UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 25, 2018 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 7. 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 JULY 20, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 6, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 13, 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 8 THROUGH 24 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 JULY 2, 2018, AT 2:30 P.M.

Matters to be Called for Argument

1. 18-22405-A-13 GEORGE/TRISHA VAUGHN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-5-18 [38]

- ☐ 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, because the debtor has underestimated the priority claim of the IRS, the plan either will not pay that claim in full in violation of 11 U.S.C. § 1322(a)(2) or it will take 73 months to complete the plan in violation of 11 U.S.C. § 1322(d).

Second, the debtor has failed to accurately complete Form 122C. The debtor has taken the following impermissible deductions from current monthly income:

- the debtor has taken a $400 deduction for utilities, an amount that exceeds the IRS standards.

- The debtor has taken an impermissible deduction from current monthly income for a $400 voluntary pension contribution. This is disposable income; the debtor may not make those contributions and deduct them from the debtor's current monthly income. Accord Parks v. Drummond (In re Parks), 475 B.R. 703 (B.A.P. 9th Cir. 2012).

- the debtor has taken a $500 deduction for childcare which in actuality is the costs of a minor son's basketball games.

- the debtor has taken a $170 deduction for chapter 13 administrative expenses that is based on a 10% trustee comp rate. For cases filed in April 2018, the comp rate is 5.8%. This reduces the deduction to $98.60.

With these deductions eliminated or reduced, the debtor will have monthly projected disposable income of $1,420.96, enough to pay $85,257.60 to unsecured creditors. Because the plan will pay these creditors nothing, 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 60 days, the case will be dismissed on the trustee's ex parte application.

2. 18-22731-A-13 THOMAS/BECKY BOYES
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
6-5-18 [13]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of 800 Loan Mart 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."

Second, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $3,000 is less than the $3,045.47 in dividends and expenses the plan requires the trustee to pay each month.

Third, 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.

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The petition does not include disclosure of two prior chapter cases and Schedule I/J omits $1,000 of monthly income from the debtor's son. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while

withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Fifth, to pay the dividends required by the plan at the rate proposed by it will take 71 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

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 60 days, the case will be dismissed on the trustee's ex parte application.

3. 18-23232-A-13 LINDA CATRON — MOTION FOR TURNOVER OF POSSESSION OF REAL PROPERTY ETC
EPE-2 — 6-7-18 [20]

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

The motion will be dismissed without prejudice.

The debtor seeks to compel the owner of real property to turn over possession of it to the debtor. Such relief requires an adversary proceeding. Fed. R. Bankr. P. 7001(1).

4. 18-22357-A-13 LEONEL/LISA LAXAMANA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-5-18 [38]

- ☐ 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, the debtor has failed to give the trustee records concerning three life insurance policies. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Second, the plan's feasibility depends on the debtor successfully prosecuting motions to avoid judicial liens of American Express Bank and Nancy Holdings. No such motions have been filed, served, and granted. Absent successful motions the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Third, the plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay approximately $34,000 to unsecured creditors.

While this is consistent with Form 122C, as Schedule I makes clear, the debtor's monthly income has increased significantly since the case was filed. Hamilton v. Lanning, 130 S.Ct 2464 (2010) permits the trustee to rebut the presumption that the amount of projected disposable income is as stated in Form 122C. As reported on Schedules I and J, the debtor's household income is now $11,636.80, significantly higher than the $8,287 reported on Form 122C.

Also, the deductions taken by the debtor on Form 122C are inflated by a total of $1,399.79, the monthly debt service on two secured claims. However, the debtor has moved to avoid these liens. If successful, there will be no monthly debt service and the claims will be nonpriority unsecured claims. Therefore, the monthly debt service may not be deducted when calculating projected disposable income. See Thissen v. Johnson, 406 B.R. 888, 894 (E.D. Cal. 2009).

When current monthly income is increased and expenses are reduced on Form 122C consistent with the above, the debtor's projected disposable income increases to approximately $75,000 over the life of the plan. Because the plan promises to pay unsecured creditors only $$34,000, it cannot be confirmed.

