UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 23, 2016 at 1:30 p.m.

THIS CALENDAR IS DIVIDED INTO TWO PARTS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN BOTH PARTS OF THE CALENDAR. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 12. 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 27, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 13, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 20, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 13 THROUGH 28 IN THE SECOND PART OF THE CALENDAR. INSTEAD, THESE ITEMS HAVE BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON MAY 31, 2016, AT 2:30 P.M.

Matters to be Called for Argument

1. 16-20002-A-13 DEMETRIUS BELLAMY — MOTION TO CONFIRM PLAN
RWH-2 — 4-1-16 [27]

- ☐ 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 $4,280 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 fails to provide at section 2.07 or in the additional provisions for a dividend to be on account of allowed administrative expenses, including the debtor's attorney's fees. Unless counsel is working for nothing, this means that the plan does not provide for payment in full of priority claims as required by 11 U.S.C. § 1322(a)(2). Also see 11 U.S.C. §§ 503(b), 507(a).

Third, the plan fails to provide for the cure of the arrears owed to Ditech on its Class 1 claim in equal monthly installments as required by 11 U.S.C. § 1325(a)(5)(B)(iii)(I).

2. 16-20820-A-13 DIANNE/ALAN DREVER — MOTION TO VALUE COLLATERAL
HDR-1 — 3-1-16 [12]
VS. PATELCO CREDIT UNION

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The debtor's motion to value the debtor's home at $425,000 will be denied.

According to the debtor, the home has a value of $425,000. As the owner, the debtor may give an opinion of the value but that opinion must be expressed without giving a reason for the valuation. Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08). 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).

Hence, the only evidence supporting the motion is the debtor's statement of value. To the extent the debtor purports to base that opinion on a comparison to other properties, the court will not consider this purported corroboration because the debtor is not a real estate professional.

On the other hand, the opposition is supported by expert testimony from two such professionals, a real estate agent and an appraiser. The lowest value offered by these experts is $475,000. At that value, the second mortgage held by the respondent creditor is at least partially "in the money" and therefore In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997) are of no help to the debtor. Instead, Nobelman v. American Savings Bank, 508 U.S. 324 (1993), prevents the debtor from stripping down the second mortgage because it encumbers the debtor's home and 11 U.S.C. § 1322(b)(2) prevents a debtor from modifying a mortgage that is at least partially collateralized.

The court concludes that the debtor's opinion of value, in the face of the experts' opinions, is not credible. Accordingly, the debtor has not met the burden of proving a value of $425,000.

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

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Patelco in order to strip down or strip off its secured claim from its collateral. While such motion has been filed, it was denied. Absent a successful motion the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

4. 16-21532-A-13 MARY MURPHY — MOTION TO CONFIRM PLAN
DPR-2 — 4-7-16 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan will take more than 200 months to be completed because it provides for payment in full of unsecured claims. The debtor has not taken account of the now unsecured claim of JPMorgan Chase in the amount of more than $69,000. The plan will not be completed within the 5-year maximum duration permitted by 11 U.S.C. § 1322(d).

The argument that JPMorgan Chase's claim, which has been stripped from its collateral pursuant to 11 U.S.C. § 506(a) as interpreted 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), is

not an allowed claim because it was discharged in a prior chapter 7, fails to deal with In re Gounder, 266 B.R. 879 (Bankr. E.D. Cal. 2001), affirmed, (E.D. Cal. 2001). That case concludes that a discharged secured claim that is stripped from its collateral in a subsequent case becomes an unsecured claim the prior discharge notwithstanding.

5. 16-21532-A-13 MARY MURPHY — COUNTER MOTION TO DISMISS CASE
DPR-2 — 5-9-16 [35]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The counter 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.

6. 16-21936-A-13 LIDIYA KRAVCHUK — ORDER TO SHOW CAUSE
5-3-16 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

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

7. 16-21385-A-13 WILFREDO/FE ONA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 4-27-16 [33]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection concerns the alleged failure to value the collateral of Capital One Bank. However, its collateral has been valued and with that valuation, the plan complies with 11 U.S.C. § 1325(a)(5).

