UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 27, 2016 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 18. 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 AUGUST 1, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 18, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 25, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 19 THROUGH 29 IN THE SECOND PART OF THE CALENDAR. INSTEAD, THESE ITEMS HAVE BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON JULY 5, 2016, AT 2:30 P.M.

Matters to be Called for Argument

1. 16-22405-A-13 CASEY DECANT — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-9-16 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The withholding of this financial information from the trustee is a breach of the duties imposed upon the debtor by 11 U.S.C. § 521(a)(3) & (a)(4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

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

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

2. 16-22722-A-13 ROBERT/STACY TURNER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-9-16 [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 will be conditionally denied.

The debtor has failed to give the trustee financial records relating to income earned prior to bankruptcy. 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).

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.

3. 16-21936-A-13 LIDIYA KRAVCHUK — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1 — 5-25-16 [31]
U.S. BANK, N.A. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

The movant held a deed of trust encumbering the property in Sacramento. The movant caused a nonjudicial foreclosure of that property on March 29, 2016 a short time after this case was filed. It asks both that the automatic stay be annulled and that the court grant prospective relief pursuant to 11 U.S.C. § 362(d)(4).

The movant's path to foreclosure has been long. Its original borrower filed a bankruptcy case on January 3, 2011 (case no. 11-20160). That case was dismissed a month later but it was followed by two more cases (case nos. 11-31487 and 12-25575). All of these cases were unsuccessful. They were dismissed or discharge was withheld.

Between the second the third cases, the original borrower transferred a fractional interest in the subject property to this debtor. She then filed a bankruptcy case on October 8, 2014 (case no. 13-30041). It was dismissed

approximately a month later for her failure to timely propose a chapter 13 plan. The debtor then filed another case on November 12, 2015 (case no. 15-28776). It dismissed two months later due to the debtor's failure to timely file schedules, statements and a plan. Then, on March 29., 2016, this case was filed only to be dismissed on June 6, 2016 because the debtor, among other things, did not show up at the meeting of creditors.

The court will annul the automatic stay. In determining whether to grant retroactive relief from stay, the court must engage in a case-by-case analysis and balance the equities between the parties. Some of the factors courts have considered are whether the creditor knew of the bankruptcy filing, whether the debtor was involved in unreasonable or inequitable conduct, whether prejudice would result to the creditor, and whether the court could have granted relief from the automatic stay had the creditor applied in time. Nat'l Envtl. Water Corp. v. City of Riverside (In re Nat'l Envtl. Water Corp.), 129 F.3d 1052, 1055 (9th Cir. 1997).

The Bankruptcy Appellate Panel approved additional factors for consideration in In re Fjeldsted, 293 B.R. 12 (9th Cir. B.A.P. 2003). The Fjeldsted factors are employed to further examine the debtor's and creditor's good faith, the prejudice to the parties, and the judicial or practical efficacy of annulling the stay.

Here, the movant did not know of the bankruptcy case when it conducted a foreclosure sale. Given the failure of the original borrower to make mortgage payments over a protracted period, and the above track record of tag team bankruptcies filed only to acquire the automatic stay, there is little doubt that had the movant first ask for relief from the automatic stay it would have received it. The original borrower and the debtor have filed repeated cases for the sole purpose of acquiring the automatic and without any intention or demonstrated ability of prosecuting a chapter 13 to plan confirmation and consummation. These facts are sufficient to warrant annulment. See In re Schwartz, 954 F.2d at 572); Algeran, Inc. v. Advance Ross Corp., 759 F.2d 1421, 1425 (9th Cir. 1985); Jewett v. Shabahangi (In re Jewett), 146 B.R. 250, 252 (B.A.P. 9th Cir. 1992). The circumstances where equity requires the stay to be annulled, however, are narrow and generally require a finding that the debtors have acted in bad faith or fraudulently. Id. Such conduct is present here.

Having annulled the stay to ratify the foreclosure, however, the court cannot grant relief under 11 U.S.C. § 362(d)(4). 11 U.S.C. § 362(d)(4) provides that:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . . with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property."