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 60 days, the case will be dismissed on the trustee's ex parte application.

5. 18-23558-A-13 ANDREW/MYRA SINGLETON MOTION TO
MRL-1 IMPOSE AUTOMATIC STAY
6-8-18 [8]

- ☐ 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.

This is the second chapter 13 case filed by the debtor. A prior case was dismissed within one year of the most recent petition.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case.

Section 362(c)(3)(B) allows a debtor to file a motion requesting the continuation of the stay. A review of the docket reveals that the debtor has filed this motion to extend the automatic stay before the 30th day after the filing of the petition. The motion will be adjudicated before the 30-day period expires.

In order to extend the automatic stay, the party seeking the relief must demonstrate that the filing of the new case was in good faith as to the creditors to be stayed. For example, in In re Whitaker, 341 B.R. 336, 345 (Bankr. S.D. Ga. 2006), the court held: "[T]he chief means of rebutting the presumption of bad faith requires the movant to establish 'a substantial change in the financial or personal affairs of the debtor . . . or any other reason to conclude' that the instant case will be successful. If the instant case is one under chapter 7, a discharge must now be permissible. If it is a case under chapters 11 or 13, there must be some substantial change."

Here, it appears that the debtor was unable to maintain plan payments in the first case due to serious health condition that interrupted her ability to work. That condition has now been treated and the debtor is able to maintain her plan payments. This is a sufficient change in circumstances rebut the presumption of bad faith.

6. 18-20571-A-13 MARK ENOS
PLC-3

MOTION FOR CONTEMPT
3-16-18 [30]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

Before filing this case, the debtor borrowed money from the respondent Advance America. The debtor alleges that AA violated the automatic stay by collecting this debt after this case was filed.

The automatic stay is a fundamental protection given to bankruptcy debtors. Eskanos & Adler, P.C. v. Leetien, 309 F.3d 1210, 1214 (9th Cir. 2002). The filing of a bankruptcy case "*operates as a stay, applicable to all entities, of the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor . . .; the enforcement . . . of a judgment . . .; any act to obtain possession of property of the estate . . .; [and] any act to create, perfect, or enforce any lien. . . .*"

If the respondent took money from the debtor's bank account to repay a loan, it acted to collect a debt. But, there is no evidence that AA's actions were a violation of the automatic stay.

The debtor has the burden of persuasion on every element of a claim arising from a violation of the automatic stay. Harris v. Johnson (In re Harris), Case No. 10-00880-GBN, WL 3300716, at *4 (B.A.P. 9th Cir. Apr. 7, 2011) (citing to Fernandez v. G.E. Capital Mortg. Servs. (In re Fernandez), 227 B.R. 174, 180 (B.A.P. 9th Cir. 1998)).

In his original motion, the debtor attested that he delivered to AA pre-petition a check which AA presented and cashed post-petition.

"*[The debtor's counsel] informed Advance America Store personnel [that] by cashing the Debtor's check it will violate the Automatic Stay since he had filed bankruptcy on February 1, 2018. Advance America cashed the Debtor's check even after receiving all the information needed.*"

Docket 30 at 2 (emphasis added).

At the request of the debtor, the hearing was continued to May 21. To give the debtor an opportunity to supplement the record. The debtor failed to do so by the deadline set by the court. The hearing was continued a second time to June 25 to permit and consider the debtor's supplemental filing, a declaration and memorandum of points and authorities. Dockets 68 & 69. In these documents, the debtor changes his story. He now claims that AA did not cash a check in violation of the automatic stay. Instead, the debtor now claims that, before filing the bankruptcy case, he signed a loan agreement with AA giving it the right to initiate an electronic funds transfer (EFT) from the debtor's bank account in order to recoup its loan. It is this EFT that the debtor claims violated the automatic stay.

The debtor also argues that the EFT does not fall within the stay violation exception of section 362(b)(11), which provides that: "(b) The filing of a petition under section 301 . . . does not operate as a stay — . . . *(11) under*

subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument[.]"

