**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**March 26, 2018 at 1:30 p.m.**

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**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 16. 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 APRIL 23, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL 9, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY APRIL 16, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.**

**THERE WILL BE NO HEARING ON ITEMS 17 THROUGH 30 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 APRIL 2, 2018, AT 2:30 P.M.**

***Matters to be Called for Argument***

1. 18-20201-A-13 LISA THOMPSON — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-6-18 [29]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Capital One 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."

Second, 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.

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

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. 18-20116-A-13 MICHAEL CHRISTIAN — MOTION TO VALUE COLLATERAL
MOH-1
VS. WAYNE AND JANA SLOCUM — 3-7-18 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $8,500 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $8,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $8,500 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

3. 16-21320-A-13 JUAN/CATHERINE MARTINEZ — MOTION TO CONFIRM PLAN
DEF-4 — 2-6-18 [121]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $8.808.52 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, to pay the dividends required by the plan at the rate proposed by it will take 88 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

4. 18-20128-A-13 CHARLENE SANDERS
SS-2

MOTION TO CONFIRM PLAN
2-6-18 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, 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.

Second, 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).

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor failed to include a detailed statement of business income and expenses with Schedule I/J. 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).

5. 18-20334-A-13 LAWRENCE HERTZOG
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
3-6-18 [38]

- ☐ 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 case dismissed.

First, the debtor has failed to commence making plan payments and has not paid

approximately $3,510 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, the debtor has failed to give the trustee financial records for a closely held business. 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).

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The petition fails to disclose that the debtor has filed six prior chapter 13 cases since 2010. 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).

Fourth, 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.

Fifth, 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.

Sixth, the plan impermissibly requires payment of fees to a debtor's attorney even though the debtor has no attorney.

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

6. 18-20334-A-13 LAWRENCE HERTZOG
BDA-1
CAPITAL ONE AUTO FINANCE VS.

OBJECTION TO
CONFIRMATION OF PLAN
2-26-18 [31]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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 proposes to retain a vehicle which secures a claim held by the objecting creditor. No valuation motion concerning that vehicle has been granted. Even so, the plan proposes to reduce the secured claim by more than $5,000. This violates 11 U.S.C. § 1325(a)(5)(B) requires payment of the claim in full.

Also, the plan proposes to pay this claim with interest at the rate of 5%. The prime rate is currently 4.5%.

The Supreme Court decided in Till v. SCS Credit Corp., 124 S.Ct. 1951 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987).

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

As surveyed by the Supreme Court in Till, courts using the formula approach typically have adjusted the interest rate 1% to 3%. The debtor's proposed rate of 5% is a .5% improvement on prime. Considering the debtor's prior filing history as well as the fact that the security for this loan is a 4-year old motor vehicle, this rate does not satisfy Till. There is considerable risk to the creditor of nonpayment and depreciation of its collateral.

7. 17-27350-A-13 RICCY/TESSIE LABITORIA — MOTION TO VALUE COLLATERAL
TAG-3
VS. FLAGSHIP CREDIT — 2-23-18 [33]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied.

The debtor seeks to value a vehicle that serves as the collateral for the claim of Flagship Credit. According to the debtor's declaration, the vehicle, a 2006 Chevrolet Colorado, has a value of $2,500. This value is based on the debtor's opinion and Schedule A/B and takes into account the vehicle's age, mileage (150,000 miles) and condition (the timing belt and engine must be replaced).

The motion is not accompanied by any corroboration of the vehicle's condition, such as a statement from a mechanic.

When a creditor holds a purchase money security interest in a motor vehicle used by a debtor for nonbusiness purposes, the court is required to value the vehicle at the price a retail merchant would charge for it considering its age and condition at the time value is determined. See 11 U.S.C. § 506(a).

The debtor has not provided evidence of the value a retail merchant would charge for the vehicle. The debtor is merely giving the debtor's opinion about the value of the vehicle.

