UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

January 23, 2017 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 9. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE FEBRUARY 21, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 6, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY FEBRUARY 13, 2017. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 10 THROUGH 17 IN THE SECOND PART OF THE CALENDAR. INSTEAD, THESE ITEMS HAVE BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON JANUARY 30, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 12-23807-A-13 DOUGLAS CREECH — NOTICE OF DEFAULT AND APPLICATION TO DISMISS 11-29-16 [85]
JPJ-4

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The trustee's motion to dismiss the case will be granted and the case will be dismissed. The debtor's objection will be overruled.

The trustee filed and served a notice of default on November 29, 2016. It recited that the debtor had failed to pay $8,192.98 through November 2016 and that a further $2,024 would become due on December 25. If this default was not cured, the trustee asked that the case be dismissed.

This dismissal procedure is authorized by Local Bankruptcy Rule 3015-1(g) which provides:

(1) If the debtor fails to make a payment pursuant to a confirmed plan, including a direct payment to a creditor, the trustee may mail to the debtor and the debtor's attorney written notice of the default.

(2) If the debtor believes that the default noticed by the trustee does not exist, the debtor shall set a hearing within twenty-eight (28) days of the mailing of the notice of default and give at least fourteen (14) days' notice of the hearing to the trustee pursuant to LBR 9014-1(f)(2). At the hearing, if the trustee demonstrates that the debtor has failed to make a payment required by the confirmed plan, and if the debtor fails to rebut the trustee's evidence, the case shall be dismissed at the hearing.

(3) Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.

(4) If the debtor fails to set a hearing on the trustee's notice, or cure the default by payment, or file a proposed modified chapter 13 plan and motion, or perform the modified chapter 13 plan pending its approval, or obtain approval of the modified chapter 13 plan, all within the time constraints set out above, the case shall be dismissed without a hearing on the trustee's application.

Thus, a debtor receiving a Notice of Default has three alternatives. (1) Cure the default within 30 days of the notice of default as well as pay the additional payment that would come due during the 30-day period to cure the default. (2) Within 30 days of the notice of default, file a motion to confirm a modified plan and a modified plan in order to cure/suspend the default stated in the notice of default. (3) Contest the notice of default by setting a hearing within 28 days of the notice of default on 14 days of notice to the trustee.

Here, the debtor opted to take the third alternative and he timely disputed

that the notice of default was correct, contending that the plan was not in default. According to the debtor, the operative plan is the modified plan filed on June 30, 2016 which calls for monthly plan payments of $1,500. However, that plan was not confirmed by the court. The court granted the motion to confirm the modified plan on three conditions: the debtor return the trustee's refund of plan payments, the debtor make the August 2016 plan payment as required by the proposed modified plan, and the debtor make the September 2016 payment as required by the proposed modified plan. While the debtor returned the refund and made the August 2016 plan payment, he failed to make the September 2016 plan payment. As the result, on October 4, 2016, an order was entered denying confirmation of the modified plan.

This prompted the trustee to issue the November 29 notice of default. It calculated the payments due but not made under the terms of the plan filed April 2, 2012. The debtor does not dispute, and has offered no evidence suggesting, that the notice of default correctly calculates the plan payments not made under the terms of the April 2, 2012 confirmed plan. Hence, there is cause for dismissal. See 11 U.S.C. § 1307(c)(6). The case will be dismissed pursuant to the notice of default the debtor's objection to that notice will be overruled.

2. 12-23807-A-13 JPJ-4 — DOUGLAS CREECH — COUNTER MOTION TO DISMISS CASE 1-5-17 [88]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The counter-motion will be dismissed. This counter-motion was unnecessary. The notice of default requested dismissal and the debtor's objection to that notice has been overruled. As a result, the case will be dismissed pursuant to the trustee's notice.

3. 16-27839-A-13 JPJ-1 — JOHN/HELENA MOEHRING — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 1-3-17 [12]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained and the motion to dismiss the case will be conditionally denied.

