UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 2, 2015 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 11. 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 ON MARCH 30, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY MARCH 16, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 23, 2015. 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 12 THROUGH 25 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 MARCH 9, 2015, AT 2:30 P.M.

Matters to be Called for Argument

1. 10-24702-A-13 VERNON/JAMIE JIMMERSON — MOTION TO RECONSIDER DISMISSAL OF CASE 2-13-15 [103]
JPJ-3

- ☐ 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 denied.

The debtor failed to make the payments required by a confirmed plan. This prompted the trustee to issue a notice of default pursuant to Local Bankruptcy Rule 3015-1(g). It recited that the debtor had failed to make $5,262.54 in plan payments.

This notice of default procedure, as authorized by Local Bankruptcy Rule 3015-1(g), provides:

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

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

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

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

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

The debtor in this case opted on November 26, 2014 to file a modified plan. While this was done within 30 days of the notice of default, the modified plan was not served correctly as is acknowledged in this motion and the motion to confirm it was dismissed at the January 12, 2015 hearing. No proof has been offered that the failure to correctly serve the motion was excusable.

The failure to confirm the plan prompted the trustee to file an application on January 29 to dismiss the case. This was consistent with the local rule.

The dismissal application stirred the debtor to action. A motion was filed to confirm the modified plan. But, before it could be heard the case was dismissed on February 4 on the trustee's application. The debtor made no attempt between the January 29 application and the February 4 dismissal to obtain an extension of time to confirm the modified plan. Only the actual dismissal of the case prompted the debtor on February 13 to move to vacate the dismissal.

The latter motion asserts that counsel for the debtor believed the notice of default was negated merely by the mere filing of the modified plan and the motion to confirm it within 30 days of the notice of default. As long as these were filed within 30 days of the notice of default, he believed the notice of default no longer had the potential for the dismissal of the case even if the court did not confirm the modified plan.

That is not what Local Bankruptcy Rule 3015-1(g) provides and it is not what the notice of default stated. The latter provided that the case would be dismissed if, among other things, the debtor failed to "obtain approval of the modified chapter 13 plan." Given that this has been the practice in this court for 20 years and has been memorialized in the General Orders on chapter 13 practice that are the predecessors of Local Bankruptcy Rule 3015-1(g), given that the rule and the notice of default are clear, the court is hard pressed to conclude that the erroneous belief that the timely filing of an unconfirmable plan was enough to defeat the trustee's notice of default amounts to an excusable neglect or mistake. This is particularly so when the debtor failed to even request an extension under the notice of default procedure even though almost 3 weeks elapsed between the dismissal of the motion to confirm the modified plan and the dismissal of the case.

2. 11-36003-A-13 ANDREW/JULIE SCHWEITZER — MOTION FOR ORDER CONFIRMING THAT LOAN MODIFICATION DISCUSSION WILL NOT VIOLATE THE AUTOMATIC STAY
EGS-1 — 1-30-15 [74]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied. The court does not give

declaratory relief without an adversary proceeding being filed. See Fed. R. Bankr. P. 7001.

3. 14-20460-A-13 BELEN VALENCIA
SJS-1
FRANCISCO VALENCIA VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
2-13-15 [56]

- ☐ 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.

11 U.S.C. § 362(d) and Fed. R. Bankr. P. 4001(d) authorize the bankruptcy court to lift the stay "for cause shown." The Ninth Circuit has stated that because there is no clear definition of what constitutes "cause," discretionary relief from stay must be granted on a case by case basis. See In re MacDonald,775 F.2d 715 (9th Cir. 1985). The court has further held that "it is appropriate for bankruptcy courts to avoid incursions into family law matters out of consideration of court economy, judicial restraint, and deference to your state court brethren and their established expertise in such matters." See id.

Movant asserts that relief from the automatic stay is in the best interests of the parties and promotes judicial economy. Since this court must approve any division of community property, since the court is not permitting either spouse to take separate or community property to the exclusion of the claims of their creditors, and since it is in the interest of each the bankruptcy estate to determine the property interests of each spouse, there is cause to grant the motion. Accordingly, the motion will be granted.

There also is cause to annul the stay to grant the foregoing relief to ratify actions taken prior to the filing of the motion. The nondebtor spouse was not listed as a creditor in this case nor given notice of its filing. The filing spouse failed to apprise the nondebtor spouse and the state court that this case was pending.

The parties shall bear their own fees and costs.

4. 14-20460-A-13 BELEN VALENCIA
JPJ-2
VS. JUANA ESCUTIA

OBJECTION TO
CLAIM
1-7-15 [50]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained.

The last date to file a timely proof of claim was June 4, 2014. The proof of claim was filed on December 8, 2014. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

The claimant maintains the claim should be allowed because the debtor failed to give her notice of the bankruptcy case in time to file a timely proof of claim. This objection is without merit.