There is no foundation of the debtor's ability to state the value a retail merchant would charge for the vehicle. The debtor is not a retail merchant nor a vehicle appraiser. See Fed. R. Evid. 702 & 703. The declaration does not qualify the debtor as anything other than a lay witness. See Fed. R. Evid. 701.

Based on this insufficient record, the court must conclude that the debtor has not satisfied the burden of proving the vehicle's value for purposes of section 506(a).

8. 18-20250-A-13 ANDRES FLORES — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-6-18 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

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

Third, 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.

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

Fifth, to pay the dividends required by the plan at the rate proposed by it will take 257 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Sixth, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $3,175.83 is less than the $3,336.98 in dividends and expenses the plan requires the trustee to pay each month.

Seventh, while the plan provides for the payment of an obligation secured by a first deed of trust encumbering the debtor's home, the plan makes no provision for the second deed of trust or a secured tax claim. This failure will be a ground to terminate the automatic stay in favor these junior liens. If granted, the plan, insofar as the debtor seeks to retain the home and pay the senior lien, will be frustrated. The plan does not comply with 11 U.S.C. § 1325(a)(6).

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. 18-20362-A-13 KARLTON/LORI HUTCHINSON — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 3-6-18 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

First, the plan misclassifies a secured claim in Class 4. Class 4 is reserved for secured claims that are not in default and that are not modified by the plan. Here, Quicken Loans' claim is in default. Therefore, the claim belongs in Class 1 and the debtor must cure the pre-petition default while maintaining ongoing mortgage payments. See 11 U.S.C. § 1322(b)(5).

Second, the reference to the Class 4 claim misidentifies the collateral for the claim.

Third, because the plan does not take into account the amount necessary to cure the default on Quicken Loans' claim and because the debtor has understated the ongoing mortgage payment, it appears that the debtor's monthly net income will not be sufficient to fund the plan. See 11 U.S.C. § 1325(a)(6).

Fourth, the debtor has not met the burden of proving that the plan will pay unsecured creditors the present value of what they would receive in a chapter 7 liquidation as required by 11 U.S.C. § 1325(a)(4).

10. 18-20362-A-13 KARLTON/LORI HUTCHINSON — OBJECTION TO CONFIRMATION OF PLAN
NLG-1 — 2-13-18 [14]
QUICKEN LOANS, INC. 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 sustained to the extent and for the reasons stated in the ruling on the trustee's objection (JPJ-1).

11. 18-20571-A-13 MARK ENOS
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
3-6-18 [13]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan fails to provide a dividend to be paid 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).

Second, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Acura Financial Services 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."

12. 18-20571-A-13 MARK ENOS
PLC-1
VS. ACURA FINANCIAL SERVICES

MOTION TO VALUE COLLATERAL
3-8-18 [16]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $9,425 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $9,425 of the respondent's claim is an allowed secured claim. When

the respondent is paid $9,425 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

13. 18-20591-A-13 SUSAN RIGGS — ORDER TO SHOW CAUSE 3-9-18 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $79 due on March 5 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

14. 18-20493-A-13 SHELLY MILERA — OBJECTION TO CONFIRMATION OF PLAN 3-6-18 [13]
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 was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained.

First, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $17,893.50 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only $8,524.92 to unsecured creditors.

Second, 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 unsecured creditors $8,524.92 but Form 122C shows that the debtor will have $50,940 over the next five years.

15. 17-23597-A-13 STEVEN DE LA ROSA — MOTION FOR RELIEF FROM AUTOMATIC STAY 2-19-18 [30]
RAS-1
REVERSE MORTGAGE SOLUTIONS, INC. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted.

This motion concerns real property in Isleton, California. Schedule A lists no

interest in this or any real property. However, according to Schedule C, the debtor's family trust owns the Isleton property and it has a value of $260,000.

The debtor's confirmed plan makes no provision for, nor does it impair, the movant's claim.

According to the motion, the property is encumbered by the movant's deed of trust which secures a claim of more than $262,000. The movant asserts that the property has a value of $165,000.

