UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 11, 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 26. 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 23, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 2, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 16, 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 27 THROUGH 37 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 21, 2016, AT 2:30 P.M.

Matters to be Called for Argument

1. 16-20820-A-13 DIANNE/ALAN DREVER — MOTION TO VALUE COLLATERAL
HDR-1
VS. PATELCO CREDIT UNION — 3-1-16 [12]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The motion will be denied as the evidence in support of the property's value is inadmissible. The debtor asserts that the property had a value of $425,000 as of the petition date. His opinion is based on his comparison of his home to other properties he considers comparable.

As a lay witness, the debtor's opinion of value for the property can be based solely on the fact that he owns the property. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Yet, this is not the basis upon which the debtor relies to render his opinion of value. Without any foundation, the debtor proceeds as if he was an expert witness comparing his home to other homes and distilling an opinion based on other sales. As a lay witness, this opinion of value is inadmissible.

2. 16-20820-A-13 DIANNE/ALAN DREVER — OBJECTION TO CONFIRMATION OF PLAN
RDW-1
PATELCO CREDIT UNION VS. — 3-23-16 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Patelco in order to strip down or strip off its secured claim from its collateral. While such motion has been filed, it was denied. 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."

3. 16-20724-A-13 STEPHEN/KAREN MALONEY — OBJECTION TO CONFIRMATION OF PLAN
PBL-1
TCF NATIONAL BANK VS. — 3-9-16 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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 secured claim in Class 1. As a Class 1 secured claim, the ongoing mortgage payment is paid to the creditor by the trustee (not the debtor) and the pre-petition is cured. Here, while the plan estimates that the arrearage is $4,000, the plan further provides at section 2.04: "The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." Hence, whatever the plan estimates the arrears to be, the creditor will be paid whatever it demands absent an objection to the claim.

That said, the discrepancy between the claim and the plan's estimate may be so large that the cannot feasibly pay what a creditor demands. In this case, however, there is a good faith dispute as to the amount of the claim. The court will allow the claims' allowance process to play out after a plan is confirmed. If the arrearage claim is allowed in an amount more than the plan can feasibly pay, it will be incumbent on the debtor to amend the plan and if the debtor does not the court will entertain a motion for relief from the automatic stay.

As to the assertion that the debtor has failed to pay the first post-petition mortgage payment, the assertion is irrelevant because the plan requires the trustee to make that payment in the month following the first plan payment. The objection fails to indicate that the debtor failed to make a payment to the trustee and/or that the trustee failed to make a payment to the creditor.

4. 15-23928-A-13 EJS-3 — SHAWN/JACQUELINE CUNNINGHAM — MOTION TO MODIFY PLAN 2-23-16 [75]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and 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 $300 is less than the $332 in dividends and expenses the plan requires the trustee to pay each month.

Second, even if the plan payments had been current, the debtor has not satisfied the burden of proving the plan's feasibility over its duration. As noted by the trustee, the plan's feasibility depends in part on the debtor's re-employment in May 2016. The debtor has produced no evidence as to whether such employment is likely and at what wage.

5. 16-20830-A-13 TOLLIFERRO SMITH
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
3-23-16 [14]

- ☐ 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 debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor failed to list on the petition two prior chapter 7 petitions filed in the last eight years, and has overstated health related expenses by $350 on Schedule J. This nondisclosure and misstatement 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).

Third, 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).

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. 16-20631-A-13 EMIGDIO SILVA
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
3-23-16 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, the debtor failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

Second, 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.

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

Fourth, 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 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 trustee will object to all of the debtor's Cal. Civ. Proc. Code § 703.140(b) exemptions claimed on Schedule C. The trustee argues that because the debtor is married, as admitted in Schedules I and J, and because the debtor's spouse has not joined in the chapter 13 petition, the debtor must file his spouse's waiver of right to claim exemptions. See Cal. Civ. Proc. Code § 703.140(a)(2). This was not done.

A debtor's exemptions are determined as of the date the bankruptcy petition is filed. Owen v. Owen, 500 U.S. 305, 314 (1991); see also In re Chappell, 373 B.R. 73, 77 (B.A.P. 9th Cir. 2007) (holding that "critical date for determining exemption rights is the petition date"). Thus, the court applies the facts and law existing on the date the case was commenced to determine the nature and extent of the debtor's exemptions.

11 U.S.C. § 522(b)(1) permits the states to opt out of the federal exemption statutory scheme set forth in section 522(d). In enacting Cal. Civ. Proc. Code § 703.130, the State of California opted out of the federal exemption scheme relegating a debtor to whatever exemptions are provided under state law. Thus, substantive issues regarding the allowance or disallowance of a claimed exemption are governed by state law in California.