8. 11-48790-A-13 WALTER/SHERRI BRINKERHOFF MOTION TO
SJS-2 VACATE DISMISSAL OF CASE
5-9-16 [51]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

The trustee's Notice of Filed Claims was filed and served on October 17, 2012 as required by Local Bankruptcy Rule 3007-1(d) and former General Order 05-03. That notice advised the debtor of all claims filed by creditors. Given the claims filed and their amounts, it would have taken 104 months to pay the dividends promised by the confirmed plan. The confirmed plan specified that it had to be completed within 60 months as required by 11 U.S.C. § 1322(d).

The debtor failed to reconcile the plan with the claims, either by filing and serving a motion to modify the plan to provide for all claims within the maximum duration permitted by section 1322(d), or by objecting to claims. This is required by Local Bankruptcy Rule 3007-1(d)(5) and former General Order 05-03 which provides: "If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date." See also former General Order 05-03, ¶ 6; In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004).

Because the time to modify the plan under Local Bankruptcy Rule 3007-1(d)(5) and under former General Order 05-03, ¶ 6, had expired, the trustee moved to dismiss the case on March 22. The trustee's motion was set for hearing on April 21 pursuant to Local Bankruptcy Rule 9014-1(f)(1). Therefore, the debtor was required to file written opposition to the dismissal motion by April 7. None was filed.

Therefore, because the plan could not be completed within its 60 month duration, because the debtor had failed to modify the plan despite a reasonable opportunity to do so, because the failure to timely modify the plan was a material breach of the plan, and because the debtor failed to file written opposition to the dismissal motion, the court dismissed the case without hearing. See 11 U.S.C. § 1307(c)(6).

The debtor then filed this motion to vacate the dismissal. While acknowledging the failure to file written opposition to the dismissal motion, the debtor points out that a motion to confirm a modified plan was filed before the hearing on the dismissal motion. The court will deem that motion to be opposition to dismissal and it will vacate the dismissal. However, instead of granting the dismissal motion outright, it will be conditionally denied. The debtor will have 60 days to confirm a modified plan. If not confirmed timely, the case will be dismissed on the trustee's ex parte application.

9. 16-21694-A-13 ALICE PEREZ — MOTION TO VALUE COLLATERAL
PGM-1
VS. TRAVIS CREDIT UNION — 4-21-16 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None. There is a material disputed fact, the value of the subject vehicle. Therefore, the persons who have offered opinions of value in the written record shall be presented at an evidentiary hearing on May 31, 2016 at 2:30 PM. Each side will have 45 minutes to examine and cross-examine these witnesses, to object to testimony, and to make argument.

10. 16-21694-A-13 ALICE PEREZ — MOTION TO VALUE COLLATERAL
PGM-2
VS. TRAVIS CREDIT UNION — 4-21-16 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None. There is a material disputed fact, the value of the subject vehicle. Therefore, the persons who have offered opinions of value in the written record shall be presented at an evidentiary hearing on May 31, 2016 at 2:30 PM. Each side will have 45 minutes to examine and cross-examine these witnesses, to object to testimony, and to make argument.

11. 16-21599-A-13 CHRISTOPHER/GLEE WOODYARD — MOTION TO VALUE COLLATERAL
OAG-3
VS. AMERICREDIT FINANCIAL SERVICES, INC. — 4-25-16 [29]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor has filed a valuation motion that accompanies a proposed chapter 13 plan. The valuation motion addresses the value of a 2007 Honda Accord that secures Americredit's Class 2 claim. The debtor has opined that the vehicle has a value of $6,813. The debtor's record includes nothing about the vehicle's condition, mileage or accessories.

The creditor counters that the value of the vehicle is $8,600 based on a "clean retail" evaluation by the NADA Guides.

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 a commonly used market guide, is $8,600. Such valuations, however, usually presume the condition of the vehicle is excellent.

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?

Nor has the debtor proven to the court's satisfaction the replacement value of the vehicle. The motion contains very little specific information about the vehicle other than its model, year, and mileage.

While neither party has persuaded the court as to the replacement value of the vehicle under section 506(a)(2), it is the debtor who has the burden of proof. Accordingly, the valuation motion must be denied.

12. 16-21599-A-13 CHRISTOPHER/GLEE WOODYARD — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 4-27-16 [39]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the

hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

First, the debtor has failed to commence making plan payments and has not paid approximately $2,675 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).

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, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Americredit/GM Financial 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."