The objection asserts that the plan will not pay unsecured creditors either in full or all of the debtor's projected disposable income as required by 11 U.S.C. § 1325(b). While the plan is consistent with Form 122 filed November 29, 2016, as noted by the trustee, that form has not correctly completed by the debtor.

The debtor took two deductions from income on Form 122C filed November 29, 2016 at line 43 for expenses related to special circumstances which "justify additional expenses" that the debtor has "no reasonable alternative." These deductions were $2,300 for "aug [sic] payment from land contract final payment" and $3,000 for "july [sic] vacation accurred [sic] and received no other payments due".

These deductions are inappropriate for several reasons. First, line 43 is for expense deductions. The debtor appears to be deducting income that the debtor believes will not be received in the future. This calculation belonged on line 46 of Form 122C. Second, because Form 122C calculates current monthly income based on an average of the income received by the debtor over the six months prior to bankruptcy, only 1/6 of these two amounts should have been "deducted". Third, nothing should have been deducted by the debtor because the debtor included neither the income from the land contract nor the vacation pay in his monthly income for the six month period. By not including these amounts in current monthly income but including an adjustment to account for the end of the two income streams, the debtor in effect deducted the amounts twice. Fourth, the $2,300 payment is overstated. According to the debtor's statement at the meeting of creditors, the debtor received $300 a month through August, or a total of $1,200 during the 6-month period immediately prior to the filing of the case.

Hence, the debtor's average monthly income during the six months prior to bankruptcy should be $700 more than reported (1/6th of $1,200 and 3,000), increasing currently monthly income from $9,626.21 to $10,326.21. To adjust for the fact that it is certain that the debtor will not receive further compensation for unused vacation and payments under the land sale agreement, this amount can be adjusted downward by $700, back to $9,626.21. From this must be subtracted the debtor's other expense deductions, $7,749.05 as reported on line 42, leaving $1,877.16 of monthly projected disposable income. Over 60 months, the debtor will have more than $112,000 available to pay unsecured creditors, substantially more than 0% dividend promised in the plan for Class 7. The plan does not comply with 11 U.S.C. § 1325(b).

The amended Form 122C filed January 12, 2017 does not cure these problems.

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

4. 16-27749-A-13 NOREEN JAMES — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 1-3-17 [13]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

First, the debtor has failed to make $1,890 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, the debtor has not filed an income tax return for 2015. The return is delinquent.

Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becoming effective, the Bankruptcy Code did not require chapter 13 debtors to file delinquent tax returns. If a debtor did not file tax returns, the trustee might object to the plan on the grounds of lack of feasibility or that the plan was not proposed in good faith. See, e.g., Greatwood v. United States (In re Greatwood), 194 B.R. 637 (9th Cir. B.A.P. 1996), *affirmed*, 120 F.3d. 268 (9th Cir. 1997).

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors.

There are two consequences to a failure to comply with section 1308. The failure is cause for dismissal. See 11 U.S.C. § 1307(e). Also, 11 U.S.C. § 1325(a)(9) and an uncodified provision of BAPCPA found at section 1228(a) of the Act provide that the court cannot confirm a plan if delinquent returns have not been filed with the taxing agency and filed with the court. This has not been done and so the court cannot confirm the plan proposed by the debtor.

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

5. 16-27552-A-13 ALFONSO/CAMMIE MACIEL — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 1-3-17 [34]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained and the motion to dismiss the case will be conditionally denied.

First, the plan's feasibility depends on the debtor successfully prosecuting motions to value the collateral of A-L Financial and Americredit/GM Financial in order to strip down or strip off their secured claims from their collateral. No such motions have been filed, served, and granted. Absent successful motions the debtor cannot establish that the plan will pay secured claims in

full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Second, because the plan fails to specify how debtor's counsel's fees will be approved, either pursuant to Local Bankruptcy Rule 2016-1 or by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017, but nonetheless requires the trustee to pay counsel a monthly dividend on account of such fees, in effect the plan requires payment of fees even though the court has not approved them. This violates sections 329 and 330.

Third, the plan misclassifies a nonpriority, unsecured debt (described as a "repo deficiency") as a Class 2 secured claim.

