UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 6, 2018 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 13. 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 SEPTEMBER 4, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 20, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 27, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 13 THROUGH 27 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 AUGUST 13, 2018, AT 2:30 P.M.

Matters to be Called for Argument

1. 18-24304-A-13 CARLTON/CHERYL PHENIX — MOTION TO VALUE COLLATERAL
MET-1
VS. WESTAMERICA BANK — 7-23-18 [10]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $10,600 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $10,600 of the respondent's claim is an allowed secured claim. When the respondent is paid $10,600 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.

2. 17-22513-A-13 CHARLIE/CHRISTINA BOGGS — MOTION TO MODIFY PLAN
MS-4 — 6-28-18 [56]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $670 is less than the $676.42 in dividends and expenses the plan requires the trustee to pay each month.

Second, the debtor has not explained the reason for the inability to make plan payments in April, May and June 2018. Absent an explanation the court cannot be sure the reason for the default will not recur. The debtor has not met the burden of proving an ability to make plan payments.

Third, the plan fails to provide for the dividends already paid by the trustee pursuant to the original confirmed plan. Specifically, the trustee has partially cured the arrears on a Class 1 secured claim. While the plan proposes to move the treatment of this claim to Class 4 based on a consensual

loan modification with the home lender, the plan must provide for the arrears in Class 1 to the extent previously paid by the trustee. Otherwise, the trustee would be compelled to recover the amounts previously paid to the home lender.

To the extent the trustee is objecting to the plan on the ground that the debtor is not contributing all disposable income to the plan and the payment of unsecured creditors, the objection will be overruled. 11 U.S.C. § 1325(b) is not applicable to a plan proposed post-confirmation. See Sunahara v. Burchard (In re Sunahara), 326 B.R. 768, 781-83 (9th Cir. BAP 2005).

3. 17-20214-A-13 CHRISTOPHER/MARTA HEARTY — MOTION FOR RELIEF FROM AUTOMATIC STAY
DVW-1 — 7-17-18 [29]
21ST MORTGAGE CORPORATION VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be dismissed as moot.

The court confirmed a plan on March 23, 2017. That plan provides for the movant's claim in Class 4 (and not in Class 2 as is stated in the motion). Class 4 secured claims are long-term claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or by a third party. The plan includes the following provision at section 2.11:

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

Because the plan has been confirmed and because the case remains pending under chapter 13, the automatic stay has already been modified to permit the movant to proceed against its collateral.

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

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

5. 18-21751-A-13 ALLA KVITKO — MOTION TO CONVERT OR TO DISMISS CASE
JPJ-2 — 7-6-18 [33]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

This case was filed on March 26, 2018. The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The court's order denying confirmation was filed on June 18. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This fact suggests to the court that the debtor either does not intend to confirm a plan or does not have the ability to do so. This is cause for dismissal or conversion of the case to chapter 7, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(1) & (c)(5).

Nonetheless, given the debtor filed a proposed modified plan after this objection was filed, the court will give the debtor to obtain its confirmation. However, if the plan is not confirmed at the scheduled hearing on August 27, the case will be converted to one under chapter 7 rather than dismissed. According to the schedules, there is substantial nonexempt equity in assets.

6. 17-26052-A-13 TANISHA MAVY — MOTION TO MODIFY PLAN
TM-8 — 6-29-18 [90]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the objection overruled on two conditions. First, the debtor shall re-file the proposed plan on the new mandatory court form without making any substantive changes to the treatment of claims. Second, the order confirming the plan shall further modify the plan by providing for a total of $750 in plan payments through June 2018 and then monthly payments of $65 from July 2018 and continuing until the 36th plan month.

7. 18-22156-A-13 ROBERT/DEANNA HAMMAN — MOTION TO CONFIRM PLAN
HLG-1 — 6-25-18 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender has agreed to a home loan modification. Absent that agreement, the claim cannot be modified. See 11 U.S.C. § 1322(b)(2). Instead, the debtor is limited to curing any pre-petition default while maintaining the regular monthly mortgage installment. See 11 U.S.C. § 1322(b)(5).

8. 18-21957-A-13 WILLIAM AMARAL — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1 — 7-3-18 [53]
WELLS FARGO BANK, N.A. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

According to the motion, the movant holds a claim secured by the senior mortgage encumbering the debtor's real property which has a value of $703,000. The movant is owed approximately $387,000.

There is no confirmed plan. The debtor has proposed a plan and a related motion to sell the subject property. The sale will pay all secured claims in full.

Given that there is considerable equity in the property, there is no cause to terminate the automatic stay or the codebtor stay pursuant to 11 U.S.C. §§ 362(d)(2) and 1301. Further, given the substantial equity cushion, there is no cause for such relief under section 362(d)(1).

