UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 4, 2016 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 19. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE MAY 9, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL 27, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 2, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 20 THROUGH 38 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 11, 2016, AT 2:30 P.M.

Matters to be Called for Argument

1. 15-28604-A-13 ANN-MARIE SCOTT — MOTION TO AVOID JUDICIAL LIEN
RS-3
VS. GREATER CALIFORNIA FINANCIAL SERVICES
3-16-16 [46]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $394,000 as of the date of the petition. The unavoidable liens total $431,716.76. The debtor has an available exemption of $1. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

2. 14-20913-A-13 RICHARD BALAS AND PATRICIA BISETTI-BALAS — MOTION TO SELL
CA-2
3-14-16 [29]

- ☐ 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 to sell real property will be granted on the condition that the sale proceeds are used to pay all liens of record in full in a manner consistent with the plan. If the proceeds are not sufficient to pay liens of record in full (including liens ostensibly "stripped off"), no sale may be completed without the consent of each lienholder not being paid in full.

Insofar as surplus sale proceeds are available, they shall be paid over to the trustee to the extent required by the confirmed plan with such additional amounts as volunteered by the debtor. The turnover of the surplus sale

proceeds is voluntary. Burgie v. McDonald (In re Burgie), 239 B.R. 406, 409-410 (B.A.P. 9th Cir. 1999) ("The proceeds of the sale of a debtor's real estate in a chapter 13 case never become disposable income for the purposes of chapter 13. This result applies in a chapter 13 case whether or not the property is exempt from execution. . . . Postpetition disposable income does not include prepetition property or its proceeds.").

Absent either payment in full (i.e., a 100% dividend) of all filed proofs of claim or the approval of a modified plan that permits the plan to be completed without payment in full, the plan shall not be deemed completed by payment of the sale proceeds to the trustee.

3. 14-20913-A-13 RICHARD BALAS AND PATRICIA BISETTI-BALAS — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
CA-3 — 3-14-16 [34]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

The court previously approved, and counsel has been paid, $3,315.40. In addition, counsel now seeks a further $2,446 in compensation for services related primarily related to concluding this case. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan.

4. 11-46816-A-13 LARRY/PAULA HUNLEY — MOTION TO MODIFY PLAN
PGM-1 — 2-26-16 [58]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $200 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, even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim

while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the post-petition arrears owed to the Class 1 home loan held by Shellpoint. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

5. 16-20120-A-13 RAQUEL RIOS — MOTION TO CONFIRM PLAN
RLC-2 — 2-15-16 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

This ruling pertains to the plan filed on February 15. The court deems the plan filed on February 14 to have been voluntarily dismissed by the debtor.

First, Counsel for the debtor has opted to receive fees 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. However, counsel has not complied with Rule 2016-1 by filing the rights and responsibilities agreement. The abbreviated procedure for approval of the fees permitted by Local Bankruptcy Rule 2016-1 is not applicable. 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.

Second, 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).

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, 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).

Fifth, the debtor has failed to fully and accurately provide all information

required by the petition, schedules, and statements. Specifically, the debtor failed to file a detailed statement of gross receipts and expenses for a business with Schedules I and J, and the debtor failed to include employment income earned during the six months prior to the petition on Form 22. 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).

Sixth, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $2,100 to be made in the first five months of the plan is less than the $2,263 in dividends and expenses the plan requires the trustee to pay each month.

Seventh, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $37,935.29 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only $19,106.41 to unsecured creditors.

Eighth, the plan described in the motion is not the plan proposed by the debtor. The evidence with the motion, therefore, does not support confirmation of the proposed plan.

Ninth, the secured claim of Rushmyfile, Inc./Brownpenny is misclassified in Class 1. Class 1 is reserved for secured claims that are not modified and that will mature after the completion of the plan. These claims receive monthly contract installment payments plus a dividend to cure any arrears. See 11 U.S.C. § 1322(b)(5).

