**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**June 4, 2018 at 1:30 p.m.**

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**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 19. 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 25, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 11, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 18, 2018. 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 20 THROUGH 30 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 JUNE 18, 2018, AT 2:30 P.M.**

***Matters to be Called for Argument***

1. 13-35100-A-13 WILLIAM SANDBANK — MOTION FOR
DWE-1 — RELIEF FROM AUTOMATIC STAY
U.S. BANK, N.A. VS. — 4-26-18 [63]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted.

The plan provides for the movant's secured claim in Class 2B. That is, its claim has been reduced to the value of the real property securing it and that amount will be paid in full with interest over the entire plan duration. The plan also provides for the movant's retention of the lien. The plan does not otherwise modify the claim of the movant. The loan documentation provides that the debtor is to insure the subject property and pay property taxes. The plan does not modify these obligations. Since the plan was confirmed, the debtor has breached these duties and the movant has been required to advance more than $23,000 since 2014 to pay taxes and insurance. This is a breach of the plan and is cause to terminate the stay.

Further, Local Bankruptcy Rule 3015-1(b)(3) requires "[t]he debtor shall maintain insurance as required by any law or contract and the debtor shall provide evidence of that insurance as required by 11 U.S.C. § 1326(a)(4)." See section 5.02 of confirmed plan.

The debtor does not deny the default but insists because the property has appreciated to more that $300,000, the movant is adequately protected and therefore should wait for the plan to be concluded before it is permitted to enforce its right to have taxes and insurance paid.

Confirmation of the debtor's plan necessarily entailed a determination that it adequately protected the movant's security interest. Just as the movant is bound by that determination and may not attack the confirmation order by bringing a motion for relief from the automatic stay by arguing that the plan does not protect its security interest, the debtor is bound by the plan and if he breaches it there is cause to terminate the stay. See 11 U.S.C. § 1327(a).

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events and circumstances, in connection with this bankruptcy case or otherwise, from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived.

2. 17-28001-A-13 ARLENE DISESSA — OBJECTION TO CLAIM
RJ-2
VS. MECHANICS BANK — 4-16-18 [48]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** Because this objection to a proof of claim has been set for hearing on less than the 44 days' notice to the claimant required by Local Bankruptcy Rule 3007-1(c)(1), it is deemed brought pursuant to Local Bankruptcy Rule 3007-1(c)(2). Therefore, the creditor and any other party in interest need not file written opposition prior to the hearing and they may raise opposition orally at the hearing. If a colorable defense to the objection is raised, the court may assign a briefing schedule and a final hearing date and time or, if there is no need to develop the record further, consider the merits of the objection. If there is no opposition raised at the hearing, the court will consider the merits of the objection.

The objection will be overruled.

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 evidence with the objection suggests that the last payment was on November 4, 2013. Therefore, using this date as the date of breach, when the case was filed on December 10, 2017, more than 4 years had passed.

However, the objection notes that the debtor was a debtor in an earlier chapter 13 case, Case No. 13-30309. That case was filed on August 3, 2013 and was dismissed on September 20, 2015. The earlier case was pending a total of two years and 49 days.

Cal. Civ. Pro. Code § 356 provides that when an action cannot be because of an injunction or statutory prohibition, the period of time the injunction or prohibition is effective is not included in the limitations period. "'A bankruptcy stay has been held to be a 'statutory prohibition' within the

meaning of Code of Civil Procedure section 356. [Citation.] [¶] . . . Under Code of Civil Procedure section 356, i.e., the period of time of the automatic stay should not be counted as part of limitation time.'" Kertesz v. Ostrovsky, 115 Cal.App.4th 369, 378 2004) *quoting* Schumacher v. Worcester, 55 Cal.App.4th 376, 380 (1997).

The time period from the alleged last payment and the commencement of this case is 4 years and 36 days. While this seems to place the creditor outside the 4-year limitations period, by virtue of section 356 the limitations period was tolled for 2 years and 49 days. This means that less than 4 years has effectively lapsed since the last payment. The claim is within the applicable limitations period.