This motion has been brought because the debtor breached the terms of the deed of trust by failing to maintain insurance on the property. The debtor's response acknowledges the default.

There is cause to terminate the automatic stay.

First, the plan makes no provision for this claim and the debtor has failed to discharge the contractual responsibility of insuring the property since the case was filed.

Second, there is no equity in the property, whether its value is as stated by the debtor or the movant.

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).

16. 18-20334-A-13 LAWRENCE HERTZOG — OBJECTION TO CONFIRMATION OF PLAN
BDA-1
WOLLEMI ACQUISITIONS, L.L.C. VS. — 3-7-18 [42]

- ☐ 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 proposes to retain a vehicle which secures a claim held by the objecting creditor. No valuation motion concerning that vehicle has been granted. Even so, the plan proposes to reduce the secured claim by almost $32,000. This violates 11 U.S.C. § 1325(a)(5)(B) requires payment of the claim in full.

Even if the debtor were to move to value the vehicle, the motion would be denied. The objecting creditor holds a purchase money security interest in a vehicle used by the debtor and purchased within 910 days of the filing of the case. Therefore, 11 U.S.C. § 1325(a)(9)(*) prevents the debtor from valuing the vehicle and stripping the claim down to its value.

Also, the plan proposes to pay this claim with interest at the rate of 5%. The

prime rate is currently 4.5%.

The Supreme Court decided in Till v. SCS Credit Corp., 124 S.Ct. 1951 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987).

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

As surveyed by the Supreme Court in Till, courts using the formula approach typically have adjusted the interest rate 1% to 3%. The debtor's proposed rate of 5% is a .5% improvement on prime. Considering the debtor's prior filing history as well as the fact that the security for this loan is a 3-year old motor vehicle, this rate does not satisfy Till. There is considerable risk to the creditor of nonpayment and depreciation of its collateral.

17. 18-21277-A-13 JANET MICHELLE MARTINO — MOTION TO EXTEND AUTOMATIC STAY
SDB-1 — 3/8/18 [10]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted.

This is the second chapter 13 case filed by the debtor. A prior case within one year of the most recent petition. The prior case, however, was pending for approximately 4 years. Before the debtor could complete her plan, she suffered a loss of income which prevented her from making plan payments.

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, it appears that the debtor was unable to maintain her plan payments in the first case due to a loss of income. The debtor has corrected this situation by accepting work as a substitute teacher. This is a sufficient change in circumstances rebut the presumption of bad faith.

***FINAL RULINGS BEGIN HERE***

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| 18. | 12-40002-A-13<br>PGM-1 | STEVEN FERREIRA AND<br>ARACELI BURCIAGA | MOTION TO<br>DETERMINE FINAL CURE AND MORTGAGE PAYMENT<br>2-26-18 [94] |

**Final Ruling:** The court continues the hearing to April 9, 2018 at 1:30 p.m. because the parties agreed, without court permission, to change the due date for written opposition from March 12 to March 19.

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| 19. | 18-21211-A-13<br>TRN-1 | EDEN ELMIDO | MOTION TO<br>EXTEND AUTOMATIC STAY<br>3-3-18 [9] |

**Final Ruling:** The motion will be dismissed.

First, insofar as the motion pertains to the IRS, 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.

Second, the notice of the hearing informs all potential respondents that they must file written opposition 14 days prior to the hearing if they wish to oppose this motion. However, because less than 28 days of notice of the hearing was given, Local Bankruptcy Rule 9014-1(f)(2) specifies that written opposition is unnecessary. Instead, potential respondents may appear at the hearing and orally contest the motion. If necessary, the court may thereafter require the submission of written evidence and briefs. By erroneously informing potential respondents that written opposition was required and was a condition to contesting the motion, the moving party may have deterred a respondent from appearing. Therefore, notice was materially deficient.