According to the objection, this claim matures on June 1, 2016. When it matures, a substantial balloon payment of approximately $135,770.38 will be due. Because of this and because the claim is in default, the claim must be provided for in Class 2. Class 2 claims must be paid in full through the plan. This plan makes no provision for the claimant's balloon payment. Instead, the plan provides for 60 payments of $1,480.63. This is the installment payment specified in the note. Even though the term of the loan is 24 months, making the note installment payment for 60 months will not retire the loan because the note was not fully amortized. Without considering pre-bankruptcy arrears, making the note installment of $1,480.63 for 60 months will not retire the balance due on the date of the bankruptcy filing, $135,957.49. At the end of 60 months, approximately $135,211.86 will still be owing. The plan makes no provision for payment of this sum. The plan does not comply with 11 U.S.C. § 1325(a)(5)(B).

Brownpenny's other objections will be overruled. Nothing in 11 U.S.C. §§ 1322(a) or 1325(a)(5) requires that a plan grant relief from the automatic stay to a secured creditor. Also, assuming there was fraud in the inception of the plan, an assumption not born out by any evidence, this does not prevent a chapter 13 plan from adjusting the debt.

6. 16-20429-A-13 DELMAN SHAULIS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-16-16 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant

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

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

First, 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, the debtor admitted at the meeting of creditors that the debtor failed to file an income tax returns for the prior four tax years. These returns are delinquent.

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

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

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

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor

failed to file a detailed statement of gross receipts and expenses for a business with Schedules I and 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).

Fifth, 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).

Sixth, the schedules and statements fail to include several vehicles in the debtor's possession.

Seventh, the plan's feasibility depends on the debtor successfully prosecuting a lien avoidance motion concerning the claim Nicholas Shaulis in order to avoid a judicial lien securing it. 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."

Eighth, the debtor has failed to commence making plan payments and has not paid approximately $3,870 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).

Ninth, counsel for the debtor has opted to receive fees 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. However, counsel has not complied with Rule 2016-1 by filing the rights and responsibilities agreement. The abbreviated procedure for approval of the fees permitted by Local Bankruptcy Rule 2016-1 is not applicable. 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.

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.

7. 16-20429-A-13 DELMAN SHAULIS
FHS-1
LARRY KNIFONG VS.

OBJECTION TO
CONFIRMATION OF PLAN
3-17-16 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

The objecting creditor's claim is secured by commercial real property. The claim matured prior to the filing of the bankruptcy case. While the plan provides for payment in full of the claim in Class 2, it provides no interest will accrue on the claim even though the claim will be paid over the plan's 60 month duration. This violates 11 U.S.C. § 1325(a)(5)(B)(ii) which requires that "the value, as of the effective date of the plan, of property to be distributed under the plan on account of [a secured claim] is not less than the allowed amount of such claim. . . ."

The effective date of the proposed plan is the date of its confirmation. Unless the plan provides for payment in full of the claim on the effective date, it must provide for payment of interest on the claim. Otherwise, the value of the plan payments will not have a present value equal of the amount of claim. Put another way, a dollar paid in installments over a five year period is not worth a dollar paid immediately.

8. 16-20429-A-13 DELMAN SHAULIS
RLS-1
NICHOLAS SHAULIS VS.

OBJECTION TO
CONFIRMATION OF PLAN
3-17-16 [30]

- ☐ 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 explained in the ruling on the trustee's objection, JPJ-1.

9. 16-21429-A-13 IMOGENE ESPINOZA
PLC-1

MOTION TO
EXTEND AUTOMATIC STAY
3-16-16 [8]

- ☐ 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 motion states that this is the second chapter 13 case filed by the debtor. A prior case was dismissed within one year of the filing of the current case.

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."

A review of the court's electronic case files reveals that the debtor has filed two prior cases that were dismissed within the year prior to this most recent case.

Case No. 14-31248 was filed on November 14, 2014 and was dismissed on April 27, 2015 because the debtor failed to confirm a plan after a reasonable opportunity to do so.

Case No. 15-24878 was filed on June 17, 2015 and was dismissed on November 9, 2015 because the debtor failed to confirm a plan after a reasonable opportunity to do so.

Because two prior cases were dismissed in the prior year, 11 U.S.C. § 362(c)(4) is applicable, not section 362(c)(3). Hence, there is no automatic stay unless the court imposes one. The court can think of no good reason to impose the stay when a debtor fails to mention a second case and fails to explain why two cases were dismissed, not just one.

