UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 22, 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 13. 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 19, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 5, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 12, 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 14 THROUGH 34 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 30, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1.	16-24004-A-13 LDD-2	JENNIFER/VINCENT HAMMOND	OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES 4-10-17 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection to the demand for $650 will be sustained.

This case was filed on June 20, 2016.

Quicken Loans holds a claim secured by the debtor's home. After receiving due and proper notice of the commencement of the case, it filed a timely proof of claim on August 2, 2016. The proof of claim indicates that Quicken is owed $233,386.85, that its claim is fully secured, and that there are no pre-petition arrears owed on the loan.

A short time later, on August 29, 2016, Quicken filed a Notice of Postpetition Mortgage Fees, Expenses and Charges. This notice demanded payment of $150 in attorney's fees, and $500 in "bankruptcy/proof of claim fees".

Because the Quicken home loan was not in default when the case was filed, was a long term loan, and was not modified by the plan, the plan provided for the loan in Class 4. Class 4 claims are unmodified by the plan and receive regular monthly contract installment payments directly from the debtor. Upon confirmation of the plan, the automatic stay terminates as to this and any other Class 4 claim.

This treatment meant that the plan made no provision for the payment of the $650 demanded in the Notice. If the debtor wished to pay this sum, the debtor either could modify the plan to provide for payment of the $650 or pay the $650 directly to Quicken.

Instead, the debtor has objected to the $650 demanded in the Notice. The objection makes two points. First, the loan documentation does not provide for the payment of these fees and costs. Second, the amount is unreasonable or at least has not been proven to be reasonable. Both points are well taken.

The promissory note appended to the proof of claim includes a provision permitting Quicken to demand its reasonable fees and costs if it has required the maker to immediately pay in full the note. This clause has no applicability here inasmuch as the note was not in default when the case was filed and has not gone into default since the case was filed, and Quicken has not accelerated the note.

Paragraph 14 of the Uniform Covenants in the deed of trust provides in relevant part:

"14. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law."

While the court agrees that fees and costs, even when incurred in connection with litigation of issues peculiar to bankruptcy law, may be assessed by a secured creditor to the debtor, the fees and costs must be provided for in the underlying loan documentation. See Kord Enters. II v. California Commerce Bank (In re Kord Enters. II), 139 F.3d 684 (9th Cir. 1998). Here, the provisions permitting Quicken to demand fees and costs in both the note and deed of trust are premised on a default by the debtor. The loan was not in default when the case was filed and no default is alleged to have occurred after the case was filed.

Assuming for sake of argument that Quicken could assess fees and costs incurred in connection with a loan not in default, the fees and costs must be reasonable. See Countrywide Home Loans, Inc. v. Hoopai (In re Hoopai), 581 F.3d 1090 (9th Cir. 2009). The court concludes that no fees and costs are reasonable in the context of this case. The loan was not in default when the case was filed. The loan was not in default after the case was filed. The proposed plan provided for no modification of the loan and the debtor promised to continue making contract installment payments to Quicken both before and after the plan was confirmed. The debtor has kept that promise. Once the plan was confirmed, the plan provided for the termination of the automatic stay as to Quicken's claim. And, because Quicken's claim will mature after the plan is completed, the claim will not be discharged. See 11 U.S.C. §§ 1322(b)(5), 1328(a)(1). In these circumstances, there was and is no practical reason or legal compulsion to file a proof of claim. See 11 U.S.C. § Fed. R. Bankr. P. 3002(a).

In essence, the debtor is being charged $650 so the creditor can demand nothing in this case. That is unreasonable.

2.	17-21428-A-13 DEF-2	ROBERT/VALERIE KUSHNER	MOTION TO CONFIRM PLAN 4-3-17 [31]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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, to pay the dividends required by the plan at the rate proposed by it will take 218 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Third, the plan assumes the arrears on the objecting creditor's Class 1 secured claim are approximately $9,902. The creditor indicates that the arrears are more than $54,314.78. At this higher level, the plan either is not feasible or it will not pay the objecting secured claim in full. The plan fails to comply with 11 U.S.C. §§ 1325(a)(5)(B) & (a)(6).