A chapter 13 discharge is limited to debts "provided for by the plan." 11 U.S.C. § 1328(a). In order to provide for a debt, the chapter 13 plan must make provision for the claim and the holder of the claim must be given notice of the filing of the bankruptcy petition in time to participate by filing a timely proof of claim. See Fed. R. Bankr. P. 3002.

Providing for a claim in a chapter 13 plan, however, does no good if the debtor fails to tell the claim holder about the bankruptcy case in time to file a proof of claim. In this circumstance, the debtor will not discharge that claim even if the plan makes provision for its payment. See, e.g., Crites v. Oregon (In re Crites), 201 B.R. 277 (Bankr. D. Ore. 1996); Southtrust Bank of Ala. v. Gamble (In re Gamble), 85 B.R. 150, 152 (Bankr. N.D. Ala. 1988); In re Cash, 51 B.R. 927, 929 (Bankr. N.D. Ala. 1985); Leber v. Illinois Dep't of Revenue (In re Leber), 134 B.R. 911 (Bankr. N.D. Ill. 1991).

This result is dictated by the requirements of due process. See U.S. Const., amend. V ("[n]o person . . . shall . . . be deprived of . . . property, without due process of law. . . ."). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

Here, the claimant's claim was added to the petition but the debtor failed to include her address on the master address list. It was not until after the claims' bar date that this error was discovered by the debtor. The claimant was advised on the case after the deadline had expired.

The remedy for this is not to allow a late claim. The remedy is that the claim will not be discharged by the debtor. The deadline set by Fed. R. Bankr. P. 3002(c) cannot be extended.

First, Rule 3002(c) contains six exceptions to the requirement that a timely proof of claim be filed. None of those exceptions are applicable here.

Second, Fed. R. Bankr. P. 9006(b)(3) specifically precludes enlargement of the time for creditors to file proofs of claim except to the extent provided in Rule 3002(c). The court concludes that Rule 3002(c) provides no basis for an extension in this case.

Third, the applicability of Rule 3002(c) and not Fed. R. Bankr. P. 3003(c)(3) to this case, and the wording of Rule 9006(b)(3) prevent the Supreme Court's decision in Pioneer Investment Services Company v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380 (1993), from being of assistance to the creditors.

Pioneer involved a chapter 11 proceeding. In chapter 11 cases, the filing of proofs of claim is governed by Rule 3003 and not Rule 3002. Rule 3002 applies to chapter 13 cases. Rule 9006(b)(3) does not restrict extensions of the time to file proofs of claim in chapter 11 cases. Consequently, under Rule 9006(b)(1), the court may permit a creditor to file a proof of claim in a chapter 11 case after the bar date established under Rule 3003 has expired if excusable neglect prevented the filing of a timely proof of claim.

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

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

Implicit in the claimant's argument is, because she did not receive notice of the filing of the petition or the deadline for filing proofs of claim in time to file a timely proof of claim, it would be unfair if she is precluded from filing a claim and participating in the case.

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

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

5. 14-32561-A-13 JONATHAN GARCIA — ORDER TO SHOW CAUSE 2-9-15 [24]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will remain pending but the court will modify the terms of its order permitting the debtor to pay the filing fee in installments.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $79 installment when due on February 4. While the delinquent installment was paid on February 17, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

6. 15-20966-A-13 RICARDO/MARIA CARRANZA — MOTION TO TRANSFER CASE 2-11-15 [8]
JPJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor, the creditors, 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. According to the petition, the debtor lives and works in Contra Costa county. The schedules identify no significant assets located outside of that county. Contra Costa county is in the Northern District. The case was filed in the Eastern District. Venue is in the Northern District.

7. 13-20777-A-13 GEORGE/CHALANDOS MALOTT — MOTION FOR RELIEF FROM AUTOMATIC STAY 1-29-15 [26]
APN-1
SANTANDER CONSUMER USA, INC. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The movant's claim is secured by a vehicle. The confirmed plan provides for payment in full of the claim through the plan. However, after confirmation the vehicle was involved in an accident and is a total loss. This is cause to modify the automatic stay to permit the movant to apply the insurance proceeds

and the salvage value to its claim with any surplus being returned to the debtor.

The trustee asks that the insurance and salvage proceeds be paid to him for disbursement to the movant because the plan provided for the payment of the claim through the plan. However, the accident is cause to modify the stay. When the court terminates or modifies the automatic stay to permit a lender to foreclose on a home it does not require the foreclosure trustee to turnover the foreclosure bid to the bankruptcy trustee for transmittal to the lender. This is because there is cause to modify the automatic stay to permit the lender to protect itself. The same will be done here. An event has occurred that the plan does not anticipate. Therefore, there is cause to modify the stay to permit the movant to realize upon its collateral in a different way. Nothing in the plan requires the trustee to make the disbursement to the creditor.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

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

8. 14-27284-A-13 ANDREW/ROWENA CHAMP — MOTION FOR RELIEF FROM AUTOMATIC STAY
DJD-1 — 2-10-15 [59]
SETERUS, INC. VS.