The evidentiary record does not support any relief in favor of the debtor. In his May 18 supplemental declaration, the debtor refers to a loan agreement that governs the terms of how AA was to be repaid. That agreement is not in the record. The debtor nevertheless claims this agreement permitted AA to take $300 from his bank account.

In In re Snowden, 422 B.R. 737, 742 (Bankr. W.D. Wash. 2009), a case similar to this, the agreement that authorized the creditor to take money from the debtor's bank account provided the creditor with two options: to make a one-time electronic funds transfer from the account or to process the payment as a check transaction.

Thus, the precise terms of the loan agreement are central to understanding the mechanics of how AA obtained a transfer from the debtor's bank account.

Moreover, the debtor refers to an EFT but there is nothing in the record evidencing such a transfer. Obviously the debtor observed the transfer on a document, such as a bank statement. Such a statement or other document is not part of the record.

Assuming an EFT took place, there is nothing in the debtor's testimony about the timing of the EFT. When was the EFT initiated? When did the debtor's bank receive the EFT? When did the bank transfer the money to AA? The declaration is silent on these points. Docket 68. The declaration doesn't even say when the debtor borrowed the money from AA and when he executed the loan agreement. He references "[t]he last time [he] borrowed money from [AA]," but no specific date or its relation in time to this case. Docket 68 at 2.

In short, the evidentiary record is deficient and does not establishing that AA did anything after this case was filed. The debtor has not satisfied his burden of persuasion to establish a stay violation. The motion will be denied.

This is not to say, however, that the debtor has no other remedies. Inability to establish stay violation does not insulate a post-petition transfer from avoidance. See Franklin v. Kwik Cash of Martin (In re Franklin), 254 B.R. 718 (Bankr. W.D. Tenn. 2000); Wittman v. State Farm Life Insurance Co., Inc., (In re Mills), 167 B.R. 663, 664 (Bankr. D. Kan. 1994) aff'd., 176 B.R. 924 (D. Kan. 1994).

Section 549(a) of the Bankruptcy Code provides that the trustee may avoid unauthorized post-petition transfers of property of the estate. 11 U.S.C § 549(a)(1) and (2)(B). Checking account balances become "property of the estate" once a bankruptcy petition is filed. 11 U.S.C. § 541(a). In the case of Barnhill v. Johnson, 503 U.S. 393 (1992), the Supreme Court held that "*[f]or the purposes of payment by ordinary check, . . . a 'transfer' as defined by 101(54) [of the Bankruptcy Code] occurs on the date of honor, and not before.*" Id. at 400, 112 S.Ct. 1386. "*[T]he payment of checks presented post-petition constitutes a 'transfer' of property of the estate and if this transfer is not authorized by the Bankruptcy Code it may be set aside pursuant to 11 U.S.C. § 549.*" In re Hoffman, 51 B.R. 42, 46 (Bankr. W.D. Ark. 1985).

Of course, while the debtor has this potential remedy, it must be exercised in an adversary proceeding. Fed. R. Bankr. P. 7001.

7. 18-22471-A-13 CARLA ODEN
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
6-5-18 [17]

- ☐ 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, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $3,200 is less than the $3,561.12 in dividends and expenses the plan requires the trustee to pay each month.

Second, the secured claim of USAA is misclassified in Class 4. Because the claim will mature before the end of the plan, the claim belongs in Class 2.

Third, 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.

Fourth, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive more than $302,000 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only $315.68 to unsecured creditors.

Fifth, the plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay unsecured creditors $315.68 but Form 122 shows that the debtor will have more than $189,000 over the next five years.

Sixth, one of the two secured claims held by Wells Fargo is misclassified in Class 1. Class 1 is reserved for secured claims that were in default when the case was filed. The plan provides for the cure of the default and the maintenance of the contract installment payment but does not otherwise modify the claim. The plan indicates that nothing will be paid to Wells Fargo on account of one of the claims. This appears to be a junior deed of trust that encumbers property in which, after taking into account the senior deed of

trust, has no equity. The plan appears to be proposing that nothing be paid on this claim. Such treatment belongs in Class 2 and to be confirmable the debtor must concurrently prosecute a valuation motion.

