UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 4, 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 22. 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 JUNE 1, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 18, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 26, 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 26 THROUGH 29 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 11, 2015, AT 2:30 P.M.

Matters to be Called for Argument

1. 14-31902-A-13 ROY/CHERIS WHITAKER — MOTION TO VACATE
RMW-2 — 4-17-15 [74]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be denied.

The motion seeks to vacate and reconsider orders entered on a valuation motion concerning the collateral securing a claim held by Ally Financial and the trustee's objection to the confirmation of the first amended plan.

The first problem with the motion is that it fails to deal with the fact that the case was dismissed on April 21. Given the dismissal, any motion to value collateral and confirm a plan is moot.

Ignoring the dismissal of the case, and assuming the debtor is asking that the dismissal be vacated, there is no cause to reconsider the dismissal or the denial of the valuation motion and the confirmation of the plan.

The dismissal is the result of a dismissal motion filed by the trustee in connection with his successful objection to the confirmation of the original plan. After a hearing on February 2, the court set March 16 as the deadline for the confirmation of a plan. If that deadline was not met, the case would be dismissed on the trustee's ex parte application.

Even though the debtor did not meet the March 16 deadline, the trustee did not immediately move for dismissal. This may have been because the debtor set a hearing on a motion to confirm an amended plan on the March 16 deadline. However, on March 8, the debtor moved the hearing to the court's April 6 calendar. See Docket 58.

Also, because the debtor continued the confirmation hearing to April 6, the court continued the hearings on debtor's related valuation motions from March 16 to April 6 so that all motions would be heard at the same time.

The debtor failed to appear at the April 6 hearings. Even so, the court did not base its rulings on the failure to appear. The court took up the merits of each motion and the objections to each. The court denied confirmation of the plan and sustained the trustee's objection to that plan (RMW-3), it denied the debtor's motion to value Ally's collateral, a motor vehicle, at $22,848 (RMW-2), and granted the debtor's motion to value Fast Auto Loans collateral, a

second vehicle (RMW-1). See Docket 67, 68, 69.

Only after the conclusion of the April 6 hearings did the trustee invoke the earlier order providing for the dismissal of the case. He filed his ex parte application for dismissal on April 14 and April 21 the case was dismissed.

The debtor's motion to vacate the orders denying the motions to value Ally's collateral and to confirm the amended plan is based on two false premises: one, that the court denied the motion to confirm the plan and the motion to value because the debtor failed to appear; two, that the debtor appeared at the April 6 but was told the hearings would take place on April 16.

As is clear from the minutes of the hearing, the court disposed of each motion on its merits and not on the debtor's failure to appear. The minutes also record that each motion was heard by the court and the debtor failed to appear at the hearing. The debtor was not told the hearings had been continued to April 16.

The valuations motions were set by the debtor for hearing on March 16. At the February 2 hearing on the trustee's objection to the confirmation of the plan the court did not continue the March 16 hearing to April 16. On the contrary, March 16 was the deadline set by the court for the confirmation of a plan and the valuations motions would have to be adjudicated before or contemporaneously with the motion to confirm a plan.

Shortly before the March 16 hearing, the court continued the valuations motions to its April 6 calendar so they could be heard with the motion to confirm the amended plan. The debtor set the April 6 hearing and the court moved the valuation hearings to the date selected by the debtor. Even if the debtor somehow was confused about the hearing date for the valuation motions, that does not explain why the debtor did not appear on April 6 at the hearing the debtor set on the confirmation of the amended plan.

Finally, ignoring the fact that there is no cause to vacate the prior orders, there is nothing in this motion suggesting the court's prior decisions were wrong. There is no admissible evidence with the motion. Rather, the debtor offers the inadmissible hearsay testimony of a car dealer concerning the value of the vehicle securing Ally's claim. And, whatever the value of that vehicle, the plan was unconfirmable because all plan payments had not been paid.

2. 14-31902-A-13 ROY/CHERIS WHITAKER — MOTION TO VACATE
RMW-3 — 4-17-15 [74]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

there is opposition, the court may reconsider this tentative ruling.

The motion will be denied.

