.C. § 1325(a)(6).

3. 02-30608-A-13L STEVEN/JUANITA OVERTON HEARING - MOTION TO
SDB #5 MODIFY CHAPTER 13 PLAN AFTER
CONFIRMATION
8-26-04 [109]

- 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 87 months to complete the plan.

4. 04-22908-A-13L STEVEN/SUSAN TRIPP HEARING - MOTION TO
SDB #1 MODIFY CHAPTER 13 PLAN AFTER
CONFIRMATION
8-31-04 [15]

- Telephone Appearance
 Trustee Agrees with Ruling

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

Because of the increased ongoing mortgage payment to Fairbanks, the plan does not cash flow. That is, it cannot be completed in the promised 42 months. It will take 56 months to complete the plan. The plan, therefore, is not feasible as required by 11 U.S.C. § 1325(a)(6).

5. 03-30611-A-13L ANTHONY/DORCAS PAGANINI HEARING - MOTION FOR
SW #2 RELIEF FROM AUTOMATIC STAY
GMAC, VS. 8-31-04 [41]

- Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The plan provides for payment in full of the movant's secured claim as a Class 2 secured claim. Class 2 secured claims are paid in full through the plan and without maintenance of post-petition contract installments. The motion asserts that debtor has failed to make over \$2,736 in plan payments. The debtor admits the default but claims the default has been cured. Assuming this is so, there is no cause to terminate the automatic stay.

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 by 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.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

6. 04-26812-A-13L JOSE HERNANDEZ HEARING - OBJECTION TO CLAIM
LJP #1 OF CHASE MANHATTAN MTG. CORP.
8-10-04 [10]

Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

On April 28, 1998, the debtor and his spouse filed a chapter 13 petition, Case No. 98-26444. Chase Manhattan received notice of the commencement of this petition. It was later dismissed on September 2, 1998 without a plan ever being confirmed.

Also on April 28, 1998, Chase Manhattan completed a nonjudicial foreclosure before it received notice of the filing of the petition. A trustee's deed was recorded on May 4, 1998. The next day, Chase Manhattan transferred the property by grant deed to the Secretary of Veterans Affairs. This deed was recorded on May 19, 1998.

However, by virtue of the prior filing of the first chapter 13 petition, the foreclosure and subsequent transfers were void. See Schwartz v. United States (In re Schwartz), 954 F.2d 569, 571 (9th Cir. 1992). The dismissal of the petition did not have the effect of retroactively annulling the automatic stay or ratifying acts violating the stay. See 11 U.S.C. § 349(b). The stay expired upon, not before, the dismissal of the petition. Consequently, if a creditor violated the automatic stay while the case was pending, any claim arising because of that violation was not vitiated by the dismissal. See In re Davis, 177 B.R. 907, 911 (B.A.P. 9th Cir. 1995).

On September 22, 1998 the debtor and his spouse filed another chapter 13 petition, Case No. 98-34630. Chase Manhattan received notice of the commencement of this petition. The debtor and his spouse proposed, confirmed, and completed a chapter 13 plan. The plan provided for the cure of arrears owed to Chase Manhattan. Their discharge was entered on July 17, 2001.

Chase Manhattan (or its predecessor) did not file a timely proof of claim for its arrears. The time for it to file a timely proof of claim expired on February 17, 1999. Apparently, neither Chase Manhattan nor the Secretary of Veterans Affairs had yet discovered that the foreclosure was void.

Therefore, on March 3, 2000, the debtor and his spouse filed a proof of claim on Chase Manhattan's behalf for \$12,500 in arrears as permitted by 11 U.S.C. § 501(b) and Fed. R. Bankr. P. 3004. Rule 3004 permits the debtor to file a claim for a creditor within 30 days of the deadline for the creditor to file a claim. This extension is not precluded by Fed. R. Bankr. P. 9006(b). The proof of claim filed by the debtors was served on Chase Manhattan.

March 3, 2000 is more than 30 days after February 17, 1999. However, General Order 97-02, ¶ 6(f) extended this deadline to "90 days after service on the debtor or his counsel of the Notice of Filed Claims." The Notice of Filed Claims was served by the trustee on the debtor and his counsel on April 7, 1999. Therefore, the extended deadline permitted by the general order expired

on July 6, 1999. The March 3, 2000 claim filed by the debtor and his spouse was untimely. However, no one objected to the proof of claim on the ground that it was untimely. In the absence of such an objection, the proof of claim is deemed allowed. See 11 U.S.C. § 502(a).

On the other hand, on February 28, 2001, the chapter 13 trustee objected to the proof of claim on a different ground. When the trustee began sending payments to Chase Manhattan for the \$12,500 in arrears, Chase Manhattan returned the check with a letter stating that the "loan is paid off." This prompted the trustee to object to the proof of claim on the ground that it had been satisfied by some unknown source. The objection was served on the debtor, the debtor's counsel, and Chase Manhattan. No response was filed and the objection was sustained. That is, the claim for arrears was disallowed. The order was served on the debtor, the debtor's counsel, and Chase Manhattan on April 20, 2001. No appeal was filed.

According to the trustee's final report, nothing was paid to Chase Manhattan on account of its disallowed claim.

On July 8, 2003, the Secretary of Veterans Affairs executed a quitclaim deed in favor of Chase Manhattan. It was recorded on September 2, 2003. On December 3, 2003 Chase Manhattan caused the rescission of the May 4, 1998 trustee's deed. It then started the nonjudicial foreclosure process anew. A notice of default was recorded on December 10, 2003. A notice of sale was recorded and published on March 16, 2001. It set a foreclosure sale for April 1, 2004. The record does not explain why no sale occurred on April 1 or thereafter up to the date the debtor filed a third chapter 13 petition.

The debtor filed a third chapter 13 petition on July 2, 2004. Chase Manhattan received notice of the commencement of the case. The proposed plan provides for Chase Manhattan's claim in Class 4. This means that the debtor believes that Chase Manhattan's claim was not in default on the date of the petition, and that it has not matured and will not mature prior to the completion of the plan.

Chase Manhattan filed a timely proof of claim on July 22, 2004. It includes a demand for \$87,451.58 in arrears. These arrears included principal, interest, and other charges that fell between July 1, 1997 through July 2, 2004. Thus, it includes arrears that accrued prior to the filing of the second petition filed on September 22, 1998.

The debtor objects to the proof of claim. He maintains that the entire claim, both unmatured principal and all arrears, must be disallowed and that Chase Manhattan must reconvey its deed of trust.

The court would agree with the objection had it disallowed Chase Manhattan's entire claim, its deed of trust would be void. See 11 U.S.C. § 506(d) ("To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void" with exception that are not relevant to this case).

However, the court did not disallow Chase Manhattan's claim. It disallowed a portion of the arrears it claimed for the period up to the date of the second petition. The arrears accruing after September 22, 1998 were not disallowed nor was the unmatured principal. Therefore, the court will sustain the objection in part. All arrears for the period prior to September 22, 1998 are disallowed. The remainder of the claim is allowed and the deed of trust is not

void. It survived the discharge granted in the first case because it still secured everything but the disallowed portion of the claim.

Because the unmatured principal and the arrears accruing after April 22, 1998 remain owing, the proposed plan cannot be confirmed. It does not provide for the cure of the arrears owed to Chase Manhattan. This violates both 11 U.S.C. § 1322(b) (2) and § 1325(a) (5) (B).

The court does not reach the remaining objections.

The motion to dismiss the case will be granted in part. 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.

7. 04-26812-A-13L JOSE HERNANDEZ HEARING - OBJECTION TO
SML #1 CONFIRMATION OF CHAPTER 13 PLAN
AND REQUEST FOR DISMISSAL BY CHASE
MANHATTAN MORTGAGE CORPORATION
8-18-04 [15]

- Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part for the reasons explained in the ruling made for Docket Control No. LJP-1.

8. 99-29013-A-13L LAURIE DEUSCHEL HEARING - MOTION FOR
LAD #6 AN ORDER CONFIRMING CHAPTER 13
PLAN
8-20-04 [219]

- Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the objection will be overruled.

First, because the debtor never submitted an order on her objection to the claim of Beneficial, no order was entered. The court has now entered that order allowing the claim in the amount of \$432.50. As to Beneficial, the plan satisfies 11 U.S.C. § 1325(a) (5) (B).

Second, the plan originally provided for Fleet/Washington Mutual's claim in Class 1. After the commencement of the case, Fleet/Washington Mutual violated the automatic stay, entitling the debtor to damages. These damages flowed from events subsequent to the filing of the petition and therefore were not property of the estate. As a result of a settlement, Fleet/Washington Mutual waived its secured claim. In other words, the debtor gave up property that did not belong to the estate in order to extinguish a claim against the estate. Therefore, she is entitled to take what would otherwise have gone to Fleet/Washington Mutual. Doing so eliminates any recovery for the unsecured creditors. The plan does not violate 11 U.S.C. § 1325(b).

9. 04-28016-A-13L PATRICIA BOLDEN-SMITH HEARING - MOTION FOR
KCC #1 RELIEF FROM AUTOMATIC STAY
FIRESIDE BANK, VS. 8-30-04 [13]

- 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 repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

This is the debtor's fourth petition. Her prior three chapter 13 petitions, all filed during 2003 and all dismissed because the debtor was unable to maintain plan payments, resulted in the movant receiving a total of \$1,507.97. During the period from the date the first petition was filed, January 13, 2003, to the date the current petition was filed, August 5, 2004, the movant received a total of \$1,507.97 from the chapter 13 trustees. During the same period, the movant's claim depreciated from \$12,571.25 to \$7,765.

This record inspires very little confidence in the debtor's ability to perform any plan.

