UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 6, 2015 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 9. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON MAY 4, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL 20, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY APRIL 27, 2015. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 10 THROUGH 22 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 13, 2015, AT 2:30 P.M.

Matters to be Called for Argument

1. 14-31902-A-13 ROY/CHERIS WHITAKER — MOTION TO VALUE COLLATERAL 1-21-15 [22]
RMW-1
VS. FAST AUTO LOAN

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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 $2,270 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, $2,270 of the respondent's claim is an allowed secured claim. When the respondent is paid $2,270 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.

2. 14-31902-A-13 ROY/CHERIS WHITAKER — MOTION TO VALUE COLLATERAL 1-21-15 [26]
RMW-2
VS. ALLY FINANCIAL

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has filed a valuation motion in connection with a proposed chapter 13 plan. The valuation motion addresses the value of a 2011 Chevy Silverado that secures Ally Financial's Class 2 claim. While the debtor has opined that the vehicle has a value of $22,848, in fact the debtor's opinion is based solely on the "trade-in" value reported by the Internet version of the Kelley Blue Book. The debtor further asserts that the vehicle is in "fair" condition but this is not based on specific information or evidence concerning the vehicle's condition.

The creditor counters that the value of the vehicle is $29,750 based on a retail evaluation by a commonly used market guide, NADA.

The creditor has come forward with evidence that the replacement value of the vehicle, based on its retail value as reported by a market guide, is $29,675. Such valuations, however, generally presume the condition of the vehicle is excellent. See e.g., http://www.kbb.com (indicating that retail "value assumes the vehicle has received the cosmetic and/or mechanical reconditioning needed to qualify it as 'Excellent'" and that "this is not a transaction value; it is representative of a dealer's asking price and the starting point for negotiation").

The vehicle must be valued at its replacement value. In the chapter 13 context, the replacement value of personal property used by a debtor for

personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The retail value suggested by the creditor cannot be relied upon by the court to establish the vehicle's replacement value. First, the creditor's retail value assumes that the vehicle is in excellent condition. This is not based on any facts, at least facts proven to the court. 11 U.S.C. § 506(a)(2) asks for "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." That is, what would a retailer charge for the vehicle as it is?

Nor has the debtor proven to the court's satisfaction the replacement value of the vehicle. There is no evidence from the debtor on this point. The debtor's opinion of value, at best, is what the debtor could buy the vehicle for to a used car dealer. This is not the standard. The standard is what a used car dealer would sell the vehicle for to the debtor.

While neither party has persuaded the court as to the replacement value of the vehicle under section 506(a)(2), it is the debtor who has the burden of proof. Accordingly, the valuation motion must be denied.

Accordingly, the motion will be denied.

3. 14-31902-A-13 ROY/CHERIS WHITAKER — MOTION TO CONFIRM PLAN
RMW-3 — 1-21-15 [30]

- ☐ 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 $104 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 and the rate proposed by it will take 113 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

4. 14-26253-A-13 MATTHEW MINCH — OBJECTION TO CLAIM
PLC-3
VS. U.S. BANK, N.A. — 2-28-15 [51]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

U.S. Bank, N.A., etc., et al., filed a timely proof of claim on July 23, 2014. The claim is based on a loan secured by the debtor's home. As of the date of the petition, the loan balance was $216,877.58. In addition, the creditor claimed a pre-petition arrearage of $1,020.20. This objection concerns the arrearage.

The debtor maintains that there was no arrearage owed when the bankruptcy case was filed on June 13, 2014. And, the monthly statements received from the claimant does not reflect any arrearage.

The claimant acknowledges that immediately before the bankruptcy case was filed, the loan was not in default (that is, the debtor had not failed to pay anything due under the loan) and further admits that the arrearage consists entirely of an escrow shortage. The claimant, in addition to collecting principal and interest each month from the debtor, also impounds for insurance and taxes. Those annual obligations, when the case was filed, totaled $2,383.37, for which the debtor paid $198.61 a month to the claimant to be held in escrow for the payment of taxes and insurance.

To be sure enough is in escrow to cover the insurance and taxes when they are due, the claimant is entitled under RESPA and the loan documents to build up a cushion consisting of 1/6th of the annual escrow disbursements. 1/6th of $2,383.37 is $397.22. Over the course of the year, the lowest balance in the escrow account was projected to be <$622.98>. Thus to have a cushion of $397.22 required the payment of an additional $1,020.20 for the twelve month period from July 2014 to June 2015. This is the amount demanded in the proof of claim as a pre-petition arrearage.