- ☐ 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 dismissed because it is moot.

The court confirmed a plan on January 6, 2015. That plan provides for the movant's claim in Class 4. Class 4 secured claims are claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or by a third party. The plan includes the following provision at section 2.11:

"*2.11. Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.*"

Because the plan has been confirmed and because the case remains pending under chapter 13, the automatic stay has already been modified to permit the movant to proceed against its collateral.

9. 14-27284-A-13 ANDREW/ROWENA CHAMP — MOTION FOR RELIEF FROM AUTOMATIC STAY
DJD-2 — 2-13-15 [65]
SETERUS, INC. VS.

- ☐ 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 dismissed because it is moot.

The court confirmed a plan on January 6, 2015. That plan provides for the movant's claim in Class 4. Class 4 secured claims are claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or by a third party. The plan includes the following provision at section 2.11:

"*2.11. Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.*"

Because the plan has been confirmed and because the case remains pending under chapter 13, the automatic stay has already been modified to permit the movant to proceed against its collateral.

10. 14-24088-A-13 HUGO/ALICIA CERVANTES — MOTION FOR RELIEF FROM AUTOMATIC STAY
WT-1 — 1-28-15 [38]
BTV MANAGEMENT, INC. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed as moot.

The movant leases nonresidential property to the debtor. That lease was executory when this case was filed. It was also in default the debtor having failed to pay approximately $60,000 in rent.

The case was filed on April 21, 2014 and the debtor proposed a plan on May 1, 2014. The plan was confirmed on January 29, 2015. That plan has the following provisions concerning unexpired leases and executory contracts:

"3.01. Debtor assumes the executory contracts and unexpired leases listed below. Debtor shall pay directly to the other party to the executory contract or unexpired lease, before and after confirmation, all post-petition payments. Unless a different treatment is required by 11 U.S.C. § 365(b)(1) and is set out in the Additional Provisions, pre-petition arrears shall be paid in full. The monthly dividend payable on account of those arrears is specified in the table below.

"3.02. Any executory contract or unexpired lease not listed in the table below is rejected. Upon confirmation of the plan, all bankruptcy stays are modified to allow the nondebtor party to an unexpired lease to obtain possession of leased property, to dispose of it under applicable law, and to exercise its rights against any nondebtor in the event of a default under applicable law or contract."

The debtor did not list the lease with the movant. Hence, section 3.02 of the plan is relevant. The lease was rejected upon confirmation of the plan. And, upon confirmation and rejection, the automatic stay as well as the codebtor stay of 11 U.S.C. § 1301 were modified to permit the lessor to obtain possession and enforce rights against nondebtors. Therefore, no further relief is necessary through this motion.

11. 14-32191-A-13 ANNY RECINOS — MOTION TO CONFIRM PLAN 1-14-15 [24]
RSC-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

Second, current monthly income is more than just earned income. It is any receipt whether or not taxable "derived" in the six month period prior to bankruptcy. The debtor received $90,000 from a closely held corporation which was accounted for as a loan rather than earned income. It makes no difference and must be included in income for purposes of 11 U.S.C. § 1325(b). Including it makes the debtor an over-median income debtor. The plan proposes a duration of 36 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).

Third, the plan fails to provide at section 2.07 for a dividend to be on account of allowed administrative expenses, including the debtor's attorney's

fees. Unless counsel is working for nothing, this means that the plan does not provide for payment in full of priority claims as required by 11 U.S.C. § 1322(a)(2). Also see 11 U.S.C. §§ 503(b), 507(a).

Fourth, to the extent counsel wishes to be paid pursuant to Local Bankruptcy Rule 2016-1 rather than by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017, counsel is not eligible to do so. Counsel has not complied with Rule 2016-1 by filing the rights and responsibilities agreement. Therefore, the provision in the proposed plan requiring the trustee to pay the fees without counsel first making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017, permits payment of fees without the required court approval. This violates sections 329 and 330.

Fifth, the debtor has failed to give the trustee financial records for a closely held business and for a nonfiling spouse. 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).

Sixth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor has failed to list an insurance policy and the loan from the corporation in the pertinent schedules and statements. 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).