3. 17-21634-A-13 WALTER BOYD — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 4-27-17 [14]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

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

The debtor has not failed to file an income tax return for 2011, 2013, 2014. These returns are delinquent.

Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becoming effective, the Bankruptcy Code did not require chapter 13 debtors to file delinquent tax returns. If a debtor did not file tax returns, the trustee might object to the plan on the grounds of lack of feasibility or that the plan was not proposed in good faith. See, e.g., Greatwood v. United States (In re Greatwood), 194 B.R. 637 (9th Cir. B.A.P. 1996), *affirmed*, 120 F.3d. 268 (9th Cir. 1997).

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors.

In this case, the meeting of creditors was held and concluded on May 18. Hence, the deadline for filing the delinquent returns has expired and it is impossible for the debtor to comply with section 1308.

There are two consequences to a failure to comply with section 1308. The failure is cause for dismissal. See 11 U.S.C. § 1307(e). In this case, however, the trustee has not moved for dismissal. Also, 11 U.S.C. § 1325(a)(9) and an uncodified provision of BAPCPA found at section 1228(a) of the Act provide that the court cannot confirm a plan if delinquent returns have not been filed with the taxing agency and filed with the court. This has not been done and so the court cannot confirm any plan proposed by the debtor.

4. 16-27839-A-13 JOHN/HELENA MOEHRING — MOTION TO CONFIRM PLAN
PGM-2 — 4-7-17 [41]

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

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 $23,510.64 to unsecured creditors. While consistent with Form 122C, the debtor has not accurately completed Form 122C. The debtor has taken an impermissible deduction from current monthly income for a $1,219.38 voluntary pension contribution. This is disposable income; the debtor may not make those contributions and deduct them from the debtor's current monthly income. Accord Parks v. Drummond (In re Parks), 475 B.R. 703 (B.A.P. 9th Cir. 2012). As a result, the debtor has monthly projected disposable income of $1,569.06. If paid to unsecured creditors, they would share a total of $94,143.60 over the life of the plan. Because the plan will pay only $23,510.64 to these creditors, it does not comply with 11 U.S.C. § 1325(b).

5. 17-20539-A-13 SUZANNE HANEFIELD MOTION TO SELL
LBG-2
5-1-17 [64]

- ☐ 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 dismissed without prejudice. The filing fee for the motion was not paid.

6. 15-21845-A-13 JOSEPH BARNES MOTION TO AVOID JUDICIAL LIEN
SS-9
VS. CROWNE EQUITIES, L.L.C.
5-8-17 [163]

- ☐ 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 without prejudice.

The motion asserts that the respondent holds a judicial lien that impairs the debtor's $150,000 exemption under Cal Civil Pro. Code § 704.730 of real property.

However, this exemption was claimed in an Amended Schedule C filed on May 8. Creditors and other parties in interest have 30 days from the service of the amended schedule to object to the amended exemption. The time to object has not expired. Therefore, this motion is premature because the debtor's exemption has not yet been allowed.

Also, there is no evidence with the motion establishing the debtor's right to an exemption of $150,000. The fact that it was claimed without objection (perhaps) is not good enough. The debtor must prove entitlement to the exemption. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

7. 17-21146-A-13 JENNIFER CAMPBELL — ORDER TO SHOW CAUSE 5-1-17 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Amended Tentative Ruling: The case remain pending and the order to show cause will be discharged.

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 25. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

8. 16-22552-A-13 BOWEN/NADINE RIDEOUT — MOTION TO APPROVE COMPROMISE 4-7-17 [132]
ET-6

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted on the condition that in the order granting the motion it provides confirmation of the plan and payment of $115,000 pursuant to that plan is payment in full of both proofs of claim.

