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

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**June 30, 2014 at 1:30 p.m.**

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

**THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 12. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

**IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON JULY 28, 2014 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 14, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 21, 2014. 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 THE ITEMS IN THE SECOND PART OF THE CALENDAR, ITEMS 13 THROUGH 37. INSTEAD, EACH OF THESE ITEMS HAS 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 7, 2014, AT 2:30 P.M.**

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

1. 10-27008-A-13 HORACIO TENA — MOTION TO INCUR DEBT
CAH-1 — 6-6-14 [33]

- ☐ 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 to incur a purchase money loan in order to purchase a new home will be granted. The motion establishes a need for the home and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of the plan which provides for payment in full of all claims.

2. 13-33309-A-13 ERROL/THEANA BARKER — MOTION TO AVOID JUDICIAL LIEN
PGM-4
VS. MONTE BELLO APARTMENTS — 5-6-14 [45]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied without prejudice.

The motion concerns real property that was not exempted by the debtor in the debtor's original schedules. Without an exemption, it is not possible for a judicial lien to impair an exemption. And, while the schedules were amended on May 1, 2014 to include an exemption of the real property, the amended schedule C was not served on any party in interest. Hence, the time period to object to the amended exemption has not yet begun to run.

3. 14-24723-A-13 MARIA FLORES — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-10-14 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

tentative ruling.

The objection will be sustained and the 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, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because it will take 48 months, not 36 months, to pay the dividends required by the plan.

Fifth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor failed to utilize the current official Schedules I and J. This 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).

4. 14-24826-A-13 ROGER RUE — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-11-14 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $1,127 is less than the $1,199 in dividends and expenses the plan requires the trustee to pay each month.

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, to pay the dividends required by the plan and the rate proposed by it will take 75 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Sixth, the debtor has failed to fully and accurately provide all financial information required by the petition, schedules, and statements. Specifically, the debtor failed to disclose on the statement of financial affairs, a sale or property and a related payment of a claim secured by that property. 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).

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.

5. 14-24039-A-13 TROY FINLEY — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-10-14 [41]

- ☐ 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 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 filed a certificate but the briefing was completed almost three years prior to the filing of the bankruptcy filing. Hence, the debtor was not eligible for bankruptcy relief when this petition was filed.

Second, the debtor has failed to commence making plan payments and has not paid approximately $402.84 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Third, the proposed plan is incomplete. It makes no provision for nonpriority unsecured claims, Class 7, whether that might be a 100% dividend, nothing, or something in between. Hence, the debtor cannot demonstrate that the plan is feasible as required by 11 U.S.C. § 1325(a)(6) or that it pays unsecured creditors what they would receive in a chapter 7 liquidation as required by 11 U.S.C. § 1325(a)(3).

Fourth, the plan provides for two nonpriority unsecured claims in Class 5, which is reserved for priority claims, that are not priority claims. Because priority claims must be paid in full, this is a potential unfair discrimination if other nonpriority claims will not be paid in full. See 11 U.S.C. § 1322(b)(1).

6. 12-26547-A-13 VICKIE TADLOCK
JPJ-1

OBJECTION TO EXEMPTIONS
5-20-14 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be sustained.

The debtor has claimed exempt an inheritance received more than 180 days after the filing of the bankruptcy petition. Because exemptions are determined as of the date the bankruptcy petition is filed, this exemption cannot be allowed. See In re Chappell, 373 B.R. 73 (9th Cir. B.A.P. 2007).

The debtor does not dispute this assertion but argues it makes no difference that the inheritance is not exempt because it is not property of the estate. The debtor points to 11 U.S.C. § 541(a)(5) to support this assertion. Admittedly, this section makes only inheritances received within 180 days of a bankruptcy petition property of the estate.