9. 18-21957-A-13 WILLIAM AMARAL — MOTION TO SELL
PGM-3 — 7-3-18 [66]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted on the following conditions.

First, before the sale may be consummated, a plan must be confirmed. That plan must include provisions that will implement the other conditions stated below.

Second, if a plan is confirmed, the sale must generate sufficient proceeds to pay all liens and encumbrances. This payment shall be through the plan and the trustee.

Third, if one-half of the remaining proceeds are sufficient to pay all other claims in full, that one-half shall be paid to the trustee for disbursal to all creditors pursuant to the plan. The other one-half of the remaining sale

proceeds shall be paid to the nondebtor co-owner.

If one-half of the remaining proceeds are not sufficient to pay all claims in full, all remaining proceeds shall be paid to the trustee. The trustee shall hold the proceeds until it is determined which claims are claims against the former community and which are not. Once this is determined by this court, the claims of the former community shall be paid. If they are paid in full, one-half of the then remaining sales proceeds shall be paid to the nondebtor spouse. The remaining half of the sales proceeds allocable to the debtor shall be used to pay debts for which the former community is not responsible. Once all claims are paid in full, any balance shall be refunded to the debtor.

In the event this case is dismissed before the trustee is able to pay community claims, the funds held by the trustee shall be refunded to the debtor and the nondebtor co-owner jointly.

10. 18-20571-A-7 MARK ENOS — MOTION TO MODIFY PLAN 6-25-18 [82]
PLC-7

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted on the condition that the order confirming the modified plan provides for a refund of the $157 in attorney's fees referenced in the trustee's objection. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

11. 18-23675-A-13 PAUL/ARIADNA SEVERIN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 7-18-18 [15]
JPJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $3,090 is less than the $3,160.38 in dividends and expenses the plan requires the trustee to pay each month.

Second, Local Bankruptcy Rule 3015-1(b)(6) provides: "*Documents Required by Trustee*. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist,* or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the

name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

Third, the debtor has not filed all income tax returns due over the four year period prior to the filing of this case. These returns are delinquent.

Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becoming effective, the Bankruptcy Code did not require chapter 13 debtors to file delinquent tax returns. If a debtor did not file tax returns, the trustee might object to the plan on the grounds of lack of feasibility or that the plan was not proposed in good faith. See, e.g., Greatwood v. United States (In re Greatwood), 194 B.R. 637 (9th Cir. B.A.P. 1996), *affirmed*, 120 F.3d. 268 (9th Cir. 1997).

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors.

There are two consequences to a failure to comply with section 1308. The failure is cause for dismissal. See 11 U.S.C. § 1307(e). In this case, however, the trustee has not moved for dismissal. Also, 11 U.S.C. § 1325(a)(9) and an uncodified provision of BAPCPA found at section 1228(a) of the Act provide that the court cannot confirm a plan if delinquent returns have not been filed with the taxing agency and filed with the court. This has not been done and so the court cannot confirm any plan proposed by the debtor.

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 60 days, the case will be dismissed on the trustee's ex parte application.

12. 18-21496-A-13 DANILO SESE — MOTION TO CONVERT OR TO DISMISS CASE
JPJ-3 — 7-9-18 [67]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

This case was filed on March 14, 2018. The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The court's order denying confirmation was filed on May 22. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This fact suggests to the court that the debtor either does not intend to confirm a plan or does not have the ability to do so. This is cause for dismissal or conversion of the case to chapter 7, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(1) & (c)(5).

Nonetheless, given the debtor filed a proposed modified plan after this objection was filed, the court will give the debtor to obtain its confirmation. However, if the plan is not confirmed at the scheduled hearing on September 4, the case will be converted to one under chapter 7 rather than dismissed. According to the schedules, there is approximately $30,000 of nonexempt equity in assets.

13. 17-23597-A-13 STEVEN DE LA ROSA — MOTION FOR
RAS-1 — RELIEF FROM AUTOMATIC STAY
REVERSE MORTGAGE SOLUTIONS, INC. VS. — 2-19-18 [30]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

This motion concerns real property in Isleton, California. Schedule A lists no interest in this or any real property. However, according to Schedule C, the debtor's family trust owns the Isleton property and it has a value of $260,000.

The debtor's confirmed plan makes no provision for, nor does it impair, the movant's claim.

According to the motion, the property is encumbered by the movant's deed of trust which secures a claim of more than $262,000. The movant asserts that the property has a value of $165,000.

This motion has been brought because the debtor breached the terms of the deed of trust by failing to maintain insurance on the property. The debtor's response acknowledges the default.

There is cause to terminate the automatic stay.

First, the plan makes no provision for this claim and the debtor has failed to discharge the contractual responsibility of insuring the property since the case was filed.

Second, there is no equity in the property, whether its value is as stated by the debtor or the movant.