However, even assuming the debtor's financial circumstances have changed for the better, considering the \$54,000 in arrears the debtor owes on her home mortgage, the movant will receive an almost de minimis plan payment. Its secured claim, \$11,900 according to the plan, is only 18% of the secured claims to be paid through the plan. The plan payment, \$3,484, must first be used to pay trustee compensation (approximately \$240 a month), then the ongoing mortgage payment (\$1,976 a month). This will leave \$1,268 to pay the movant and the arrears owed to Countrywide. The movant will receive approximately \$228.24 a month. At this rate (and without considering the \$1,500 in attorney's fees to be paid by the debtor through the plan to her counsel), it will take 52 months to retire the movant's claim. The court doubts that a 1999 model year vehicle with 100,000 miles will make it to the end of the plan.

In other words, assuming the best facts for the debtor, the plan she has proposed cannot be confirmed because it does not as a matter of fact preserve its collateral by proposing a realistic payment schedule.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

10. 02-23117-A-13L BRUCE/SANDRA WEAVER HEARING - DEBTORS' OBJECTION TO
JSH #2 CLAIM OF DEPT. OF CHILD SUPPORT
SERVICES
8-19-04 [55]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The debtor asks that the claim be disallowed because the debtor is paying the claim outside of the plan. The claim appears to be for pre-petition support arrears.

The objection makes no sense. Claims that are disallowed are entitled to nothing, whether from the plan or from the debtor.

The problem is not with the claim. The problem is with the plan. The plan must provide for the payment of the claim. Since the claim is asserted to be a priority claim, the plan must provide for its payment in full. See 11 U.S.C. § 1322(a)(2).

The issue will be whether or not the plan may provide for the payment of the claim directly by the debtor. There is considerable doubt regarding the permissibility of such a plan provision.

First, 11 U.S.C. § 1322(a)(1) requires the plan to provide for the submission of a portion of the debtor's future earnings "to the supervision and control of the trustee as is necessary for the execution of the plan." In other words, the debtor must pay the trustee and the trustee must pay the creditors. See also 11 U.S.C. § 1326(c).

Second, in In re Fulkrod, 973 F.2d 801 (9th Cir. 1992), the 9th Circuit considered whether chapter 12 "authorizes a debtor to make payments directly to creditors with claims modified by a plan" The court noted that there is nothing in chapter 12 that explicitly authorizes a debtor to make direct payments to impaired creditors." The court held that section 1226(c), which is identical to section 1326(c), did not authorize payment of impaired claims by the debtor.

Third, 11 U.S.C. § 1322(b)(5) permits maintenance by the debtor of payments of long-term debt only if the last payment on the contract comes due after the final plan payment. The claim indicates that it is not long term debt. It demands delinquent support payments.

11. 04-20020-A-13L TINO/JANET LOCONTE
P&A #1

HEARING - MOTION FOR
RELIEF FROM CIVIL MINUTES
ISSUED BY THIS COURT ON
JULY 30, 2004 AND ENTERED
ON THE DOCKET JULY 30, 2004
9-7-04 [69]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

First, while ostensibly brought pursuant to Fed. R. Civ. P. 60(b), the motion asks the court for "relief from civil minutes." Those civil minutes, filed and entered on July 30, 2004, did not contain a court order. Rather, the court's written findings and conclusions were appended to the minutes. The minutes explained the reasons for the court's intended denial of the confirmation of the debtors' first amended plan. The order denying confirmation was later filed on August 4, 2004 and entered on August 5, 2004. No appeal was filed to the order.

In effect, then, the motion asks the court to amend its written findings and

conclusions. Such motions are governed by Fed. R. Civ. P. 52(b) and they must be filed no later than 10 days after entry of the judgment.

A motion to confirm a chapter 13 plan is a contested matter. See Fed. R. Bankr. P. 7001, 9013. Fed. R. Bankr. P. 9014(c) makes Fed. R. Bankr. P. 7052 applicable to contested matters. Fed. R. Bankr. P. 7052 in turn incorporates Fed. R. Civ. P. 52(b). Consequently, a request that the court amend its findings and conclusions regarding confirmation of the first amended plan was due no later than August 16 (August 15 was a Sunday). This motion was not timely.

Second, to the extent the motion is correctly based on Fed. R. Civ. P. 60(b)(1) as incorporated by Fed. R. Bankr. P. 9024, the motion fails to establish mistake, surprise, or excusable neglect.

To establish a right to relief under Rule 60(b)(1) for mistake, the moving party must show a mistake that relates to the duty to respond to the underlying matter rather than to the merits of the underlying motion. To establish a right to relief under Rule 60(b)(1) for surprise, inadvertence or excusable neglect, the moving party must establish a reasonable excuse for having failed to contest the underlying matter. Meadows v. Dominican Republic, 817 F.2d 517 (9th Cir. 1987).

This is not a situation where the debtor failed to respond to an objection to confirmation. The debtors filed a timely response. The court also granted the debtors additional time to gather evidence and to file a further response. The debtors gathered no additional evidence and presented no additional evidence to the court. At the conclusion of a second hearing, the court denied confirmation of the plan because it concluded the debtors were not eligible for chapter 13 relief. Their unsecured debt exceeded the limit set by 11 U.S.C. § 109(e).

Excusable neglect under Fed. R. Civ. P. 60(b)(1) is an equitable concept that requires the court to consider whether the debtors' failure to timely present the evidence they now wish the court to consider was the result of culpable or excusable neglect. The court concludes the neglect was culpable.

The issue of the debtors' eligibility under 11 U.S.C. § 109(e) was first raised by Orlando in a January 27, 2004 objection to the debtors' original plan. The court considered that objection and the debtors' response to it at a hearing on March 30, 2004. The court came to no final conclusion as to the debtors' eligibility. Instead, the court determined that the proposed plan failed to provide for the Board of Equalization's priority claim. Although the exact amount of that claim had not been scheduled or determined, it was undisputed that such a claim existed in some amount and that it would be a priority claim. The court's ruling provided:

"[C]ounsel for the debtor admitted at the hearing that the debtor was liable to any SBE debt although the debtor may assert that the objecting creditor has an obligation to indemnify the debtor. The court does not determine whether or not the debtor has any such right. It is sufficient at present to conclude that there is an obligation owed to the SBE, it is greater than \$1, and the debtor is liable for that debt."

"The current schedules do not accurately list this debt. The court concludes that the debtor has filed schedules with the goal of minimizing the SBE claim. This has been done for two reasons."

"First, if the claim is entitled to priority treatment it may difficult, perhaps impossible, for the debtor to pay the claim in full as required by 11 U.S.C. § 1322(a)(2)."

"Second, whether or not it is a priority claim, the claim may make the debtor's unsecured debt exceed the limit set by 11 U.S.C. § 109(e)."

"The schedules are intentionally vague as to the SBE's claim. Whether done to evade the requirements of section 1322(a)(2) or to evade the debt limits of 11 U.S.C. § 109(e), it is bad faith to attempt to confirm a plan while failing to accurately schedule claims. See 11 U.S.C. §§ 521, 1325(a)(3)."

Following the entry of this ruling, the debtors amended their schedules to list the Board of Equalization's claim on Schedule E as disputed and in the amount of \$20,000. On the same day, April 20, they filed their first amended plan and a motion to confirm it.

Orlando again filed an objection to the confirmation of the first amended plan. Once again, he argued that the debtors' schedules were filed in bad faith and under-reported his and the Board's claims. He argued the debtors' total unsecured debt exceeded the limit set by section 109(e).

The court first considered Orlando's objection on June 8. In the debtors' response to the objection, both written and oral, the debtors' maintained that either Orlando was responsible for the payment of the taxes or that his claim duplicated any claim the Board might have against the debtors. However, no evidence of either contention was given to the court. So, the court continued the hearing to July 27 so that the debtors could get that evidence.

Despite the seven week continuance, they failed to obtain and file any such evidence. As this motion makes clear, they did not propound any discovery, they did not obtain any court records from the Northern District or the state court. Apparently, the debtors former attorneys had the necessary evidence but failed to hand it over and current counsel did not "press" the issue.

At the July 27 hearing, the court nonetheless deducted the Board's filed claim of \$64,351.11 (which is considerably more than the \$20,000 belatedly scheduled by the debtors) from Orlando's claim. In the ruling appended to the minutes of the July 27 hearing, the court concluded that even if it assumed the Board's claim duplicated Orlando's claim, the debtors remained ineligible for chapter 13 relief.

The evidence the debtors now wish to place before the court could have, and should have, been obtained well before the July 27 hearing. It was easily within their grasp. All they had to do was review public court records. All they had to do was get records from their own attorneys. And, they have known since at least January 27 that their eligibility would be an issue, yet they did precious little to develop the issue.

In fact, they have attempted to conceal their lack of eligibility. They failed to disclose two earlier bankruptcy petitions. If those cases had been disclosed, the trustee and creditors would have discovered that the obligation to the Board was scheduled as undisputed, liquidated and noncontingent. In this case, the debtors originally listed the Board's claim at \$1. This was not appropriate regardless of whether Orlando was liable for the taxes or whether his claim duplicated the Board's claim. The only possible reason for listing the claim at \$1 was to minimize total unsecured debt or the amount of priority

debt (which 11 U.S.C. § 1322(a)(2) requires be paid in full) in order to unfairly maximize the possibility of confirming a plan.

Finally, even assuming the court considers the additional evidence, the eligibility calculation found at page 7 of the motion filed September 7 makes no sense.

It indicates that "the SBE assessment and prejudgment interest" should be deducted from the amount demanded in Orlando's proof of claim, \$107,407. This yields \$15,203.70.

In the ruling appended to the minutes for the July 27 hearing, the court deducted the amount demanded in the Board's claim, \$64,351.11, from the amount claimed by Orlando, \$107,407, a difference of \$43,055.89.

The debtors analysis suggests that \$85,764.30, plus interest, should be deducted from Orlando's claim. The \$85,764.30 is the amount identified by Orlando in state court as the amount assessed against him by the Board. He demanded and received a judgment compelling Mr. Loconte to indemnify from this assessment. Apparently, the debtors believe that this means that the Board's and Orlando's claim overlap to the tune of \$85,764.30, plus subsequently accruing interest.

However, the motion acknowledges that Orlando has been paying down the Board's claim. To the extent he has paid the debtors' obligation to the Board, there is no duplication. Further, the statutory interest on the tax liability is likely less than the 10% judgment rate of interest accruing on Orlando's judgment.