9. 16-22552-A-13 BOWEN/NADINE RIDEOUT — MOTION TO CONFIRM PLAN 4-7-17 [127]
ET-5

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted on the condition that payment of $115,000 pursuant to the plan is payment in full of both proofs of claim. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

The fact that no other creditors have filed proofs of claim is not a basis for denying confirmation.

10. 16-22552-A-13 BOWEN/NADINE RIDEOUT STATUS CONFERENCE
16-2161 8-4-16 [1]
GARDINER ET AL V. RIDEOUT ET AL

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None.

11. 15-29553-A-13 DEAN/SHELYA WILLIAMS MOTION TO
JPJ-2 CONVERT OR TO DISMISS CASE
4-12-17 [54]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The debtor proposed and confirmed a plan. The debtor thereafter failed to make timely plan payments which are now delinquent in the sum of $1,248. Thus, there is cause to dismiss or convert the case to one under chapter 7, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(1).

After a review of the schedules, the court concludes that conversion rather than dismissal is in the best interests of creditors because there is in excess of $16,000 of equity in unencumbered, nonexempt assets that will benefit creditors if liquidated by a trustee.

Nonetheless, since the motion was filed, the debtor has proposed a modified plan that will be considered for confirmation at a hearing on June 19. If the debtor is unable to confirm a plan on June 19, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for conversion of the case to one under chapter 7. If the debtor has not confirmed by June 19, the case will be converted on the trustee's ex parte application.

12. 17-21160-A-13 LUIS/MELISSA CRUZ DE LA OBJECTION TO
JPJ-2 CRUZ EXEMPTION
4-13-17 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The trustee's objects to a homestead exemption in the amount of approximately $148,000 pursuant to Cal. Civ. Pro. Code § 704.730(a)(3)(B). The trustee maintains that because the debtor has not qualified to receive disability income, the debtor cannot establish a physical or mental disability that renders the debtor unable to engage in substantial gainful employment. However, section 704.730 does not require that such a person be receiving disability income. Rather, receipt of it creates a rebuttable presumption of a qualifying disability. But, the absence of disability income does not prevent the debtor from claiming a disability.

Inasmuch as the objection says nothing other than that the debtor is not receiving disability income, the trustee has not satisfied the burden of coming forward with evidence that the debtor is not disabled.

13. 16-28073-A-13 JEFFREY/YELENA MAYHEW MOTION TO CONFIRM PLAN
PGM-3 4-6-17 [53]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $4,600 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, on Form 122C, the debtor has overstated deductions from current monthly income in three particulars. As a result, the plan will not pay all projected disposable income to unsecured creditors as required by 11 U.S.C. § 1325(b).

First, the debtor is deducting a $440 for the repayment of a loan secured by a vehicle. However, the vehicle does not belong to the debtor and the loan is not an obligation of the debtor. This expense will be disallowed.

Second, the debtor's deduction for taxes is inconsistent with the debtor's tax payments in 2015. Rather than deduct $5,306.80, the debtor should be deducting $4,094.

Third, the debtor is deducting $160.42 in education expenses over the five year commitment period for a 17 year old son. Because the debtor may not deduct these expenses once the son is no longer a minor, the expense may only be deducted for no more than one year, or 20% of $16.42 over five years.

With the corrections urged by the trustee, the debtor's monthly projected disposable income is $2,400.63 which will be sufficient to pay $144,037.80 to unsecured creditors over the plan's 5-year duration. The plan proposes to pay a 10% dividend to $320,019.44 of unsecured claims. This is approximately $32,000 rather than the required $144,037.80.

FINAL RULINGS BEGIN HERE

14. 16-24004-A-13 JENNIFER/VINCENT HAMMOND OBJECTION TO
LDD-1 CLAIM
VS. PINNACLE CREDIT SERVICES, L.L.C. 4-10-17 [21]

Final Ruling: This objection to the proof of claim of Pinnacle Credit Services 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 in part 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 last payment was no later than December 15, 2010. Therefore, using this date as the date of breach, when the case was filed on June 20, 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).