California state law gives debtors filing for bankruptcy the right to choose (1) a set of state law exemptions similar but not identical to the Bankruptcy Code exemptions; or (2) California's regular non-bankruptcy exemptions. See Cal. Civ. Proc. Code §§ 703.130, 703.140. In the case of a married debtor, if either spouse files for bankruptcy individually, California's regular non-bankruptcy exemptions apply unless, while the bankruptcy case is pending, both spouses waive in writing the right to claim the regular non-bankruptcy state exemptions in any bankruptcy proceeding filed by the other spouse. See Cal. Civ. Proc. Code § 703.140(a)(2).

Here, the debtor is asserting the exemptions of Cal. Civ. Proc. Code § 703.140(b), which require a spousal waiver. That waiver was not filed with the petition. As a result, the debtor has no allowable exemptions. Without exemptions, the debtor's nonexempt assets total more than $162,306.41. Because the plan does not provide for payment of this amount to unsecured creditors but only approximately $5,500, the plan does not comply with 11 U.S.C. § 1325(a)(4).

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. 16-21037-A-13 THEODORE POMPA
RHM-1
VS. RICHARD JAMES CHIOZZA

MOTION TO
AVOID JUDICIAL LIEN
3-2-16 [9]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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 $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.

8. 16-21037-A-13 THEODORE POMPA
RHM-3
VS. CHASE BANK USA, N.A.

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

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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 $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.

9. 16-21037-A-13 THEODORE POMPA
RHM-4
VS. PROFESSIONAL RECOVERY SYSTEMS, LLC

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

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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 $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).

10. 16-21037-A-13 THEODORE POMPA
RHM-5
VS. CHASE BANK USA, N.A.

MOTION TO
AVOID JUDICIAL LIEN
3-3-16 [29]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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 $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.

11. 16-21037-A-13 THEODORE POMPA
RHM-6
VS. RICHARD JAMES CHIOZZA

MOTION TO
AVOID JUDICIAL LIEN
3-3-16 [39]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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 $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.

12. 16-21037-A-13 THEODORE POMPA — MOTION TO AVOID JUDICIAL LIEN
RHM-7
VS. CAPITAL ONE BANK, (USA), N.A. — 3-3-16 [44]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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 $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).

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

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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 $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.

14. 16-21037-A-13 THEODORE POMPA
RHM-9
VS. UNIFUND CCR PARTNERS

MOTION TO
AVOID JUDICIAL LIEN
3-3-16 [49]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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 $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 opposition is based on an opinion value that has not been authenticated by the alleged expert. It is inadmissable and will not be considered.

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.

15. 16-21037-A-13 THEODORE POMPA
RHM-10
VS. CHASE BANK USA, N.A.

MOTION TO
AVOID JUDICIAL LIEN
3-3-16 [54]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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 $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.

16. 16-20638-A-13 RODNEY/DEBRA BAKER
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
3-23-16 [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, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $2,029.24 is less than the $2,155 in dividends and expenses the plan requires the trustee to pay each month.

Second, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Bank of America in order to strip down or strip off its secured claim from its collateral. No such motion has been filed, served, and granted. Absent a successful motion the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

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

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.

17. 12-35244-A-13 GARY EILER
DBL-3

MOTION TO MODIFY PLAN
2-24-16 [78]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan on its face provides for retroactive plan payment increases which the debtor has not paid to the trustee. As a result, the proposed plan is delinquent in excess of $3,600. A delinquency suggests that the plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

18. 16-20449-A-13 PREM CHANDRA
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
3-23-16 [29]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the case will be dismissed.

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

Second, the debtor failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

Third, 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).

Fourth, 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.

Fifth, the plan proposed by the debtor is largely blank. The absence of material information, such as a payment and dividends to be paid to creditors indicates to the court that it is not a good faith effort to comply with the requirement that a debtor propose a plan. See 11 U.S.C. § 1321.

Sixth, no plan is not feasible as required by 11 U.S.C. § 1325(a)(6). Schedules I and J show that the debtor will have no monthly net income with which to fund a plan.

19. 13-30252-A-13 JOANN GOWANS — MOTION TO RECONSIDER DISMISSAL OF CASE 3-25-16 [95]
SS-6

- ☐ 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.

This case was dismissed on March 21, 2016 pursuant to the procedure authorized by Local Bankruptcy Rule 3015-1(g).

Through December 29, 2015, the debtor failed to make plan payments totaling $3,649. This prompted the trustee to issue a notice of default pursuant to Local Bankruptcy Rule 3015-1(g). It noted this default and also demanded the additional $2,347 due on January 25, a total amount of $5,996.