The motion also indicates that because Orlando's judgment is against Mr. Loconte only, Mrs. Loconte is eligible for chapter 13 relief. Once again, this is an issue that could have been raised but was not and there is no good reason for having failed to do so.

Further, the judgment would be a claim even against Mrs. Loconte's bankruptcy estate. The taxes and Orlando's claim arose while the debtors were married. Therefore, it is a claim against their community property. All of that community property would be property of Mrs. Loconte's bankruptcy estate even if she were the sole debtor. See 11 U.S.C. § 541(a)(2). Therefore, the entire claim could be presented in her bankruptcy.

12. 04-28020-A-13L JASBIR/JATINDER SAMRA CONT. HEARING - MOTION FOR
JMG #1 RELIEF FROM AUTOMATIC STAY ETC
OPTION ONE MORTGAGE CORPORATION, VS. 8-31-04 [6]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

To the extent the motion is brought pursuant to 11 U.S.C. § 362(d)(2), the motion must be denied because the motion concedes that the debtor has over \$70,000 of equity.

To the extent the motion is brought pursuant to 11 U.S.C. § 362(d)(1), the motion must be denied because there is no cause of relief from the stay. The property securing the movant's claim is insured. The debtor filed a plan.

That plan provides for payment in full of the arrears owed to the movant. The debtor has made all payments required by the plan.

The fact that the debtor did not perform the loan prior to the commencement of the case is not cause for relief from the automatic absent additional circumstances.

No fees and costs are awarded.

13. 04-26222-A-13L MARK LOZADA MET #1 HEARING - MOTION TO SELL PROPERTY 9-2-04 [29]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice. First, no plan has been confirmed. Second, the court has not avoided the alleged judicial lien of WestAmerica Bank. Third, there is no convincing evidence before the court that the mechanic's lien is "void."

14. 02-33323-A-13L PETER/ROBIN ARANDA SML #2 WELLS FARGO BANK, VS. CONT. HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY ETC 8-4-04 [33]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: An evidentiary hearing will be set at the hearing.

The motion alleges that four monthly post-petition payments through July 2004 have not been made. Excluding the three payments (\$ 424, \$424, and \$1,693.94) made after the supporting declaration was signed (the movant now acknowledges receipt of them), six, possibly seven, payments are in dispute.

On or about August 18, 2003, the debtor tendered check no. 1842 in the amount of \$1,724.26. The movant acknowledges receiving the check but has provided evidence that the check was dishonored by the debtor's bank.

On or about September 15, 2003, the debtor tendered a check (number unknown) in the amount of \$1,661.67. Oddly, the accounting with the declaration supporting the motion as well as the debtor's declaration acknowledge that this payment was made and received, but the movant's reply declaration states that it "has no record of receiving any amount at or near this date."

On or about September 18, 2003, the debtor tendered check no. 2050 in the amount of \$1,661.67. The movant acknowledges receiving the check but has provided evidence that the check was dishonored by the debtor's bank.

On or about September 18, 2003, the debtor tendered check no. 2051 in the amount of \$1,661.67. The movant acknowledges receiving the check but that it was not honored by the debtor's bank because the debtor had placed a "stop payment" on the check.

On or about January 19, 2004, the debtor tendered check no. 2043 in the amount of \$1,661.67. The movant acknowledges receiving the check but has provided evidence that the check was dishonored by the debtor's bank.

On or about April 30, 2004 the debtor tendered check no. 1866 in the amount of \$600. The movant's accounting makes no mention of this payment.

There may be a seventh payment in dispute. The movant's reply declaration refers to receipt of check no. 2060 on or about September 23, 2003. The movant acknowledges receiving this check but it was not honored by the debtor's bank because the debtor had placed a "stop payment" on the check. The debtor's accounting does not refer to this check.

With the opposition, the debtor has requested that the court sort out these payments at an evidentiary hearing. The court concludes there are disputed material factual issues and that an evidentiary hearing must be scheduled.

15. 02-21324-A-13L JUDY LUCERO HEARING - MOTION TO
WW #4 CONFIRM THIRD MODIFIED
CHAPTER 13 PLAN
8-24-04 [67]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted on condition that the plan is further modified to pay a 100% dividend to unsecured creditors. At the current level of plan payments, the proposed length of the plan, the dividends payable to other creditors, the proposed plan will produce enough revenue to pay unsecured claims in full. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

16. 03-24429-A-13L JEFFREY KADUK HEARING - MOTION TO
JAT #3 MODIFY CHAPTER 13 PLAN
8-23-04 [50]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, 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 64 months to complete the plan.

Second, there is no evidence that the debtor will be able to make the stream of payments required by the plan. The plan payments step up significantly in nine months. The debtor has not furnished any evidence either in the motion or by filing amended Schedules I and J that he will be able to make the increased plan payment. The plan does not comply with 11 U.S.C. § 1325(a)(6).

17. 03-27929-A-13L STEPHANIE WATSON HEARING - MOTION TO
CJY #1 CONFIRM FIRST MODIFIED
CHAPTER 13 PLAN
8-12-04 [14]

- Telephone Appearance
- Trustee Agrees with Ruling

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

the objection will be sustained.

First, the debtor is retaining the collateral of Tower Loan. However, the plan does not provide for 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).

Second, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$524.70. The plan does not comply with 11 U.S.C. § 1325(a) (6).

18. 04-23029-A-13L GEORGE GYNES, II
NLE #1

CONT. HEARING - OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
7-22-04 [14]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

Because the trustee has objected to fees being paid through the guidelines, counsel must place any retainer in trust and then file periodic interim fee applications. The guidelines are not an entitlement. They are voluntary for counsel and they provide that they may not be used if there is any objection.

The objection concerning the Arizona lot and 11 U.S.C. § 1325(a) (4) will be overruled. There is nothing in the objection demonstrating that the lot has a value greater than scheduled.

The objection that the debtor has not scheduled all income will be overruled. The debtor has listed all ebay income as well as income from his insurance business. While Ms. Bobrow has introduced evidence of significant ebay income in 2003, the debtor has explained the reason for the decline in that income. Further, the evidence presented regarding 2004 ebay income is consistent with the debtor's schedules.

The objection to employee and enrollment expenses. As explained in the response, both expenses are necessary to the debtor's insurance business.

The plan complies with 11 U.S.C. § 1325(b). However, to insure that all income has been accurately projected, the debtor shall report all income and business expenses from all of his businesses to the trustee every quarter and he shall give the trustee copies of all tax returns within 15 days of their filing. If these documents show higher disposable income than projected, the trustee or any unsecured creditor may move to modify the plan as permitted by 11 U.S.C. § 1329(a).

19. 04-23029-A-13L GEORGE GYNES, II
PB #1

CONT. HEARING - OBJECTION TO
CONFIRMATION OF CHAPTER 13 PLAN BY
PHYLLIS BOBROW
7-27-04 [17]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled. The court incorporates by

reference the ruling made in connection with Docket Control No. NLE-1.

20. 02-32230-A-13L MICHAEL/RENEE MOORE HEARING - MOTION TO
SDB #2 MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
8-25-04 [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.

The plan is not feasible. The plan required that a payment of \$16,200 be made to the trustee in August. It was not paid.

21. 03-22330-A-13L THOMAS EGAN CONT. HEARING - MOTION TO
LJP #8 CONFIRM DEBTOR'S SECOND
MODIFIED CHAPTER 13 PLAN
7-27-04 [119]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, Schedules I and J show no net disposable income with which to fund a plan. The debtor has failed to demonstrate that the plan is feasible as required by 11 U.S.C. § 1325(a)(6).

Second, 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).

22. 02-21936-A-13L WILLIAM/TAMI MISPLEY HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
GMAC, VS. 9-1-04 [86]

- 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 repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The plan provides for payment in full of the movant's secured claim as a Class 2 secured claim. Class 2 secured claims are paid in full through the plan and without maintenance of post-petition contract installments. The debtor has failed to make over \$5,418 in plan payments to the trustee. This is a material breach of the plan that has delayed payment of the movant's claim while the debtor continues to use and depreciate the movant's collateral. This is cause to terminate the automatic stay.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. §

without any dependents. Under these circumstances, Cal. Civ. Proc. Code § 704.730 permits a \$50,000 exemption.

As established in In re Mohring, 142 B.R. 389 (Bankr. E.D. Cal. 1992), *affirmed*, 153 B.R. 601 (B.A.P. 9th Cir. 1993), *affirmed*, 24 F.3d 247 (9th Cir. 1994), it is not enough to show that an exemption was claimed on Schedule C without objection. To avoid a judicial lien, the debtor must prove entitlement to the exemption. This has not been done.

To the extent the respondent asserts that, because its lien is senior to an unavoidable statutory lien for \$26,061.24 held by the IRS, its lien either cannot be avoided or the IRS lien cannot be deducted from the property's value, its assertion is rejected. Prior to the 1994 amendments to the Bankruptcy Code, there was authority for the proposition that a junior consensual lien could not be deducted from the property's value to determine if a senior judicial lien could be avoided. See In re Simonson, 758 F.2d 103 (3d Cir. 1985). This case is now overruled by the formula found in 11 U.S.C. § 522(f)(2)(A). See 4 Collier on Bankruptcy, § 522.11[3], p. 522-82 to 83 (15th ed. rev. 2003).

The order of priority of liens is important if they are all avoidable. Generally speaking, the most junior avoidable lien must be avoided first. See e.g., In re Hanger, 217 B.R. 592 (B.A.P. 9th Cir. 1997), *affirmed*, 196 F.3d 1292 (9th Cir. 1999). In this case, the only avoidable lien is held by the respondent.

Thus, assuming the property is community property, because the respondent's obligation arose during marriage, it is a community obligation and it encumbers the entire property.

The formula mandated by 11 U.S.C. § 522(f)(2)(A) and the foregoing authorities yields the following result:

Value of Property	\$230,000
Unavoidable liens	(112,361)
Subtotal	117,639
Exemption amount	(50,000)
Remainder	\$ 67,639

The respondent's lien is avoidable except to the extent of \$67,639.