The request for attorney's fees will be denied. While the court agrees that Cal. Civil Code § 1717 makes reciprocal an attorney's fee provision in the underlying contract, the record includes neither the contract nor other evidence of its content including an attorney's fee provision.

Finally, while the claimant withdrew its proof of claim on May 12, because this objection was pending before that withdrawal, the court has considered the merits of the objection. See Fed. R. Bankr. P. 3006.

15. 17-20405-A-13 EFREN/ELIZABETH MOTION FOR
APN-1 MEMORACION RELIEF FROM AUTOMATIC STAY
SANTANDER CONSUMER USA, INC. VS. 4-19-17 [59]

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

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess and to obtain possession of its personal property security, and to dispose of it in accordance with applicable nonbankruptcy law. The

movant is secured by a vehicle. 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. 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.

16. 14-29113-A-13 SIMONE MUNGUIA — MOTION TO MODIFY PLAN
RKL-1 — 4-16-17 [74]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. 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 motion will be granted on the condition that the confirmation order further modify the plan to correctly state the total of all prior payments, $39,319, made through March 2017 and to require monthly payment of $1,003 beginning in April 2017. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

17. 17-21013-A-13 GRACE KENNEDY — OBJECTION TO EXEMPTIONS
JPJ-2 — 4-13-17 [16]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. There is no objection to the relief requested and the court will not materially alter the relief requested. 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 overruled.

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). This was not done when the case was filed.

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

11 U.S.C. § 522(b)(1) permits the states to opt out of the federal exemption statutory scheme set forth in section 522(d). In enacting Cal. Civ. Proc. Code § 703.130, the State of California opted out of the federal exemption scheme

relegating a debtor to whatever exemptions are provided under state law. Thus, substantive issues regarding the allowance or disallowance of a claimed exemption are governed by state law in California.

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

Here, the debtor is asserting the exemptions of Cal. Civ. Proc. Code § 703.140(b), which requires a spousal waiver. That waiver was not filed with the petition.

However, it was filed after the objection was filed. Therefore, the objection will be overruled.

18. 17-21115-A-13 AARON BUSHEY — MOTION TO VALUE COLLATERAL
JSO-1 — 4-19-17 [14]
VS. CHRYSLER CAPITAL

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 $7,500 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, $7,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $7,500 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.

19. 17-21428-A-13 ROBERT/VALERIE KUSHNER — MOTION TO VALUE COLLATERAL
DEF-3 — 4-10-17 [42]
VS. NATIONSTAR MORTGAGE

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 motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $500,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Nationstar Mortgage. The first deed of trust secures a loan with a balance of approximately $850,000 as of the petition date. Therefore, Nationstar Mortgage's other 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 $500,000. 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).

20. 17-20031-A-13 JAMES MURRAY — MOTION TO CONFIRM PLAN
RS-1 — 4-7-17 [33]

Final Ruling: The motion will be dismissed without prejudice. The motion was served on the wrong chapter 13 trustee.

21. 16-24632-A-13 CARLOS/ELIZABETH MAXIMO — OBJECTION TO CLAIM
JPJ-1 — 3-21-17 [17]
VS. CAVALRY SPV II, L.L.C.

Final Ruling: This objection to the proof of claim of Cavalry SPV II 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 last payment was no later than November 6, 2008. Therefore, using this date as the date of breach, when the case was filed on July 15, 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).

22. 15-21845-A-13 JOSEPH BARNES — MOTION TO MODIFY PLAN
SS-8 — 4-13-17 [154]

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.

