

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 12, 2018 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 19. 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 MARCH 12, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 26, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 5, 2018. 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 20 THROUGH 29 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 FEBRUARY 20, 2018, AT 2:30 P.M.

February 12, 2018 at 1:30 p.m.

Matters to be Called for Argument

1. 17-28001-A-13 ARLENE DISESSA OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
1-24-18 [31]

- 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 conditionally denied.

First, the debtor has altered the preprinted text of the court's standard plan form in violation of Local Bankruptcy Rule 3015-1(a) and by signing the plan both the debtor and the debtor's attorney falsely certified that none of the preprinted language of the plan had been altered. Also, because the alterations changed the numbering of each section number, and because the text of each section references the original section numbers, the plan makes little sense.

Second, the plan proposes a duration of 54 months. However, because the debtor is an over-median income debtor, the duration must be 60 months even though the debtor has no projected disposable income reported on Form 22. See Danielson v. Flores (In re Flores), 2013 WL 4566428 (Aug. 29, 2013). The plan does not comply with 11 U.S.C. § 1325(b)(4).

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.

2. 17-28121-A-13 LALAINA JOHNSON OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN
1-24-18 [13]

- 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.

The debtor failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3).

3. 17-23129-A-13 TIMOTHY NEHER OBJECTION TO
TLN-23 CLAIM
VS. LENDINGHOME FUNDING CORP. 1-2-18 [190]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled in part and dismissed without prejudice in part, and the court abstains in part.

The objection argues three points.

First, the debtor maintains that the proof of claim's assertion that it is secured by the debtor's primary residence is false and therefore the proof of claim should be disallowed.

The debtor maintains that the loan was made to permit him to buy and rehabilitate an existing residence that was not his home. Indeed, the loan documentation provides that it was a business loan not a loan to permit him to buy a home. However, the debtor's petition in this case and a prior case both indicate that the debtor resides in the subject property.

Whether or not the claim is secured by the debtor's principal residence has no bearing on the allowability of the claim. It does have a bearing on whether the anti-modification provision in 11 U.S.C. § 1322(b)(2) bars the debtor from proposing a plan that modifies the claim. Claims secured only by a debtor's residence may not be modified in a bankruptcy case subject to the two exceptions stated in 11 U.S.C. § 1322(c). This is an issue for resolution in the plan confirmation process, not the claim allowance process. That is, both the creditor and the debtor may raise the issue of whether the anti-modification provision prevents modification of the claim in connection with the debtor's motion to confirm a plan.

Further, whether a claim is secured by the debtor's principal residence is determined as of the petition date, not when the loan was made. See In re Benafel, 461 B.R. 581 (B.A.P. 9th Cir. 2011). Given this authority, the court sees nothing misleading when a creditor secured by property that is not the debtor's residence at the time of loan origination, files a proof of claim indicating the claim is secured by the debtor's principal residence as of the date the bankruptcy case is filed.

This objection will be dismissed without prejudice to its substance be asserted in connection with a motion to confirm a plan and value the collateral of the creditor.

Second, the debtor never received \$29,980 of the money earmarked for the rehab of the property. The debtor maintains that therefore this amount should be deducted from principal and the accrual of interest adjusted accordingly. The

debtor also asserts that the creditor wrongly withheld the \$29,980 even though he did not the necessary work warranting the release of the funds. He asserts this caused him damage.

These claims and defenses have been raised by the debtor in pending state court litigation. The court will abstain from resolving this objection. The parties may proceed in state court to resolve these issues. Inasmuch as the debtor is the plaintiff and because this is a chapter 13 case, there is no impediment created by the Bankruptcy Code to the debtor's continued litigation in state court.

Third, the debtor complains that the proof of claim does not append the escrow account statement prepared as of the petition date as required by Fed. R. Bankr. P. 3001(c)(2)(C).

However, as noted in the response, the loan from the creditor did not establish an escrow account for taxes and insurance.

This objection will be overruled.

4. 17-25530-A-13 LANCE ENGELSTAD MOTION TO
LBG-1 CONFIRM PLAN
12-29-17 [36]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the debtor has failed to make \$5,700 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 failed to utilize the court's mandatory form plan as required by Local Bankruptcy Rule 3015-1(a) (effective on and after December 1, 2017, in all cases regardless when filed).