The motion seeks to vacate and reconsider orders entered on a valuation motion concerning the collateral securing a claim held by Ally Financial and the trustee's objection to the confirmation of the first amended plan.

The first problem with the motion is that it fails to deal with the fact that the case was dismissed on April 21. Given the dismissal, any motion to value collateral and confirm a plan is moot.

Ignoring the dismissal of the case, and assuming the debtor is asking that the dismissal be vacated, there is no cause to reconsider the dismissal or the denial of the valuation motion and the confirmation of the plan.

The dismissal is the result of a dismissal motion filed by the trustee in connection with his successful objection to the confirmation of the original plan. After a hearing on February 2, the court set March 16 as the deadline for the confirmation of a plan. If that deadline was not met, the case would be dismissed on the trustee's ex parte application.

Even though the debtor did not meet the March 16 deadline, the trustee did not immediately move for dismissal. This may have been because the debtor set a hearing on a motion to confirm an amended plan on the March 16 deadline. However, on March 8, the debtor moved the hearing to the court's April 6 calendar. See Docket 58.

Also, because the debtor continued the confirmation hearing to April 6, the court continued the hearings on debtor's related valuation motions from March 16 to April 6 so that all motions would be heard at the same time.

The debtor failed to appear at the April 6 hearings. Even so, the court did not base its rulings on the failure to appear. The court took up the merits of each motion and the objections to each. The court denied confirmation of the plan and sustained the trustee's objection to that plan (RMW-3), it denied the debtor's motion to value Ally's collateral, a motor vehicle, at $22,848 (RMW-2), and granted the debtor's motion to value Fast Auto Loans collateral, a second vehicle (RMW-1). See Docket 67, 68, 69.

Only after the conclusion of the April 6 hearings did the trustee invoke the earlier order providing for the dismissal of the case. He filed his ex parte application for dismissal on April 14 and April 21 the case was dismissed.

The debtor's motion to vacate the orders denying the motions to value Ally's collateral and to confirm the amended plan is based on two false premises: one, that the court denied the motion to confirm the plan and the motion to value because the debtor failed to appear; two, that the debtor appeared at the April 6 but was told the hearings would take place on April 16.

As is clear from the minutes of the hearing, the court disposed of each motion on its merits and not on the debtor's failure to appear. The minutes also record that each motion was heard by the court and the debtor failed to appear at the hearing. The debtor was not told the hearings had been continued to April 16.

The valuations motions were set by the debtor for hearing on March 16. At the

February 2 hearing on the trustee's objection to the confirmation of the plan the court did not continue the March 16 hearing to April 16. On the contrary, March 16 was the deadline set by the court for the confirmation of a plan and the valuations motions would have to be adjudicated before or contemporaneously with the motion to confirm a plan.

Shortly before the March 16 hearing, the court continued the valuations motions to its April 6 calendar so they could be heard with the motion to confirm the amended plan. The debtor set the April 6 hearing and the court moved the valuation hearings to the date selected by the debtor. Even if the debtor somehow was confused about the hearing date for the valuation motions, that does not explain why the debtor did not appear on April 6 at the hearing the debtor set on the confirmation of the amended plan.

Finally, ignoring the fact that there is no cause to vacate the prior orders, there is nothing in this motion suggesting the court's prior decisions were wrong. There is no admissible evidence with the motion. Rather, the debtor offers the inadmissible hearsay testimony of a car dealer concerning the value of the vehicle securing Ally's claim. And, whatever the value of that vehicle, the plan was unconfirmable because all plan payments had not been paid.

3. 14-32504-A-13 YONG HUR — MOTION TO CONFIRM PLAN 3-24-15 [28]
CAH-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

When the case was filed, the debtor was the owner of real property with a value of approximately $450,000 to $550,000. After the case was filed, the debtor transferred it to the debtor's father for no consideration. The record includes no evidence making the case that the debtor has not the equitable owner of the property or that the post-petition transfer was permissible in light of 11 U.S.C. § 549. Because avoidable transfers are includable in the liquidation analysis, and because unsecured creditors will not be paid in full, the debtor has not carried of proving that the plan complies with 11 U.S.C. § 1325(a)(4).