Fourth, the debtor has not established that the plan will pay all projected disposable income to unsecured creditors as required by 11 U.S.C. § 1325(b) because the debtor has erroneously deducted a monthly payment on account of a mortgage that the plan will strip from the debtor's home. Because nothing will be paid on account of the claim, the former mortgage payment may not be deducted from current monthly income of Form 22. See Thissen v. Johnson, 406 B.R. 888, 894 (E.D. Cal. 2009). With this deduction eliminated, the debtor must pay no less than $26,902.80 to Class 7 unsecured creditors. Because the plan will pay these creditors only 11,057, it does not comply with 11 U.S.C. § 1325(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.

THE FINAL RULINGS BEGIN HERE

13. 16-21203-A-13 RAYMOND/CHRISTINE BELCHER — OBJECTION TO EXEMPTIONS
JPJ-2 — 4-19-16 [34]

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 objection will be dismissed as moot. While the trustee is correct that the debtor's claim of exemptions under both Cal. Civ. Pro. Code § 703.140(b) and Cal. Civ. Pro. Code § 704, et seq., is not permitted by Cal. Civ. Pro. Code § 703(a)(1), (a)(3), the debtor amended Schedule C to claim a exemptions under one statutory scheme. To the extent the trustee has an objection to the exemptions claimed in the amended Schedule C, he may file and serve such objection in accordance with Fed. R. Bankr. P. 4003(b)(1).

14. 15-28719-A-13 BRETT/PATRICIA PETERSON — MOTION TO CONFIRM PLAN
BLF-5 — 4-14-16 [54]

Final Ruling: The motion will be dismissed as moot. The case was dismissed on April 28.

15. 16-21932-A-13 PAUL LOWE — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1 — 4-18-16 [10]
FEDERAL NATIONAL MORTGAGE ASSOC. VS.

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

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1). The movant completed a nonjudicial foreclosure sale before the bankruptcy case was filed. Under California law, once a nonjudicial foreclosure sale has occurred, the trustor has no right of redemption. Moeller v. Lien, 25 Cal. App.4th 822, 831 (1994). In this case, therefore, the debtor has no right to ignore the foreclosure. If the foreclosure sale was not in accord with state law, this should be asserted as a defense to an unlawful detainer proceeding in state court. The purchaser's right to possession after a foreclosure sale is based on the fact that the property has been "duly sold" by foreclosure proceedings. Cal. Civ. Pro. Code § 1161a. Therefore, it is necessary that the plaintiff prove that each of the statutory procedures has been complied with as a condition for seeking possession of the property. See Miller & Starr, California Real Estate 2d, §§ 18.140 and 18.144 (1989). Alternatively, the debtor should press an independent claim for relief in state court to challenge the foreclosure. The automatic stay is a respite from creditor action while the debtor attempts to reorganize. Here, the debtor has no apparent right to reorganize the movant's debt because of the foreclosure unless that foreclosure

was improper. Whether or not it was improper must be decided in state court.

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. 15-29535-A-13 DAVID STONE — OBJECTION TO CLAIM
DRE-3
VS. CAVALRY SPV I, L.L.C. — 4-13-16 [32]

Final Ruling: This objection to the proof of claim of Cavalry SPV I, L.L.C., 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 proof of claim asserts that the claimant is the assignee of HSBC. However, no documentation of the original claim, the alleged judgment entered on it, or of the assignment is appended to the proof of claim. The debtor complains of the lack of documentation but also states he recalls no debt owed to HSBC.

In In re Heath, 331 B.R. 424, 436 (9th Cir. BAP 2005) and In re Campbell, 336 B.R. 430, 436 (9th Cir. BAP 2005), creditors filed proofs of claim that failed to provide adequate summaries or attach the documentation as required by Fed. R. Bankr. P. 3001. The debtors in these cases objected to the proofs of claim but came forward with no evidence that the claims were not owed. Therefore, the BAP concluded that even though the failure to include the summaries and/or documentation required by Rule 3001 deprived the proofs of claim of their prima facie validity, this was not a basis for disallowing the claims in the absence of evidence the claims were not owed.

Here, the debtor has stated under penalty of perjury that he recalls no debt owed to HSBC. Given the lack of documentation for the claim, this is sufficient for the court to conclude that no debt is justly owing and the claim is disallowed. See 11 U.S.C. § 502(b)(1).