Fourth, Hamilton v. Lanning, 130 S.Ct 2464 (2010), permits the trustee to rebut the presumption that the amount of projected disposable income is as stated in Form 122C when a change of income is known and virtually certain at the time of plan confirmation. As reported on Schedules I and J, the debtor's household monthly income is now $3,718.24 as the result of a raise received three months prior to bankruptcy. Using current income rather than the average for six pre-petition months, the debtor's monthly projected disposable income will be more than $220,000 over the plan's 60-month duration. This will permit payment of a 100% dividend to nonpriority unsecured creditors. Because the plan will these creditors only a 69% dividend, the plan does not comply with 11 U.S.C. § 1325(b).

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

6. 16-27069-A-13 MARIA TORRES LOPEZ — OBJECTION TO CONFIRMATION OF PLAN
PPR-1
DEUTSCHE BANK NATIONAL TRUST COMPANY VS. — 12-7-16 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained.

The objecting creditor holds a home mortgage that is in default. The plan, however, does not cure the default and continue monthly plan payments. Instead, by placing the claim in Class 4, the plan treats the claim as if it is current. The debtor is limited to curing any pre-petition default while maintaining the regular monthly mortgage installment. See 11 U.S.C. § 1322(b)(5). The plan fails on both counts – it reduces the monthly installment from $2,133.15 to $1,932.19 and does not cure the arrears of $7,674.27.

7. 16-27988-A-13 EBI FINI — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 1-3-17 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained.

First, if requested by the U.S. Trustee or the chapter 13 trustee, a debtor must produce evidence of a social security number or a written statement that such documentation does not exist. See Fed. R. Bankr. P. 4002(b)(1)(B). In this case, the debtor has breached the foregoing duty by failing to provide evidence of the debtor's social security number. This is cause for dismissal.

Second, with the debtor's retirement account valued at $900,000 as admitted by the debtor and the debtor's exemption as limited by Schedule C, the debtor's assets require that a 100% dividend be paid to holders of nonpriority unsecured claims. The plan promises these creditor's nothing. The plan does not comply with 11 U.S.C. § 1325(a)(4).

8. 16-27489-A-13 PALMER COOKE — MOTION TO CONFIRM PLAN
SNM-2 — 12-8-16 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The withholding of this financial information from the trustee is a breach of the duties imposed upon the debtor by 11 U.S.C. § 521(a)(3) & (a)(4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

Second, 11 U.S.C. § 521(e)(2)(B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The failure to provide the return to the trustee justifies dismissal and denial of confirmation. In addition to the requirement of section 521(e)(2) that the petition be dismissed, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 found at section 1228(a) of BAPCPA provides that in chapter 11 and 13 cases the court shall not confirm a plan of an individual debtor unless requested tax documents have been turned

over. This has not been done.

9. 16-27489-A-13 PALMER COOKE — COUNTER MOTION TO DISMISS CASE 1-5-17 [46]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The counter motion will be conditionally denied.

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

FINAL RULINGS BEGIN HERE

10. 16-25906-A-13 RANDOLPH/TAMARA RILEY — MOTION TO CONFIRM PLAN
MET-2 — 12-12-16 [27]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

11. 16-21007-A-13 ELIZABETH PAZ — OBJECTION TO CLAIM
AF-10 — 12-1-16 [157]
VS. AURORA C. MACAWILE

Final Ruling: This objection to the proof of claim of Aurora C. Macawile has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(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). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

First, to the extent the proof of claim is filed as a secured claim, the claim must be disallowed. The real property securing the claim was lost in a nonjudicial foreclosure sale on or about October 1, 2007. The record does not permit the court to determine whether the claim was junior or senior to the foreclosing lien. Nevertheless, because the debtor no longer owns the subject property, any claim necessarily is unsecured at least as to the debtor.

