UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 27, 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 16. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON MAY 26, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 11, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 18, 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 17 THROUGH 28 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 MAY 4, 2015, AT 2:30 P.M.

Matters to be Called for Argument

1. 14-20503-A-13 PETER/LINE FLEMING — MOTION TO MODIFY PLAN
MRL-2 — 3-9-15 [44]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan asks for a substantial decreased in the monthly plan payment because the debtor's business and employment income will decrease. However, the evidence of this decrease is conclusory; the debtor has not detailed the changes in an amended Schedule I and J or in a declaration with comparable information. In the absence of such evidence, the debtor has not carried the burden of establishing the need to modify the plan.

2. 14-32503-A-13 RUMMY SANDHU — MOTION TO CONFIRM PLAN
CAH-2 — 3-5-15 [28]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to make $55 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).

3. 15-20809-A-13 DESMAL MATTHEWS — ORDER TO SHOW CAUSE
4-9-15 [35]

- ☐ 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 $77 installment when due on April 6. While the delinquent installment was paid on April 20, 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.

4. 14-30613-B-13 DONALD/BROOKE HOBART — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 12-11-14 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled and the motion to dismiss the case will be denied. The objection relates to the failure of the debtor to the value of the collateral of Wells Fargo/Morgan Stanley/Specialized Loan Servicing's collateral. Without such valuation, the debtor cannot prove the plan will comply with 11 U.S.C. §§ 1322(b)(2), 1325(a)(5)(B) and (6). However, the debtor has successfully moved to value the collateral. Because the collateral has no value, the claim can be treated as an unsecured claim.

5. 14-30613-B-13 DONALD/BROOKE HOBART — OBJECTION TO CONFIRMATION OF PLAN
MDE-1 — 12-11-14 [25]
WELLS FARGO BANK, N.A. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled. The objection relates to the failure of the debtor to the value of the collateral of Wells Fargo/Morgan Stanley/Specialized Loan Servicing's collateral. Without such valuation, the debtor cannot prove the plan will comply with 11 U.S.C. §§ 1322(b)(2), 1325(a)(5)(B) and (6). However, the debtor has successfully moved to value the collateral. Because the collateral has no value, the claim can be treated as an unsecured claim.

6. 14-30613-B-13 DONALD/BROOKE HOBART — MOTION TO VALUE COLLATERAL
JGD-1 — 12-11-14 [18]
VS. WELLS FARGO/MORGAN STANLEY/SPECIALIZED

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $111,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by American First Credit Union. The first deed of trust secures a loan with a balance of approximately $118,084.17 as of the petition date. This is the amount demanded by the credit union in its proof of claim and is not based on the statements of the debtor. Therefore, Wells Fargo/Morgan Stanley/Specialized Loan Servicing's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840

(B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is $0, because the value of the respondent's collateral is $0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(I).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of $111,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

7. 15-21418-B-13 ANNE-MARIE FLORES — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 3-30-15 [24]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of WFS Financial/Wachovia 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."

8. 15-21418-B-13 ANNE-MARIE FLORES — OBJECTION TO CONFIRMATION OF PLAN
APN-1 — 3-13-15 [19]
WELLS FARGO BANK, N.A. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained in part.

To the extent the creditor objects to the valuation of its collateral the objection is premature because there is no motion to value its collateral. Hence, its claim is determined by the proof of claim the creditor files, not the plan.

However, because the debtor has failed to file a valuation motion, the debtor cannot prove that the monthly dividend and interest rate proposed for the objecting creditor's claim will adequately protect its interest in the vehicle and pay it the present value of the claim.

9. 15-22720-B-13 MARC LUCERO
MOH-1
VS. BANK OF AMERICA, N.A.

MOTION TO
VALUE COLLATERAL
4-7-15 [10]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $95,396 as of the date the petition was filed. It is encumbered by a first deed of trust held by America's Servicing Company. The first deed of trust secures a loan with a balance of approximately $100,367.66 as of the petition date. Therefore, Bank of America's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is $0, because the value of the respondent's collateral is $0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a

contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(I).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of $95,396. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

10. 15-21640-A-7 RHONDA DARRETT — ORDER TO SHOW CAUSE 4-6-15 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $79 due on April 1 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

11. 15-21243-A-13 ANTONIO BROWN AND LAKIYA LOWE-BROWN — ORDER TO SHOW CAUSE 4-7-15 [34]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $79 due on

April 2 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

12. 15-21258-A-13 ELIZABETH GOMEZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 4-8-15 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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 $1,690 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, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $2,610 is less than the $3,268.09 in dividends and expenses the plan requires the trustee to pay each month.

Third, 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).