3. 17-28001-A-13 ARLENE DISESSA — OBJECTION TO CLAIM
RJ-4
VS. NAVY FEDERAL CREDIT UNION — 5-5-18 [57]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** Because this objection to a proof of claim has been set for hearing on less than the 44 days' notice to the claimant required by Local Bankruptcy Rule 3007-1(c)(1), it is deemed brought pursuant to Local Bankruptcy Rule 3007-1(c)(2). Therefore, the creditor and any other party in interest need not file written opposition prior to the hearing and they may raise opposition orally at the hearing. If a colorable defense to the objection is raised, the court may assign a briefing schedule and a final hearing date and time or, if there is no need to develop the record further, consider the merits of the objection. If there is no opposition raised at the hearing, the court will consider the merits of the objection.

The objection will be overruled.

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 evidence with the objection asserts that the last payment was on April 30, 2013. Therefore, using this date as the date of breach, when the case was filed on December 10, 2017, more than 4 years had passed.

However, the objection concerning the claim Mechanics Bank notes that the debtor was a debtor in an earlier chapter 13 case, Case No. 13-30309. The court takes judicial notice of the filing and dismissal of the earlier case. That case was filed on August 3, 2013 and was dismissed on September 20, 2015. The earlier case was pending a total of two years and 49 days.

Cal. Civ. Pro. Code § 356 provides that when an action cannot be because of an injunction or statutory prohibition, the period of time the injunction or prohibition is effective is not included in the limitations period. "'A bankruptcy stay has been held to be a 'statutory prohibition' within the meaning of Code of Civil Procedure section 356. [Citation.] [¶] . . . Under Code of Civil Procedure section 356, i.e., the period of time of the automatic stay should not be counted as part of limitation time.'" Kertesz v. Ostrovsky, 115 Cal.App.4th 369, 378 2004) *quoting* Schumacher v. Worcester, 55 Cal.App.4th 376, 380 (1997).

The time period from the alleged last payment and the commencement of this case is 4 years and 224 days. While this seems to place the creditor outside the 4-year limitations period, by virtue of section 356 the limitations period was tolled for 2 years and 49 days. This means that less than 4 years has effectively lapsed since the last payment. The claim is within the applicable limitations period.

4. 17-28001-A-13 ARLENE DISESSA — OBJECTION TO CLAIM
RJ-5
VS. NAVY FEDERAL CREDIT UNION — 5-5-18 [62]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** Because this objection to a proof of claim has been set for hearing on less than the 44 days' notice to the claimant required by Local Bankruptcy Rule 3007-1(c)(1), it is deemed brought pursuant to Local Bankruptcy Rule 3007-1(c)(2). Therefore, the creditor and any other party in interest need not file written opposition prior to the hearing and they may raise opposition orally at the hearing. If a colorable defense to the objection is raised, the court may assign a briefing schedule and a final hearing date and time or, if there is no need to develop the record further, consider the merits of the objection. If there is no opposition raised at the hearing, the court will consider the merits of the objection.

The objection will be overruled.

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 evidence with the objection asserts that the last payment was on May 20, 2013. Therefore, using this date as the date of breach, when the case was filed on December 10, 2017, more than 4 years had passed.

However, the objection concerning the claim Mechanics Bank notes that the debtor was a debtor in an earlier chapter 13 case, Case No. 13-30309. The court takes judicial notice of the filing and dismissal of the earlier case. That case was filed on August 3, 2013 and was dismissed on September 20, 2015. The earlier case was pending a total of two years and 49 days.

Cal. Civ. Pro. Code § 356 provides that when an action cannot be because of an injunction or statutory prohibition, the period of time the injunction or prohibition is effective is not included in the limitations period. "'A bankruptcy stay has been held to be a 'statutory prohibition' within the meaning of Code of Civil Procedure section 356. [Citation.] [¶] . . . Under Code of Civil Procedure section 356, i.e., the period of time of the automatic stay should not be counted as part of limitation time.'" Kertesz v. Ostrovsky, 115 Cal.App.4th 369, 378 2004) *quoting* Schumacher v. Worcester, 55 Cal.App.4th 376, 380 (1997).