Third, 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).

Fourth, 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

6. 17-28230-A-13 ROYAN WITHERS
JHW-1
AMERICREDIT FINANCIAL SERVICES, INC. VS.

OBJECTION TO
CONFIRMATION OF PLAN
1-11-18 [14]

- 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, the plan provides for the creditor's claim in Class 2A (secured claims not reduced to the value of the collateral). The plan indicates that the creditor holds a nonpurchase money security interest. The objection establishes, however, that the creditor holds a purchase money security interest. Because the plan provides otherwise, no preconfirmation adequate protection payments can be made to the creditor. As a result, the debtor's plan does not comply with 11 U.S.C. § 1326(a)(1)(C).

Second, the plan provides for interest to accrue on this claim at the rate of 3.5%. At present, the prime rate is 4.5%.

The Supreme Court decided in Till v. SCS Credit Corp., 124 S.Ct. 1951 (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.

As surveyed by the Supreme Court in Till, courts using the formula approach typically have adjusted the interest rate 1% to 3%. The debtor's proposed rate of 3.5% gives a 1.00% discount on prime. It states the obvious that a discount on prime does not satisfy Till and does not comply section 1325(a)(5)(ii).

7. 17-28230-A-13 ROYAN WITHERS
JHW-2
CREDIT ACCEPTANCE CORP. VS.

OBJECTION TO
CONFIRMATION OF PLAN
1-15-18 [19]

- 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, the plan provides for the creditor's claim in Class 2A (secured claims not reduced to the value of the collateral). The plan indicates that the creditor holds a nonpurchase money security interest. The objection establishes, however, that the creditor holds a purchase money security interest. Because the plan provides otherwise, no pre-confirmation adequate protection payments can be made to the creditor. As a result, the debtor's plan does not comply with 11 U.S.C. § 1326(a)(1)(C).

Second, the plan provides for interest to accrue on this claim at the rate of 3.0%. At present, the prime rate is 4.5%.

The Supreme Court decided in Till v. SCS Credit Corp., 124 S.Ct. 1951 (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.

As surveyed by the Supreme Court in Till, courts using the formula approach typically have adjusted the interest rate 1% to 3%. The debtor's proposed rate of 3.0% gives a 1.50% discount on prime. It states the obvious that a discount on prime does not satisfy Till and does not comply section 1325(a)(5)(ii).

8. 17-27633-A-13 CHRISTOPHER DECASPER OBJECTION TO
BOSCO CREDIT L.L.C. VS. CONFIRMATION OF PLAN
12-28-17 [16]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained.

The plan appears to provide for the objecting creditor's claim in Class 4 (the creditor is identified as Chase). Class 4 claims are reserved for secured claims not in default. According to the objection, there are more than \$3,300 in such arrears. Because the plan does not provide for such arrears, it does not comply with 11 U.S.C. § 1325(a)(5)(B) and 11 U.S.C. § 1322(b)(2).

The objection that the plan is not feasible because the debtor has only \$125 in net income will be overruled. The court can make no conclusions about feasibility based only on the amount of a debtor's net income.

9. 17-28246-A-13 FUAAD/ABEER IBRAHIM OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
1-24-18 [31]

- 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 conditionally denied.

First, the debtor has failed to give the trustee records relating to his business as a financial broker. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Second, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the petition fails to identify a prior bankruptcy case filed by the debtor. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

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.

10. 17-28246-A-13 FUAAD/ABEER IBRAHIM MOTION TO
MJD-3 VALUE COLLATERAL
VS. PATELCO CREDIT UNION 1-18-18 [22]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$600,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Bank of America. The first deed of trust secures a loan with a balance of approximately \$643,929.25 as of the petition date. Therefore, Patelco's 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 \$600,000. 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).

11. 17-27947-A-13 MICHELLE EDWARDS MOTION TO
MOH-1 VALUE COLLATERAL
VS. CHRYSLER CAPITAL 1-29-18 [25]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property

is \$35,799 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, \$35,799 of the respondent's claim is an allowed secured claim. When the respondent is paid \$35,799 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.

12. 17-28152-A-13 MICHAEL/DOLORES RENDON OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
1-24-18 [18]

- 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 conditionally denied.

The debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender, Ocwen, has agreed to a home loan modification. Absent that agreement, the claim cannot be modified. See 11 U.S.C. § 1322(b)(2). Instead, 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).

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.

13. 17-28161-A-13 MICHAEL MCELREATH OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
1-24-18 [15]

- 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

. . .
3.07. (a) *Cure of defaults.* All arrears on Class 1 claims shall be paid in full by Trustee. The equal monthly installment specified in the table below as the "arrearage dividend" shall pay the arrears in full.

(1) *Unless otherwise specified below, interest will accrue at the rate of 0%.*

(2) *The arrearage dividend must be applied by the Class 1 creditor to the arrears. If this plan provides for interest on the arrears, the arrearage dividend shall be applied first to such interest, then to the arrears.*

(b) *Maintaining payments.* Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.

(1) *Unless subpart (b) (1) (A) or (B) of this section is applicable, the amount of a post-petition monthly payment shall be the amount specified in this plan.*

(A) *If the amount specified in the plan is incorrect, the Class 1 creditor may demand the correct amount in its proof of claim. Unless and until an objection to such proof of claim is sustained, the trustee shall pay the payment amount demanded in the proof of claim.*

(B) *Whenever the post-petition monthly payment is adjusted in accordance with the underlying loan documentation, including changes resulting from an interest rate or escrow account adjustment, the Class 1 creditor shall give notice of the payment change pursuant to Fed. R. Bankr. P. 3002.1(b). Notice of the change shall not be given by including the change in a proof of claim. Unless and until an objection to a notice of payment change is sustained, the trustee shall pay the amount demanded in the notice of payment change.*

(2) *If a Class 1 creditor files a proof of claim or a notice of payment change pursuant to Fed. R. Bankr. P. 3002.1(b) demanding a higher or lower post-petition monthly payment, the plan payment shall be adjusted accordingly."*

Of course, if there is an arrearage amount or an installment amount is significantly under-estimated by the debtor, the plan may not be feasible as required by 11 U.S.C. § 1325(a)(6). That is, if the claim is much higher, it may not be paid in full during the stated term of the plan or the plan may exceed the maximum duration permitted by 11 U.S.C. § 1322(d).

However, in this case, because the creditor has not filed a proof of claim and because the discrepancy does not appear to be material, the court cannot conclude the plan will not be feasible. Nor does the court conclude the plan is not feasible merely because the debtor is devoting all disposable income to the plan. The debtor is required to devote all disposable income to the payment of claims. See 11 U.S.C. § 1325(b). There is no provision in section 1325(b) or elsewhere that permits a debtor to set aside income for a "rainy day" fund. If the debtor encounters the unexpected, the debtor can seek to modify the plan.

16. 17-27975-A-13 SUKHRAJ/FAWN DULAI
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN
1-24-18 [20]

- 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.

While the debtor appeared at the meeting of creditors as required by 11 U.S.C. § 343, he declined to answer the trustee's questions concerning a \$3,000,000 judgment. This failure to cooperate with the trustee is a breach of the duty imposed by 11 U.S.C. § 521(a)(3) and the attempt to confirm a plan while failing to answer the trustee's questions is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3).

17. 17-27975-A-13 SUKHRAJ/FAWN DULAI
MG-1
LAKHVINDER DULAI VS.

OBJECTION TO
CONFIRMATION OF PLAN
1-25-18 [23]

- 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.

The debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor failed to schedule an adverse \$3,000,000 judgment entered before the case was filed. The judgment is no longer subject to appeal. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

18. 17-27975-A-13 SUKHRAJ/FAWN DULAI
MG-2

MOTION TO
DISMISS OR TO CONVERT CASE
1-25-18 [28]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The motion will be granted.

Before the case was filed, the debtors had a judgment in excess of \$3,000,000 entered against them. This judgment was scheduled albeit at approximately 1/10th of its actual amount.

The debtors' response to the motion concedes, in effect, that the amount of the judgment makes them ineligible for chapter 13 relief because it exceeds the debt caps for both secured and unsecured claims set by 11 U.S.C. § 109(e). One debtor requests dismissal and the other requests conversion to chapter 7. The motion expresses no preference.

