UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 13, 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 14. 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 13, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 27, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 6, 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 15 THROUGH 19 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 21, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 16-28103-A-13 BERTA GALVEZ-SERRATO — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 1-25-17 [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 will be conditionally denied.

First, to pay the dividends required by the plan at the rate proposed by it will take 72 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Second, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $2,651 is less than the $2,772.67 in dividends and expenses the plan requires the trustee to pay each month.

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

2. 16-28008-A-13 MARIO/DEBORAH DERENZI — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 1-25-17 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

The plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay $5,890.92 to unsecured creditors.

While this is consistent with Form 22, the debtor has deducted $5,204 a month for taxes which is significantly more than the debtor's tax liability in 2015. Based on those taxes, the debtor's taxes are, amortized over 12 months, approximately $3,500. With the deduction for taxes reduced to $3,500 a month the debtor's projected disposable income over 5 years increases to $87,856.20.

Because the plan will these creditors only $5,890.92, 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.

3. 16-28313-A-13 MARISA GONZALES — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 1-25-17 [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.

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

First, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Schedule A/B fails to list the debtor's retirement account as an asset. 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).

Second, the debtor has failed to give the trustee copies of a real estate license. 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).

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. 16-26614-A-13 LORI ECHOLS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-17-16 [17]

- ☐ 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 debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor failed to disclose the transfer of real property within the prior two years to a former spouse. 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). Filing the information after the deadline for objecting to the plan does not purge the bad faith.

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. 17-20246-A-13 ANDRES SUAREZ — MOTION TO EXTEND AUTOMATIC STAY O.S.T.
MB-2 — 2-7-17 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor has filed five chapter 13 cases since December 12, 2013. The two most recent cases, Case Nos. 16-22677 and 17-20246, were filed by the debtor alone, but three earlier cases, Case Nos. 13-35639, 14-20262, and 14-22793, were filed with his spouse, Deanne Suarez. Mrs. Suarez, in the addition to the three joint petitions, has filed two other cases alone, Case Nos. 16-27280 and 12-39895. All if these cases were filed under chapter 13 and all, except for the two most recent cases filed by each spouse, were dismissed without completing a plan and receiving a discharge. The prior cases were dismissed either because the filing fee was not paid, a plan, schedules or statements were not filed, or plan payments were not made.

Only one of these prior cases filed by the debtor was dismissed within the past year.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-

year period but was dismissed, the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case.

Section 362(c)(3)(B) allows a debtor to file a motion requesting the continuation of the stay. A review of the docket reveals that the debtor has filed this motion to extend the automatic stay before the 30th day after the filing of the petition. The motion will be adjudicated before the 30-day period expires.

In order to extend the automatic stay, the party seeking the relief must demonstrate that the filing of the new case was in good faith as to the creditors to be stayed. For example, in In re Whitaker, 341 B.R. 336, 345 (Bankr. S.D. Ga. 2006), the court held: "[T]he chief means of rebutting the presumption of bad faith requires the movant to establish 'a substantial change in the financial or personal affairs of the debtor . . . or any other reason to conclude' that the instant case will be successful. If the instant case is one under chapter 7, a discharge must now be permissible. If it is a case under chapters 11 or 13, there must be some substantial change."

Here, the motion focuses only on the last prior case filed by Mr. Suarez, Case No. 16-22677, which was dismissed because he failed to pay the filing fee. He argues that because he paid the filing fee and is now represented by a different attorney, this case has been filed in good faith.

That is a very narrow view of the relevant facts. Mr. and Mrs. Suarez were represented by counsel in all of their cases. Further, the failure to pay the filing fee was the reason one other case was dismissed, Case. No 14-20262. And, the debtor has been attempting to reorganize the debt encumbering his home on Brett Drive since at least 2014, without success. Given this lengthy track record, the court is unconvinced that this case has a reasonable chance of success.

6.	16-28148-A-13	ORLANDO VALENCIA AND MARIA SANCHEZ	OBJECTION TO CONFIRMATION OF PLAN
	BOSCO CREDIT, L.L.C. VS.		1-26-17 [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 plan provides for the objecting creditor home loan in Class 1. Class 1 is reserved for long term claims not modified by the plan. Such claims receive their ongoing contract installment payment and any arrears are cured. See 11 U.S.C. § 1322(b)(2) and (b)(5). While the plan provides for both the arrears and the ongoing contract installment, the arrears have been understated by more than $24,000. At the rate of repayment proposed by the plan, it will take more than 500 months to cure the arrears. Such a plan either exceeds the maximum 5

year duration permitted by 11 U.S.C. § 1322(d), or if the plan must be completed within 5 years, the arrearage will not be cured.