However, the debtor's argument fails to take account of 11 U.S.C. § 1306(a)(1) which sweeps into the estate property interests acquired by a chapter 13 debtor after a chapter 13 petition is filed, including inheritances acquired more than 180 days after the case is filed. Accord Dale v. Maney (In re Dale), 505 B.R. 8, (9th Cir. B.A.P. 2014). "[W]e hold that . . . an inheritance received by chapter debtors more than 180 days following the petition date . . . and before the case is closed, dismissed or converted is property of the debtors' bankruptcy estate." Id. And, it makes no difference that a confirmed plan provided for the revesting of the property of the estate in the debtor. Id. at 13, Carroll v. Logan, 735 F.3d 147, 150 (4th Cir. 2013); Keith M. Lundin, Chapter 13 Bankruptcy ¶ 47.2 (3d ed. 2007-1.

The inheritance is property of the estate and the debtor may not exempt it.

7. 10-46568-A-13 JAMES/TERRY BALDWIN
JPJ-3

MOTION TO MODIFY PLAN
5-6-14 [200]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

Before the court are two competing motions to confirm modified plans, one by the debtor and one by the trustee. Before discussing these plans, it is necessary to recount the rather tortured history of the plans confirmed in this case.

The first plan confirmed was proposed by debtor on January 13, 2011 and confirmed on March 29, 2011. It required monthly plan payments of $52.17 for months 1 through 13, of $459.17 for months 14 through 33, of $1,055.19 for months 34 through 49, and of $1,166.19 for months 50 through 60.

The original Schedule I filed with the petition on October 5, 2010 and the amended Schedule I filed on December 4, 2010 listed only each debtor's monthly employment income. It included no projected bonuses or other income other than regular monthly income.

As it turned out, the debtor would receive substantial bonuses. For 2010 the debtor received two bonuses, both paid after the bankruptcy was filed. The first bonus totaled $65,881 but after taxes the debtor received $40,549.75. Prorating this amount based on the date of filing, the debtor proposed to retain $9,954.33, the amount earned after the petition date, and to pay $30,595.42 to the trustee for distribution to creditors. The latter amount represented the prorated bonus attributable to the prebankruptcy period.

The second bonus also was received after the filing of the bankruptcy case. It totaled $73,935 but after taxes the debtor received $48,478.47. It is the debtor's position that this bonus could be retained by him because it is earned in toto after the bankruptcy was filed. It was a retention bonus that was due on January 1, 2011.

The proration and the claim to the entire second bonus apparently is based on the debtor's interpretation of 11 U.S.C. § 541(a)(6). That is, the debtor believes he is entitled to keep any earnings from services performed after the commencement of the bankruptcy case.

Having received but not scheduled these substantial bonuses, the debtor first filed a motion on April 14, 2011 asking the court to confirm the debtor's proration of the first bonus and to award to the debtor all of the second bonus. The court dismissed this motion as an impermissible attempt to obtain a declaratory judgment without the requisite adversary proceeding.

Next, the debtor proposed a modified plan on July 25, 2011 and proposed to divide the bonuses between himself and the estate. The modified required the same 60 monthly payments as required by the originally confirmed plan but also required the debtor to pay $30,595.42 of the $40,549.75 net bonus to creditors. The debtor proposed to retain the entire second bonus. This modified plan was confirmed on December 14, 2011 over the trustee's objection.

However, the modified plan omitted one essential term. It failed to say when the debtor was required to pay $30,595.42 to the trustee. After waiting two years for the debtor to pay it, the trustee moved to dismiss the case.

This prompted the debtor to file yet another modified plan on May 18, 2013. This plan clarified that the $30,595.42 would be paid in two installments: $10,000 on March 25, 2014 and $20,595.42 on March 25, 2015. This plan was confirmed, without objection, on July 15, 2013.

This did not end the matter.

The foregoing reflects the attempt to deal with two bonuses paid to the debtor in 2011. As it turned out, the debtor earned another bonus, this one in the net amount of $40,045.03 that was paid on February 28, 2014.

The trustee has proposed a modified plan that requires the debtor to pay this additional bonus to trustee on July 25, 2014 for transmittal to unsecured creditors. Otherwise, the plan payments are unchanged.