However, this calculation is estimating the monthly payment necessary to make future, post-petition tax and insurance payments while maintaining the necessary cushion. This is not a case where the debtor fell behind on pre-petition payments thereby creating, not only a principal and interest arrearage, but an escrow shortage.

This fact distinguishes In re Rodriquez, 629 F.3d 136, 142 (3rd Cir. 2010), in which the court dealt with a pre-bankruptcy escrow deficiency and permitted this amount to be included in a proof of claim as an arrearage. In this case, the arrearage is not based on a pre-bankruptcy escrow shortage; it is based on an expected post-bankruptcy shortage.

While this means the amount should not be in the proof of claim, the claimant is free to demand payment by adjusting the debtor's post-petition mortgage installment accordingly.

To the extent the debtor asks that the court preclude the claimant from adding post-petition fees and costs to its proof of claim, the request is denied. Including such amounts in the proof of claim is permissible. See Atwood v. Chase Manhattan Mort. Co., 293 B.R. 227, 232 (9th Cir. BAP 2003). Of course, if the proof of claim is amended, the debtor has every right to object to the amendment on any available ground.

The court declines to award any fees to the debtor. While the amount claimed as an arrearage does not belong in the proof of claim, the amount is owed by the debtor has part of its post-petition obligation to the claimant.

5. 15-20459-A-13 RONALD DAVIS
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
3-18-15 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, the debtor has failed to make $3,200 of the 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, 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, the plan fails to provide at section 2.07 for a dividend to be on account of allowed administrative expenses, including the debtor's attorney's fees. Unless counsel is working for nothing, this means that the plan does not provide for payment in full of priority claims as required by 11 U.S.C. § 1322(a)(2). Also see 11 U.S.C. §§ 503(b), 507(a).

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor failed to include with Schedules I and J detailed statements of business income and expenses. 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).

Finally, the debtor has not filed all income tax returns for the prior four years.

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.

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. 15-20072-A-13 MARYLOUISE PADLO — ORDER TO SHOW CAUSE 3-13-15 [46]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $76 installment when due on March 9. While the delinquent installment was paid on March 17, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

7. 11-35181-A-13 ROGER/VERONICA CIHLA — MOTION TO INCUR DEBT 3-17-15 [58]
SLE-1

- ☐ 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 incur a purchase money loan in order to purchase a new home will be granted. The motion establishes a need for the home and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of a plan that debtor has been able to perform for approximately four years.

8. 15-20484-A-13 CHRISTOPHER WEBB — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 3-18-15 [37]

- ☐ 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 is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $4,597.75 is less than the $12,380.43 in dividends and expenses the plan requires the trustee to pay each month.

Second, to pay the dividends required by the plan and the rate proposed by it will take 603 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Third, the debtor has not completed Schedule J correctly. Because the mortgage debt referred to in the objection is being paid through the plan as Class 1 claims, the monthly obligations should not be listed in Schedule J. Schedule J should include only those expenses the debtor will continue to pay to creditors. By include the mortgage debt in the plan and on Schedule J, the debtor in effect is providing for the double payment of the debt and decreasing the monthly net income available to fund the plan.

Fourth, the debtor has failed to make $4,597.75 of the 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).

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 Class 1 claims, the debtor was required to provide the trustee with a Class 1 checklist for each such claim. The debtor failed to do so.

Finally, because the trustee's objection to the debtor's exemptions is well taken (the debtor has claimed exemptions pursuant to Cal. Civ. Pro. Code § 703.140 without filing the necessary waiver from the nonfiling spouse), the debtor is not entitled, in the absence of the waiver or amended exemptions, to claim any exemptions. Without exemptions, unsecured creditors would be paid $84,569. Therefore, the chapter 13 plan must pay unsecured creditors no less than the present value of $84,569. The plan promises them nothing. The plan does not comply with 11 U.S.C. § 1325(a)(4).

9. 15-20290-A-13 ERIC/ADINA HENDERSON — OBJECTION TO CONFIRMATION OF PLAN
BF-5
CALIBER HOME LOANS, INC. VS. — 3-18-15 [21]

- ☐ 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 objecting creditor's claim in Class 1. This means that the plan will cure the pre-petition arrearage while maintaining the monthly contract installment. The plan explicitly provides that the claim is not modified in any way. This treatment satisfies the requirements of 11 U.S.C. §§ 1322(b)(2), (b)(5), and 1325(a)(5)(B). The fact that the plan may erroneously understate the pre-petition arrears by less than $2,000 is not important because the amount demanded by the creditor in a timely proof of claim, not the amount stated in the plan, will be paid. And, a review of Schedule J reveals sufficient monthly net income to pay arrears in the amount claimed.