Also, examining Schedules I and J filed in these 3 cases reveals that the debtor's problem receiving social security benefits was only an issue in Case No. 15-24878. In the earlier case, Case No. 14-31248, her household income was $4,793.77 but she was unable to confirm a plan. With the social security in

Case No. 15-24878, her household income was $4,805.92 but she was unable to confirm a plan.

In this case, her monthly income, $3,532.56, is lower than in the prior two cases, as well as in a third prior case filed on October 20, 2011. In the 2011 case, Case No. 11-45014, her household income was $4,565.38. While a plan was confirmed, the case was dismissed on May 7, 2014 because the debtor was unable to maintain plan payments.

In short, the court sees no significant improvement in the debtor's financial situation and has no reasoned justification for concluding that this case will be more successful that the prior three cases filed by the debtor.

10. 15-28832-A-13 PEDRO GARCIDUENAS — MOTION TO CONFIRM PLAN 2-19-16 [31]
PGM-2

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender, Wells Fargo Home Mortgage, has agreed to a home loan modification. Absent that agreement, the claim cannot be modified. See 11 U.S.C. § 1322(b)(2). Instead, the debtor is limited to curing any pre-petition default while maintaining the regular monthly mortgage installment. See 11 U.S.C. § 1322(b)(5).

If Wells Fargo Home Mortgage agrees to a modification, the claim is misclassified in Class 1. That class is reserved for long term claims not modified by the plan. Such claims receive their ongoing contract installment payment and any arrears are cured. See 11 U.S.C. § 1322(b)(2) and (b)(5).

Wells Fargo will not be paid according to its note and deed of trust. Hence, the claim belongs in Class 2. And, because the claim is being modified, the entire claim, including unmatured principal, must be paid in full through the plan. The only debt that can be permitted to remain long term debt is debt that is not modified by the chapter 13 plan. As long as the plan is only curing an arrearage, the long term debt may continue beyond the length of the plan and be classified in Class 1. See 11 U.S.C. § 1322(b)(3) & (5). Whenever a long term debt is modified prospectively in a chapter 13 case, such as by changing its interest rate or future installments, the entire claim must be paid during the chapter 13 case as a Class 2 claim. See 11 U.S.C. §§ 1322(d) and 1325(a)(5). See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004).

11. 16-20738-A-13 FARAH RAMOS — ORDER TO SHOW CAUSE 3-16-16 [35]

- ☐ 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 11 was not paid. This is cause for dismissal. See 11 U.S.C. §

1307(c)(2).

12. 16-20640-A-13 MICHAEL/EMMA POST — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-16-16 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, 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.

Second, the plan is not signed in violation of Fed. R. Bankr. P. 9011(a).

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

13. 16-20640-A-13 MICHAEL/EMMA POST — OBJECTION TO CONFIRMATION OF PLAN
KLF-1 — 3-3-16 [23]
DEUTSCHE BANK NATIONAL TRUST CO. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be overruled.

The plan provides for the creditor's secured claim in Class 1. For the first 6 months of the plan, nothing will be paid to the creditor on account of its arrearage claim. Beginning in the seventh month and continuing for the remaining duration of the plan, $505.19 will be paid to the creditor on account of the arrears on its claim. The creditor objects to this treatment on the ground that six months of nothing and 54 months of $505.19 does not yield an equal monthly installment as required by 11 U.S.C. § 1325(a)(5)(B)(iii)(I).

The plan does provide 54 months of equal monthly payments. If nothing is paid in a month, there is no payment in that month.

Nothing in § 1325(a)(5)(B)(iii)(I) requires equal monthly installments to begin at any particular moment during the chapter 13 case. In other words, when the plan proposes periodic payments to an allowed secured claim holder, § 1325(a)(5)(B)(iii)(I) does not specify that equal monthly payments must begin immediately after the petition, immediately after confirmation, or at any other particular time. As explained by the bankruptcy court in In re DeSardi, 340 B.R. 790 (Bankr. S.D. Tex. 2006):

"The equal payment provision does not state that its requirements must be met beginning in month one of the plan. Nor does the section state that payments must be equal "as of the effective date of the plan." . . . The Court understands this clause to require payments to be equal once they begin, and to continue to be equal until they cease. . . ." Id. at 805-07.