7. 16-27967-A-13 D. JEANNE PETERSON — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 1-25-17 [19]

- ☐ 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 case dismissed.

First, 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). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

Second, 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).

Third, 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.

Fourth, Local Bankruptcy Rule 3015-1(b)(6) provides: "*Documents Required by Trustee*. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42

U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

Fifth, the debtor is not eligible for chapter 13 relief. 11 U.S.C. § 109(h) prohibits an individual from being a debtor under any chapter unless that individual received a credit counseling briefing from an approved non-profit budget and credit counseling agency during the 180-day period immediately preceding the filing of the petition. In this case, the debtor has not filed a certificate evidencing that briefing was completed during the 180-day period prior to the filing of the petition. Hence, the debtor was not eligible for bankruptcy relief when this petition was filed.

Sixth, the proposed plan specifies no dividends payable to Class 7 unsecured creditors nor a dividend to cure the arrears on the Class 1 mortgage claim. In short, the plan makes no provision for the payment of creditors. If that was intentional, one wonders why the case was filed. If it was unintentional and there are claims to pay, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because it makes no provision for the payment of those claims.

Seventh, the trustee will object to all of the debtor's exemptions because they have been claimed pursuant to both Cal. Civ. Proc. Code § 703, et seq., and Cal. Civ. Proc. Code § 704, et seq.

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 bankruptcy debtor to exemptions generally available to judgment debtors (Cal. Civ. Proc. Code § 704, et seq.) or Cal. Civ. Proc. Code § 703, et seq., which may be claimed by California debtors filing bankruptcy. The debtor cannot claim both.

8. 16-28169-A-13 CHARLETTE BRADFORD — OBJECTION TO CONFIRMATION OF PLAN 1-25-17 [14]
JPJ-1

- ☐ 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 is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $1,200 is less than the $1,217.99 in dividends and expenses the plan requires the trustee to pay each month. Also, even if adequately funded, the debtor has not carried the burden of proving the plan's feasibility. In order to make the plan payment, the debtor is counting on receipt of $1,300 from her cousin. However, there is no proof that the cousin has the ability or the inclination to contribute $1,300 a month to the debtor.

Third, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Chase Auto Finance in order to strip down or strip off its secured claim from its collateral. No such motion has been filed, served, and granted. Absent a successful motion 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."

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.

9. 16-28169-A-13 CHARLETTE BRADFORD — OBJECTION TO CONFIRMATION OF PLAN
PPR-1
U.S. BANK, N.A. VS. — 1-26-17 [17]

- ☐ 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 overruled.

The creditor holds a mortgage on Texas real property. When its mortgage was placed on the property, someone else owned the property. After the mortgage was incurred, the debtor acquired the property and now she is attempting to cure a payment default while maintaining the monthly contract installments required by the mortgage.

The creditor objects, contending that because there is no privity of contract with the debtor, she may not reorganize its claim. This contention will be

overruled

In Johnson v. Home State Bank, 501 U.S. 78, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991), the Supreme Court held that the term "claim" included obligations for which a debtor had no personal liability. In that case, Home State Bank held a $470,000 mortgage secured by the home of Curtis Reed Johnson, a chapter 7 debtor. After Johnson defaulted, the bank began foreclosure proceedings. Prior to the foreclosure sale, Johnson filed for chapter 7 protection and received a discharge of his personal liability on the mortgage owed to the bank. Although Johnson's personal liability to the bank was discharged, the bank's right to proceed against Johnson's property survived the Chapter 7 liquidation.

Following Johnson's discharge, the bankruptcy court lifted the automatic stay and the bank renewed its foreclosure effort. The state court eventually entered a $200,000 in rem judgment in favor of the bank. Johnson then filed for chapter 13 protection shortly before the judgment was satisfied at a foreclosure sale. He included the bank's mortgage as a claim included in his Chapter 13 plan. Over the bank's objection, the court confirmed Johnson's Chapter 13 plan.

The bank appealed the decision, arguing that a debtor was prohibited from including in the chapter 13 plan a mortgage securing an obligation for which a debtor's personal liability was discharged in an earlier chapter 7 bankruptcy. The bank argued that a debtor could only include debts in a chapter 13 plan on which the debtor was personally liable.

The Supreme Court held that the definition of claim in 11 U.S.C. § 101(5) was cast in broad terms and included not only an obligation against a debtor personally but claims against the debtor's property. This is reinforced by 11 U.S.C. § 102(2) which provides "'claim against the debtor' includes claim against property of the debtor."