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

(1) If the debtor fails to make a payment pursuant to a confirmed plan,

including a direct payment to a creditor, the trustee may mail to the debtor and the debtor's attorney written notice of the default.

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

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

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

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

The debtor in this case opted to propose a modified plan. The court considered this plan on March 14. However, because the debtor failed to make a plan payment of $432 and failed to prove that Selene Financial had agreed to home loan modification, the court denied confirmation. The minutes of the confirmation hearing indicate that the debtor did not appear at the hearing to contest the court's tentative ruling which noted these problems. As a result, the tentative ruling became the final ruling.

On March 25, the debtor moved to vacate the dismissal. This motion indicates that the failure to pay $432 was corrected prior to the March 14 hearing. However, this motion fails to explain why no one appeared at the hearing to present evidence of payment to the court.

Further, this motion includes no evidence that there is home loan modification from Selene. The evidence presented is that Selene will consider the debtor's application for a modification sometime after April 6.

This is not sufficient to vacate the dismissal. The debtor had an opportunity to contest the objection to the confirmation of the modified plan and was informed of the court's tentative ruling well in advance of the March 14 hearing. No appearance was made.

20. 14-31455-A-13 ANGELLE GARNER
DJH-1
SALVADOR RAMIREZ VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-23-16 [39]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to prosecute an action in a nonbankruptcy forum seeking redress for damages alleged sustained in a pre-bankruptcy auto accident involving the debtor. The debtor maintained liability insurance. The stay is modified to allow the movant to prosecute the action with the proviso that any judgment or settlement may be satisfied only be resort to such insurance and/or by presenting a claim in this case for payment by the trustee.

21. 16-20758-A-13 MASOUMEH KENNEDY
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
3-24-16 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

According to the response, the debtor provided the financial information concerning the spouse's income to the trustee and an amended Rights and Responsibilities Agreement and a Disclosure of Compensation have been filed. Unless the provided information or the amended documents raise other issues, it appears the debtor has addressed the trustee's concerns.

22. 16-20265-A-13 VICTOR HALTOM
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
3-7-16 [24]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained and the case will be dismissed.

The debtor is an attorney represented by an experienced bankruptcy attorney.

The debtor is not eligible for chapter 13 relief. According to Schedule D, the debtor has noncontingent, liquidated secured debt of $1,165,847. This total does not include all of the Caliber claim of $766,943. It reduces the claim from $766,943 to $746,457 to account for the scheduled value of the real property securing the claim, $746,457. This results in Caliber having a bifurcated claim of $746,457 secured, and $20,486 unsecured.

After this deduction, the debtor's secured debt is $1,165,847, which exceeds the $1,149,525 maximum permitted by 11 U.S.C. § 109(e).

The debtor attempts to sidestep this result by arguing that the value of the property securing the Caliber claim is $700,000, not $746,457. However, eligibility for chapter 13 relief under section 109(e) is based on the original schedules as filed by the debtor. See In re Scovis, 249 F.3d 975, 983 (9th Cir. 2001). In Scovis, the Ninth Circuit held: "[T]he bankruptcy court should normally look to the petition to determine *the amount of debt* owed, checking only to see that the schedules were made in good faith." Id. at 982 (emphasis added).

Quite frankly, it is difficult to understand, and the court does not believe, that it is unfair to conclude that a debtor who is an attorney, and is represented by a bankruptcy attorney, does not understand the significance of signing schedules under penalty of perjury. The schedules will be relied on by the court to determine eligibility and the debtor is not eligible for chapter 13 relief.

Even if the court were inclined to determine eligibility based on evidence not in the schedules, such as the opinion of value from Coldwell Banker, it would not reach a different conclusion because the evidence offered is inadmissible. The Coldwell Banker opinion is unauthenticated and is inadmissible hearsay.

Further, the reliance on an opinion from Zillow.com also is inadmissible. It is hearsay. See Fed. R. Evid. 801. While Fed. R. Evid. 803(17) excepts from the hearsay rule market compilations generally used and relied upon by the public, no foundation was laid establishing that the values reported by this Internet site meets this criteria. The court doubts that such a foundation could be laid. As courts have noted, zillow.com is "inherently unreliable." "Zillow is a site almost like Wikipedia. Whereas Wikipedia allows anyone to input or change specific entries, Zillow allows homeowners to do so. A homeowner with no technical skill beyond the ability to surf the web can log in to Zillow and add or subtract data that will change the value of his property." See In re Darosa 442 B.R. 173, 177 (Bankr. D. Mass. 2010). See also In re Phillips, 491 B.R. 255, 260 (Bankr. D. Nev. 2013). For this reason, reports such as Zillow are not compilations made admissible by Fed. R. Evid. 803(17). Id.