The debtor counters with his own modified plan. It is identical to the May 18, 2013 modified plan except that it adds this provision: "During the remainder of the Plan, Debtors shall keep the annual bonus payments that might be received."

The basic theory underlying the debtor's position and proposed plan is that these bonuses are not property of the estate because of section 541(a)(6).

This overlooks, however, section 1306(a)(2) which provides that "[p]roperty of the estate includes . . . earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12, whichever occurs first." Hence, the post petition bonus, paid for post petition services, is property of the estate. It is not exempt. There is nothing in the record to indicate that it is necessary to the support and maintenance of the debtor. Hence, it is available to fund a plan. Therefore, the court will confirm the trustee's plan and deny confirmation of the modified plan proposed by the trustee.

8. 10-46568-A-13 JAMES/TERRY BALDWIN — MOTION TO MODIFY PLAN 6-2-14 [225]
LLL-15

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied for the reasons explained in the ruling on the trustee's motion to confirm a modified plan, JPJ-3. That ruling is incorporated by reference.

9. 14-24772-A-13 CAROLYN STUBBS — ORDER TO SHOW CAUSE 6-10-14 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $70 due on June 5 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

10. 10-21180-A-13 ROBERT MACBRIDE — DEBTOR'S MOTION FOR CONFIRMATION OF MORTGAGE CURE ETC 5-8-14 [194]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** None. The respondent's request for a continuance is granted and the court sets the following schedule for discovery, briefing and hearing.

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|---|---|
| July 14 | Commencement of nonexpert discovery. |
| September 15 | Completion of nonexpert discovery, designation and disclosure of expert, commencement of expert discovery. |
| October 14 | Close of expert discovery. |
| October 27 | Filing and service of supplemental briefing and evidence from the debtor, if any. |
| November 10 | Filing and service of supplemental briefing and evidence from the respondent, if any. |
| November 24 | Filing and service of any reply by debtor to respondent's supplemental briefing and evidence, if any. |
| Dec. 1 @ 1:30 | Status conference to set evidentiary hearing. |

11. 12-41081-A-13 CHERYL MORRIS
JPJ-2
VS. SELENE FINANCE, LP/DLJ MORTGAGE, INC.

OBJECTION TO CLAIM
4-8-14 [65]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be overruled.

The last date to file a timely proof of claim was April 17, 2013. The respondent did not file its proof of claim until February 7, 2014. Without more, pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim must be disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

The response admits the proof of claim was filed late. The court has no discretion to allow a late claim. The deadline to file a proof of claim set by Fed. R. Bankr. P. 3002(c) cannot be extended as requested by the claimant. First, Rule 3002(c) contains six exceptions to the requirement that a timely proof of claim be filed. None of those exceptions are applicable here. Second, Fed. R. Bankr. P. 9006(b)(3) specifically precludes enlargement of the time for creditors to file proofs of claim except to the extent provided in Rule 3002(c). The court concludes that Rule 3002(c) provides no basis for an extension in this case.

The applicability of Rule 3002(c) and not Fed. R. Bankr. P. 3003(c)(3) to this case, and the wording of Rule 9006(b)(3) prevent the Supreme Court's decision in Pioneer Investment Services Company v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380 (1993), from being of assistance to the creditors. Pioneer involved a chapter 11 proceeding. In chapter 11 cases, the filing of proofs of claim is governed by Rule 3003 and not Rule 3002. Rule 3002 applies to chapter 13 cases. Rule 9006(b)(3) does not restrict extensions of the time to file proofs of claim in chapter 11 cases. Consequently, under Rule 9006(b)(1), the court may permit a creditor to file a proof of claim in a chapter 11 case after the bar date established under Rule 3003 has expired if excusable neglect prevented the filing of a timely proof of claim.