See also In re Hill, 2007 WL 499622 (Bankr. M.D.N.C. Feb. 12, 2007) (plan may pay attorney's fees and other costs allowed under section 507(a)(2) before equal monthly payments begin to a car lender. "Since Chapter 13 plans must provide for payment of section 507(a)(2) claims, which include debtors' attorneys' fees, either before or concurrently with other payments, even payments on secured claims, requiring the 'equal monthly payments' to begin at confirmation would result in many unconfirmable plans . . . an absurd result that Congress could not have intended."); In re Blevins, 2006 WL 2724153 (Bankr. E.D. Cal. Sept. 21, 2006) (equal monthly amount requirement in section 1325(a)(5)(B)(iii)(I) is satisfied by plan that begins equal monthly payments after attorney's fees are paid in full.).

14. 15-29648-A-13 TERI TAYLOR — MOTION TO VALUE COLLATERAL
TAG-3
VS. SANTANDER CONSUMER USA, INC. — 3-18-16 [52]

- ☐ 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 motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $4,505 as of the date the petition was filed

and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $4,505 of the respondent's claim is an allowed secured claim. When the respondent is paid $4,505 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.

15. 11-39370-A-13 JORGEN/DANA EIREMO — MOTION TO APPROVE LOAN MODIFICATION
SS-6 — 3-16-16 [92]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted. The debtor 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.

16. 15-26773-A-13 DEMAR RICHARDSON — MOTION TO CONFIRM PLAN
CA-2 — 2-22-16 [57]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $3,886 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 73 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

17. 16-20390-A-13 DEBRA FREEMAN
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
3-16-16 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

The debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender has agreed or will agree to a home loan modification. There is no proof of an agreement and absent that agreement, the plan cannot be modified consistent with 11 U.S.C. § 1322(b)(2) because it modifies the claim prospectively. The debtor is limited to curing any pre-petition default while maintaining the regular monthly mortgage installment or surrendering the property securing the claim. See 11 U.S.C. §§ 1322(b)(5) & 1325(a)(5)(B) and (C).

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.

18. 16-20390-A-13 DEBRA FREEMAN
AP-1
QUICKEN LOANS, INC. VS.

OBJECTION TO CONFIRMATION OF PLAN
3-7-16 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained to the extent and for the reasons stated in the ruling on the trustee's objection, JPJ-1.

19. 16-20590-A-13 DANIEL/MEGHAN MILLER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-7-16 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor omitted the codebtor's income from Schedule I and failed to list their year to date income of the Statement of Financial Affairs. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

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

THE FINAL RULINGS BEGIN HERE

20. 15-28002-A-13 KANIKA REED — MOTION TO MODIFY PLAN
WW-1 — 2-26-16 [33]

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.

21. 15-25105-A-13 FLORA NANCA — MOTION TO MODIFY PLAN
PGM-2 — 2-29-16 [64]

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.

22. 16-20316-A-13 GRANT PARKISON — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-16-16 [25]

Final Ruling: There is a pending related case before Judge Jaime. This case will be transferred to Judge Jaime and this motion will be heard by him on April 12, 2015 at 1:00 p.m. The trustee will give notice of the continued hearing.

23. 15-25719-A-13 MICHAEL/JUDITH PENNEY — MOTION TO MODIFY PLAN
SJS-1 — 2-26-16 [38]

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.

24. 15-28937-A-13 JOSHUA/SHELLY FREEMAN — MOTION TO CONFIRM PLAN
NF-1 — 2-18-16 [26]

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

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

25. 16-21037-A-13 THEODORE POMPA — MOTION TO AVOID JUDICIAL LIEN
RHM-1 — 3-2-16 [9]
VS. RICHARD JAMES CHIOZZA

Final Ruling: This motion to avoid a judicial lien 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 pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $250,000 as of the date of the petition. The unavoidable liens total $83,263.28. The debtor has an available exemption of $175,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court notes that two abstracts of judgment, the first issued October 29,

2004 and the second July 15, 2008, were recorded for the judgment entered on September 24, 2004 in Solano County Superior Court, case number VSC074619. RHM-1 and RHM-6 are for the same judgment in favor of this creditor. The judgment was in the amount of $5,022. The second abstract shows a change of address for the judgment creditor.

