UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 10, 2017 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 11. 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 JUNE 5, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 22, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 30, 2017. 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 12 THROUGH 16 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 15, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 17-20405-A-13 JPJ-1 — EFREN/ELIZABETH MEMORACION — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 4-19-17 [65]

- ☐ 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 in part and the motion to dismiss the case will be conditionally denied.

First, counsel for the debtor has opted to receive fees pursuant to Local Bankruptcy Rule 2016-1 rather than by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. However, the plan asks for fees greater than disclosed pursuant to Fed. R. Bankr. P. 2016(b). Unless and until that disclosure is amended to be consistent with the plan, the plan will pay the lesser of the amount disclosed and the amount provided for in the plan.

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

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.

2. 17-20405-A-13 PPR-1 — EFREN/ELIZABETH MEMORACION — OBJECTION TO CONFIRMATION OF PLAN 4-10-17 [55]
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.

Even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the pre-petition arrears owed to objecting creditor on its home loan. Instead, the plan is premised on the assertion that there are no arrears and the plan provides for the claim in Class 4. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

3. 17-20107-A-13 RENEE BOUTROS — MOTION TO CONVERT CASE OR TO DISMISS CASE 2-23-17 [22]
JPJ-2

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case converted to one under chapter 7.

The debtor proposed a plan that cannot be confirmed because it will not pay unsecured creditors the present value of what they would receive in a chapter 7 liquidation as required by 11 U.S.C. § 1325(a)(4). As noted by the trustee, the nonexempt net value of scheduled assets is $63,200 yet the plan proposed to pay less than $2,000 to unsecured creditors.

Apparently, at the meeting of creditors, the debtor asserted that her son is the "equitable owner" of her home and without the equity in her home included among her assets, the plan will pass muster under section 1325(a)(4). However, given the status of a chapter 7 trustee as a BFP under 11 U.S.C. § 544, an unrecorded interest in the debtor's home is likely to be avoided by a trustee. The discussion in the additional briefs filed by the debtor do not convincing deal with this issue.

First, the debtor assumes that an asset impressed with a resulting or a constructive trust cannot be reached by a trustee via section 544(a). This is incorrect. While the property may be impressed with a resulting or a constructive trust, both outside and inside of bankruptcy, it nonetheless may be subject to claims of a BFP.

Further, the additional briefs did not support the assertion that the son is the beneficial owner of the property. He helped his mother purchase by giving her more than $140,000 of the purchase price and he also helped her by making mortgage payments. However, he also informed the mortgage lender in writing that the $140,000 was a gift. That is, it was given to his mother without promise of anything in return. Further, since the purchase, the debtor's conduct has been inconsistent with an ownership interest in the son. She has claimed it as her exempt property and she has transferred the property into a revocable trust of which she is the beneficiary.

Consequently, assuming the son has an interest in the property, the proceeds realized by the avoidance of the son's interest must be included in the liquidation analysis absent some evidence, not provided by the debtor, that section 544 would not be applicable.

Finally, at best, the argument that the son has an interest in the home is an admission that her son embarked on a scheme to defraud a home lender. He was not able to qualify for a mortgage and so he had his mother do it for him which necessitated that she take title. Now that he can afford to make the payments, he wishes to leave title in his mother's name so as to not trigger a due on sale clause, but prevent his mother's bankruptcy estate from capitalizing on the fact that record title is in her name, not his. The court will not abet this scheme.

An examination of the schedules I and J shows that the debtor has no income beyond family assistance and that assistance is insufficient to fund a plan that requires payment of a $63,200 dividend to unsecured creditors.

While family assistance may be considered income for purposes of eligibility under 11 U.S.C. § 109(e), here that support is de minimis, just $100. It seems more an artifice that reality. And, even if considered material, there is no proof from the son of his ability or inclination to contribute it to the debtor throughout the duration of the plan. Hence, the debtor has not carried the burden of proving feasibility. See 11 U.S.C. § 1325(a)(6).

The inability of the debtor to propose a confirmable plan is cause for dismissal or conversion of the case to one under chapter 7, whichever is in the interests of creditors. See 11 U.S.C. § 1307(c)(1) & (c)(5). As noted in the trustee's motion, there are nonexempt assets that may produce a return of approximately $63,200 for unsecured creditors. Given this return, conversion rather than dismissal is in the interest of creditors.

4. 17-20107-A-13 RENEE BOUTROS — MOTION TO CONFIRM PLAN 2-17-17 [12]
MET-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection sustained for the reasons explained in this ruling and in the ruling on the trustee's motion to dismiss the case.