Third, while the opposition indicates that the debtor intends to modify the plan to cure this default, this motion was filed in February 2018. The debtor has had ample time to modify the plan but has failed to do so.

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).

FINAL RULINGS BEGIN HERE

14. 17-22513-A-13 CHARLIE/CHRISTINA BOGGS — MOTION TO APPROVE LOAN MODIFICATION
MS-3 — 6-28-18 [51]

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 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 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 on condition that the court grants the related motion to confirm a modified plan. 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.

15. 18-21823-A-13 LETICIA COLLAZO — MOTION TO CONFIRM PLAN
TOG-1 — 7-2-18 [25]

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.

16. 18-24028-A-13 JAMES/JULIE PAWLOSKI — MOTION TO VALUE COLLATERAL
SDB-1
VS. THE GOLDEN 1 CREDIT UNION — 7-3-18 [8]

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $16,407 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $16,407 of the respondent's claim is an allowed secured claim. When the respondent is paid $16,407 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.

17. 18-20630-A-13 THANH LIEU — MOTION TO CONFIRM PLAN
MRL-2 — 6-11-18 [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.

18. 18-23042-A-13 RUSSELL/MIA LANG — MOTION TO CONFIRM PLAN
SDH-1 — 6-28-18 [17]

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. 17-26753-A-13 STEFAN ROSAURO AND APRIL CRUZ — OBJECTION TO CLAIM
JPJ-1 — 6-11-18 [43]
VS. CAVALRY SPV I, L.L.C.

Final Ruling: This objection to the proof of claim of Cavalry SPV I has been set for hearing on at least 44 days' notice to the claimant as required by

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

The objection will be sustained and the claim disallowed.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the no payments were ever made on a debt that was charged off by the creditor on July 31, 2012. Therefore, using this date as the date of breach, when the case was filed on October 11, 2017, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

20. 18-22156-A-13 ROBERT/DEANNA HAMMAN — OBJECTION TO CONFIRMATION OF PLAN
HLG-1 — 7-23-18 [37]
THE BANK OF NEW YORK MELLON VS.

Final Ruling: The objection will be dismissed without prejudice. This objection was filed and served as a separate contested matter. This is appropriate only in connection with a proposed plan that is served by the trustee and to which parties in interest are required to object without a motion by the debtor to confirm the plan. Here, the debtor filed a motion to confirm the plan. The debtor served that motion and proposed plan on the objecting creditor. Therefore, the objecting creditor should have filed opposition to the debtor's motion (HLG-1). The creditor failed to do so.

21. 17-20763-A-13 FRANK/TINA MOONEY — MOTION TO MODIFY PLAN
PGM-5 — 6-29-18 [68]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The court will not materially alter the relief requested and the issue raised by the trustee can be resolved by a nonmaterial modification to the plan. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted on the condition that the plan is further modified to provide for the total dividend of $375.62 previously paid to Sacramento County Utilities. This further modification may be included in the order confirming the modified plan. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

22. 18-21063-A-13 YVETTE TAYLOR — MOTION TO CONFIRM PLAN
WLG-1 — 7-5-18 [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.

23. 18-22870-A-13 SAMANTHA SHAFFNER — OBJECTION TO CLAIM
JPJ-1
VS. CAVALRY SPV I, L.L.C. — 6-11-18 [18]

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

The objection will be sustained and the claim disallowed.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on April 17, 2010. Therefore, using this date as the date of breach, when the case was filed on May 8, 2018, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

24. 10-38174-A-13 JAMES/DEBRA WEAVER — MOTION TO AVOID JUDICIAL LIEN
MWB-3
VS. CHASE BANK USA, N.A. — 7-3-18 [77]

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

The motion will be granted in part.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $160,000 as of the petition date. The unavoidable liens totaled approximately $258,000 on that same date, consisting of two mortgages in favor of Bank of America. While the debtor has no equity, the debtor is entitled to claim an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) of $1.00 in the property.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption and will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

25. 18-20880-A-13 RICHARD POGGIO — MOTION TO CONFIRM PLAN
MDA-1 — 5-31-18 [29]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The court will not materially alter the relief requested and the issue raised by the trustee has been resolved by granting a motion to avoid a judicial. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).
The motion will be granted. The plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

26. 18-20880-A-13 RICHARD POGGIO — MOTION TO AVOID JUDICIAL LIEN
MDA-2
VS. CAPITOL ONE BANK — 6-18-18 [41]

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

The motion will be granted in part.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $160,000 as of the petition date. The unavoidable liens totaled approximately $258,000 on that same date, consisting of two mortgages in favor of Bank of America. While the debtor has no equity, the debtor is entitled to claim an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) of $1.00 in the property.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A),

there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption and will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

27. 17-22681-A-13 CRAIG GLICK
ALF-1

MOTION TO
MODIFY PLAN
6-27-18 [18]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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