THE FINAL RULINGS BEGIN HERE

10. 10-49502-A-13 ERWIN/ENRIETTA GARRIDO — MOTION TO MODIFY PLAN
WW-5 — 2-26-15 [55]

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.

11. 10-36204-A-13 BRADLEY/CHARLOTTE THEURICH — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
BB-8 — 3-5-15 [110]

Final Ruling: The motion will be dismissed without prejudice. There is no service list appended to the certificate of service. Hence, there is no proof that all parties in interest were served with the motion and notice of the hearing as required by Fed. R. Bankr. P. 2002(a).

12. 14-26107-A-13 ROBIN LANGLEY — OBJECTION TO CLAIM
JPJ-1
VS. CAVALRY SPV I, L.L.C. — 2-10-15 [27]

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

According to the documentation attached to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the claim, the last payment was received on March 2, 2009, which is more than four years prior to the filing of this case. Hence, when the case was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

13. 12-39409-A-13 RICHEY HARRISON — MOTION TO MODIFY PLAN
MC-5 — 2-24-15 [118]

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.

14. 14-24640-A-13 CYNTHIA ADAMS — MOTION TO MODIFY PLAN
PGM-1 — 2-24-15 [23]

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

The motion will be granted on the condition that the plan is further modified in the confirmation order to account for all prior payments made by the debtor under the terms of the prior plan, and to provide for a plan payment of $95 beginning March 25, 2015. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

15. 14-28542-A-13 NANCY/DANIEL BALAGUY — MOTION TO CONFIRM PLAN
RS-3 — 2-23-15 [43]

Final Ruling: The motion will be dismissed because it is moot. The case was dismissed on March 2, 2015.

16. 15-20444-A-13 SUZAN SALYERS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-18-15 [18]

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

The objection and dismissal motion are based on the assumption that the debtor failed to value of the collateral of CLC/Nationwide Bank in order to strip off or strip down its Class 2 claim. However, the court granted a valuation motion on March 27. Accordingly, the objection will be overruled and the motion will be denied.

17. 14-25654-A-13 JULIE MOORE — MOTION TO MODIFY PLAN
CAH-3 — 2-20-15 [48]

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

The motion will be granted on the condition that the plan is further modified in the confirmation order to account for all prior payments made by the debtor under the terms of the prior plan, and to provide for a plan payment of $450 beginning March 25, 2015. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

18. 14-30268-A-13 NEERAJ/KALYANI KUMAR — MOTION TO CONFIRM PLAN
DAO-5 — 2-16-15 [85]

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

The motion will be granted and the objection will be overruled. The objection relates to the debtor's failure to lodge orders granting three lien avoidance/valuation motions necessary to justify the proposed plan treatment of the respondent creditors. Those orders have been lodged and entered. The plan complies with 11 U.S.C. §§ 1322(a) & (b), and 1325(a).

19. 15-21069-A-13 THOMAS/ROSEANNA MARIANI — ORDER TO SHOW CAUSE
3-19-15 [19]

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

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $79 installment when due on March 16. However, after the issuance of the order to show cause, the filing was paid inn full. No prejudice was caused by the late payment of the installment.

20. 14-25485-A-13 MARK/MELANIE GARLAND — OBJECTION TO CLAIM
JPJ-1 — 2-10-15 [21]
VS. ATLANTIC CREDIT & FINANCE, INC.

Final Ruling: The objection will be dismissed as moot. The proof of claim was voluntarily withdrawn on March 4, 2015.

21. 14-25485-A-13 MARK/MELANIE GARLAND — OBJECTION TO CLAIM
JPJ-2 — 2-10-15 [25]
VS. JEFFERSON CAPITAL SYSTEMS, L.L.C.

Final Ruling: This objection to the proof of claim of Jefferson Capital Systems, L.L.C., has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court

will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

According to the documentation attached to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the claim, the last payment was received on April 6, 2006, which is more than four years prior to the filing of this case. Hence, when the case was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

22. 11-46097-A-13 BRIAN CLARK — MOTION TO MODIFY PLAN
WW-3 — 2-26-15 [31]

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.