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, Schedule J does not accurately reflect the debtor's housing expense. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

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

13. 12-20659-A-13 CLIFTON/MARILYNNE HITE — MOTION TO INCUR DEBT
CAH-4 — 4-13-15 [75]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

14. 15-20072-A-13 MARYLOUISE PADLO — MOTION TO CONFIRM PLAN
SS-3 — 3-16-15 [48]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained. Feasibility of the plan as well as its compliance with 11 U.S.C. §§ 1322(b)(2) and 1325(a)(5)(B) depended on the debtor successfully objecting to the proof of claim for a home loan held by Pacific Capital Investment. The court overruled the objection to that proof of claim.

15. 14-31880-A-13 LYNDA WILLIAMS — MOTION TO CONFIRM PLAN
PGM-1 — 3-16-15 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender has agreed 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).

Second, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Select Portfolio 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, to pay the dividends required by the plan and the rate proposed by it

will take 528 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Fourth, the debtor has not established that the plan will pay all projected disposable income to unsecured creditors as required by 11 U.S.C. § 1325(b) because the debtor has not completed Form 22 in its entirety when calculating projected disposable income. The debtor has failed to complete the portion of Form 22 necessary to calculate projected disposable income. Without doing so, the debtor cannot prove compliance with 11 U.S.C. § 1325(b).

16. 12-27398-B-13 BRUCE/PAULETTE CREAGER — MOTION TO APPROVE LOAN MODIFICATION
JLB-2 — 3-23-15 [47]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

FINAL RULINGS BEGIN HERE

17. 15-20915-B-13 RONALD/URSULA VIVIANI — MOTION TO VALUE COLLATERAL
JMC-1 — 3-11-15 [17]
VS. BANK OF AMERICA, N.A.

Final Ruling: The motion has been resolved by stipulation.

18. 10-43116-A-13 TERRY/YOSHIE KENNEDY — MOTION FOR RELIEF FROM AUTOMATIC STAY
ASW-1 — 3-24-15 [88]
BANK OF AMERICA, N.A. VS.

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 dismissed as moot.

A plan was confirmed in this case on February 9, 2011. That plan provided for the movant's claim as a Class 3 secured claim. This means that the plan provided for the surrender of the movant's collateral in order to satisfy its secured claim. It also provides at section 3.14:

"*Entry of the confirmation order shall constitute an order modifying the automatic stay to allow the holder of a Class 3 secured claim to repossess, receive, take possession of, foreclose upon, and exercise its rights and judicial and nonjudicial remedies against its collateral.*"

Thus, the stay has already been terminated and the motion is moot. To the extent the plan's description of the movant's identity or of the surrendered collateral is not accurate or as comprehensive as in the movant's security documentation, the order may recite that the collateral identified in the motion has been, or will be, surrendered to the movant pursuant to the terms of a confirmed plan and, as a result, the automatic stay was previously terminated.

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).

19. 11-33522-A-13 DONALD HUDSON — MOTION FOR HARDSHIP DISCHARGE
RDS-4 — 3-23-15 [61]

Final Ruling: This motion for a hardship discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir.

1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

11 U.S.C. § 1328(b) permits a discharge "at any time after confirmation of the plan" if three cumulative conditions are met: 1) the debtor's failure to complete payments under the plan is due to circumstances "for which the debtor should not justly be held accountable"; 2) the debtor has satisfied the best interests of creditors test of 11 U.S.C. § 1325(a)(4); and 3) modification of the plan is not practicable.

It appears from the evidence that the debtor's elderly dependent is in need of 24 care. Available government benefits will not provide this care and so the debtor will cease working to provide the care. This is a circumstances "for which the debtor should not justly be held accountable".

A certification of completion of a course on personal financial management has been filed.

In a chapter 7 case, unsecured creditors would not receive a dividend. In this case, they promise and have received a .83% dividend.

Finally, given the debtor's limited ability to work, modification of the plan is not practicable.

Consistent with 11 U.S.C. § 1328(c), the order granting the motion shall provide that all creditors will have 30 days, plus three days for mailing, from the service of the order to object to the dischargeability of debts pursuant to 11 U.S.C. § 523(a) to the extent such complaints were not earlier required by Fed. R. Bankr. P. 4007(c). Any discharge shall be subject to any timely complaint filed and shall not include long-term debt classified in Class 1.

20. 14-30526-A-13 DN-9 — BALVIR SINGH AND NIRMAL KAUR — MOTION TO EXTEND TIME 4-11-15 [69]

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 debtor shall have through and including May 26 to confirm a plan. If not confirmed, the case will be dismissed on the ex parte application of any party in interest.

21. 14-20433-A-13 PGM-4 — CINDY ELDRIDGE — MOTION TO MODIFY PLAN 3-17-15 [46]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to

the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

22. 14-25364-A-13 GREGORY MCKINNEY — MOTION TO MODIFY PLAN
RAC-1 — 3-20-15 [19]

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.