Also, the debtor failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

23. 15-20671-A-13 BRYAN SCHULTZ — MOTION TO MODIFY PLAN
EWV-90 — 2-26-16 [30]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan provides for the IRS's secured claim in Class 5. Class 5 is reserved for priority claims. This claim belongs in Class 2. While both Class 5 and Class 2 claims must be paid in full, the former is not entitled to receive interest. See 11 U.S.C. §§ 1322(a)(2) & 1325(a)(5)(B). Hence, by not paying interest on this secured claim, the plan does not comply with section 1325(a)(5)(B).

Second, even though counsel opted to be compensated pursuant to Local Bankruptcy Rule 2016-1, the plan provides for payment of $7,000, well in excess of the $4,000 permitted by the local rule.

24. 16-20891-A-13 HILARIO HERNANDEZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-23-16 [24]

- ☐ 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, Bank of America, 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).

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.

25. 16-20891-A-13 HILARIO HERNANDEZ — OBJECTION TO CONFIRMATION OF PLAN
BANK OF AMERICA, N.A. VS. — 3-23-16 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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 for the reasons and to the extent discussed in the ruling on the trustee's objection, JPJ-1.

26. 16-21599-A-13 CHRISTOPHER/GLEE WOODYARD — MOTION TO EXTEND AUTOMATIC STAY
OAG-1 — 3-28-16 [12]

- ☐ 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.

This is the second chapter 13 case filed by the debtor. The debtor's earlier chapter 13 case was dismissed within one year of the most recent petition.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case.

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

In order to extend the automatic stay, the party seeking the relief must demonstrate that the filing of the new case was in good faith as to the

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

Here, it appears that the debtor was unable to maintain plan payments in the first case due to a series of unexpected problems including the flooding of the debtor's home and a seriously ill extended family member. These issues are now resolved and the debtor is able to maintain plan payments. This is a sufficient change in circumstances rebut the presumption of bad faith.

FINAL RULINGS BEGIN HERE

27. 15-28901-A-13 ERIN PENLAND — MOTION TO CONVERT OR DISMISS CASE 3-3-16 [31]
JPJ-2

Final Ruling: The motion will be dismissed as moot. The case was dismissed on March 7.

28. 16-20207-A-13 ANTHONY BASURTO — ORDER TO SHOW CAUSE 3-21-16 [23]

Final Ruling: The order to show cause will be discharged because it is moot. The case was dismissed on March 31.

29. 16-20020-A-13 OMAR KIRBY — MOTION TO CONFIRM PLAN 2-17-16 [17]
SBT-1

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 reduce the monthly dividend payable to the debtor's attorney. The reduction must be sufficient to permit payment of all plan dividends with a plan payment of $2,345 a month. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

30. 16-20724-A-13 STEPHEN/KAREN MALONEY — MOTION TO APPROVE LOAN MODIFICATION 3-10-16 [25]
JMC-1

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

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

31. 15-28433-A-13 JUSTIN WESTCOTT — MOTION TO CONFIRM PLAN 2-18-16 [26]
RJM-1

Final Ruling: The motion will be dismissed without prejudice.

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

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

32. 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.

33. 16-20750-A-13 MARCOS EVANGELISTA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1
3-23-16 [25]

Final Ruling: The objecting party has voluntarily dismissed the objection and the related motion.

34. 15-26254-A-13 TIMOTHY/ROBIN PEPPEL — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-1
SETERUS, INC. VS. — 3-8-16 [26]

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

The motion will be dismissed as moot.

The court confirmed a plan on October 20, 2015. That plan provides for the movant's claim in Class 4. The plan further provides at section 2.11:

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

Because the plan has been confirmed and because the case remains pending under

chapter 13, the automatic stay has already been modified to permit the movant to proceed against its collateral.

The movant shall bear its own fees and costs.

35. 14-31266-A-13 PHIL MORRIS
EAT-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-14-16 [34]

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

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's real property. The plan classifies the movant's claim in Class 1 and requires that the post-petition note installments be paid by the trustee to the movant. Because the debtor has failed to make all plan payments, the trustee was unable to make at least five monthly post-petition monthly mortgage payments to the movant as required by the plan. This default is cause to terminate the automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 434-435 (B.A.P. 9th Cir. 1985).

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

The 10-day period specified in Fed. R. Bankr. P. 4001(a)(3) will not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

36. 14-31266-A-13 PHIL MORRIS
EAT-1
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-14-16 [41]

Final Ruling: This motion will be dismissed as duplicative of docket #34.

37. 16-20687-A-13 MICHAEL/BERNADETTE AMBERS
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
3-23-16 [20]

Final Ruling: The objecting party has voluntarily dismissed the objection and the related motion.