4. 15-21913-A-13 MEGAN CARR — ORDER TO SHOW CAUSE 4-16-15 [16]

- ☐ 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 $79 installment when due on April 10. While the delinquent installment was paid on April 16, 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.

5. 12-33819-A-13 DENNIS/RENEE PLANJE — MOTION TO INCUR DEBT
WW-3 — 4-20-15 [45]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion to incur a purchase money loan in order to purchase a new home will be granted. The motion establishes a need for the home and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of the plan.

6. 15-20632-A-13 JOSEPH/ROBI ROGERS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 4-14-15 [77]

- ☐ 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 plan fails to state the arrearage owed on a Class 1 claim held by Mr. Cashen and provide for the cure of that arrearage. Therefore, the proposed plan impermissibly modifies a home loan and fails to provide for the cure of the arrearage. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B).

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. 15-20632-A-13 JOSEPH/ROBI ROGERS — OBJECTION TO CONFIRMATION OF PLAN
ME-3 — 4-16-15 [80]
TERRENCE CASHEN 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 and to the extent addressed in the ruling on the trustee's objection (JPJ-1).

8. 15-20632-A-13 JOSEPH/ROBI ROGERS — OBJECTION TO CONFIRMATION OF PLAN
MET-1 — 3-19-15 [31]
BANK OF THE WEST VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained to same extent and for the same reasons explained in the ruling of June 17, 2013 in the debtor's earlier chapter 13 case, Case No. 12-39573, wherein they proposed a plan that failed to provide for the Bank's secured claim. As to the Bank, the plan and the case have not been filed in good faith. See 11 U.S.C. § 1325(a)(3), (7). The court incorporates by reference its earlier ruling.

9. 15-22941-A-13 EVELYN/JERRY GAUDITE — MOTION TO EXTEND AUTOMATIC STAY O.S.T.
RLG-2 — 4-21-15 [17]

- ☐ 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.

A prior case was dismissed within the prior year because the debtor's unsecured debt exceeded the amount permitted by 11 U.S.C. § 109(e) for chapter 13 eligibility. In the current case, the schedules indicate that unsecured debt is within the debt limit.

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, at least facially, the impediment that thwarted the first case appears to have been eliminated.

10. 15-21243-A-13 SS-2 — ANTONIO BROWN AND LAKIYA LOWE-BROWN — MOTION TO CONFIRM PLAN 3-19-15 [28]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $1,096 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 does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay unsecured creditors $35,151.19 but Form 22 shows that the debtor will have $72,510 over the next five years.

11. 15-21243-A-13 SS-2 — ANTONIO BROWN AND LAKIYA LOWE-BROWN — COUNTER MOTION TO DISMISS CASE 4-15-15 [37]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

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.

12. 15-21845-A-13 — JOSEPH BARNES — ORDER TO SHOW CAUSE 4-13-15 [36]

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

13. 15-21845-A-13 SS-2 VS. CROWNE EQUITIES, L.L.C. — JOSEPH BARNES — MOTION TO AVOID JUDICIAL LIEN 4-6-15 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

According to the schedules filed and attached to the motion, the subject property has a value of $150,000, is encumbered by the respondent's judicial lien of $6,072, and $143,928 of the remaining equity is exempt. Therefore, the judicial lien does not impair the exemption – the debtor as well as the creditor could be paid if the property were sold for $150,000.

14. 15-21945-A-13 — CHRISTOPHER SWENDSEN — ORDER TO SHOW CAUSE 4-16-15 [31]

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

1307(c)(2).

15. 15-21945-A-13 CHRISTOPHER SWENDSEN
BHT-105996
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-3-15 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed in part and denied in part.

According to the motion, the debtor filed a prior case on December 4, 2014 that was dismissed on February 13, 2015, within the year prior to the filing of this case. This case was filed on March 12, 2015. No motion was made by the debtor or the trustee seeking to extend the automatic stay beyond the 30th day of the case. Hence, as a matter of law in this case, the automatic stay expired on April 11. Hence, there is no automatic stay in this case. See 11 U.S.C. § 362(c)(3).

There is no automatic stay to terminate. The court will confirm, however, the absence of the automatic stay. See 11 U.S.C. § 362(j).