The time period from the alleged last payment and the commencement of this case is 4 years and 204 days. While this seems to place the creditor outside the 4-year limitations period, by virtue of section 356 the limitations period was tolled for 2 years and 49 days. This means that less than 4 years has effectively lapsed since the last payment. The claim is within the applicable

limitations period.

5. 17-28001-A-13 ARLENE DISESSA
RJ-6
VS. NAVY FEDERAL CREDIT UNION

OBJECTION TO CLAIM
5-5-18 [67]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** Because this objection to a proof of claim has been set for hearing on less than the 44 days' notice to the claimant required by Local Bankruptcy Rule 3007-1(c)(1), it is deemed brought pursuant to Local Bankruptcy Rule 3007-1(c)(2). Therefore, the creditor and any other party in interest need not file written opposition prior to the hearing and they may raise opposition orally at the hearing. If a colorable defense to the objection is raised, the court may assign a briefing schedule and a final hearing date and time or, if there is no need to develop the record further, consider the merits of the objection. If there is no opposition raised at the hearing, the court will consider the merits of the objection.

The objection will be overruled.

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 evidence with the objection asserts that the last payment was on May 20, 2013. Therefore, using this date as the date of breach, when the case was filed on December 10, 2017, more than 4 years had passed.

However, the objection concerning the claim Mechanics Bank notes that the debtor was a debtor in an earlier chapter 13 case, Case No. 13-30309. The court takes judicial notice of the filing and dismissal of the earlier case. That case was filed on August 3, 2013 and was dismissed on September 20, 2015. The earlier case was pending a total of two years and 49 days.

Cal. Civ. Pro. Code § 356 provides that when an action cannot be because of an injunction or statutory prohibition, the period of time the injunction or prohibition is effective is not included in the limitations period. "'A bankruptcy stay has been held to be a 'statutory prohibition' within the meaning of Code of Civil Procedure section 356. [Citation.] [¶] . . . Under Code of Civil Procedure section 356, i.e., the period of time of the automatic stay should not be counted as part of limitation time.'" Kertesz v. Ostrovsky, 115 Cal.App.4th 369, 378 2004) *quoting* Schumacher v. Worcester, 55 Cal.App.4th 376, 380 (1997).

The time period from the alleged last payment and the commencement of this case is 4 years and 204 days. While this seems to place the creditor outside the 4-year limitations period, by virtue of section 356 the limitations period was tolled for 2 years and 49 days. This means that less than 4 years has effectively lapsed since the last payment. The claim is within the applicable limitations period.

6. 17-28001-A-13 ARLENE DISESSA — OBJECTION TO CLAIM
RJ-7
VS. LVNV FUNDING, L.L.C. — 5-5-18 [72]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** Because this objection to a proof of claim has been set for hearing on less than the 44 days' notice to the claimant required by Local Bankruptcy Rule 3007-1(c)(1), it is deemed brought pursuant to Local Bankruptcy Rule 3007-1(c)(2). Therefore, the creditor and any other party in interest need not file written opposition prior to the hearing and they may raise opposition orally at the hearing. If a colorable defense to the objection is raised, the court may assign a briefing schedule and a final hearing date and time or, if there is no need to develop the record further, consider the merits of the objection. If there is no opposition raised at the hearing, the court will consider the merits of the objection.

The objection will be overruled.

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 evidence with the objection asserts that the last payment was on May 14, 2013. Therefore, using this date as the date of breach, when the case was filed on December 10, 2017, more than 4 years had passed.

However, the objection concerning the claim Mechanics Bank notes that the debtor was a debtor in an earlier chapter 13 case, Case No. 13-30309. The court takes judicial notice of the filing and dismissal of the earlier case. That case was filed on August 3, 2013 and was dismissed on September 20, 2015. The earlier case was pending a total of two years and 49 days.