Relief under 11 U.S.C. § 362(d)(4) will be denied because the movant is not "a creditor whose claim is secured by an interest in such real property," for purposes of 11 U.S.C. § 362(d)(4). The movant now is the owner of the

property. According to the motion, the movant purchased the property at the foreclosure sale ratified by the court. The movant does not hold a debt secured by the property. Relief under section 362(d)(4) is available only to creditors who are secured by the property. Ellis v. Yu (In re Ellis), 523 B.R. 673, 678-80 (B.A.P. 9th Cir. 2014). The movant is not secured by the property. The movant is the owner of the property.

Finally, in rem relief sought under some other theory, including under 11 U.S.C. § 105, will be denied because such relief requires an adversary proceeding. Johnson v. TRE Holdings LLC (In re Johnson), 346 B.R. 190, 195 (B.A.P. 9th Cir. 2006).

4. 11-45037-A-13 BRYANT/CAROL HIGGS — MOTION TO MODIFY PLAN
DBJ-3 — 5-12-16 [60]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The modified plan fails to provide for payments and dividends already made pursuant to the originally confirmed plan.

5. 16-21437-A-13 JULIE COLLIS-DAVIS — MOTION TO VALUE COLLATERAL
DEF-3 — 5-24-16 [38]
VS. FIRST TENNESSEE BANK, N.A.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The debtor's motion to value the debtor's home at $250,000 will be denied.

According to the debtor, the home has a value of $250,000. As the owner, the debtor may give an opinion of the value but that opinion must be expressed without giving a reason for the valuation. Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08). Unless the owner also qualifies as an expert, it is improper for the owner to give a detailed recitation of the basis for the opinion. Only an expert qualified under Fed. R. Evid. 702 may rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject. . . ." Fed. R. Evid. 703. "For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay, should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties unless, the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc." Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08).

Hence, the only evidence supporting the motion is the debtor's statement of value.

On the other hand, the opposition is supported by expert testimony from an appraiser. The lowest value offered by these experts is $310,000. At that value, the second mortgage held by the respondent creditor is at least

partially "in the money" and therefore In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997) are of no help to the debtor. Instead, Nobelman v. American Savings Bank, 508 U.S. 324 (1993), prevents the debtor from stripping down the second mortgage because it encumbers the debtor's home and 11 U.S.C. § 1322(b)(2) prevents a debtor from modifying a mortgage that is at least partially collateralized.

The court concludes that the debtor's opinion of value, in the face of the appraisal is not credible. Accordingly, the debtor has not met the burden of proving a value of $250,000.

6. 16-22739-A-13 JOEY/SHEILA NUQUI — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-9-16 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be overruled and the motion to dismiss the case will be denied on the condition that the plan is modified in two respects.

First, the dividend to Class 7 creditors must be increased to 5.1%, which will yield an approximate dividend of $10,519.60, in order to comply with 11 U.S.C. § 1325(b). Second, with the consent of the debtor, any tax refund for the duration of the plan, to the extent the state and federal refund exceeds $2,000 for any tax period.

7. 16-22354-A-13 OSCAR DIAZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-8-16 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the case will be dismissed.

First, the debtor failed to appear at the meeting of creditors. Appearance is

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

Second, in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The withholding of this financial information from the trustee is a breach of the duties imposed upon the debtor by 11 U.S.C. § 521(a)(3) & (a)(4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

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

Fourth, 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 debtor has failed to commence making plan payments and has not paid approximately $150 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).

Sixth, even if plan payments were current the plan would not be feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $150 is less than the $244 in dividends and expenses the plan requires the trustee to pay each month.

Seventh, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The plan fails to disclose two prior bankruptcy cases dismissed during the prior 8 years. 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).

Eighth, the plan incorporates additional provisions but fails to attach them to the plan.

Ninth, the plan specifies no dividend for Class 7 creditors, whether it may be nothing or 100%. Without this term, the debtor cannot prove the plan is feasible or that it complies with 11 U.S.C. § 1325(a)(4).

Tenth, the plan fails to provide for the maintenance of mortgage payments and the cure of the pre-petition arrears on a Class 1 mortgage claim. Therefore, the plan does not comply with 11 U.S.C. §§ 1322(b)(2), (b)(5), and 1325(a)(5)(B).