The debtor proposed a plan that cannot be confirmed because it will not pay unsecured creditors the present value of what they would receive in a chapter 7 liquidation as required by 11 U.S.C. § 1325(a)(4). As noted by the trustee, the nonexempt net value of scheduled assets is $63,200 yet the plan proposed to pay less than $2,000 to unsecured creditors.

Apparently, at the meeting of creditors, the debtor asserted that her son is the "equitable owner" of her home and without the equity in her home included among her assets, the plan will pass muster under section 1325(a)(4). However, as explained in the ruling on the motion to convert the case (which is incorporated by reference), the argument that the son is the equitable owner is not credible nor is accepted by the court as fact. Further, given the status of a chapter 7 trustee as a BFP under 11 U.S.C. § 544, an unrecorded interest in the debtor's home is likely to be avoided by a trustee. Consequently, the

proceeds realized by the avoidance of the son's interest must be included in the liquidation analysis absent some evidence, not provided by the debtor, that section 544 would not be applicable.

An examination of the schedules I and J shows that the debtor has no income beyond family assistance and that assistance is insufficient to fund a plan that requires payment of a $63,200 dividend to unsecured creditors. This impacts both the plan's feasibility and the debtor's eligibility for chapter 13 relief. See 11 U.S.C. §§ 109(e), 1325(a)(6).

5. 17-21115-A-13 AARON BUSHEY — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 4-19-17 [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 debtor owes a domestic support obligation. Local Bankruptcy Rule 3015-1(b)(6) provides:

"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*."

The debtor failed to deliver to the trustee the Domestic Support Obligation Checklist. This checklist is designed to assist the trustee in giving the notices required by 11 U.S.C. § 1302(d).

The trustee must provide a written notice both to the holder of a claim for a domestic support obligation and to the state child support enforcement agency. See 11 U.S.C. §§ 1302(d)(1)(A) & (B). The state child support enforcement agency is the agency established under sections 464 and 466 of the Social Security Act. See 42 U.S.C. §§ 664 & 666. Section 1302(d)(1)(C) requires a third, post-discharge notice to both the claim holder and the state child support enforcement agency.

The trustee's notice to the claimant must: (a) advise the holder that he or she is owed a domestic support obligation; (b) advise the holder of the right to use the services of the state child support enforcement agency for assistance

in collecting such claim; and (c) include the address and telephone number of the state child support enforcement agency.

The trustee's notice to the State child support enforcement agency required by section 1302(d)(1)(B) must: (a) advise the agency of such claim; and (b) advise the agency of the name, address and telephone number of the holder of such claim.

By failing to provide the checklist to the trustee, the debtor has disregarded the rule that it be provided, has breached the duty to cooperate with the trustee imposed by 11 U.S.C. § 521(a)(3) & (a)(4). This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

Second, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Chrysler Capital 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, 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).

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

6. 17-21121-A-13 MARTIN STREETER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 4-19-17 [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 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, 11 U.S.C. § 521(e)(2)(B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The failure to provide the return to the trustee justifies dismissal and denial of confirmation. In addition to the requirement of section 521(e)(2) that the petition be dismissed, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 found at section 1228(a) of BAPCPA provides that in chapter 11 and 13 cases the court shall not confirm a plan of an individual debtor unless requested tax documents have been turned over. This has not been done.

Fourth, the debtor has failed to commence making plan payments and has not paid approximately $652.37 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Fifth, the secured tax claim of Shasta County is misclssified in Class 5 which is reserved for priority claims. The distinction is material inasmuch as secured claims must accrue interest while unsecured priority claims do not. See 11 U.S.C. §§ 1322(a)(2) & 1325(a)(5)(B).

Sixth, to the extent the plan's feasibility rests on the debtor's ability to obtain a reverse mortgage, there is no evidence that the debtor has or will qualify for such a loan. And, to the extent the debtor has obtained the loan after this case was filed, he has done so without complying with Local Bankruptcy Rule 3015-1(i)(2).

Seventh, 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 Fed. R. Bankr. P. 2016(b) by filing a disclosure of fees.

7. 17-20673-A-13 SARINA BRYSON
MRL-1

MOTION TO CONFIRM PLAN
3-19-17 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The court denied confirmation of the debtor's first plan because, among other reasons, that plan did not comply with 11 U.S.C. § 1325(b). It neither paid unsecured creditors in full nor paid them all of the debtor's projected disposable income. The first plan promised to pay unsecured creditors $55,201 even though Form 122C showed that the debtor will have $104,321.40 over the next five years.

The debtor has now filed and amended plan and an amended Form 122C.