26. 04-28149-A-13L LAURA DRAKE HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
9-16-04 [13]

- 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 September 9, 2004. It was not paid.

27. 00-23450-A-13L ROBERT BARNHILL HEARING - MOTION TO
SDB #3 MODIFY CHAPTER 13 PLAN AFTER
CONFIRMATION
8-17-04 [58]

- 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 debtor has not proven the feasibility of the plan as required by 11 U.S.C. § 1325(a)(6). The debtor is promising to pay \$60,000 from the proceeds of a lawsuit in order to pay priority and secured claims. However, there is no convincing evidence that the debtor has a judgment or has a collectible judgment.

28. 04-26853-A-13L NINA BURNSIDE-HOPSON HEARING - MOTION TO
WW #1 CONFIRM FIRST AMENDED
CHAPTER 13 PLAN
8-11-04 [13]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted on condition that the plan is further modified to pay a 22% dividend to unsecured creditors. At the current level of plan payments, the proposed length of the plan, and the dividends payable to other creditors, the proposed plan will produce enough revenue to pay unsecured claims a 22% dividend. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

29. 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 the objection will be sustained.

First, the plan is not feasible as witnessed by the failure of the debtor to make plan payments totaling \$2,671. The plan does not comply with 11 U.S.C. § 1325(a)(6).

Second, 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 88 months to complete the plan.

30. 04-28160-A-13L DANNY ROBERTS HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
9-14-04 [12]

- 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 September 9, 2004. It was not paid.

31. 04-27965-A-13L THOMAS/CAROLYN FATH HEARING - OBJECTIONS TO
MB #1 PROPOSED CHAPTER 13 PLAN
AND CONFIRMATION THEREOF BY
COUNTRYWIDE HOME LOANS, INC.
9-10-04 [10]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

The debtor is now in his second case. The first was dismissed earlier in 2004 when the debtor defaulted in making plan and mortgage payments immediately after the filing of the case. In this case, the trustee reports that the debtor failed to make the September plan payment. As a result, the trustee was unable to make the mortgage payment to the movant.

The court concludes the plan is not feasible and that this case has been filed without any demonstrated change in the debtor's financial circumstances. The plan does not comply with 11 U.S.C. § 1325(a)(3) and (a)(6).

32. 04-23473-A-13L FORESTINE HUNTER HEARING - MOTION TO
GAM #2 CONFIRM AMENDED CHAPTER 13 PLAN
8-23-04 [58]

- 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 as witnessed by the failure of the debtor to make plan payments totaling \$2,652. The plan does not comply with 11 U.S.C. § 1325(a)(6). Because of the default, the trustee has been unable to maintain post-petition mortgage installments.

33. 03-30182-A-13L NANCY CARR
NLE #1

HEARING - OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
8-30-04 [71]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

First, the objection that the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) will be sustained. The plan proposes to pay less than 100% to holders of unsecured claims yet the debtor proposes to end the plan after only 28 months.

Second, the debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The debtor appears to concede that her income is likely to be reduced in connection with her divorce proceeding. If her income is reduced, the debtor will be unable to make the payments required by the plan.

Third, the plan makes no provision for the secured claim of WFS. The plan must provide for surrender of the vehicle or the payment of the claim. The plan does not comply with 11 U.S.C. § 1325(a)(5)(A), (B), or (C).

Fourth, the debtor has not proven that the plan complies with 11 U.S.C. § 1325(a)(4) by paying unsecured creditors what they would receive in a chapter 7 liquidation. Until the debtor properly claims exemptions, this calculation cannot be completed.

The objection regarding the debtor's personal living expenses will be overruled. The trustee has merely told the court what the debtor's expenses are but has provided nothing suggesting these expenses are not the debtor's actual expenses or that they are unreasonable in any respect.

34. 03-30182-A-13L NANCY CARR
MHK #1

HEARING - OBJECTION TO
CONFIRMATION OF DEBTOR'S
PLAN BY DENNIS G. CARR
9-2-04 [81]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection is sustained in part. The court incorporates its ruling made in connection with NLE-1.

35. 04-27087-A-13L JESUS/MARITZA RAMIREZ
NLE #1

HEARING - OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
9-1-04 [24]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained.

The plan requires the debtor to obtain the right to use the cash collateral of Countrywide. There is no evidence that Countrywide has consented to such use and the court has dismissed without prejudice a motion to obtain permission to use the cash collateral. Because the debtor does not yet have leave to use

cash collateral, the plan is not feasible. See 11 U.S.C. § 1325(a)(6).

36. 02-24994-A-13L WILLIAM/CHRISTINA JONES HEARING - MOTION TO
PL #2 MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
8-31-04 [49]

- 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 motion indicates that the debtor's employment has changed. She is no longer operating a day care business and instead drives a bus. Despite this change, the debtor has not filed amended Schedules I and J or given the court comparably detailed evidence regarding her income and expenses. Without this evidence, the debtor cannot establish that the plan is feasible. See 11 U.S.C. § 1325(a)(6).

37. 04-27697-A-13L ALAN/LINDA ZINK CONT. HEARING - OBJECTION TO
NLF #1 CONFIRMATION OF CHAPTER 13
PLAN AND TO MOTION TO VALUE
COLLATERAL OF SIERRA CENTRAL
CREDIT UNION
8-17-04 [10]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

As the movant and plan proponent, the debtor has the burden of proving the replacement value of the vehicle and that all requirements for confirmation have been met. See Meyer v. Hill (In re Hill), 268 B.R. 548, 552 (B.A.P. 9th Cir. 2001).

As to the value of the vehicles, the debtor first attested that they had values of \$5,000 each. Following the objection, they conceded they were worth \$6,645 and \$7,260. These values are based on the private party valuation database of the Kelley Blue Book. However, the debtor has assumed that the vehicles are in "fair" condition. There is no factual basis for such contention in the record. The court also notes that the creditor's valuation is based on the assumption the vehicles are in "excellent" condition. Once again, there is no factual basis for this assumption. However, because the debtor has the burden of proof, the absence of this evidence will require the denial of the valuation. This does not mean the court agrees with the creditor's valuation.

As to confirmation, because the debtor has not established the value of the vehicles, the debtor cannot establish that the plan will pay the creditor's secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B).

Further, the debtor has not come forward with any convincing evidence of the ability to step up payments as required by the plan. The only evidence before the court is contained in Schedules I and J and they show an ability only to make the lowest monthly payment, \$1,300. Without this evidence, the debtor has failed to prove compliance with 11 U.S.C. § 1325(a)(6).

The court does not reach the other facets of the feasibility objection.

MATTERS HEARD BEGINNING AT 11:00 A.M.

38. 04-29342-A-13L JEROME JACKSON HEARING - MOTION FOR
KIM #1 RELIEF FROM AUTOMATIC STAY
FF PROPERTIES, VS. 9-23-04 [7]

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.

39. 03-27353-A-13L DAVID/KATHERINE SOUTHER HEARING - MOTION FOR
AAC #2 ORDER ALLOWING DEBTORS TO
REFINANCE EXISTING HOME LOANS
9-21-04 [41]

Telephone Appearance

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

40. 03-22567-A-13L ANA GARCIA HEARING - MOTION TO
CRR #5 MODIFY CHAPTER 13 PLAN AFTER
CONFIRMATION
9-9-04 [93]

Telephone Appearance

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

41. 01-22358-A-13J JAMES/ESTRELLA KINCAID
JPJ #2

HEARING - MOTION TO
DISMISS (PLAN DOES NOT
COMPLY; PLAN WILL TAKE 185
MONTHS TO COMPLETE)
9-15-04 [122]

□ Telephone Appearance

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor, the creditors, and any other parties in interest were not required to file a written response or opposition to the motion. Therefore, the court will first consider any oral opposition prior to considering the motion.

FINAL RULINGS BEGIN HERE

42. 01-31300-A-13L MATTHEW HORNBUCKLE HEARING - TRUSTEE'S OBJECTION TO
LJL #1 CLAIM OF ASSET ACCEPTANCE CORP.
8-10-04 [27]

Final Ruling: This objection to the proof of claim of Asset Acceptance Corp. 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 February 13, 2002. The proof of claim was filed on April 1, 2002. 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).

43. 02-20001-A-13L WENDY BELTON HEARING - MOTION FOR
BDG #3 ADDITIONAL FEES IN CHAPTER 13 CASE
(\$2,500.00)
8-31-04 [59]

Final Ruling: The motion will be dismissed without prejudice.

The proof of service indicates that counsel failed to serve the motion on the debtor as required by Fed.R.Bankr.P. 2002(a)(6).

44. 04-20901-A-13L OROBOSA IDEHEN HEARING - APPLICATION
CYB #2 RE: ADDITIONAL FEES AND EXPENSES
IN CHAPTER 13 (\$1,180.25)
8-26-04 [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.

45. 02-27303-A-13L MICHAEL DAVIS HEARING - MOTION TO
PGM #1 MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
8-20-04 [24]

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. 03-33103-A-13L MELVA CARTER HEARING - MOTION FOR
PGM #1 FOR MODIFICATION OF PLAN
8-17-04 [22]

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.

47. 04-20103-A-13L JOSEPH/LACY RIPOLL HEARING - TRUSTEE'S OBJECTION TO
LJL #2 CLAIM OF SMUD
8-19-04 [62]

Final Ruling: The parties have continued the hearing to October 19, 2004 at 9:00 a.m.

48. 01-27607-A-13L RICHARD/JERI WESTERFELD HEARING - MOTION TO
CRR #1 MODIFY CHAPTER 13 PLAN AFTER
CONFIRMATION
8-23-04 [32]

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.

49. 04-27308-A-13L WILLIAM/MICHELE EGGERT HEARING - MOTION FOR
HCT #1 RELIEF FROM AUTOMATIC STAY
ROXANA/GRANT GONZALEZ, VS. 9-3-04 [12]

Final Ruling: The motion will be dismissed without prejudice.