23. 13-35475-A-13 JOSE JIMENEZ AND MARIA GONZALEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1 — 3-25-15 [236]
ACT PROPERTIES L.L.C. VS.

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.

To the extent the motion seeks to terminate the automatic stay pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to foreclose upon and to obtain possession of its real property security, the motion will be granted. The debtor has not scheduled an interest in the property and has not provided for the payment of the movant's claim. That claim has not been paid since at least 2011 and is 44 months in arrears. Because the debtor has not paid the movant's claim, and will not pay it in connection with the chapter 13 case, there is cause to terminate the automatic stay.

11 U.S.C. § 362(d)(4) provides that:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section,

such as by terminating, annulling, modifying, or conditioning such stay . . . with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property."

Section 362(d)(4) implicates 11 U.S.C. § 362(b)(20). Section 362(b)(20) is an "in rem" exception to the automatic stay. If the court grants relief in this case under section 362(d)(4), but then another petition is filed by any debtor who claims an interest in the subject real property, section 362(b)(20) provides that the automatic stay does not operate in the second case so as to prevent the enforcement of a lien or security interest in the subject real property. The exception to the automatic stay in the second case is effective for 2 years after the entry of the order under section 362(d)(4) in the first case.

A debtor in the subsequent bankruptcy case, however, may move for relief from the in rem order. The request for relief from the in rem order may be premised upon "changed circumstances or for other good cause shown. . . ."

Here, the original borrower and owner of the property transferred an interest in the subject property without the consent of the movant to this debtor. The debtor then failed to make payments to the movant, filed a bankruptcy case, failed to schedule an interest in the property, and then failed to provide for payment of the movant's claim in the chapter 13 plan.

The court concludes that the purpose of making the transfer and filing of this case was to prevent a foreclosure by imposing the automatic stay but without any intention of reorganizing or paying the movant's claim. These facts evidence a clear scheme to delay, hinder, or defraud creditors involving the subject property.

Therefore, the court will grant relief from the automatic stay that will be effective for a period of two years in any future case filed by anyone claiming an interest in the subject property, provided the recordation requirements of section 362(d)(4) are satisfied by the movant or its successor.

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

24. 09-39276-A-13 RICHARD GUTIERREZ — MOTION TO WAIVE DEBTOR'S 11 U.S.C. SECTION 1328 REQUIREMENT 3-25-15 [123]

Final Ruling: This motion to waive the requirements of 11 U.S.C. § 1328 for entry of a discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving

party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor died on January 25, 2015. Prior to his death, the debtor completed his plan payments and filed a certification of completion of a post-petition course on personal financial management. However, the debtor is unable able to file the remaining documents required by Local Bankruptcy Rule 5009-1. Nonetheless, it appears from the electronic record that the debtor has not received a prior discharge with the time periods specified in 11 U.S.C. § 1328(f), the debtor had no outstanding domestic support obligations, and the debtor did not owe obligations of the type described in 11 U.S.C. § 522(q). Therefore a discharge shall be issued.

25. 14-23277-A-13 INGRID MCDOWELL — MOTION TO MODIFY PLAN 3-10-15 [36]
SNM-3

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.

26. 14-30879-A-13 ROBERT/JESSICA RODGERS — MOTION TO CONFIRM PLAN 3-16-15 [37]
JME-2

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.

Also, the certificate of service was executed on March 16, 2015 and attests that the motion was served on January 17, 2015. Inasmuch as the motion was not filed and signed until March 16, it could not have been served on January 17.

27. 15-21279-A-13 RAY/ARLINDA TEEGARDEN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 4-8-15 [21]

Final Ruling: The court continues the hearing to May 26, 2015 at 1:30 p.m. in order to give the debtors the opportunity to appear at the meeting of creditors on April 30. If they fail to appear the court will dismiss the case at the continued hearing absent sufficient excuse for the failure to appear. The May 26 hearing will be a final hearing. The debtors shall file and serve their opposition if any to the objection no later than May 11. Any reply shall be filed and served by May 18.

28. 15-20884-A-13 JACQUIE ROBINSON — OBJECTION TO EXEMPTIONS
JPJ-2 — 3-26-15 [20]

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 trustee objects to all of the debtor's claimed on the original Schedule C pursuant to 11 U.S.C. § 522(d).

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, the debtor may not claim exemptions under section 522(d). And, while this objection is well taken, after it was filed by the trustee, the debtor filed an amended Schedule C claiming exemptions under California law. Therefore, this objection is moot and will be dismissed. However, the trustee may raise any objections to the amended exemptions within the time required by the Federal Rules of Bankruptcy Procedure.