In Pioneer, the Supreme Court determined what constituted excusable neglect under Rule 9006(b)(1). That decision has little or no applicability here. In a chapter 13 case, Rule 9006(b)(1) is not applicable; Rules 9006(b)(3) and 3002(c) are applicable. And, as noted above Rule 3002(c) does not permit enlargement of the time to file proofs of claim after the expiration of the deadline even when excusable neglect is present.

In chapter 13 cases, the bankruptcy court lacks any equitable power to enlarge the time for filing a proof of claim apart from the six situations described in Rule 3002(c). See Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990). Because none of those situations are present here, and because the excusable neglect standard is not applicable in chapter 13 cases, the court cannot retroactively extend the time for the respondent to file a proof of claim.

However, prior to filing of the tardy proof of claim, the respondent objected to the confirmation of the debtor's proposed chapter 13 plan. That objection was filed on January 24, 2013, prior to the bar date for filing proofs of

claim. In the documents comprising the objection, the respondent attached its loan documentation, including the note and the deed of trust, described its collateral, stated the original loan amount, the balance due, and arrears owed on the loan, and demanded that the arrears and the ongoing payment be made to it through the plan.

The Ninth Circuit recognizes that a claim may be presented informally. An informal proof of claim "must state an explicit demand showing the nature and amount of the claim against the estate and evidence an intent to hold the debtor liable." Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Restaurants, Inc., 754 F.2d 811, 815 (9th Cir. 1985). Also see In re Franciscan Vineyards, Inc., 597 F.2d 181 (9th Cir. 1979), *cert. denied*, 445 U.S. 915, 100 S.Ct. 1274, 63 L.Ed.2d 598 (1980); Matter of Pizza of Hawaii, Inc., 761 F.2d 1374, 1381 (9th Cir. 1985) (motion for relief from automatic stay considered an informal proof of claim).

The objection may be considered an informal proof of claim. It clearly summarizes the respondent's claim and makes clear that it intends to enforce that claim against the debtor. Thus, having filed a timely, albeit informal, proof of claim, the apparently tardy formal proof of claim relates back to January 24, 2013 and is considered timely. "A creditor is permitted to file a proof of claim after the bar date when the proof of claim is an amendment to a timely filed claim. . . ." In re Osborne, 159 B.R. 570, 573 (Bankr. C.D. Cal. 1993), *affirmed*, 167 B.R. 698 (B.A.P. 9th Cir. 1994), *affirmed*, 76 F.3d 306 (9th Cir. 1996).

The court is not granting permission to file a late claim. The court may grant such permission only under the circumstances allowed in Fed. R. Bankr. P. 3002(c)(1)-(6). This rule has no applicability here. However, the court concludes, by virtue of the informal proof of claim, that a timely proof of claim was filed.

12. 14-24691-A-13 JPJ-1 — MICHAEL LAMB AND MARGARET LEDOUX-LAMB — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO CONVERT CASE 6-11-14 [18]

- ☐ 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 but the motion to convert the case will be denied because the conversion fee has not been paid.

First, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Bank of America 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, 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.

Third, the debtor has failed to give the trustee financial records for a closely held business. 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).

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor failed to schedule an interest in inventory, accounts receivable and other business assets. 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).

***THE FINAL RULINGS BEGIN HERE***

13. 13-23600-A-13 RANDALL HILL — MOTION TO MODIFY PLAN
PGM-4 — 5-21-14 [58]

**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 trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

14. 14-24604-A-13 DAVID STRANNARD — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-10-14 [16]

**Final Ruling:** The trustee has voluntarily dismissed the objection to the confirmation of the plan as well as the related dismissal motion.

15. 14-25106-A-13 IRIS FRAZIER — MOTION TO VALUE COLLATERAL
ACK-1
VS. WELLS FARGO BANK, N.A. — 5-21-14 [10]

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $175,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Wells Fargo Home Mortgage. The first deed of trust secures a loan with a balance of approximately $227,006 as of the petition date. Therefore, Wells Fargo Bank, N.A.'s claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir.