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 60 days, the case will be dismissed on the trustee's ex parte application.

FINAL RULINGS BEGIN HERE

8. 18-22806-A-13 ARACELI FLORES — MOTION TO CONFIRM PLAN
PR-1 — 5-22-18 [17]

Final Ruling: The motion will be dismissed without prejudice.

Local Bankruptcy Rule 3015-1(c)(3) and (d)(1) require that when the debtor files and serves a motion to confirm a chapter 13 plan, the motion to confirm it must be set for hearing on 35 days of notice to all creditors, the chapter 13 trustee, and the U.S. Trustee. If any of these parties in interest wish to object to the confirmation of the plan, they must file and serve a written objection at least 14 days prior to the hearing. See Local Bankruptcy Rules 3015-1(b)(1) and 9014-1(f)(1)(B). The debtor's notice of the hearing on the motion to confirm the plan must advise all parties in interest of the deadline for filing written objections. See Local Bankruptcy Rule 9014-1(d)(3).

This procedure complies with Fed. R. Bankr. P. 2002(a)(9) and (b), which requires a minimum of 28 days of notice of the hearing and 21 days of notice of the deadline for objections to confirmation as well as the hearing on confirmation of the plan. Because Rule 9014-1(f)(1)(B) requires that written opposition be filed 14 days prior to the hearing but Fed. R. Bankr. R. 2002(a)(9) requires 21 days of notice of the deadline for filing opposition, the debtor must give 35 days of notice of the hearing.

Here, the debtor gave only 34 days of notice of the hearing. Therefore, parties in interest received only 20 days notice of the deadline for filing and serving written opposition to the motion. Notice was insufficient.

9. 14-24219-A-13 DAVID/KAREN WARN — MOTION FOR RELIEF FROM AUTOMATIC STAY
EGS-1 — 5-26-18 [78]
BAYVIEW LOAN SERVICING, L.L.C. VS.

Final Ruling: The motion will be dismissed as moot.

The court confirmed a plan on August 20, 2014. That plan provides for the movant's claim in Class 4. Class 4 secured claims are long-term 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 has already been modified to permit the movant to proceed against its collateral.

10. 17-25144-A-13 CRYSTAL BAULWIN
SDB-3

MOTION TO MODIFY PLAN
5-16-18 [35]

Final Ruling: The motion will be dismissed without prejudice. The movant failed to file a separate certificate of service with the motion as required by Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents (assuming such was done) does not satisfy the local rule. The proof/certificate of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar. Given the absence of the required proof/certificate of service, the moving party has failed to establish that the motion was served on all necessary parties in interest.

11. 14-32145-A-13 SIRIPORN GOODWIN
APN-1
TOYOTA MOTOR CREDIT CORP. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-23-18 [26]

Final Ruling: The motion will be dismissed as moot.

The movant leased a vehicle to the debtor. The confirmed plan does not provide for the assumption of such lease.

The plan provides at section 3.02:

"Any executory contract or unexpired lease not listed in the table below is rejected. Upon confirmation of the plan, all bankruptcy stays are modified to allow the nondebtor party to an unexpired lease to obtain possession of leased property, to dispose of it under applicable law, and to exercise its rights against any nondebtor in the event of a default under applicable law or contract."

Because this plan was confirmed on December 22, 2017, and because the plan does not list the subject lease in the table below section 3.02 of the confirmed plan, the stay has already been modified to provide the movant with the relief it has requested. The motion is moot.

12. 18-22346-A-13 CHRISTINA BEGLEY
KWS-1

MOTION TO CONFIRM PLAN
5-15-18 [18]

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.

13. 18-22346-A-13 CHRISTINA BEGLEY — OBJECTION TO CLAIM
KWS-1
VS. AMERICAN EXPRESS NATIONAL BANK — 5-9-18 [14]

Final Ruling: The objection will be dismissed without prejudice.