26. 16-21037-A-13 THEODORE POMPA — MOTION TO AVOID JUDICIAL LIEN
RHM-10
VS. CHASE BANK USA, N.A. — 3-3-16 [54]

Final Ruling: This motion to avoid a judicial lien 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 pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $250,000 as of the date of the petition. The unavoidable liens total $83,263.28. The debtor has an available exemption of $175,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

There are 3 abstracts of judgment, the first issued March 2, 2006, the second October 31, 2007 and the third November 25, 2015, for the judgment of the Solano County Superior Court in case number FCM090502. The last of these is a for a renewed judgment. RHM-3, RHM-5 and RHM-10 concern this judgment in favor of creditor Chase Bank USA, N.A. The original judgment, entered on October 3, 2005, was in the amount of $7,564.70 and the renewal of judgment with fees & interest was $15,608.40. The second and third abstracts of judgment show CACH, LLV and CACH, L.L.C. as the assignee of record.

27. 16-21037-A-13 THEODORE POMPA — MOTION TO AVOID JUDICIAL LIEN
RHM-2
VS. RICHARD JAMES CHIOZZA — 3-2-16 [14]

Final Ruling: The motion will be dismissed without prejudice. It was not served on the correct respondent.

There are 3 abstracts of judgment, the first issued May 22, 2012, the second November 12, 2008 and the third, which is a renewal of judgment, filed March 18, 2015, for a judgment entered in Solano County Superior Court, case number VSC102311. RHM-2, RHM-8 and RHM-9 are all regarding the same judgment in favor of creditor United Fund CCR Partners, also identified as NDS, LLC. The original judgment entered on November 12, 2008, was in the amount of $7,280.40 and the renewal of judgment with fees & interest was $11,877.45. This motion, however, was served on Richard James Chiozza who has no connection to the judgment or any of the three abstracts.

28. 16-21037-A-13 THEODORE POMPA
RHM-3
VS. CHASE BANK USA, N.A.

MOTION TO
AVOID JUDICIAL LIEN
3-2-16 [19]

Final Ruling: This motion to avoid a judicial lien 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 pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $250,000 as of the date of the petition. The unavoidable liens total $83,263.28. The debtor has an available exemption of $175,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

There are 3 abstracts of judgment, the first issued March 2, 2006, the second October 31, 2007 and the third November 25, 2015, for the judgment of the Solano County Superior Court in case number FCM090502. The last of these is a for a renewed judgment. RHM-3, RHM-5 and RHM-10 concern this judgment in favor of creditor Chase Bank USA, N.A. The original judgment, entered on October 3, 2005, was in the amount of $7,564.70 and the renewal of judgment with fees & interest was $15,608.40. The second and third abstracts of judgment show CACH, LLV and CACH, LLC as the assignee of record.

29. 16-21037-A-13 THEODORE POMPA
RHM-4
VS. PROFESSIONAL RECOVERY SYSTEMS, LLC

MOTION TO
AVOID JUDICIAL LIEN
3-3-16 [24]

Final Ruling: This motion to avoid a judicial lien 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 pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $250,000 as of the date of the petition. The unavoidable liens total $83,263.28. The debtor has an available exemption of $175,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real

property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

30. 16-21037-A-13 THEODORE POMPA — MOTION TO AVOID JUDICIAL LIEN
RHM-5
VS. CHASE BANK USA, N.A. — 3-3-16 [29]

Final Ruling: This motion to avoid a judicial lien 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 pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $250,000 as of the date of the petition. The unavoidable liens total $83,263.28. The debtor has an available exemption of $175,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

There are 3 abstracts of judgment, the first issued March 2, 2006, the second October 31, 2007 and the third November 25, 2015, for the judgment of the Solano County Superior Court in case number FCM090502. The last of these is a for a renewed judgment. RHM-3, RHM-5 and RHM-10 concern this judgment in favor of creditor Chase Bank USA, N.A. The original judgment, entered on October 3, 2005, was in the amount of $7,564.70 and the renewal of judgment with fees & interest was $15,608.40. The second and third abstracts of judgment show CACH, LLV and CACH, LLC as the assignee of record.