Eleventh, the debtor is not eligible for chapter 13 relief. 11 U.S.C. § 109(h) prohibits an individual from being a debtor under any chapter unless that individual received a credit counseling briefing from an approved non-profit budget and credit counseling agency during the 180-day period immediately preceding the filing of the petition. In this case, the debtor has not filed a certificate evidencing that briefing was completed during the 180-day period prior to the filing of the petition. Hence, the debtor was not eligible for bankruptcy relief when this petition was filed.

8. 16-21471-A-13 TYLER/KIMBERLY WELCH — MOTION TO AVOID JUDICIAL LIEN
ULC-1
VS. CAPITAL ONE BANK USA, N.A. — 5-26-16 [24]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The motion asserts that the respondent holds a claim secured by a judicial lien. However, the debtor's personal liability was discharged in a prior case and the judicial lien was avoided pursuant to 11 U.S.C. § 522(f)(1)(A) in that same case. Assuming this is so, there is nothing to avoid in this case.

9. 16-23077-A-13 ADRIAN/VICTORIA OLDHAM — MOTION TO VALUE COLLATERAL
MET-1
VS. UMPQUA BANK — 6-9-16 [12]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be denied.

According to the debtors, their business inventory and business equipment have a value of $21,745. However, this opinion is based on the liquidation value given to the debtors by West Auctions. There are two problems.

The debtors are simply repeating the opinion of another. This is hearsay and will not be considered by the court.

Second, the relevant valuation standard is not a liquidation value. Because the debtor is operating a business and selling the inventory at retail and suing the equipment, the cost of replacing that inventory and the cost of replacing the business equipment are the relevant valuation standards. See 11 U.S.C. § 506(a)(1).

10. 16-22082-A-13 GARY DELFINO AND JAQUILINE NERUTSA — ORDER TO SHOW CAUSE 6-6-16 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will remain pending but the court will modify the terms of its order permitting the debtor to pay the filing fee in installments.

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 31. While the delinquent installment was paid on June 9, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

11. 16-20883-A-13 WALTER FLETSCHER — MOTION TO CONFIRM PLAN 5-9-16 [52]
DBJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan does not satisfy 11 U.S.C. § 1322(a)(2) because it fails to provide for payment in full of the priority claim of Melissa Fletcher.

Second, because the plan under-estimates the nonpriority unsecured claims in Class 7 by more than $400,000, to pay the dividends required by the plan at the rate proposed by it will take 138 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

The objection by Bank of America, which was incorrectly noticed for hearing under a different docket control number, will be overruled. The plan does not provide for a secured claim held by Bank of America.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the debtor adequately fund the plan with future earnings or other future income that is paid over to the trustee (section 1322(a)(1)), provide for payment in full of priority

claims (section 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (section 1322(a)(3)). But, nothing in section 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may, at the option of the debtor, include. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (section 1322(b)(2)), cure any default on a secured claim, including a home loan (section 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (section 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options: (1) provide a treatment that the debtor and secured creditor agree to (section 1325(a)(5)(A)), provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the plan (section 1325(a)(5)(B)), or surrender the collateral for the claim to the secured creditor (section 1325(a)(C). However, these three possibilities are relevant only if the plan provides for the secured claim.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. See 11 U.S.C. § 362(d)(1).

12. 16-20590-A-13 DANIEL/MEGHAN MILLER — MOTION TO AVOID NONPOSSESSORY, NONPURCHASE MONEY LIEN
PGM-2 — 5-26-16 [31]
VS. SPRINGLEAF FINANCIAL SERVICES

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed without prejudice.

The motion asserts that the respondent holds a nonpossessory, nonpurchase money security interest in household property used by the debtor. The declaration in support of the motion, however, asserts the respondent holds a judicial lien against the personal property described in the motion but no copy of the judicial lien is authenticated by the declaration. In short, the motion says one thing that is not supported by the record, and the debtor's written testimony attests to something else that is not corroborated by the documentation of the judicial lien.

13. 16-20891-A-13 HILARIO HERNANDEZ — MOTION TO CONFIRM PLAN
RJ-2 — 5-17-16 [39]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, 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.