Cal. Civ. Pro. Code § 356 provides that when an action cannot be because of an injunction or statutory prohibition, the period of time the injunction or prohibition is effective is not included in the limitations period. "'A bankruptcy stay has been held to be a 'statutory prohibition' within the meaning of Code of Civil Procedure section 356. [Citation.] [¶] . . . Under Code of Civil Procedure section 356, i.e., the period of time of the automatic stay should not be counted as part of limitation time.'" Kertesz v. Ostrovsky, 115 Cal.App.4th 369, 378 2004) *quoting* Schumacher v. Worcester, 55 Cal.App.4th 376, 380 (1997).

The time period from the alleged last payment and the commencement of this case is 4 years and 210 days. While this seems to place the creditor outside the 4-year limitations period, by virtue of section 356 the limitations period was tolled for 2 years and 49 days. This means that less than 4 years has effectively lapsed since the last payment. The claim is within the applicable limitations period.

7. 18-22405-A-13 GEORGE/TRISHA VAUGHN
RJ-2
VS. CPS, CONSUMER PORTFOLIO SERVICES

MOTION TO VALUE COLLATERAL
5-21-18 [32]

- ☐ 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 valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $6,300 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $6,300 of the respondent's claim is an allowed secured claim. When the respondent is paid $6,300 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.

8. 18-22006-A-13 ELI/KELSEY MARCHUS
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
5-17-18 [26]

- ☐ 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 conditionally denied.

First, if requested by the U.S. Trustee or the chapter 13 trustee, a debtor must produce evidence of identity and a social security number or a written statement that such documentation does not exist. See Fed. R. Bankr. P. 4002(b)(1)(A) and (B). In this case, the debtor has breached the foregoing duty by failing to provide evidence of the debtor's social security number.

This is cause for dismissal.

Second, 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 business expenses when calculating current monthly income. Gross business income, without expense deduction, is part of the debtor's current monthly income. Once total current monthly income is calculated, business expenses may be deducted as an expense when calculating current monthly income. Accord In re Weigand, 386 B.R. 238 (9th Cir. BAP 2008). The distinction is material here because with gross business income a part of the debtor's current monthly, the debtor's current monthly income exceeds the state median income for a comparably sized household. As a result, the debtor must complete Form 122 in its entirety in order to calculate projected disposable income. The debtor has failed to complete the portion of Form 122 necessary to calculate projected disposable income. Without doing so, the debtor cannot prove compliance with 11 U.S.C. § 1325(b) or that the plan will be the required duration.

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.

9. 17-25518-A-13 RONALD/RHONDA SHUMAN — MOTION TO CONVERT OR DISMISS CASE 4-27-18 [54]
JPJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be conditionally denied.

This case was filed on August 21, 2017. The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The debtor thereafter proposed a modified plan but it was denied confirmation on March 19, 2017. The failure to confirm a plan in over nine months suggests to the court that the debtor either does not intend to confirm a plan or does not have the ability to do so. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

However, after this motion was filed, the debtor proposed another modified plan and set it for hearing on July 19. If that plan is not confirmed on July 19, the case will be converted to one under chapter 7 rather than dismissed because a review of the schedules that this is in the best interests of creditors because there is in excess of $60,000 of equity in unencumbered, nonexempt assets that will benefit creditors if liquidated by a trustee. If a plan is not confirmed on July 19, the case will be converted on the trustee's ex parte application.

10. 18-21823-A-13 LETICIA COLLAZO — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 5-10-18 [13]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

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

Because counsel failed to appear at the meeting, he shall not be permitted to elect payment of fees pursuant to Local Bankruptcy Rule 2016-1. Instead, he shall file a fee application and seek approval of a reasonable fee.

11. 18-21224-A-13 ARLENE MARTINEZ — ORDER TO SHOW CAUSE
5-7-18 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The case shall remain pending on the following terms and conditions.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $77 installment when due on May 1. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

12. 18-20630-A-13 THANH LIEU — MOTION TO CONFIRM PLAN
MRL-1 — 4-4-18 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has deducted approximately $624.26 per month for the 60-month plan duration. This deduction is for the repayment of loans from a retirement plan. However, the debtor has admitted this expense will end after 24 months.