Thus, the motion will be dismissed to the extent it seeks the termination of the automatic stay.

The motion will be denied to the extent it requests prospective in rem relief.

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."

Relief under 11 U.S.C. § 362(d)(4) will be denied because the movant is no longer "a creditor whose claim is secured by an interest in such real property," for purposes of 11 U.S.C. § 362(d)(4). The movant is the owner of the property. According to the motion, the movant purchased the property at the pre-petition foreclosure sale. The movant no longer owns a debt secured by the property.

Finally, in rem relief will be denied under 11 U.S.C. § 105 as well, because such relief requires an adversary proceeding. Johnson v. TRE Holdings LLC (In re Johnson), 346 B.R. 190, 195 (B.A.P. 9th Cir. 2006).

16. 15-21946-A-13 OSIRIS HENDERSON
BHT-1

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY
4-17-15 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

To the extent the motion seeks confirmation pursuant to 11 U.S.C. § 362(j) that the automatic stay never went into effect in this case, the motion will be granted. As recounted in the motion, three prior chapter 13 cases were filed by the debtor that were dismissed within one year of the filing of this case. Hence, no automatic stay went into effect in this case and review of the docket reveals that the court did not impose the automatic stay. See 11 U.S.C. § 362(c)(4).

The motion will be granted insofar as it asks for prospective relief pursuant to 11 U.S.C. § 362(d)(4).

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 movant has been attempting to foreclose its deed of trust due to the borrower's failure to make payments. However, the debtor has delayed a foreclosure by filing six chapter 13 cases, with all prior cases being dismissed without completion of a plan.

The court concludes that the purpose of these successive bankruptcy cases is

acquire the automatic stay without any intention of reorganizing under chapter 13. These facts evidence a clear scheme to delay, hinder, or defraud creditors by filing successive bankruptcy cases.

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. The court awards no fees and costs.

17. 15-21762-A-13 PAUL/SHERI D'ANGELO — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 4-14-15 [24]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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 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, 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).

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, Schedules I and J do not include the detailed statement of income and expenses associated with the debtor's real property rental. 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).

18. 14-31870-A-13 KARA WIDMAR — ORDER TO SHOW CAUSE 4-9-15 [23]

- ☐ 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 $77 due on April 6 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

19. 15-21472-A-13 RIGOBERTO/FELIX RODRIGUEZ — MOTION TO VALUE COLLATERAL 4-1-15 [28]
PGM-2
VS. WELLS FARGO BANK, N.A.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

The debtor has filed a valuation motion in connection with a proposed chapter 13 plan. The valuation motion addresses the value of a 2010 Volkswagen Jetta that secures Wells Fargo Bank's Class 2 claim. The debtor's evidence includes a long least of defects and mechanical issues. Given these issues and the 105,000 mileage, the debtor has opined that the vehicle has a value of $6,500. The debtor has also offered an expert opinion as to the liquidation value of the car, $4,950.

The bank counters that the value of the vehicle is $10,500 based on a "clean" retail evaluation by NADA Used Car Guide, a commonly used market guide.

To the extent the objection urges the court to reject the debtor's opinion of value because the debtor's opinion is not admissible, the court instead rejects the objection. As the owner of the vehicle, the debtor is entitled to express an opinion as to the vehicle's value. See Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

Any opinion of value by the owner must be expressed without giving a reason for the valuation. Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08). Indeed, unless the owner also qualifies as an expert, it is improper for the owner to give a detailed recitation of the basis for the opinion. Only an expert qualified under Fed. R. Evid. 702 may rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject. . . ." Fed. R. Evid. 703. "For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay, should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties unless, the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc." Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08).

The creditor has come forward with evidence that the replacement value of the

vehicle, based on its retail value as reported by NADA is $10,500. This valuation, however, presumes the condition of the vehicle is excellent. Cf. http://www.kbb.com (indicating that retail "value assumes the vehicle has received the cosmetic and/or mechanical reconditioning needed to qualify it as 'Excellent'" and that "this is not a transaction value; it is representative of a dealer's asking price and the starting point for negotiation").

The vehicle must be valued at its replacement value. In the chapter 13 context, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

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

Given the extensive use and condition issues, the court concludes the retail value of the vehicle is $6,500.