Second, while the motion refers to an updated budget that evidences the debtor's ability to make the payments required by the plan, no such budget has been filed or accompanies the motion. Therefore, the debtor has not met the burden of proving the plan's feasibility. See 11 U.S.C. § 1325(a)(6). Further, the plan's feasibility is called further into doubt by virtue of the fact that it understates the arrears on Bank of America Class 1 claim by approximately $800.

14. 16-21694-A-13 ALICE PEREZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
JDM-1
TRAVIS CREDIT UNION VS. — 6-7-16 [59]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim.

According to the debtor, the vehicle securing the movant's claim has a value of $6,000. While a plan has been proposed, there is no evidence in the record that its confirmation is likely. Further, the debtor is not using the vehicle. She has allowed a non-dependent adult child to remove the vehicle from California and enjoy its exclusive use. Thus, it is evident the vehicle is not necessary to the debtor's personal financial reorganization and the expenditure of funds on the vehicle is neither necessary to the debtor's maintenance nor reasonable.

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.

15. 16-21694-A-13 ALICE PEREZ — MOTION TO VALUE COLLATERAL
PGM-1
VS. TRAVIS CREDIT UNION — 4-21-16 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice.

At the hearing on May 23, the debtor's attorney agreed to permit the respondent's expert to inspect the vehicle in order to appraise it. The debtor then failed to permit the inspection. Given the debtor's failure to cooperate

as promised, the court denies the motion.

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

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice.

At the hearing on May 23, the debtor's attorney agreed to permit the respondent's expert to inspect the vehicle in order to appraise it. The debtor then failed to permit the inspection. Given the debtor's failure to cooperate as promised, the court denies the motion.

17. 16-23598-A-13 VALERIE SMITH — MOTION TO EXTEND AUTOMATIC STAY
ALF-1 — 6-7-16 [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, pursuant to 11 U.S.C. § 362(c)(3), will be denied.

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.

This debtor, however, filed two prior cases (case nos. 15-20681, dismissed August 8, 2015, and 15-27104, dismissed December 12, 2015) which were pending and dismissed within 1 year of this case. Therefore, section 362(c)(3) is not applicable. Instead, 11 U.S.C. § 362(d)(4) is applicable and it provides that there is no automatic stay unless imposed by the court when the debtor files two prior cases that were pending and dismissed in the prior year.

More important than citing the wrong section, however, is the failure of the motion to explain the failure of the debtor to properly prosecute the two prior cases which were dismissed because she failure to timely confirm a plan (the first case), and failed to file a certificate evidencing completion of credit briefing and provide the trustee a copy of her last filed tax return. These failures are discussed only in general terms. Therefore, the court has no

confidence that this case is likely to result in a confirmed plan that the debtor consummates.

18. 16-22699-A-13 ROBERTO HEREDIA AND MARIA RUIZ-CASTILLO — OBJECTION TO CONFIRMATION OF PLAN
MC-1 — 6-9-16 [12]
FREEDOM MORTGAGE CORPORATION VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

The plan provides for the objecting creditor's claim in Class 4. (The claim holder is identified as Roundpoint Mortgage in the plan; the court assumes this is the claim of Freedom Mortgage.) Class 4 is reserved for claims not in default and not modified by the plan. The plan provides for the maintenance of ongoing mortgage payments by the debtor directly to the creditor. In this instance, however, the creditor maintains that the claim was in default when the case was filed. There is a pre-petition arrearage of $1,747.22. Because the plan does not provide for a cure of this arrearage, the plan does not satisfy 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B).

THE FINAL RULINGS BEGIN HERE

19. 12-25204-A-13 CHARANJIT SINGH — MOTION TO MODIFY PLAN
CJY-3 — 5-16-16 [45]

Final Ruling: The motion will be dismissed without prejudice.

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

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

20. 15-25707-A-13 JEANNINE SILVA — MOTION FOR RELIEF FROM AUTOMATIC STAY
RLC-1 — 5-25-16 [31]
ED/SHEILA CARBAHAL VS.

Final Ruling: The motion will be dismissed without prejudice.