Also, 11 U.S.C. § 502(b)(1) expressly provides that a claim must be allowed if the claim is enforceable against either the debtor or her property. Thus, section 502(b)(1) envisions that a claim secured by a mortgage would encumber property of someone without personal liability for the underlying claim.

Several courts have permitted a chapter 13 debtor not in privity of contract with a lender to provide for its claim when the debtor has acquired an interest in its collateral. See e.g., In re Curinton, 300 B.R. 78 (M.D. Fla. 2003); Bank of America v. Garcia (In re Garcia), 276 B.R. 627, 628-29 (Bankr. D. Ariz. 2002); In re Hutcherson, 186 B.R. 546, 551 (Bankr. N.D. Ga. 1995).

There is no evidence in the record that the objecting creditor's claim included a due on sale provision. If the transfer to the debtor triggered such a provision, the might be an argument that a cure would consist only of payment of the entire obligation through the plan.

For example, in In re Threats, 159 B.R. 241 (Bankr. N.D. Ill. 1993) the debtor received title to a home already encumbered by a mortgage. The mortgage contained a due on sale clause, which resulted in the mortgage becoming fully due and payable upon the transfer of the home. After acquiring the home, the debtors failed to make over $16,000 in payments and they filed for a chapter 13 case. In their proposed plan they sought to cure the default. The bankruptcy court concluded that the debtors could not cure the defaulted payments. Instead, the due-on-sale clause meant the plan had to pay the entire mortgage

in full. The debtors could not viably propose such a plan.

10. 16-28370-A-13 RAFAEL BERRIOS — OBJECTION TO CONFIRMATION OF PLAN
PPR-1 — 1-17-17 [14]
CARRINGTON MORTGAGE SERVICES, L.L.C. VS.

- ☐ 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 overruled.

A review of the plan indicates that the secured claim of the objecting creditor is not provided for in the plan. The objection that the omission means the plan cannot be confirmed will be overruled.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the debtor adequately fund the plan with future earnings or other future income that is paid over to the trustee (section 1322(a)(1)), provide for payment in full of priority claims (section 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (section 1322(a)(3)). But, nothing in section 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may, at the option of the debtor, include. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (section 1322(b)(2)), cure any default on a secured claim, including a home loan (section 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (section 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options: (1) provide a treatment that the debtor and secured creditor agree to (section 1325(a)(5)(A)), provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the plan (section 1325(a)(5)(B)), or surrender the collateral for the claim to the secured creditor (section 1325(a)(C). However, these three possibilities are relevant only if the plan provides for the secured claim.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. See 11 U.S.C. § 362(d)(1).

11. 16-28383-A-13 THEODORE/ROBERTA KLINE — MOTION TO VALUE COLLATERAL
MRL-1
VS. CWHEQ REVOLVING HOME LOAN TRUST — 1-13-17 [14]

- ☐ 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 $200,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Safe Credit Union. The first deed of trust secures a loan with a balance of approximately $253,048 as of the petition date. Therefore, CWHEQ Revolving Home Loan Trust'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 $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).

12. 16-28383-A-13 THEODORE/ROBERTA KLINE — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 1-25-17 [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 overruled and the motion to dismiss the case denied.

The objection and motion relate to the failure to value the collateral of CWHEQ Revolving Home Loan Trust. The court has granted a valuation motion.

13. 16-27995-A-13 THOMAS FOX
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
1-25-17 [23]

- ☐ 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 in part and the motion to dismiss the case will be conditionally denied.

The objection based on the failure to claim exemptions correctly will be overruled.

The trustee will object 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, as admitted in Schedules I and J, 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. Therefore, the trustee argues the exemptions, which total $8,160, will be disallowed. This will impact the liquidation analysis under 11 U.S.C. § 1325(a)(4) which requires that unsecured creditors receive in a chapter 13 case the present value of their likely dividend in a chapter 7 case. Without exemptions, the $8,160 could be liquidated by a trustee for the benefit of unsecured creditors.

However, the plan provides that the $77,163.77 of unsecured claims will receive a 39% dividend. This will total approximately $30,093.85, which exceeds the dividend required by section 1325(a)(4). Therefore, in the absence of evidence that the estate includes assets in excess of the amount the debtor has attempted to exempt, with or without the exemptions, the plan complies with section 1325(a)(4).

The objection that the plan does not provide for payment in full of priority claims as required by 11 U.S.C. § 1322(a)(2) will be sustained. The plan fails to provide for the scheduled priority claim of the Franchise Tax Board.