23. 16-21545-A-13 ALANIE NONAN — MOTION TO CONVERT OR TO DISMISS CASE
JPJ-2 — 4-12-17 [50]

Final Ruling: This motion to dismiss or to convert the case to one under chapter 7 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 debtor has failed to pay to the trustee approximately $800 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal or conversion, whichever is in the bests interests of creditors. See 11 U.S.C. § 1307(c)(1).

After a review of the schedules, the court concludes that conversion rather than dismissal is in the best interests of creditors because there is in excess of $11,000 of equity in unencumbered, nonexempt assets that will benefit creditors if liquidated by a trustee.

24. 16-24946-A-13 TWILA HENRY — OBJECTION TO CLAIM
JPJ-2 — 4-7-17 [50]
VS. CACH, L.L.C.

Final Ruling: This objection to the proof of claim of CACH 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.

The last date to file a timely proof of claim was November 30, 2016. The proof of claim was filed on December 5, 2016. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

25. 15-22548-A-13 MARGARET CLARK — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
BLG-5 — 4-21-17 [101]

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 seeks approval of $2,438 in additional fees and $40.54 in costs incurred principally in connection with assisting the debtor with a loan modification and responding to a dismissal motion. 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.

26. 16-20750-A-13 MARCOS EVANGELISTA — MOTION TO MODIFY PLAN
MRL-2 — 4-10-17 [43]

Final Ruling: The motion has been voluntarily dismissed.

27. 16-22552-A-13 BOWEN/NADINE RIDEOUT — MOTION TO CONFIRM PLAN
ET-1 — 6-16-16 [29]

Final Ruling: The court deems this motion to have been voluntarily dismissed inasmuch as the debtor subsequently proposed that a modified plan be confirmed.

28. 16-22552-A-13 BOWEN/NADINE RIDEOUT — OBJECTION TO CLAIM
ET-3
VS. DEBORAH GARDINER — 9-8-16 [78]

Final Ruling: The objection has been resolved by a compromise. The objection

will be dismissed.

29. 16-22552-A-13 BOWEN/NADINE RIDEOUT — OBJECTION TO CLAIM
ET-4
VS. WILLIAM GARDINER — 9-8-16 [83]

Final Ruling: The objection has been resolved by a compromise. The objection will be dismissed.

30. 17-22055-A-13 ROBERT/JULIE WARES — ORDER TO SHOW CAUSE
5-4-17 [17]

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

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $79 installment when due on May 1. However, after the issuance of the order to show cause, the filing fee was paid in full. No prejudice was caused by the late payment.

31. 16-27478-A-13 RAYMOND WOLFE — MOTION TO CONFIRM PLAN
PLG-3 — 4-7-17 [51]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the 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 plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

32. 15-20884-A-13 JACQUIE ROBINSON — MOTION TO MODIFY PLAN
JDR-5 — 4-24-17 [103]

Final Ruling: The motion has been voluntarily dismissed.

33. 13-26286-A-13 ANTHONY/BRIDGET CARDENAS — MOTION TO MODIFY PLAN
PGM-3 — 4-14-17 [63]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. 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 motion will be granted on the condition that the confirmation order further modify the plan to correctly state the total of all prior payments, $141,198.

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

34. 13-20087-A-13 JOSEFINA/JOSE LORICO
HDR-9

MOTION TO
SUBSTITUTE A PERSONAL
REPRESENTATIVE ETC
4-17-17 [117]

Final Ruling: This 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 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.

Debtor Jose Lorico died after this case was filed. Prior to his death, the debtors confirmed but have not yet completed a plan. Both debtors filed a financial management certificate. See 11 U.S.C. §§ 110, 111, 1328(g)(1) and Fed. R. Bankr. P. 1007(c). The co-debtor, Josefina Lorico, is authorized pursuant to Local Bankruptcy Rule 1016-1 to file the case-ending documents required by Local Bankruptcy Rules 1007(c) and 5009-1. The clerk shall enter the discharge of both debtors when the co-debtor is otherwise entitled to a discharge.