There is no evidence accompanying the motion proving any of the factual assertions in the motion. While exhibits are included with the motion, none have been authenticated.

50. 01-31910-A-13L MANUEL/LISA ROCHA HEARING - TRUSTEE'S OBJECTION TO
LJL #6 CLAIM OF CB MERCHANT SERVICES
8-10-04 [124]

Final Ruling: This objection to the proof of claim of CB Merchant Services 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 March 13, 2002. The proof of claim was filed on July 9, 2002. 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).

51. 02-32210-A-13L STEVEN/DONNA ILLUM HEARING - MOTION TO
MJE #1 CONFIRM FIRST AMENDED CHAPTER 13
PLAN AFTER CONFIRMATION
8-16-04 [32]

Final Ruling: The motion will be dismissed without prejudice.

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.

52. 00-28211-A-13L BRIAN/HOLLY BOYLE HEARING - MOTION TO
AMH #7 APPROVE THIRD MODIFIED PLAN
8-30-04 [81]

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.

56. 03-32318-A-13L PATRICK/MARY MILLER
MWB #6

HEARING - SECOND MOTION FOR
APPROVAL OF ATTORNEYS FEES
AND COSTS PAYABLE (\$2,145.00
FEES; \$41.20 COSTS)
9-7-04 [53]

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.

57. 04-27921-A-13L SUZETTE QUILAY

HEARING - OBJECTION TO CHAPTER
13 PLAN BY CITIMORTGAGE, INC.
(FIRST DEED OF TRUST)
9-2-04 [14]

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 objection will be sustained in part.

Preliminarily, the court notes that the objecting creditor failed to include a docket control number on each of its objection. This is required by Local Bankruptcy Rule 9014-1(c). Further, the notice of hearing for each objection fails to explain how the debtor must respond to the objection. Is written opposition required? The notices did not comply with Local Bankruptcy Rule 9014-1(d)(2) & (3) (effective Dec. 23, 2002).

However, these defects were waived when the debtor responded in writing to the merits of the objections.

The objection that the plan does not "provide recourse" in the event of a plan default will be overruled. The plan states that in the event the "Debtor defaults in the performance of this plan, or if the plan will not be completed within six months of its stated term, not to exceed 60 months, Trustee or any other party in interest may request, appropriate relief by filing a motion and setting it for hearing pursuant to Local Bankruptcy Rule 9014-1. This relief may consist of, without limitation, the following: **(1) Dismissal** of the case. . . **(2) Conversion** of the case to chapter 7 of the Bankruptcy Code[;] **(3) Relief from the automatic stay** to pursue rights against collateral."

While the creditor may be hoping for something that permits it to toss the debtor out of her home with no notice or process, that is unlikely to happen nor is it required. Even if there is a default, the debtor has the right to move to modify the plan. See 11 U.S.C. § 1329(a). The court will not require the debtor to forego that right.

The objection that the plan understates the arrears owed on the second deed of trust will be overruled. The fact that the plan understates the pre-petition arrears owed to the objecting creditor is not a basis for contending that the plan violates 11 U.S.C. §§ 1322(b)(2) & 1325(a)(5)(B) because the secured claim will not be paid in full. The plan provides: "A timely proof of claim must be filed by or on behalf of a creditor, including a secured creditor, before a claim may be paid pursuant to this plan . . . The proof of claim, not the plan or the schedules, shall determine the amount and classification of a claim. If a claim is provided for by this plan and a proof of claim is filed, dividends shall be paid based upon the proof of claim unless the granting of a valuation or a lien avoidance motion, or the sustaining of a claim objection, affects the amount or classification of the claim." The claim will be paid in full as required by section 1325(a)(5)(B) and the claim is not being modified as prohibited by section 1322(b)(2).

While the size of the claim may impact the ability of the debtor to complete the plan within the proposed term, the court need not take this issue up at this time. First, there is no evidence that the plan will not be completed within its stated term. This will depend on the amount of the other claims which have not yet been filed. Second, the plan states: "Unless all allowed unsecured claims are paid in full, the plan shall not terminate earlier than the stated term or 36 months, whichever is longer. If necessary to complete this plan, the term shall be extended up to 6 months, but the plan may not exceed 60 months in length." The stated plan term is 36 months. An additional 6 months and/or a sale or refinance will easily accommodate the amounts demanded by the objecting creditor. Third, if this is incorrect and the plan cannot be completed within its stated term, plus an additional 6 months not to exceed 60 months, the case will be dismissed unless the plan is promptly amended. The inability of the plan to be completed within its term is cause for dismissal.

The creditor asserts that this petition and the proposed plan have been filed in bad faith. It is incumbent on the debtor to show that she is proceeding in good faith. 11 U.S.C. § 1325(a)(3). While the creditor has made the assertion, the debtor has the burden of coming forward with evidence to show he has acted in good faith. 11 U.S.C. § 362(g)(2); Fed. R. Bankr. P. 3015(f).

Given the assertion of bad faith and the multiple petitions, the debtor must show that the debtor's financial circumstances have changed such that the court can conclude that this petition is likely to be more successful than the last. In re Metz, 820 F.2d 1495, 1497 (9th Cir. 1987). The debtor has produced no such evidence. What problems prompted the default in and dismissal of the first case? Have those problems been cured? There are no answers to these questions.

The objection that the plan does not provide for the claim secured by a second deed of trust will be sustained. If the debtor wishes to retain the property encumbered by that deed of trust, the plan must provide for payment in full of the claim. See 11 U.S.C. § 1325(a)(5)(B). The plan does not.

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.

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 objection will be sustained in part.

Preliminarily, the court notes that the objecting creditor failed to include a docket control number on each of its objection. This is required by Local Bankruptcy Rule 9014-1(c). Further, the notice of hearing for each objection fails to explain how the debtor must respond to the objection. Is written opposition required? The notices did not comply with Local Bankruptcy Rule 9014-1(d) (2) & (3) (effective Dec. 23, 2002).

However, these defects were waived when the debtor responded in writing to the merits of the objections.

The objection that the plan does not "provide recourse" in the event of a plan default will be overruled. The plan states that in the event the "Debtor defaults in the performance of this plan, or if the plan will not be completed within six months of its stated term, not to exceed 60 months, Trustee or any other party in interest may request, appropriate relief by filing a motion and setting it for hearing pursuant to Local Bankruptcy Rule 9014-1. This relief may consist of, without limitation, the following: **(1) Dismissal** of the case. . . **(2) Conversion** of the case to chapter 7 of the Bankruptcy Code[;] **(3) Relief from the automatic stay** to pursue rights against collateral."

While the creditor may be hoping for something that permits it to toss the debtor out of her home with no notice or process, that is unlikely to happen nor is it required. Even if there is a default, the debtor has the right to move to modify the plan. See 11 U.S.C. § 1329(a). The court will not require the debtor to forego that right.

The objection that the plan understates the arrears owed on the second deed of trust will be overruled. The fact that the plan understates the pre-petition arrears owed to the objecting creditor is not a basis for contending that the plan violates 11 U.S.C. §§ 1322(b) (2) & 1325(a) (5) (B) because the secured claim will not be paid in full. The plan provides: "A timely proof of claim must be filed by or on behalf of a creditor, including a secured creditor, before a claim may be paid pursuant to this plan . . . The proof of claim, not the plan or the schedules, shall determine the amount and classification of a claim. If a claim is provided for by this plan and a proof of claim is filed, dividends shall be paid based upon the proof of claim unless the granting of a valuation or a lien avoidance motion, or the sustaining of a claim objection, affects the amount or classification of the claim." The claim will be paid in full as required by section 1325(a) (5) (B) and the claim is not being modified as prohibited by section 1322(b) (2).

While the size of the claim may impact the ability of the debtor to complete the plan within the proposed term, the court need not take this issue up at this time. First, there is no evidence that the plan will not be completed within its stated term. This will depend on the amount of the other claims which have not yet been filed. Second, the plan states: "Unless all allowed

unsecured claims are paid in full, the plan shall not terminate earlier than the stated term or 36 months, whichever is longer. If necessary to complete this plan, the term shall be extended up to 6 months, but the plan may not exceed 60 months in length." The stated plan term is 36 months. An additional 6 months and/or a sale or refinance will easily accommodate the amounts demanded by the objecting creditor. Third, if this is incorrect and the plan cannot be completed within its stated term, plus an additional 6 months not to exceed 60 months, the case will be dismissed unless the plan is promptly amended. The inability of the plan to be completed within its term is cause for dismissal.

The creditor asserts that this petition and the proposed plan have been filed in bad faith. It is incumbent on the debtor to show that she is proceeding in good faith. 11 U.S.C. § 1325(a)(3). While the creditor has made the assertion, the debtor has the burden of coming forward with evidence to show he has acted in good faith. 11 U.S.C. § 362(g)(2); Fed. R. Bankr. P. 3015(f).

Given the assertion of bad faith and the multiple petitions, the debtor must show that the debtor's financial circumstances have changed such that the court can conclude that this petition is likely to be more successful than the last. In re Metz, 820 F.2d 1495, 1497 (9th Cir. 1987). The debtor has produced no such evidence. What problems prompted the default in and dismissal of the first case? Have those problems been cured? There are no answers to these questions.

The objection that the plan does not provide for the claim secured by a second deed of trust will be sustained. If the debtor wishes to retain the property encumbered by that deed of trust, the plan must provide for payment in full of the claim. See 11 U.S.C. § 1325(a)(5)(B). The plan does not.

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.

59. 04-26222-A-13L MARK LOZADA
NLE #1

HEARING - OBJECTION TO
CONFIRMATION OF PLAN BY TRUSTEE
8-31-04 [25]

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, 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 87 months to complete the plan.

Second, the debtor's income is not sufficient to fund the plan. The debtor is relying on \$2,900 in contributions from relatives to fund the plan. The court

has no evidence that the debtor's relatives have the financial ability or the inclination to continue making this contribution to the debtor for the entire length of the plan. The debtor has not proven that the plan is feasible. See 11 U.S.C. § 1325(a) (6).