20. 15-21074-A-13 SHARON GRIFFIN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 4-14-15 [19]

- ☐ 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 $591.33 is less than the $1,820 in dividends and expenses the plan requires the trustee to pay each month.

Second, Local Bankruptcy Rule 3015-1(b)(6) provides: "*Documents Required by Trustee.* The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist,* or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes

a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

Third, 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.

Fourth, the plan is incomplete. The plan specifies no dividend for Class 7 unsecured creditors, whether it is 0%, 100% or something in between.

Fifth, to pay the dividends required by the plan and the rate proposed by it will take more than 600 month which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Sixth, because the debtor's exemptions were not claimed properly, none is likely to be allowed. Without exemptions, unsecured creditors would receive $10,300 in a chapter 7 case. Because the plan does not provide for the present value of $10,300 to unsecured creditors, it 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.

21. 13-34387-A-13 BRANDON/RACHELLE SCHWAB — MOTION TO MODIFY PLAN
DJC-6 — 4-6-15 [88]

- ☐ 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 $2,345 is less than the $2,527 in dividends and expenses the plan requires the trustee to pay each month.

Second, the debtor has not carried the burden of proving the plan is feasible because plan payments depend on the ability of a nondebtor to complete the payments. However, there is no evidence from that third party proving the ability or the inclination to make the payments.

FINAL RULINGS BEGIN HERE

22.	10-36204-A-13 BB-9	BRADLEY/CHARLOTTE THEURICH	MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY 4-6-15 [117]

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

The motion will be granted.

The motion seeks approval of $1,000 in fees incurred prosecuting the case to a confirmed plan. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and Local Bankruptcy Rule 2016-1, if applicable.

23.	15-21411-A-13 PGM-1 VS. ONE MAIN FINANCIAL	MARK GLOWSKI	MOTION TO VALUE COLLATERAL 4-1-15 [17]

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $9,205 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $9,205 of the respondent's claim is an allowed secured claim. When the respondent is paid $9,205 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

24. 15-21528-A-13 KEVIN KRONE — OBJECTION TO EXEMPTIONS
JPJ-2 — 3-31-15 [23]

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

The trustee objects 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 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). While this was not done when Schedule C was filed, the waiver was filed on April 23. Therefore, the objection will be overruled.

25. 12-23331-A-13 JOSEPH/LINDA MCBRIDE — MOTION TO MODIFY PLAN
RAC-4 — 3-30-15 [50]

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. 10-40138-A-13 TIBORTITO TAN — MOTION TO MODIFY PLAN
SDB-1 — 3-26-15 [35]

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.

27. 15-21243-A-13 ANTONIO BROWN AND LAKIYA LOWE-BROWN
SS-3
VS. LINCOLN FINANCIAL SERVICES

MOTION TO VALUE COLLATERAL
4-20-15 [40]

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $3,800 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $3,800 of the respondent's claim is an allowed secured claim. When the respondent is paid $3,800 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

28. 14-32051-A-13 SIL/YUN KIM
MDE-1
ONEWEST BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-2-15 [30]

Amended Final Ruling: The court issued its original ruling indicating that the movant had voluntarily dismissed this motion. Further review of the docket, however, indicates that the movant filed the motion twice, both times with the same docket control number. The voluntary dismissal was an attempt to dismiss the second filed duplicate motion.

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 and to obtain possession of its real property security in accordance with applicable nonbankruptcy law. The debtor has proposed a plan that does not provide for the payment of the movant's claim. Further, the debtor has not paid the claim under the terms of the contract with the movant since this case was filed in December 2014. 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.

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

29. 15-21472-A-13 RIGOBERTO/FELIX RODRIGUEZ — MOTION TO VALUE COLLATERAL
PGM-1 — 3-31-15 [20]
VS. CITIBANK, N.A. AND BEST BUY CREDIT SERVICES

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $250 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $250 of the respondent's claim is an allowed secured claim. When the respondent is paid $250 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

30. 14-20503-A-13 PETER/LINE FLEMING — MOTION TO MODIFY PLAN
MRL-2 — 3-9-15 [44]

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