Second, viewed as an unsecured claim in this case, the proof of claim must be disallowed. The last payment on the debt, as stated in proof of claim, was January 21, 2008. Assuming it was possible to pursue a claim for money as the sold-out junior lienholder, that claim was subject to a 4-year limitations period. California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. As indicated above, this was on January 21, 2008. Using this date as the date of breach, when the case was filed on February 23, 2016, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time-barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

12. 16-20246-A-13 JOHN BROKENSHIRE
ALF-1

OBJECTION TO
NOTICE OF POST-PETITION MORTGAGE FEES, EXPENSES, AND CHARGES
12-8-16 [28]

Final Ruling: The objection has been voluntarily dismissed.

13. 15-22547-A-13 TINA CLARK
BLG-5

MOTION TO
APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
12-23-16 [87]

Final Ruling: The motion will be dismissed without prejudice.

The debtor was not served with the fee motion. Fed. R. Bankr. P. 2002(a)(6) requires that the debtor be served.

14. 11-39068-A-13 PHILIP/KATIA FONTENOT
CJY-6
VS. DEUTSCHE BANK NATIONAL TRUST COMPANY

MOTION TO
VALUE COLLATERAL
12-23-16 [81]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $200,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Deutsche Bank National Trust Company. The first deed of trust secures a loan with a balance of approximately $407,883.15 as of the petition date. Therefore, Deutsche Bank National Trust Company's other claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is $0, because the value of the respondent's collateral is $0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(I).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of $200,000. Evidence in the form of the debtor's declaration supports the valuation motion. The 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).

15. 16-27478-A-13 RAYMOND WOLFE — OBJECTION TO EXEMPTIONS
JPJ-2 — 12-30-16 [19]

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). 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). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See

Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the debtor's default is entered and the matter will be resolved without oral argument.

The objection will be sustained.

The trustee objects to all of the debtor's Cal. Civ. Proc. Code § 703.140(b) exemptions claimed on Schedule C. The trustee argues that because the debtor is married and because the debtor's spouse has not joined in the chapter 13 petition, the debtor must file his spouse's waiver of right to claim exemptions. See Cal. Civ. Proc. Code § 703.140(a)(2). This was not done.

A debtor's exemptions are determined as of the date the bankruptcy petition is filed. Owen v. Owen, 500 U.S. 305, 314 (1991); see also In re Chappell, 373 B.R. 73, 77 (B.A.P. 9th Cir. 2007) (holding that "critical date for determining exemption rights is the petition date"). Thus, the court applies the facts and law existing on the date the case was commenced to determine the nature and extent of the debtor's exemptions.

11 U.S.C. § 522(b)(1) permits the states to opt out of the federal exemption statutory scheme set forth in section 522(d). In enacting Cal. Civ. Proc. Code § 703.130, the State of California opted out of the federal exemption scheme relegating a debtor to whatever exemptions are provided under state law. Thus, substantive issues regarding the allowance or disallowance of a claimed exemption are governed by state law in California.

California state law gives debtors filing for bankruptcy the right to choose (1) a set of state law exemptions similar but not identical to the Bankruptcy Code exemptions; or (2) California's regular non-bankruptcy exemptions. See Cal. Civ. Proc. Code §§ 703.130, 703.140. In the case of a married debtor, if either spouse files for bankruptcy individually, California's regular non-bankruptcy exemptions apply unless, while the bankruptcy case is pending, both spouses waive in writing the right to claim the regular non-bankruptcy state exemptions in any bankruptcy proceeding filed by the other spouse. See Cal. Civ. Proc. Code § 703.140(a)(2).

Here, the debtor is asserting the exemptions of Cal. Civ. Proc. Code § 703.140(b), which require a spousal waiver. That waiver was not filed with the petition.

16. 16-22082-A-13 GARY DELFINO AND JAQUILINE NERUTSA — OBJECTION TO CLAIM
JPJ-2
VS. SOUTHERN NEW HAMPSHIRE UNIVERSITY — 12-5-16 [59]

Final Ruling: This objection to the proof of claim of Southern New Hampshire University has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(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). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The last date to file a timely proof of claim was August 17, 2016. The proof of claim was filed on September 19, 2016. 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).

17. 16-27298-A-13 CARRIE NOAH — MOTION TO CONFIRM PLAN 12-9-16 [20]
DBL-1

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.