60. 04-27523-A-13L EDWARD/HEATHER AGUSTIN HEARING - DEBTORS' MOTION TO
DJC #1 VALUE COLLATERAL OF WELLS FARGO
FINANCIAL ACCEPTANCE
8-26-04 [11]

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 \$8,620 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, \$8,620 of the respondent's claim is an allowed secured claim. When the respondent is paid \$8,620, 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.

61. 04-27128-A-13L SIMEON LUZANO HEARING - MOTION FOR
SW #1 RELIEF FROM AUTOMATIC STAY
WFS FINANCIAL, INC., VS. 9-8-04 [11]

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

62. 02-33129-A-13L LIBERTAD QUINTANS HEARING - MOTION FOR
SML #2 RELIEF FROM AUTOMATIC STAY ETC
CHASE MORTGAGE CO., VS. 8-31-04 [73]

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, or is about to be, 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 by 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.

63. 03-27430-A-13L TERRIE KARNES
CRR #2

HEARING - MOTION TO
MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
8-30-04 [32]

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.

64. 04-26832-A-13L GREGORY COLOSIO
BWF #1

HEARING - OPPOSITION TO
MOTION FOR VALUATION OF SECURITY
BY OREGON FIRST COMMUNITY C.U.
8-25-04 [20]

Final Ruling: This objection to confirmation and to the valuation included within the 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 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.

Despite the foregoing, the objection will be overruled.

The plan includes a motion by the debtor urging a \$27,900 valuation. The valuation motion includes the declaration of the debtor testifying that the subject vehicle has a value of \$27,900. 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 \$31,255 retail value suggested by the Kelley Blue Book. Nothing in Rash v. Associates Commercial, 138 L.Ed.2d 148 (1997), compels the conclusion that retail value is replacement value. Indeed, it suggests the two are not equivalent. Id. at 160, n. 6 ("Whether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property. We note, however, that replacement value, in this context, should not include certain items. For example, where the proper measure of the replacement value of a vehicle is its retail value, an adjustment to that value may be necessary: A creditor should not receive portions of the retail price, if any, that reflect the value of items the debtor does not receive when he retains his vehicle, items such as warranties, inventory storage, and reconditioning."). Therefore, the creditor's argument that the court should simply adopt the retail valuation is not persuasive.

The court notes that the private party valuation database in the Kelley Blue Book corresponds with the debtor's opinion of value. The private party value is the value "you might expect to pay for a used car when purchasing from a private party." This is a good approximation of the replacement cost of the vehicle. This value does not include warranties, inventory storage, and reconditioning charges as does the retail valuation in the Kelley Blue Book. The private party value in this case is \$26,320. The clerk shall append this ruling to the minutes along with the Kelley Blue Book Private Party Report.

The court concludes the replacement value of the vehicle was \$27,900 on the date of the petition.

65. 04-26832-A-13L GREGORY COLOSIO
BWF #2

HEARING - OBJECTION TO
CONFIRMATION OF CHAPTER 13
PLAN BY OREGON FIRST
COMMUNITY CREDIT UNION
8-25-04 [17]

Final Ruling: This objection to confirmation and to the valuation included within the 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 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 in part.

The objection that the plan does not comply with 11 U.S.C. § 1325(a) (5) (B) because it provides for the payment of the present value of only \$27,900 will be overruled. As determined in connection with BWF-1, this corresponds with the value of the subject vehicle.

The objection to the interest rate proposed by the plan 7.5% because it is a reduction of 8.5% contract rate will be overruled.

The Supreme Court decided in Till v. SCS Credit Corp., ___ S.Ct. ___ (May 17, 2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987).

To set the appropriate rate, the court is required to conduct an "objective inquiry" into the appropriate rate. However, the debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

The prime rate on October 4, 2004 was 4.75% as reported by Money Cafe.com. See www.nfsn.com/library/prime.htm. As surveyed by the Supreme Court in Till, courts using the formula approach typically have adjusted the interest rate 1% to 3% above the prime rate. The debtor's proposed rate of 7.5% gives a 2.75% adjustment. The size of this increase, combined with the fact that the movant is secured rather than unsecured and given the financial feasibility of the plan (as evidenced by Schedules I and J), satisfies section 1325(a) (B) (ii). Absent some showing by the objecting creditor that 7.75% is not adequate, the court concludes that it is adequate for purposes of section 1325(a) (5) (ii).

"Moreover, starting from a concededly low estimate and adjusting upward places the evidentiary burden squarely on the creditors, who are likely to have readier access to any information absent from the debtor's filing. . . ." The creditor here has not satisfied this burden. It merely complains that it has not received the contract rate. No evidence, other than the contract rate, is offered to establish that 7.5% is not adequate for purposes of 11 U.S.C. § 1325(a) (5) (ii).

The objection that "the plan does not provide for adequate insurance" will be overruled. First, there is no evidence with the objection establishing that there is no insurance in place. Second, the plan provides at Part III (C) (2): "Debtor shall maintain insurance as required by any law or contract."

The objection that the plan is not feasible will be overruled. The objection seems to be premised on the assumption that the objecting creditor's secured claim will be \$31,255 rather than \$27,900. The court, however, has valued the collateral at \$27,900. At this level, there is no evidence that the plan does not cash flow.

The objection that the plan (including the amended plan) does not comply with 11 U.S.C. § 1325(b) will be sustained. The amended plan pays only a 15% dividend to holders of general unsecured claims. Yet, the debtor proposes to pay secured claims held by GE and Honda Financial and secured by recreational vehicles, as well as a second vehicle securing a claim held by WFS. The debtor has produced no evidence that all of these vehicles plus the vehicle securing the objecting creditor's claim are necessary to his reorganization, maintenance or livelihood.

The portion of the objection relating to the termination of the co-debtor stay of 11 U.S.C. § 1301 has no relevance to the confirmation of the plan.

66. 04-27332-A-13L STEPHEN/KELLY MURRAY HEARING - OBJECTION TO
NLE #1 CONFIRMATION OF PLAN BY TRUSTEE
8-31-04 [17]

Final Ruling: The objecting party has voluntarily dismissed the objection.

67. 03-33233-A-13L POLICARPO/ELENA PIMENTEL HEARING - TRUSTEE'S OBJECTION TO
LJL #1 CLAIM OF CHASE MANHATTAN MORTGAGE
8-10-04 [14]

Final Ruling: This objection to the proof of claim of Chase Manhattan Mortgage 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 April 21, 2004. The proof of claim was filed on June 14, 2004. 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).

68. 03-33833-A-13L ROBERT KEO AND HEARING - SECOND MOTION FOR
MWB #3 SOPHEAK VOUTHHA APPROVAL OF ATTORNEYS FEES AND
COSTS PAYABLE (\$1,482.00)
9-7-04 [31]

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.

69. 04-23833-A-13L JOSEPH GRIFFIN HEARING - MOTION FOR
SCH #1 RELIEF FROM AUTOMATIC STAY
STERNBERG & COAD-HERMELIN, VS. 8-30-04 [27]

Final Ruling: The motion will be dismissed without prejudice.

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.

70. 03-31635-A-13L FREDERICK/CANDICE TOLBERT HEARING - OBJECTION BY
BHS #3 DEBTORS TO CLAIM OF WELLS FARGO
FINANCIAL CA
8-4-04 [21]

Final Ruling: The objection will be dismissed without prejudice.

The objection was served by sending it to the address on the proof of claim but not directed "to the attention of an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service of process." Fed.R.Bankr.P. 7004(b)(3). A claim objection, unless joined with a demand for relief of a kind specified in Fed.R.Bankr.P. 7001, is a contested matter. Fed.R.Bankr.P. 3007, 9013, and 9014. Contested matters are initiated by filing a motion. Fed.R.Bankr.P. 9013. A motion in a contested matter must be served like a summons and a complaint. Fed.R.Bankr.P. 9014 incorporating by reference Fed.R.Bankr.P. 7004. Rule 7004(b)(3) permits service by mail on a corporation provided it is addressed to "an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service of process." The proof of service indicates that the objection in this instance was not mailed to the attention of "an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service of process."

This issue is discussed in detail in In re Rushton, 285 B.R. 76, 79-81 (Bankr. S.D. Ga. 2002). In Rushton, the bankruptcy court concluded that an objection to a corporate creditor's claim could be sent to the address on the proof of claim but the failure to mail the objection to the attention of an agent or officer renders the objection procedurally defective. "Bankruptcy Rule 2003 does not apply to service of an objection to claim. . . . The request for notices [filed by the claimant's attorney] entitles [the claimant's attorney] to receive Rule 2002 notices; but it does not designate the attorney to receive service of process in a contested matter on [the claimant's] behalf. . . . The procedure for a claim objection is governed by Bankruptcy Rule 3007. . . . [A]n objection to a claim is a contested matter subject to Bankruptcy Rule 7004. . . . An objection to a proof of claim of a corporate claimant under Bankruptcy Rule 7004(b)(3) may be sent to the address of the proof of claim. When perfecting service under Bankruptcy Rule 7004(b)(3), plaintiffs may rely on the

address listed on a creditor's proof of claim. . . . [t]he Debtors were correct in mailing the objection and the notice of objection to [the claimant's] address as listed in the proof of claim. However, Debtors failed to address the objection to an officer or agent and therefore did not properly perfect service. While Debtors are not required to mail service to a named individual officer or agent, at a bare minimum, service must be addressed 'to the attention of an officer, a managing or general agent or any other agent authorized by appointment or by law to receive service of process.'"

Service in this case was deficient because the objection was not served "to the attention of an officer, a managing or general agent or any other agent authorized by appointment or by law to receive service of process." 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)).

71. 04-20135-A-13L JAMES/MELINDA MONTEMAYOR HEARING - MOTION FOR
PPR #1 RELIEF FROM AUTOMATIC STAY
OCEAN WEST ENTERPRISES, INC., VS. 8-30-04 [19]

Final Ruling: The movant has voluntarily dismissed the motion.