The amended plan promises to pay unsecured creditors no less than $82,737. This is less than the debtor's projected disposable income than is reported on the original Form 122C but more than the $72,073.20 shown on amended Form 122C. The changes on the amended Form, however, have not been substantiated and appear to be calculated only to reduce the debtor's projected disposable income. For instance, the debtor has deducted $120 a month for plumbing repairs as part of her housing and utility expense (an expense not permitted as part of the housing deduction by the statute), $5,100 a month for taxes (an increase of almost $300 that is not corroborated by any evidence), $2,000 a month for the proposed plan payment (even though the average payment is only $1,571), $900 of "special circumstance" expenses related to education expenses for an adult child and the care of pets (neither of which can be characterized as reasonable and necessary expenses and exceed the statutory deductions permitted), and an additional $85 deduction for trustee's fees in excess of that permitted by the U.S. Trustee. With these deductions disallowed, the debtor will have sufficient projected disposable income to pay unsecured claims in full.

8. 14-30076-A-13 THOMAS/CYNTHIA MOORE
MWB-6

MOTION TO MODIFY PLAN
3-27-17 [68]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to make $80 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).

9. 15-20884-A-13 JACQUIE ROBINSON
JDR-4

MOTION TO MODIFY PLAN
4-14-17 [90]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice.

According to the certificate of service, this motion was set on 27 days' notice. Local Bankruptcy Rule 3015-1(d)(3) requires 35 days of notice.

Also, comparison of the service list on the certificate to the master address list indicates that all creditors were not served with the motion.

10. 15-20884-A-13 JACQUIE ROBINSON — MOTION TO VALUE COLLATERAL
JDR-4
VS. OCWEN LOAN SERVICING L.L.C. — 4-14-17 [93]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice.

First, the hearing was set on 27 days' notice. Because the notice of the hearing required the respondent to file a written response to the motion, Local Bankruptcy Rule 9017-1(f)(1) required 28 days of notice.

Second, because the motion maintains that the subject property has a value of $160,970 and because the claim is less than that amount, the court sees no purpose in valuing the home.

11. 17-20885-A-13 KANDICE RICHARDSON FOWLER — ORDER TO SHOW CAUSE
4-19-17 [42]

- ☐ 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 $76 due on April 14 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

Final Rulings Begin Here

12. 16-24032-A-13 IGNACIO LAUDER AND WILMA FRONDA — OBJECTION TO CLAIM
MET-4
VS. SYSTEMS AND SVCS. TECHNOLOGIES, INC. — 3-23-17 [50]

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

The objection will be sustained and the claim disallowed.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the initial payment was due to the claimant in September 2001. No payments were made. Therefore, using the last date in September 2001 as the date of breach, when the case was filed on June 22, 2016, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

13. 16-22552-A-13 BOWEN/NADINE RIDEOUT
JCW-2
BAYVIEW LOAN SERVICING, L.L.C. VS. — MOTION FOR RELIEF FROM AUTOMATIC STAY
4-6-17 [120]

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

The motion will be granted.

The motion pertains to real property located in Massachusetts and owned of record by a relative of the debtor. The movant holds a note secured by the property. The relative died in 2013. The motion is filed in the event the debtor is entitled to inherit the subject property and because the mortgage payments have not been made since May 2016. The debtor's plan makes no provision for the mortgage debt.

In the event the debtor is entitled to an interest in the subject property, there is cause to terminate the automatic stay. The debtor has proposed a plan

that does not provide for the payment of the movant's claim. Further, the debtor is not paying the claim outside of the bankruptcy case. 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, and because the debtor has no privity of contract with the movant, 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.

14. 15-26663-A-13 JENNIFER TUNISON — MOTION TO MODIFY PLAN 3-19-17 [36]
MRL-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 debtor, 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 trustee, 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.

15. 17-21474-A-13 RAFE SPAULDING — OBJECTION TO CONFIRMATION OF PLAN 4-20-17 [15]
RCO-1
WELLS FARGO BANK, N.A. VS.

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The debtor's response to the objection concedes its merit. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The objection will be sustained.

Even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the pre-petition arrears claimed by the objecting creditor in connection with its the Class 1 home loan. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

16. 17-21878-A-13 ANTHONY METZ — MOTION TO VALUE COLLATERAL
MRL-1
VS. INTERNAL REVENUE SERVICE — 4-8-17 [9]

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 debtor is the owner of the subject personal property. The debtor's evidence indicates that the replacement value of the subject property (not including the over-encumbered vehicle and the tax refund retained by the respondent) is $8,441 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $8,441 of the respondent's claim is an allowed secured claim. When the respondent is paid $8,441 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.