2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

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

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of $175,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

16. 13-29808-A-13 SUSAN KELLY
JPJ-1
VS. SALLIE MAE, INC.

OBJECTION TO CLAIM
5-8-14 [25]

**Final Ruling:** This objection to the proof of claim of Sallie Mae, Inc., 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. The last date for a creditor other than a governmental entity to file a timely proof of claim was November 27, 2013. The last date for a governmental entity to file a proof of claim was January 21, 2014. The proof of claim was filed on April 9, 2014. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

17. 14-24609-A-13 EDWIN VIRAY
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
6-10-14 [22]

**Final Ruling:** The trustee has voluntarily dismissed the objection to the confirmation of the plan as well as the related dismissal motion.

18. 14-22213-A-13 DALE NEWBERRY
SDB-2

MOTION TO CONFIRM PLAN
5-15-14 [32]

**Final Ruling:** This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

19. 14-24317-A-13 JOHN BAXTER AND PATRICI GRIFFIN RICE BAXTER
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN
6-10-14 [26]

**Final Ruling:** At the request of the trustee and with the consent of the

debtor, the hearing on the objection will be continued to July 21, 2014 at 1:30 p.m. The debtor's response to the objection shall be filed and served no later than July 7 and the trustee's reply shall be filed and served no later than July 14.

20. 10-27120-A-13 EMILITO/MELISSA SIMPLICIANO — MOTION TO MODIFY PLAN 5-23-14 [101]

**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 and the objection will be overruled on the condition that the plan is further modified in the confirmation order to provide that the payment schedule shall be as specified in the second "page 7." As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

21. 14-24836-A-13 AARON/REBECCA ULDALL — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1
AMERICREDIT FINANCIAL SERVICES, INC. VS. — 5-28-14 [17]

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

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess and to obtain possession of its personal property security, and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has proposed a plan that does not provide for the payment of the movant's claim. Further, the debtor has not paid the claim under the terms of the contract with the movant. Because the debtor has not paid the movant's claim, and will not pay it in connection with the chapter 13 case, there is cause to terminate the automatic stay.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

22. 13-29637-A-13 JERMAINE/BAILEY ARMSTEAD
JPJ-4
VS. SALLIE MAE, INC. — OBJECTION TO CLAIM 5-8-14 [41]

**Final Ruling:** This objection to the proof of claim of Sallie Mae, Inc., 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. The last date for a creditor other than a governmental entity to file a timely proof of claim was November 27, 2013. The last date for a governmental entity to file a proof of claim was January 21, 2014. The proof of claim was filed on April 4, 2014. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

23. 13-29441-A-13 RAVINDER GILL — OBJECTION TO CLAIM
JPJ-1
VS. SALLIE MAE, INC. — 5-8-14 [39]

**Final Ruling:** This objection to the proof of claim of Sallie Mae, Inc., 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. The last date for a creditor other than a governmental entity to file a timely proof of claim was November 20, 2013. The last date for a governmental entity to file a proof of claim was January 13, 2014. The proof of claim was filed on April 1, 2014. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

24. 09-35744-A-13 BRIAN CHOJNACKI AND BRIDGET ARENA — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
BKW-3 — 6-2-14 [97]

**Final Ruling:** At the request of the movant, the hearing is continued to July 21, 2014 at 1:30 p.m. Opposition shall be filed and served no later than July 7 and any reply shall be filed and served by July 14. The movant shall give notice of these deadlines and of the continuance no later than July 1.

25. 14-25345-A-13 FRANK ESPINOZA — MOTION TO VALUE COLLATERAL
NUU-1
VS. ONE MAIN FINANCIAL — 5-29-14 [10]

**Final Ruling:** This valuation motion has been set for hearing on the notice

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $2,425 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $2,425 of the respondent's claim is an allowed secured claim. When the respondent is paid $2,425 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.