The notice of the hearing indicates that if the respondent wished to oppose the objection, it was required to file written opposition 14 days prior to the hearing. Because written opposition was required, Local Bankruptcy Rule 3007-1(b)(1) required that the hearing be set on 44 days of notice. The objecting party gave only 41 days' notice. Notice is deficient.

14. 15-26254-A-13 TIMOTHY/ROBIN PEPPEL — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-1
SETERUS, INC. VS. — 5-24-18 [60]

Final Ruling: The motion will be dismissed as moot.

The court confirmed a plan on October 20, 2015 and modified it on January 12, 2017. That plan provides for the movant's claim in Class 4. Class 4 secured claims are long-term 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 has already been modified to permit the movant to proceed against its collateral.

15. 18-23158-A-13 RAFT THOMPSON — MOTION TO VALUE COLLATERAL
MRL-1
VS. FIRST TECHNOLOGY FEDERAL CREDIT UNION — 5-22-18 [8]

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 $20,000 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, $20,000 of the respondent's claim is an allowed secured claim. When the respondent is paid $20,000 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.

16. 18-20861-A-13 CHRISTOPHER/NEVA FULLER — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-2
CREDIT ACCEPTANCE CORP. VS. — 5-21-18 [65]

Final Ruling: The motion will be dismissed as moot. The case was dismissed on May 22. As a result, the automatic stay expired as a matter of law. There is no stay to modify or terminate.

17. 17-25273-A-13 FRANK VALENZUELA — OBJECTION TO CLAIM
JPJ-1
VS. DISCOVER BANK — 5-1-18 [38]

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

The objection will be sustained and the claim disallowed.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on September 25, 2011. Therefore, using this date as the date of breach, when the case was filed on August 9, 2017, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

18. 10-38174-A-13 JAMES/DEBRA WEAVER — MOTION TO AVOID JUDICIAL LIEN
MWB-2
VS. CHASE BANK USA, N.A. — 5-21-18 [68]

Final Ruling: The motion will be dismissed without prejudice.

The signed certificate of service filed on May 21, 2018 does not identify the respondent as having been served with anything related to the motion. The second certificate filed the same day also does not identify the respondent has having been served with anything related to this motion. Also, even if the respondent was identified, the certificate is unsigned. There is no proof that the respondent as served with the motion and notice of the hearing date.

19. 17-27876-A-13 MARTIN OLIVAS
MC-1

MOTION TO MODIFY PLAN
5-11-18 [27]

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.

20. 18-20686-A-13 MARCUS ZARRA
MMP-1

MOTION TO CONFIRM PLAN
5-24-18 [31]

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.

21. 18-22593-A-13 BRANDON/TRACY MCBROOM
APN-1
TOYOTA MOTOR CREDIT CORP. VS.

OBJECTION TO CONFIRMATION OF PLAN
5-17-18 [18]

Final Ruling: The objection will be dismissed as moot. The debtor has proposed a modified plan. The motion to confirm it is set for hearing on July 16. To the extent the issues raised in this objection continue to have merit, they should be raised in a timely written objection to the debtor's motion (KWS-1).

22. 18-22593-A-13 BRANDON/TRACY MCBROOM
KWS-1
VS. CAVALRY SPV I, L.L.C.

OBJECTION TO CLAIM
5-11-18 [12]

Final Ruling: This objection to the proof of claim of Cavalry SPV I has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d

52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained and the claim disallowed.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on November 2, 2010. Therefore, using this date as the date of breach, when the case was filed on April 27, 2018, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

23. 17-27497-A-13 IGNACIO RODRIGUEZ — OBJECTION TO CLAIM
JPJ-1
VS. BANK OF AMERICA, N.A. — 5-1-18 [19]

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

The objection will be sustained and the claim disallowed.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on April 12, 2013. Therefore, using this date as the date of breach, when the case was filed on November 14, 2017, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

24. 14-22498-A-13 STACEY BURGESS — MOTION TO MODIFY PLAN
SAC-1 — 4-18-18 [34]

Final Ruling: The motion will be dismissed as moot. The case was dismissed on May 9.