72. 03-28936-A-13L CARRIE BRANSON HEARING - MOTION FOR
PGM #1 MODIFICATION OF PLAN
8-19-04 [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.

73. 03-33236-A-13L VICTOR/ELVIRA MARES HEARING - DEBTORS' OBJECTION TO
DJC #1 CLAIM OF BENEFICIAL CALIF., INC.
8-11-04 [21]

Final Ruling: This objection to the proof of claim of Beneficial California, Inc. 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.

A fixture is a good that becomes so related to particular real property that an interest in it arises under real property law. Under California law, an interest in real property is perfected by recordation with the county recorder in the county where the real property is located. The document recorded is a financing statement that satisfies Cal. Comm. Code § 9502(b) and is filed as required by Cal. Comm. Code § 9501(a)(1)(B).

The debtor financed the purchase of a water softener through the claimant. The water softener is attached to the debtor home water system which is integral to the debtor's home. It cannot be disconnected with ease and without doing damage to the water system and the residence. This is a fixture.

The documentation contains a security agreement granting a security interest in the water system to the claimant. There is, however, no evidence that the security interest has been perfected by recordation or filing with the Secretary of State, whichever might be required. The claim is allowed as a general unsecured claim.

74. 03-24638-A-13L FLOYD/SHARON HOWELL HEARING - MOTION FOR
JAT #1 APPROVAL OF ADDITIONAL FEES
FOR ATTORNEY JOHN A. TOSNEY
(\$1,410.00)
8-31-04 [34]

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.

75. 03-27438-A-13L MIKE BAKER HEARING - TRUSTEE'S OBJECTION TO
LJL #1 CLAIM OF BRETT PEARSON
8-10-04 [90]

Final Ruling: This objection to the proof of claim of Brett Pearson 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 May 26, 2004. The proof of claim was filed on July 7, 2004. 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).

76. 03-31539-A-13L WILLIAM/WENDY HAMPTON HEARING - TRUSTEE'S OBJECTION TO
LJL #1 CLAIM OF FRANCHISE TAX BOARD
8-10-04 [17]

Final Ruling: This objection to the proof of claim of 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 last date to file a timely proof of claim was April 20, 2004. The proof of claim was filed on May 28, 2004. 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).

77. 04-27039-A-13L MARSHALL McDANIEL, JR. HEARING - TRUSTEE'S OBJECTION TO
NLE #1 EXEMPTIONS
8-30-04 [11]

Final Ruling: This objection to the debtor's exemptions 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 debtor is not entitled to a homestead exemption greater than \$50,000. The schedules indicate that the debtor is divorced, has no dependents, and has gross income more than \$6,738.33 a month. Under Cal. Civil. Proc. Code § 704.730(a) a debtor with these characteristics is entitled to only a \$50,000 exemption. The exemption is reduced to \$50,000.

Second, the exemption of a gun collection and a utility trailer under Cal. Civil. Proc. Code § 704.020 is disallowed. This statute exempts household furnishings, appliances, provisions, and wearing apparel. The trailer and gun collection do not fall within the enumerated categories of property. These exemptions are disallowed.

78. 04-27141-A-13L JOKE VANDENBULCKE HEARING - OBJECTION TO
NLE #1 CONFIRMATION OF PLAN BY TRUSTEE
8-30-04 [9]

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 overruled.

Without some evidence other than the fact that the debtor's budget includes the enumerated expenses, the court cannot conclude that the \$1,500 rental expense

or purchase money loan secured by the debtor's car are unreasonable expenses or are unnecessary to the maintenance of the debtor. These expenses, in and of themselves, do not indicate on their face that the debtor is dissipating disposable income.

79. 03-24442-A-13L JOHN/BARBARA ORTIZ HEARING - MOTION TO
SDB #2 MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
8-24-04 [49]

Final Ruling: The parties have continued the hearing to November 2, 2004 at 9:30 a.m. in courtroom 34.

80. 00-24246-A-13L THOMAS/SONJA CORREA HEARING - APPLICATION FOR
SDB #10 ADDITIONAL ATTORNEY FEES AND
EXPENSES IN CHAPTER 13
(\$1,470.00 FEES; \$27.75 EXP.)
8-24-04 [119]

Final Ruling: The motion will be dismissed without prejudice.

The proof of service indicates that the trustee Loheit was not served with the motion. The motion was served on trustee Johnson. He is not the trustee in this case. Service is deficient.

81. 04-24946-A-7 KENNETH/SANDRA POLLARD HEARING - MOTION TO
MET #1 MODIFY PLAN AFTER CONFIRMATION
8-24-04 [23]

Final Ruling: The motion will be dismissed without prejudice.

The petition was converted to chapter 7 on September 2, 2004.

82. 03-32947-A-13L RENEE MYERS HEARING - TRUSTEE'S OBJECTION TO
LJL #1 CLAIM OF SALLIE MAE, INC. FOR
USB/BRAZOS
8-19-04 [86]

Final Ruling: This objection to the proof of claim of Sallie Mae, Inc. 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 April 7, 2004. The proof of claim was filed on June 18, 2004. 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).

83. 04-27748-A-13L JAMES/LISA DANIEL
WW #1

HEARING - MOTION TO
VALUE COLLATERAL OF WELLS FARGO
ACCEPTANCE
8-25-04 [9]

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 \$6,200 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, \$6,200 of the respondent's claim is an allowed secured claim. When the respondent is paid \$6,200, 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.

84. 99-33348-A-13L TRINIDAD FLORES
SDB #11

HEARING - MOTION TO
MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
8-25-04 [172]

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.

85. 04-20249-A-13L NORMA/JOHN CRANSHAW
FF #4

HEARING - DEBTORS' OBJECTION TO
CLAIM OF RJM ACQUISITIONS FUNDING
LLC, ASSIGNEE OF FINGERHUT
8-19-04 [57]

Final Ruling: This objection to the proof of claim of RJM Acquisitions Funding LLC 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 respondent's claim is unsecured and no priority status is asserted. Its claim was scheduled in a prior chapter 7 petition filed by the debtors, Case No. 03-25127. The debtors received a discharge in that case and there is no record of the claim being excepted from that discharge nor is any basis for such an exception apparent from the proof of claim. The claim is therefore disallowed.

86. 04-28049-A-13L ROBIN DROPPA HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
9-14-04 [15]

Final Ruling: The order to show cause will be discharged as moot. The petition was previously dismissed on the motion of the trustee.

87. 01-27650-A-13L RONALD/CAROLYN PACHECO HEARING - TRUSTEE'S OBJECTION TO
LJL #1 CLAIM OF GOLDEN STATE CELLULAR
8-19-04 [29]

Final Ruling: This objection to the proof of claim of Golden State Cellular 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 services given to the debtor in 1999. Such claims are not entitled to priority status. 11 U.S.C. § 507.

88. 04-25150-A-13L GURDEEP/SUKHWINDER BAHIA HEARING - MOTION TO VALUE
MG #1 COLLATERAL OF YOLO FEDERAL C.U.
8-18-04 [18]

Final Ruling: This objection to the proof of claim of Yolo 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 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 \$31,110 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, \$31,110 of the respondent's claim is an allowed secured claim. When the respondent is paid \$31,110 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.

89. 04-23351-A-13L PAUL/DONNA COFFARO
LJL #1

HEARING - TRUSTEE'S OBJECTION TO
CLAIM OF SIERRACENTRAL C.U.
8-19-04 [27]

Final Ruling: This objection to the proof of claim of Sierra Central 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 a pre-petition judgment against the debtor. The judgment in turn was based on a pre-petition loan to the debtor. Such claims are not entitled to priority status. 11 U.S.C. § 507.

90. 04-24951-A-13L GREGORIO TORRES AND
RR #1 MARIA AMBRIZ

HEARING - MOTION TO VALUE
COLLATERAL OF CHRYSLER FINANCIAL
8-31-04 [25]

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 \$5,335 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, \$5,335 of the respondent's claim is an allowed secured claim. When the respondent is paid \$5,335 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.

91. 03-33454-A-13L ROGER/MARY NOONAN
LJL #2

HEARING - TRUSTEE'S OBJECTION TO
CLAIM OF TRAUNER, COHEN & THOMAS,
LLP
8-19-04 [46]

Final Ruling: This objection to the proof of claim of Trauner, Cohen & Thomas 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 April 21, 2004. The proof of claim was filed on May 24, 2004. 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).

92. 03-25159-A-13L THOMAS/ROSE LAMS HEARING - MOTION TO
SDB #3 MODIFY CHAPTER 13 PLAN
AFTER CONFIRMATION
8-20-04 [29]

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.

93. 04-20262-A-13L ED RANEY HEARING - MOTION FOR
JMG #1 RELIEF FROM AUTOMATIC STAY ETC
WELLS FARGO BANK, VS. 9-17-04 [47]

Final Ruling: The motion will be dismissed without prejudice.

The motion includes a request that the codebtor stay of 11 U.S.C. § 1301 be terminated or modified. However, the proof of service does not indicate that the codebtor, Jennifer Lindren, was served with the motion as required by section 1301.

94. 04-28162-A-13L LINDA ZIMMERMAN HEARING - ORDER TO SHOW
CAUSE RE DISMISSAL OF CASE OR
IMPOSITION OF SANCTIONS
9-14-04 [16]

Final Ruling: The order to show cause will be discharged as moot. The petition was previously dismissed on the motion of the trustee.

95. 04-25368-A-13L PAUL DOVE HEARING - TRUSTEE'S OBJECTION TO
NLE #2 EXEMPTIONS
8-30-04 [28]

Final Ruling: The objection will be dismissed as moot. The debtor has amended the exemptions to which the trustee objected. If the amended exemptions are objectionable, the trustee should set a new objection for hearing.

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 pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a) pertaining to Best Buy/Household Bank's collateral, a DVD player and a car stereo, 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 \$300 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, \$300 of the respondent's claim is an allowed secured claim. When the respondent is paid \$300, 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.