THE FINAL RULINGS BEGIN HERE

12. 15-20003-A-13 ANDREA LARA — ORDER TO SHOW CAUSE 2-9-15 [32]

Final Ruling: The order to show cause will be discharged and the case will 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 February 4. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

13. 14-24309-A-13 HEATHER SPEARS — OBJECTION TO CLAIM 1-5-15 [33]
JPJ-1
VS. QUANTUM 3 GROUP, L.L.C.

Final Ruling: This objection to the proof of claim of Quantum 3 Group, L.L.C., 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.

According to the documentation attached to the proof of claim, 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. According to the claim, the last payment was received on April 14, 2005, which is more than four years prior to the filing of this case. Hence, when the case was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

14. 14-31127-B-13 DENNIS/JASMINE EHRENBERGER — MOTION TO APPROVE LOAN MODIFICATION 1-20-15 [24]
SDH-1

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

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent

with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

15. 14-31833-A-13 CHRISTOPHER SWENDSEN — ORDER TO SHOW CAUSE 2-9-15 [32]

Final Ruling: The order to show cause will be discharged as moot. The case was dismissed on February 23.

16. 14-31833-A-13 CHRISTOPHER SWENDSEN — MOTION FOR RELIEF FROM AUTOMATIC STAY 1-26-15 [22]
BHT-1
WELLS FARGO BANK, N.A. VS.

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be dismissed because it is moot. The case was dismissed. Therefore, the automatic stay, to the extent it may have existed, expired upon that dismissal. See 11 U.S.C. § 362(c)(1) & (c)(2).

17. 10-24234-A-13 OLIN/FAWNA BURGOYNE — MOTION TO INCUR DEBT 1-28-15 [170]
JSO-8

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

The motion to incur a purchase money loan to purchase a vehicle will be granted. The motion establishes a need for the vehicle and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of the plan.

18. 13-29138-A-13 GEORGE KHAN — MOTION TO MODIFY PLAN 1-26-15 [32]
DJC-1

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 trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents'

defaults are entered and the matter will be resolved without oral argument.

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

19. 14-24841-A-13 WILLIAM KEARNEY — MOTION TO MODIFY PLAN 1-16-15 [45]
LBG-2

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be 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, and to provide for a plan payment of $1,850 beginning February 25, 2015. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

20. 10-25344-A-13 JOHN/LYNN WHITLOCK — OBJECTION TO CLAIM 1-14-15 [80]
JPJ-2
VS. NATIONSTAR MORTGAGE

Final Ruling: This objection to the proof of claim of Nationstar Mortgage 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. The last date to file a timely proof of claim was July 21, 2010. The proof of claim was filed on June 25, 2012. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

21. 14-30069-A-13 JOSEPH/LORI AUGUSTINE — ORDER TO SHOW CAUSE 2-11-15 [35]

Final Ruling: The order to show cause will be discharged and the case will 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 February 6. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

22. 15-20273-A-13 CONCETTA MANZANO
EJS-1
VS. MORGAN STANLEY HOME LOANS

MOTION TO
VALUE COLLATERAL
1-29-15 [13]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $500,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Wells Fargo Home Mortgage. The first deed of trust secures a loan with a balance of approximately $504,296 as of the petition date. Therefore, Morgan Stanley Home Loan'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 $500,000. 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).

23. 14-30879-A-13 ROBERT/JESSICA RODGERS — MOTION TO CONFIRM PLAN
JME-1 — 1-19-15 [26]

Final Ruling: The motion will be dismissed without prejudice.

Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 7346, Philadelphia, PA 19101-7346; (2) United States Attorney, for the IRS, 501 I Street, Suite 10-100, Sacramento, CA 95814; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

Service in this case is deficient because the IRS was not served at the second and third addresses listed above.

24. 14-31782-A-13 JAMES HOWARTH — MOTION FOR RELIEF FROM CODEBTOR STAY
DBJ-1 — 1-27-15 [41]
TRI COUNTIES BANK VS.

Final Ruling: This motion for relief from the codebtor stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee 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 movant holds a debt owed by the debtor and a nonbankrupt codebtor. It is an unsecured claim. The plan will pay only 31% of unsecured claims. The movant asks that it be given relief from the codebtor stay of 11 U.S.C. § 1301 to pursue its claim against the codebtor to the extent the claim will not be paid in this case. This relief is appropriate. First, the codebtor has not opposed the motion within 20 days of the filing of the motion as required by section 1301(d). Second, because the proposed plan will not pay the claim in full, relief is appropriate to the extent the claim will not be paid in this case. Household Finance Corp. v. Jacobsen (In re Jacobsen), 20 B.R. 648 (B.A.P. 9th Cir. 1982).

25. 14-30283-A-13 LARRY/VALERIE JONES — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
MRL-1 — 1-26-15 [29]

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 fees of $1,892.50 represent reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and the Local Bankruptcy Rule 2016-1, if applicable.