26. 13-27558-A-13 DANIEL/JAMIE STONE — OBJECTION TO CLAIM
JPJ-2
VS. SALLIE MAE, INC. — 5-8-14 [51]

**Final Ruling:** This objection to the proof of claim of Sallie Mae, Inc., 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. The last date for a creditor other than a governmental entity to file a timely proof of claim was October 9, 2013. The last date for a governmental entity to file a proof of claim was November 27, 2013. The proof of claim was filed on March 27, 2014. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

27. 14-24160-A-13 AHMED CHARTAEV — OBJECTION TO EXEMPTIONS
JPJ-2 — 5-23-14 [16]

**Final Ruling:** The objection will be dismissed as moot. The case has been dismissed.

28. 13-27565-A-13 MELISSA MANSFIELD — OBJECTION TO CLAIM
JPJ-1
VS. SALLIE MAE, INC. — 5-8-14 [26]

**Final Ruling:** This objection to the proof of claim of Sallie Mae, Inc., 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. The last date for a creditor other than a governmental entity to file a timely proof of claim was October 9, 2013. The last date for a governmental entity to file a proof of claim was November 27, 2013. The proof of claim was filed on March 29, 2014. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

29. 13-27565-A-13 MELISSA MANSFIELD — OBJECTION TO CLAIM
JPJ-2
VS. SALLIE MAE, INC. — 5-8-14 [30]

**Final Ruling:** This objection to the proof of claim of Sallie Mae, Inc., 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. The last date for a creditor other than a governmental entity to file a timely proof of claim was October 9, 2013. The last date for a governmental entity to file a proof of claim was November 27, 2013. The proof of claim was filed on March 29, 2014. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

30. 13-27565-A-13 MELISSA MANSFIELD — OBJECTION TO CLAIM
JPJ-3
VS. SALLIE MAE, INC. — 5-8-14 [34]

**Final Ruling:** This objection to the proof of claim of Sallie Mae, Inc., 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. The last date for a creditor other than a governmental entity to file a timely proof of claim was October 9, 2013. The last date for a governmental entity to file a proof of claim was November 27, 2013. The proof of claim was filed on March 29, 2014. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

31. 14-23468-A-13 ROBERT/RHONDA WELCH — MOTION TO CONFIRM PLAN
JME-1 — 5-16-14 [21]

**Final Ruling:** This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

32. 12-32070-A-13 DANIEL/TINA GREENWOOD — OBJECTION TO CLAIM
JPJ-2
VS. THE BANK OF NEW YORK MELLON — 5-8-14 [43]

**Final Ruling:** This objection to the proof of claim of The Bank of New York Mellon 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. The last date to file a timely proof of claim was October 31, 2012. The proof of claim was filed on May 22, 2013. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In

re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

33. 10-53172-A-13 JOHN/LORETTA DEERING — OBJECTION TO CLAIM
JPJ-4
VS. CONSUMER PORTFOLIO SERVICE — 5-8-14 [99]

**Final Ruling:** This objection to the proof of claim of Consumer Portfolio Service 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. The last date to file a timely proof of claim was April 20, 2011. The proof of claim was filed on April 16, 2014. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

34. 12-36782-A-13 DEBRA WILKINS — MOTION TO APPROVE LOAN MODIFICATION
CFH-3 — 5-29-14 [40]

**Final Ruling:** This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

35. 14-22185-A-13 VALENTIN MANZO — MOTION TO CONFIRM PLAN
PGM-2 — 5-19-14 [34]

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

Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

36. 13-22788-A-13 RACHAEL AMARAL — OBJECTION TO CLAIM
JPJ-2
VS. OCWEN LOAN SERVICING, L.L.C. — 5-8-14 [38]

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

The objection will be sustained. The last date to file a timely proof of claim was July 3, 2013. The proof of claim was filed on March 21, 2014. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

37. 13-33089-A-13 PRISCILLA BEINTKER — MOTION TO APPROVE LOAN MODIFICATION
SDH-5 — 5-30-14 [53]

**Final Ruling:** This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.