The valuation motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a) pertaining to Dell's collateral, a computer, 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 \$300 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, \$300 of the respondent's claim is an allowed secured claim. When the respondent is paid \$300, 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.

The valuation motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a) pertaining to GMAC's collateral, a Chevy Impala, 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 \$16,205 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, \$16,205 of the respondent's claim is an

allowed secured claim. When the respondent is paid \$16,205 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.

The valuation motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a) pertaining to Circuit City's collateral, computer equipment, 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 \$300 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, \$300 of the respondent's claim is an allowed secured claim. When the respondent is paid \$300, 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.

97. 03-27373-A-13L PAUL/LOIS CLIFTON HEARING - MOTION FOR
JAT #3 APPROVAL OF ATTORNEY FEES FOR
JOHN A. TOSNEY
(\$1,740.00 FEES; \$20.00 COSTS)
8-20-04 [46]

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.

98. 04-20278-A-13L DAYANAND/MARGARET MAHARAJ HEARING - MOTION FOR
LJB #1 RELIEF FROM AUTOMATIC STAY ETC
WELLS FARGO BANK, VS. 9-1-04 [26]

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 through the plan. The trustee reports that the debtor has failed to pay \$4,123.41 in plan payments. This in turn has meant that the trustee has been unable to pay all post-petition installment payments to the movant. 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).

Further, the debtor's plan does not provide for the entire post-petition mortgage installment amount. It provides for \$1,100.84 but the motion indicates that \$1,207.95 is owed each month. Regardless of which installment amount is accurate, there has been a post-petition default.

The debtor does not dispute that he has not been able to make all plan payments nor that all mortgage installments have not been made. Instead, the debtor wishes to modify the plan to cure the post-petition default. However, there is no credible evidence that the debtor will be able to perform a plan having defaulted under the terms of a plan filed earlier this year.

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.

99. 01-26279-A-13L LOWELL/CONNIE STREIKER HEARING - REQUEST BY
CREDITOR LEASEMOBILE/CALIFORNIA
FOR ORDER THAT ITS CLAIM BE PAID
AS EXPENSE OF ADMINISTRATION
8-17-04 [59]

Final Ruling: The motion will be dismissed without prejudice.

The motion is not identified by a docket control number on all moving papers. All matters placed on the calendar must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c). The purpose of the docket control number is to insure that all documents filed in support and in opposition to a motion are linked on the docket. This linkage insures that the court as well as any party reviewing the docket will be aware of everything filed in connection with a motion.

This motion has no docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the motion that have not been brought to the attention of the court. The court will not permit the movant to profit from possible confusion that the movant has caused.

100. 03-32080-A-13L DONALD/KRISTINE HIGGINS CONT. HEARING - MOTION TO
MWB #4 AVOID LIEN
VS. DONALD/CAROL STAIR 8-17-04 [97]

Final Ruling: This motion to avoid a judicial lien 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 respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the trustee and the creditor are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$200,000 as of the date of the petition. The unavoidable liens total \$135,578. The debtor has an available exemption of \$75,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

101. 03-32080-A-13L DONALD/KRISTINE HIGGINS CONT. HEARING - MOTION FOR
MWB #5 ORDER PARTIALLY DISALLOWING
 CLAIM OF BRAD/CHRISTINE CARPENTER
 7-29-04 [88]

Final Ruling: The objection will be dismissed without prejudice.

First, the notice of the hearing on the objection to the proof of claim of the Carpenters indicated that they were required to file written opposition to the objection 14 days prior to the original September 1 hearing date. However, the debtor gave only 36 days of notice of that hearing. Local Bankruptcy Rule 3007-1(d)(1) requires written opposition only if the hearing is set on 44 days or more of notice. Local Bankruptcy Rule 3007-1(d)(2) specifies that no written opposition need be filed to the objection when less than 44 days' notice is given. Instead, the claimant may appear at the hearing to contest the objection. By informing the claimant that written opposition was required, and that without it the claimant might not be heard at the hearing, the notice may have deterred the claimant from appearing.

Second, the same docket control number on the objection has been used on an unrelated fee motion. All matters placed on the calendar must be given a

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 pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a) pertaining to Pacific Bay Federal Credit Union's collateral, a Toyota Tacoma, 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 \$14,000 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, \$14,000 of the respondent's claim is an allowed secured claim. When the respondent is paid \$14,000, 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.

The valuation motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a) pertaining to Pacific Bay Federal Credit Union's collateral, a Suzuki GSXR 1000, will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of \$7,590 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, \$7,590 of the respondent's claim is an allowed secured claim. When the respondent is paid \$7,590, 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.

The valuation motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a) pertaining to Zale's collateral, a ring and earrings, 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 \$570 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, \$570 of the respondent's claim is an allowed secured claim. When the respondent is paid \$570, 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.

The valuation motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a) pertaining to Les Schwab's collateral, tires and rims, 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 \$1,380.83 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, \$1,380.83 of the respondent's claim is an allowed secured claim. When the respondent is paid \$1,380.83, 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.

The valuation motion pursuant to Fed.R.Bankr.P. 3012 and 11 U.S.C. § 506(a) pertaining to Levitz's collateral, furniture, 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 \$600 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, \$600 of the respondent's claim is an allowed secured claim. When the respondent is paid \$600, 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.

108. 99-35385-A-13L ANDRE/KARLA WYNNE
WW #9

HEARING - APPLICATION RE:
ADDITIONAL FEES AND EXPENSES
IN CHAPTER 13 CASE (\$4,823.26)
9-7-04 [113]

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.

109. 04-20286-A-13L ROBERTA HOLMES
LJL #2

HEARING - TRUSTEE'S OBJECTION TO
CLAIM OF UNION PLANTERS MORTGAGE,
INC.
8-19-04 [18]

Final Ruling: This objection to the proof of claim of Union Planter's Mortgage 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 February 27, 2004. The second proof of claim was filed on April 19, 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.

110. 04-26187-A-13L CAROL ERDMAN
KCC #1
FIRESIDE BANK, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
9-7-04 [22]

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 repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. The plan requires direct payments to the movant by a codebtor. The codebtor has defaulted in making two monthly payments directly to the movant as required by the plan. This is cause to terminate the automatic stay.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 10-day stay of Fed.R.Bankr.P. 4001(a)(3) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

111. 04-27087-A-13L JESUS/MARITZA RAMIREZ
AAC #1

HEARING - DEBTORS' MOTION FOR
ORDER ALLOWING USE OF CASH
(COUNTRYWIDE HOME LOANS AND
HOUSEHOLD FINANCIAL SERVICES)
9-21-04 [27]

Final Ruling: The motion will be dismissed without prejudice.

The motion seeks permission to the use Countrywide's cash collateral for the duration of the plan. That is, court has not been requested to permit interim use of cash collateral and then set a hearing for final approval. This is the final hearing. The motion was served on September 21, resulting in 14 days' notice to Countrywide of the hearing. Fed. R. Bankr. P. 4001(b)(2) requires 15 days' notice of the final hearing.

While Local Bankruptcy Rule 9014-1(f)(2) permits a motion to be set on as little as 14 days' notice, that rule also provides that this may be done "unless additional notice is required by the Federal Rules of Bankruptcy Procedure."

112. 04-27389-A-13L DAVID/ASHLEY NUBLA HEARING - MOTION FOR
KCC #1 RELIEF FROM AUTOMATIC STAY
FIRESIDE BANK, VS. 9-7-04 [37]

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

113. 04-27389-A-13L DAVID/ASHLEY NUBLA HEARING - OBJECTION TO
KCC #2 CONFIRMATION OF PLAN BY FIRESIDE
BANK
9-7-04 [42]

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

114. 02-28691-A-13L ROBERT/KIMBERLY VASQUEZ CONT. HEARING - MOTION FOR
WGM #1 RELIEF FROM AUTOMATIC STAY
LONG BEACH MORTGAGE COMPANY, VS. 8-24-04 [59]

Final Ruling: The movant has voluntarily dismissed the motion.

115. 04-26991-A-13L JULIA PABON HEARING - OBJECTION TO
NLE #1 CONFIRMATION OF PLAN BY TRUSTEE
8-30-04 [14]

Final Ruling: The court continues the hearing to October 19, 2004 at 9:00 a.m. so that the objection can be considered in connection with the motion to confirm an amended plan.

116. 04-27592-A-13L ANTONIO/ALMA SANTIAGO HEARING - MOTION TO VALUE
WW #1 COLLATERAL OF GOLDEN ONE C.U.
8-25-04 [8]

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 \$7,150 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, \$7,150 of the respondent's claim is an allowed secured claim. When the respondent is paid \$7,150 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.

117. 04-27592-A-13L ANTONIO/ALMA SANTIAGO
WW #2

HEARING - MOTION TO VALUE
COLLATERAL OF CIRCUIT CITY
8-25-04 [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 \$1,000 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, \$1,000 of the respondent's claim is an allowed secured claim. When the respondent is paid \$1,000 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.

118. 04-27592-A-13L ANTONIO/ALMA SANTIAGO
WW #3

HEARING - MOTION TO
VALUE COLLATERAL OF LEVITZ/
HOUSEHOLD FINANCE
8-25-04 [16]

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 \$1,000 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, \$1,000 of the respondent's claim is an allowed secured claim. When the respondent is paid \$1,000 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.

119. 03-31994-A-13L JAMES QUIRK
LJL #3

HEARING - TRUSTEE'S OBJECTION TO
CLAIM OF GMAC MORTGAGE
8-10-04 [69]

Final Ruling: This objection to the proof of claim of GMAC Mortgage 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 March 10, 2004. The proof of claim was filed on March 22, 2004. 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).

120. 03-28196-A-13L LEN/CAROL GREER
WW #2

HEARING - MOTION TO
CONFIRM FIRST MODIFIED
CHAPTER 13 PLAN
8-23-04 [19]

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.

121. 03-28497-A-13L AMADOR ARROYO, III
WW #4

HEARING - RESET MOTION TO
CONFIRM FIRST MODIFIED CHAPTER
13 PLAN
8-25-04 [37]

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.