Therefore, over a 60-month plan duration, the expense should be reduced to $249.70. This will yield projected disposable income over 60 months of $37,165.20. Because the plan will pay only $15,613.71 over this period, it does not comply with 11 U.S.C. § 1325(b).

13. 18-20748-A-13 KAREN BLAKLEY — MOTION TO MODIFY PLAN
MJD-1 — 4-19-18 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

To pay the dividends required by the plan at the rate proposed by it will take 96 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

14. 18-21651-A-13 ALAN MILLSPAUGH — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 5-9-18 [37]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

First, the debtor has failed to make $336 of the 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 lack of feasibility also is indicated by the fact that Schedules I and J show that the debtor will have monthly net income of $2,885 with which to fund a plan that requires a monthly payment of $3,336.

Third, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $15,500 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only $6,585.93 to unsecured creditors.

Fourth, counsel for the debtor has opted to receive fees pursuant to Local Bankruptcy Rule 2016-1 rather than by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. However, the rights and responsibilities agreement executed and filed indicates that counsel will receive fees of $5,000. The plan, on the other hand, requires payment of $4,500. Therefore, the plan does not provide for payment in full of the fees agreed to by the debtor. The plan does not comply with 11 U.S.C. § 1322(a)(2).

15. 18-21751-A-13 ALLA KVITKO
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN
5-10-18 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $120 is less than the $1,333.51 in dividends and expenses the plan requires the trustee to pay each month.

Second, the debtor has failed to commence making plan payments and has not paid approximately $120 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).

Third, the plan leaves blank the provision as to whether or not the property of the estate will revest in the debtor upon confirmation of the plan.

Fourth, 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.

Fifth, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $66,000 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay nothing to unsecured creditors.

16. 18-20860-A-13 DAVID/TANYA CASTILLO
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
4-12-18 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be sustained and the motion to dismiss the case conditionally denied.

The plan does not provide for payment in full of a domestic support obligation as required by 11 U.S.C. § 1322(a)(2). While 11 U.S.C. § 1322(a)(4) carves a narrow exception to the rule that payment in full is required, to fit within the exception, the creditor must consent to less than payment in full or file a proof of claim indicating the DSO is of the type described in 11 U.S.C. § 507(a)(1)(B). Neither condition has been proven.

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.

17. 17-24878-A-13 ORASTINE HEAGLER — MOTION TO EMPLOY
PGM-3 — 5-19-18 [72]

- ☐ 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.

There is a confirmed plan in this case which revests property of the estate in the debtor. This motion seeks leave to hire a broker to assist the debtor in selling the debtor's real property.

Nothing requires a chapter 13 debtor to obtain the court's permission to hire a professional. 11 U.S.C. § 327 has applicability only with reference to trustees and professional's representing the bankruptcy estate.

Of course, leave of court will be required to sell property and to compensate the broker.

18. 18-21884-A-13 ERIC/ADINA HENDERSON — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 5-17-18 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

The objection will be sustained.

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

19. 17-20287-A-13 BRANDI DECHAINE — MOTION TO MODIFY PLAN 4-30-18 [62]
RS-4

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

***FINAL RULINGS BEGIN HERE***

20. 18-20210-A-13 AMIRA ENDERIZ — MOTION TO CONFIRM PLAN
MET-2 — 4-22-18 [31]

**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.

21. 18-22031-A-13 CHARLES/SANDRA INDARA — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 5-10-18 [22]

**Final Ruling:** The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. After this objection was filed, the debtor proposed a modified plan that will be considered for confirmation at a hearing on July 2. The court deems the filing of the modified plan to be a voluntary dismissal of the plan that is the subject of this objection. The proposed modified plan appears to address the issues raided by the objection.

Accordingly, this objection will be dismissed as moot. To the extent the issues raised by the objection have relevance to the modified plan, the objecting party shall raise them again as timely opposition to the debtor's motion to confirm the modified plan.