31. 16-21037-A-13 THEODORE POMPA — MOTION TO AVOID JUDICIAL LIEN
RHM-6
VS. RICHARD JAMES CHIOZZA — 3-3-16 [39]

Final Ruling: This motion to avoid a judicial lien 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 pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $250,000 as of the date of the petition. The unavoidable liens total $83,263.28. The debtor has an available exemption of $175,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. §

522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court notes that two abstracts of judgment, the first issued October 29, 2004 and the second July 15, 2008, were recorded for the judgment entered on September 24, 2004 in Solano County Superior Court, case number VSC074619. RHM-1 and RHM-6 are for the same judgment in favor of this creditor. The judgment was in the amount of $5,022. The second abstract shows a change of address for the judgment creditor.

32. 16-21037-A-13 THEODORE POMPA — MOTION TO AVOID JUDICIAL LIEN
RHM-7
VS. CAPITAL ONE BANK, (USA), N.A. — 3-3-16 [44]

Final Ruling: This motion to avoid a judicial lien 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 pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $250,000 as of the date of the petition. The unavoidable liens total $83,263.28. The debtor has an available exemption of $175,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

33. 16-21037-A-13 THEODORE POMPA — MOTION TO AVOID JUDICIAL LIEN
RHM-8
VS. UNIFUND CCR PARTNERS — 3-3-16 [34]

Final Ruling: This motion to avoid a judicial lien 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 pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $250,000 as of the date of the petition. The unavoidable liens total $83,263.28. The debtor has an available exemption of $175,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. §

522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

There are 3 abstracts of judgment, the first issued May 22, 2012, the second November 12, 2008 and the third, which is a renewal of judgment, filed March 18, 2015, for a judgment entered in Solano County Superior Court, case number VSC102311. RHM-2, RHM-8 and RHM-9 are all regarding the same judgment in favor of creditor United Fund CCR Partners, also identified as NDS, LLC. The original judgment entered on November 12, 2008, was in the amount of $7,280.40 and the renewal of judgment with fees & interest was $11,877.45.

34. 16-21037-A-13 THEODORE POMPA — MOTION TO AVOID JUDICIAL LIEN
RHM-9 — 3-3-16 [49]
VS. UNIFUND CCR PARTNERS

Final Ruling: This motion to avoid a judicial lien 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 pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $250,000 as of the date of the petition. The unavoidable liens total $83,263.28. The debtor has an available exemption of $175,000. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

There are 3 abstracts of judgment, the first issued May 22, 2012, the second November 12, 2008 and the third, which is a renewal of judgment, filed March 18, 2015, for a judgment entered in Solano County Superior Court, case number VSC102311. RHM-2, RHM-8 and RHM-9 are all regarding the same judgment in favor of creditor United Fund CCR Partners, also identified as NDS, LLC. The original judgment entered on November 12, 2008, was in the amount of $7,280.40 and the renewal of judgment with fees & interest was $11,877.45.

35. 15-29648-A-13 TERI TAYLOR — MOTION TO VALUE COLLATERAL
TAG-1 — 3-18-16 [56]
VS. SANTANDER CONSUMER USA, INC.

Final Ruling: This motion is dismissed without prejudice. It is duplicative of TAG-1 and is not accompanied by a certificate of service.

36. 15-27755-A-13 ABU ALAMIN — MOTION TO DISMISS CASE
MLF-3 — 3-21-16 [78]

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.

37. 11-39370-A-13 JORGEN/DANA EIREMO — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
SS-3 — 3-18-16 [97]

Final Ruling: The motion will be dismissed without prejudice.

Counsel for the debtor seeks compensation for professional services rendered to the debtor in this case. This hearing was set on 17 days' notice of the hearing. Fed. R. Bankr. P. 2002(a)(6) requires a minimum of 21 days' notice of the hearings on motions to approve professional compensation and reimbursement of expenses. While Local Bankruptcy Rule 9014-(f)(2) permits motions to be set on as little as 14 days of notice, and permits opposition to be made at the hearing, this local rule also provides this amount of notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Because Rule 2002(a)(6) requires a minimum of 21 days of notice of the hearing and because only 21 days' notice was given, notice is insufficient.

38. 12-33979-A-13 DENNIS/JANET POLING — MOTION TO MODIFY PLAN
PGM-1 — 2-25-16 [26]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the 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.