17. 11-48137-A-13 ROSS KAPLAN — MOTION FOR SUGGESTION OF DEATH ETC.
EJS-1
4-19-16 [27]

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 creditors, the United States Trustee, 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 to the extent stated below.

The debtor died on March 22, 2016. Prior to his death, the debtor confirmed but did not complete a plan, and filed a financial management certificate. See 11 U.S.C. §§ 110, 111, 1328(g)(1) and Fed. R. Bankr. P. 1007(c). The debtor's daughter 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 as well as a motion for a hardship discharge pursuant to 11 U.S.C. § 1328(b). The clerk shall enter a discharge when the debtor is otherwise entitled to a discharge.

18. 11-48137-A-13 ROSS KAPLAN — MOTION FOR HARDSHIP DISCHARGE 4-22-16 [32]
EJS-2

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 creditors, the United States Trustee, 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.

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

It appears from the evidence that the debtor died in March 2016. This is a circumstances "for which the debtor should not justly be held accountable".

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

In a chapter 7 case, nonpriority unsecured creditors would not receive a dividend. In this case, they were not promised or paid a dividend. Hence, these creditors have gotten what they would have received in a liquidation.

Finally, given the debtor's death, modification of the plan is not practicable.

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

19. 16-21345-A-13 MONICA IVIE
JPJ-2

OBJECTION TO EXEMPTIONS
4-19-16 [25]

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

The objection will be sustained.

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.

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.

20. 16-20673-A-13 GLENN GILKERSON AND THEALISE WAGER
ADS-1

MOTION TO CONFIRM PLAN
4-15-16 [33]

Final Ruling: The motion will be dismissed without prejudice.

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

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

21. 16-20673-A-13 GLENN GILKERSON AND THEALISE WAGER
ADS-2
VS. SANTANDER CONSUMER USA, INC.
MOTION TO VALUE COLLATERAL
4-15-16 [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 $8,900 as of the date the petition was filed and the effective date of the plan. The court also takes judicial notice of the creditor's proof of claim which admits the vehicle has a value of $8,900. 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, $8,900 of the respondent's claim is an allowed secured claim. When the respondent is paid $8,900 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.

22. 12-33979-A-13 DENNIS/JANET POLING
PGM-2
MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
4-20-16 [33]

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 $1,125 in additional fees incurred principally in connection with a motion to modify the 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. 16-20883-A-13 WALTER FLETSCHER — OBJECTION TO EXEMPTIONS
JPJ-3 — 4-20-16 [32]

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 objection will be dismissed as moot. While the trustee is correct that the debtor's exemption exceeded the statutory amount allowed by the exemption statute, after the objection was filed, the debtor amended the exemption to claim an amount within the statute. To the extent the trustee has an objection to the amended exemption he may file and serve such objection in accordance with Fed. R. Bankr. P. 4003(b)(1).

24. 16-21385-A-13 WILFREDO/FE ONA — MOTION TO AVOID JUDICIAL LIEN
SDB-2 — 4-22-16 [26]
VS. CAPITAL ONE BANK (USA), N.A.

Final Ruling: This motion to avoid a judicial lien 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 pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $478,000 as of the date of the petition. The unavoidable liens total $646,043.84. The debtor has an available exemption of $100. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

25. 11-48790-A-13 WALTER/SHERRI BRINKERHOFF — MOTION TO MODIFY PLAN
SJS-1 — 4-18-16 [40]

Final Ruling: The debtor has voluntarily dismissed the proposed modified plan and the motion to confirm it.

26. 15-28798-A-13 DARREN/SANDRA STOWES
TJW-4

MOTION TO CONFIRM PLAN
4-4-16 [59]

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.

27. 16-21599-A-13 CHRISTOPHER/GLEE WOODYARD
OAG-2
VS. SPECIALIZED LOAN SERVICING, L.L.C.

MOTION TO VALUE COLLATERAL
4-25-16 [24]

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 $235,705 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 $311,562 as of the petition date. Therefore, Specialized Loan Servicing's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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

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

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of $235,705. 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).

28. 16-21599-A-13 CHRISTOPHER/GLEE WOODYARD — MOTION TO VALUE COLLATERAL
OAG-4
VS. SANTANDER CONSUMER USA, INC. — 4-25-16 [34]

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 $8,353 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, $8,353 of the respondent's claim is an allowed secured claim. When the respondent is paid $8,353 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.