Subject to the debtors paying any fees to split the case into two cases, the case will be dismissed as to debtor Fawn Dulai and converted to chapter 7 as to the other debtor.

19. 17-27879-A-13 EILEEN CHAVEZ
MOH-1
VS. WELLS FARGO BANK, N.A.

MOTION TO
VALUE COLLATERAL
1-23-18 [28]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The

debtor's evidence indicates that the replacement value of the subject property is \$12,450 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, \$12,450 of the respondent's claim is an allowed secured claim. When the respondent is paid \$12,450 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.

FINAL RULINGS BEGIN HERE

20. 13-32912-A-13 CYNTHIA EVANS MOTION TO
SS-6 MODIFY PLAN
1-5-18 [112]

Final Ruling: The debtor has voluntarily dismissed the motion and does not intend to confirm the modified plan filed January 5.

21. 17-27538-A-13 RENE JARA ORDER TO
SHOW CAUSE
1-22-18 [33]

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

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the \$77 installment when due on January 16. However, after the issuance of the order to show cause, the delinquent installment and the entire remaining filing fee were paid. No prejudice was caused by the late payment.

22. 13-24341-A-13 THOMAS/CONNIS KIMBALL MOTION TO
PGM-4 APPROVE COMPENSATION OF DEBTORS'
ATTORNEY
1-9-18 [66]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the 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 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 above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The motion seeks approval of \$1,605 in additional fees incurred principally in connection with assisting the debtor in obtaining a home loan modification. The foregoing represents 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 Local Bankruptcy Rule 2016-1, if applicable.

23. 17-25149-A-13 CHRISTINA JACOBS OBJECTION TO
JPJ-1 CLAIM
VS. LVNV FUNDING, L.L.C. 12-13-17 [31]

Final Ruling: This objection to the proof of claim of LVNV Funding 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 and the claim disallowed.

Because the underlying debt is a contract claim, most likely based on a written contract, 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. The proof of claim indicates the last payment was on January 5, 2008. Therefore, using this date as the date of breach, when the case was filed on August 3, 2017, 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).

24. 14-32456-A-13 ALEJANDRO MARTINEZ MOTION TO
PGM-2 APPROVE COMPENSATION OF DEBTOR'S
ATTORNEY
1-10-18 [54]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the 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 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 above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion seeks approval of \$1,200 in additional fees incurred principally in connection dealing with a motion to dismiss the case and a motion for relief from the automatic stay. The foregoing represents 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 Local Bankruptcy Rule 2016-1, if applicable.

25. 14-24857-A-13 JOHN/DENISE ZEMKO MOTION TO
ADR-1 MODIFY PLAN
12-27-17 [29]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The court will not materially alter the relief requested and the issue raised by the trustee can be resolved by a nonmaterial modification to the plan. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted on the condition that the plan is further modified in the confirmation order to strike additional provision section 7.03 and to continue to provide for the secured claim of Schools Financial Credit Union in Class 2A. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

26. 17-28261-A-13 ERIC PHILLIPS ORDER TO
SHOW CAUSE
1-25-18 [20]

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

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the \$79 installment when due on January 22. However, after the issuance of the order to show cause, the delinquent installment and the entire remaining filing fee were paid. No prejudice was caused by the late payment.

27. 17-27984-A-13 CHRISTOPHER SIMPSON OBJECTION TO
DB-2 CONFIRMATION OF PLAN
FARM CREDIT WEST, F.L.C.A. VS. 1-25-18 [42]

Final Ruling: The objection to the confirmation of the plan will be dismissed as moot. The case was dismissed on January 30.

28. 17-27984-A-13 CHRISTOPHER SIMPSON OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
1-24-18 [39]

Final Ruling: The objection to the confirmation of the plan and the motion to dismiss the case will be dismissed as moot. The case was dismissed on January 30.

29. 16-21385-A-13 WILFREDO/FE ONA MOTION TO
SDB-4 MODIFY PLAN
12-26-17 [78]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The court will not materially alter the relief requested and the issue raised by the trustee can be resolved by a nonmaterial modification to the plan. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted on the condition that the plan is further modified in the confirmation order to account for all prior payments made by the debtor under the terms of the prior plan, to provide for a plan payment of \$1,550 beginning January 2018, and increasing the dividend to Class 7 to 100%. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.