Fed. R. Bankr. P. 9013 and 9014(a) provide that a request for an order shall be made by motion. Fed. R. Bankr. P. 9014(b) further provides that a motion must be served in the manner provided for service of a summons and a complaint. Fed. R. Bankr. P. 7004(b) permits service of a summons and a complaint by first class mail. When the person served is the debtor, the debtor and the debtor's attorney both must be mailed the summons and complaint. See Fed. R. Bankr. P. 7004(b)(9) & (g). Here, the motion was served only on the debtor's attorney. Nothing has been filed by or on behalf of the debtor that might be considered a waiver of this service defect. Therefore, service is defective and the motion must be dismissed without prejudice.

21. 15-28408-A-13 BARBARA GIAMMARCO — MOTION FOR RELIEF FROM AUTOMATIC STAY
DJD-1 — 5-22-16 [34]
SETERUS, INC. VS.

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

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The movant is secured by a deed of trust encumbering the debtor's real property. The plan classifies the movant's claim in Class 1 and requires that the post-petition note installments be paid by the trustee to the movant. Because the debtor has failed to make all plan

payments, the trustee was unable to make at least three monthly post-petition monthly mortgage payments to the movant as required by the plan. This default is cause to terminate the automatic stay. See Ellis v. Parr (In re Ellis), 60 B.R. 432, 434-435 (B.A.P. 9th Cir. 1985).

The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) will not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

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 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.

22. 16-21320-A-13 JUAN/CATHERINE MARTINEZ — OBJECTION TO EXEMPTIONS
JPJ-2 — 5-10-16 [27]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument.

While the trustee's objection is meritorious, after it was filed, the debtor filed an amended Schedule C amending the exemptions. Therefore, this objection is moot and it is dismissed without prejudice to the trustee's right to object

to the amended exemptions.

23. 16-21532-A-13 MARY MURPHY — MOTION TO CONFIRM PLAN
DPR-3 — 5-13-16 [42]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted on the condition that the plan is modified in the confirmation order to require a duration of 60 months. As modified, the plan will comply with 11 U.S.C. § 1325(b)(4)(A)(ii).

24. 16-21437-A-13 JULIE COLLIS-DAVIS — OBJECTION TO EXEMPTIONS
JPJ-1 — 5-10-16 [30]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument.

While the trustee's objection is meritorious, after it was filed, the debtor filed an amended Schedule C amending the exemptions. Therefore, this objection is moot and it is dismissed without prejudice to the trustee's right to object to the amended exemptions.

25. 15-29648-A-13 TERI TAYLOR — MOTION TO CONFIRM PLAN
TAG-4 — 5-6-16 [71]

Final Ruling: The motion will be dismissed without prejudice.

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

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

26. 16-23255-A-13 RICHARD HOPE — MOTION TO AVOID JUDICIAL LIEN
SNM-1 — 5-24-16 [8]
VS. AHERN RENTALS, INC.

Final Ruling: The court continues this hearing to July 25, 2016 at 1:30 p.m. because the deadline to object to exemptions has not yet expired. Until the exemption underlying this motion is allowed, this motion is premature.

27. 16-21471-A-13 TYLER/KIMBERLY WELCH — OBJECTION TO EXEMPTIONS
JPJ-2 — 5-10-16 [16]

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

The objection will be sustained.

The debtor has claimed a homestead exemption pursuant to Cal. Civ. Pro. Code 704.30 in an amount of "100% of fair market value." California law permits a finite exemption; it does not permit an exemption of whatever a home happens to be worth. The debtor must claim a specific amount of equity as exempt up to the relevant statutory maximum.

28. 16-20673-A-13 GLENN GILKERSON AND THEALISE WAGER — OBJECTION TO EXEMPTIONS
JPJ-2 — 5-10-16 [57]

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

The objection will be sustained and the exemption under Cal. Civ. Pro. Code § 703.140(b)(10)(D) will be disallowed. This statute provides an exemption of alimony and child support. Firearms are not covered by it.

29. 16-22083-A-13 ERIC FRANCOIS — ORDER TO SHOW CAUSE
6-6-16 [29]

Final Ruling: The order to show cause will be discharged as moot. The case was dismissed on June 15.