Also, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor failed to include the income of a nonfiling spouse in the calculation of monthly net income/projected disposable income on Form 122-C. 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.

14. 16-27995-A-13 THOMAS FOX — OBJECTION TO CONFIRMATION OF PLAN
APN-1
WELLS FARGO BANK, N.A. VS. — 1-24-17 [18]

- ☐ 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 in part.

The creditor complains that the plan "strips down" its secured claim to the value of the vehicle securing its claim even though it holds a purchase money security interest in a vehicle acquired for the debtor's personal use and incurred within 910 days of the bankruptcy. If true, this treatment would violate the "hanging paragraph" following 11 U.S.C. § 1325(a)(9).

The hanging paragraph provides that "section 506 shall not apply to a claim described in [section 1325(a)(5)] if the creditor has a purchase money security interest," the secured debt was incurred within 910 days of the filing of the petition, and the collateral is a motor vehicle acquired for the personal use of the debtor.

Therefore, the debtor may not "strip down" the objecting creditor's claim to the value of the vehicle. The debtor may, however, modify the claim such as by curing the arrears, changing the interest rate, reamortizing the claim, etc.

A review of the plan indicates that the debtor is not attempting to strip down the claim to the value of the vehicle securing it. There is no motion to value that vehicle. A valuation motion is a predicate to stripping down the claim. In the absence of a valuation motion, the plan provides at section 2.04 that the creditor's proof of claim will dictate the amount of the claim. Section 2.04 provides that "[t]he proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." Hence, the entire amount owed on the petition date will be paid.

This objection will be overruled.

Also, the demand that the plan provide the contract rate of 16.48% is rejected. Even though the plan cannot be stripped down, the debtor is not prohibited from changing terms other than the amount owed on the petition date. The plan may provide for a modification of the contract interest rate.

However, the objection to the interest payable under the plan to the creditor

will be sustained. The plan indicates the claim will be paid in full with interest at the rate of 4.75%.

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.

The prime rate is 3.75%. 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 4.75% is not enough considering that the claim is under-collateralized and is secured by depreciating personal property. To satisfy section 1325(a)(B)(ii) the interest rate must be increased to 6.75%.

FINAL RULINGS BEGIN HERE

15. 16-22928-A-13 NICOLE DOW
APN-1
PALOMAR HOMEOWNER ASSOC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
1-9-17 [58]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. 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 dismissed as moot.

A plan was confirmed in this case on October 11, 2016. That plan provided for the movant's claim as a Class 3 secured claim. This means that the plan provided for the surrender of the movant's collateral in order to satisfy its secured claim. It also provides at section 2.10:

"2.10. **Class 3 includes all secured claims satisfied by the surrender of collateral.** Upon confirmation of the plan, all bankruptcy stays are modified to allow a Class 3 secured claim holder to exercise its rights against its collateral."

Thus, the automatic stay, and any other bankruptcy stay, has already been terminated and the motion is moot. To the extent the plan's description of the movant's identity or of the surrendered collateral is not accurate or as comprehensive as in the movant's security documentation, the order may recite that the collateral identified in the motion has been, or will be, surrendered to the movant pursuant to the terms of a confirmed plan and, as a result, the automatic stay was previously terminated.

16. 16-27030-A-13 GINA HITSON-O'NEAL

ORDER TO
SHOW CAUSE
1-27-17 [35]

Final Ruling: The order to show cause will be discharged and the case shall 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 23. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

17. 16-27552-A-13 ALFONSO/CAMMIE MACIEL
PLC-3

MOTION TO
CONFIRM PLAN
12-29-16 [29]

Final Ruling: The motion will be denied without prejudice.

The motion does not comply with Local Bankruptcy Rule 9014-1(e)(3) because when it was filed it was not accompanied by a sufficient separate proof/certificate of service. While one was filed, it refers to an appended service list that, in fact, is not appended to certificate of service. Given the absence of the required proof/certificate of service, the moving party has failed to establish that the motion was served on all necessary parties in interest.

18. 16-25154-A-13 CRAIG/MARQUITA TOMASEK — MOTION TO MODIFY PLAN
MS-1 — 1-3-17 [26]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, 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 trustee, 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 modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

19. 16-28073-A-13 JEFFREY/YELENA MAYHEW — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 1-26-17 [29]

Final Ruling: The court continues the hearing on this objection to February 21, 2017 at 1:30 p.m. when it will consider related valuation motions. In the interim, if the debtor wishes to contest the objection, the debtor shall file and serve a written response to the objection on or before February 15.