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| 20. | 17-24514-A-13<br>MJD-1<br>VS. ONEMAIN CONSUMER LOAN, INC. | LEO BAIR AND SANDY MORGAN | OBJECTION TO<br>CLAIM<br>2-7-18 [25] |

**Final Ruling:** While the objection is correct in its assertion that respondent's proof of claim was filed after the bar date for claims and therefore should be disallowed, the proof of claim was voluntarily withdrawn on February 9. The objection will be dismissed as moot.

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| 21. | 17-24514-A-13<br>MJD-2 | LEO BAIR AND SANDY MORGAN | MOTION TO<br>MODIFY PLAN<br>2-13-18 [30] |

**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.

22. 15-21528-A-13 KEVIN KRONE
PGM-6

MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
2-26-18 [107]

**Final Ruling:** This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The motion seeks approval of $1,500 in additional fees incurred principally in connection with an adversary proceeding. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor primarily in connection with assisting the debtor in obtaining a home loan modification and amending the chapter 13 plan to incorporate the terms of the loan modification. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and Local Bankruptcy Rule 2016-1, if applicable.

23. 17-23129-A-13 TIMOTHY NEHER
TLN-28
VS. SAM'S DOOR SHOP

OBJECTION TO CLAIM
2-6-18 [231]

**Final Ruling:** This objection to the proof of claim of Sam's Door Shop has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained and the claim allowed in the amount of $1,855.61. The evidence with the objection demonstrates that the claimant has failed to credit the debtor with a payment of $1,351.28, thereby reducing the amount claimed from $3,206.89 to $1,855.61.

24. 17-23129-A-13 TIMOTHY NEHER
TLN-29
VS. COMPASS BANK

OBJECTION TO
CLAIM
2-6-18 [233]

**Final Ruling:** The objection will be dismissed without prejudice.

Fed. R. Bankr. P. 7004(h) requires that service of contested matters and adversary proceedings on insured depository institutions be accomplished by certified mailed addressed to an officer of the institution unless the institution has previously appeared in the case through an attorney. A review of the docket reveals that the respondent has not previously appeared through an attorney. The certificate of service indicates that the objection was not served by certified mail. First class, postage prepaid, service is not enough.

25. 18-20631-A-13 SYREETA SHOALS
MC-1
VS. CAPITAL ONE AUTO FINANCE, INC.

MOTION TO
VALUE COLLATERAL
2-22-18 [16]

**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 valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $12,291 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $12,291 of the respondent's claim is an allowed secured claim. When the respondent is paid $12,291 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

26. 17-20936-A-13 ANGIE MATSUMOTO
JPJ-3
VS. MID AMERICA BANK & TRUST

OBJECTION TO
CLAIM
2-6-18 [24]

**Final Ruling:** This objection to the proof of claim of Mid America Bank & Trust has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained and the claim disallowed.

The last date to file a timely proof of claim was June 14, 2017. The proof of claim was filed on January 2, 2018. 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).

27. 17-20936-A-13 ANGIE MATSUMOTO — OBJECTION TO CLAIM
JPJ-4
VS. MID AMERICA BANK & TRUST — 2-6-18 [28]

**Final Ruling:** This objection to the proof of claim of Mid America Bank & Trust has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained and the claim disallowed.

The last date to file a timely proof of claim was June 14, 2017. The proof of claim was filed on January 2, 2018. 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).

28. 18-20239-A-13 CAROLYN SCHMIDT — MOTION TO VALUE COLLATERAL
MRL-1
VS. CHRYSLER CAPITAL — 2-21-18 [17]

**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 valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $12,750 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $12,750 of the respondent's claim is an allowed secured claim. When

the respondent is paid $12,750 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

29. 16-21453-A-13 EDWIN/LOLITA ESPINO — MOTION TO APPROVE LOAN MODIFICATION
MRL-2 — 2-4-18 [29]

**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 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 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.

30. 14-24982-A-13 THOMAS/DELYSE GANNAWAY — MOTION TO MODIFY PLAN
MRL-3 — 1-12-18 [45]

**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.