22. 18-22031-A-13 CHARLES/SANDRA INDARA — OBJECTION TO CONFIRMATION OF PLAN
LHL-1
BANK OF AMERICA, N.A. VS. — 5-9-18 [19]

**Final Ruling:** The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. After this objection was filed, the debtor proposed a modified plan that will be considered for confirmation at a hearing on July 2. The court deems the filing of the modified plan to be a voluntary dismissal of the plan that is the subject of this objection. The proposed modified plan appears to address the issues raided by the objection.

Accordingly, this objection will be dismissed as moot. To the extent the issues raised by the objection have relevance to the modified plan, the objecting party shall raise them again as timely opposition to the debtor's motion to confirm the modified plan.

23. 17-28335-A-13 LISA KOPPLE
AP-1
WESTLAKE FINANCIAL SERVICES VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-25-18 [41]

**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 as well as the codebtor stay of 11 U.S.C. § 1301 the movant to obtain possession of the subject vehicle, to dispose of it under applicable law, and to exercise its rights against any nondebtor.

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.

24. 15-21845-A-13 JOSEPH BARNES
SS-10

MOTION TO
MODIFY PLAN
4-25-18 [193]

**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.

25. 18-21450-A-7 SALOMON HERRERA
JPJ-2

OBJECTION TO
EXEMPTIONS
4-25-18 [23]

**Final Ruling:** After this objection was filed, the debtor converted the case to

one under chapter 7. Therefore, it is the chapter 7 trustee's obligation and duty to object if appropriate to the debtor's exemptions. The chapter 13 trustee's objection is dismissed without prejudice to timely objections by the chapter 7 trustee and other parties in interest.

26. 17-23577-A-13 LEAH ELEMEN — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1 — 5-2-18 [32]
JPMORGAN CHASE BANK, N.A. VS.

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

The motion will be dismissed as moot.

The court confirmed a plan on August 22, 2017. That plan provides for the movant's claim in Class 4. Class 4 secured claims are secured claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or by a third party. The plan includes the following provision at section 2.11:

"Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Because the plan has been confirmed and because the case remains pending under chapter 13, the automatic stay and the codebtor stay of 11 U.S.C. § 1301 have already been modified to permit the movant to proceed against its collateral.

Because the movant has not prevailed, the court awards no fees and costs. 11 U.S.C. § 506(b).

27. 18-21481-A-13 EDGAR CARRILLO AND MARIA GONZALEZ — MOTION TO VALUE COLLATERAL
TOG-1 — 4-24-18 [18]
VS. ONEMAIN FINANCIAL GROUP

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $4,122 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $4,122 of the respondent's claim is an allowed secured claim. When the respondent is paid $4,122 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

28. 15-27685-A-13 ANNE-MARIE FLORES — MOTION TO MODIFY PLAN
PGM-1 — 4-18-18 [29]

**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.

29. 18-21496-A-13 DANILO SESE — OBJECTION TO EXEMPTIONS
JPJ-2 — 4-25-18 [31]

**Final Ruling:** While this objection to the debtor's exemptions had merit, it became moot when the debtor claimed amended exemptions on May 21. To the extent the trustee wishes to raise objections to the amended exemptions he is free to do so in a timely filed objection.

30. 17-26998-A-13 MILES RICHARD FRANCISCO — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 — 4-26-18 [40]
TOYOTA MOTOR CREDIT CORP. VS.

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

The motion will be granted.

The plan assumes the vehicle lease with the movant and provides for direct payment of the lease by the debtor. The debtor, however, has failed to maintain those lease payments. Three monthly payments have not been made by the debtor. This breach of the plan is cause to terminate the automatic stay.

Because the movant has not established that it holds an over-secured claim, and because it has not prevailed, 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.

This ruling was amended prior to the hearing on June 4 because the prior ruling erroneously indicated the confirmed plan provided for the termination of the stay. In fact, because the lease was assumed by the confirmed plan, the automatic stay remained in place. Consequently, the motion was necessary to modify the stay.