UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 8, 2014 at 1:30 p.m.

NO TELEPHONIC APPEARANCES WILL BE PERMITTED ON THIS CALENDAR. THE COURT'S CONFERENCING EQUIPMENT IS OUT OF ORDER. PERSONAL APPEARANCES ARE REQUIRED.

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 10. 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 SEPTEMBER 2, 2014 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 18, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 25, 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 ITEMS 11 THROUGH 17 IN THE SECOND PART OF THE CALENDAR. INSTEAD, THESE ITEMS HAVE BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON AUGUST 18, 2014, AT 2:30 P.M.

Matters to be Called for Argument

1. 14-24949-A-13 MARY LOUISE PADLO — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-25-14 [21]

☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part and the case will be dismissed.

The debtor filed a prior chapter 13 case, Case No. 09-32358, on June 16, 2009. In that case, on July 9, 2012 secured creditor LCI Lenders/Pacific Capital filed a motion for relief from the automatic stay. That motion complained, among other things, that the debtor was failing to pay ongoing real property taxes. The court issued an order requiring the debtor to make ongoing mortgage payments to the creditor as well enter into an agreement to pay the property taxes and to pay those taxes. In the event of default, the automatic stay terminated without the necessity of a further court order. See Docket #41. In April 2014, the debtor defaulted and failed to pay the property taxes. Then, on May 5, 2014, the debtor voluntarily dismissed the earlier case. In the application to dismiss the case, the debtor represented that she had incurred unexpected taxes and expenses that made it impossible to comply with the terms of her plan.

While it is unclear from the debtor's ex parte motion to dismiss, the court concludes that the taxes referred to in the motion are the very real property taxes the debtor was ordered to pay in connection with the motion for relief from the automatic stay. The court comes to this conclusion because, as noted in the trustee's reply, the debtor has not had income tax liabilities since 2008.

Five days later, the second chapter 13 case was filed.

11 U.S.C. § 109(g)(2) provides: ". . . no individual . . . may be a debtor in a case under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if . . . the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay. . . ."

The debtor is an individual. The prior case was dismissed with 180 days after the dismissal of the prior case. The dismissal was voluntary. And, the request for dismissal not only followed the filing of a motion for relief from the automatic stay, it is a fair inference that the dismissal was requested because the debtor was unable to comply with the terms of the adequate protection order.

The debtor was not eligible to be a chapter 13 debtor when this case was filed.

Second, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor failed to disclose an inheritance received in 2014. 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). And, while the debtor

amended her schedules and statements to disclose the inheritance on June 30, this was after the deadline for parties in interest to object to the confirmation of the proposed plan. The debtor will not be permitted to keep creditors in the dark concerning relevant financial information until after it is too late to object to the confirmation of a plan.

Third, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $1,304 is less than the $1,320.39 in dividends and expenses the plan requires the trustee to pay each month.

The court will overruled the objection that the plan does not comply with 11 U.S.C. § 1325(a)(4). This objection assumes the debtor is not eligible to claim a $175,000 homestead exemption pursuant to Cal. Civ. Pro. Code § 704.730 because she is not disabled, over 65, or over 55 with gross income of no more than $25,000. She is disabled as corroborated by her receipt of social security disability benefits.

2. 14-24949-A-13 MARY LOUISE PADLO — OBJECTION TO CONFIRMATION OF PLAN
MWP-1
VS. PACIFIC CAPITAL INVESTMENT, LLC — 6-26-14 [24]

☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The objection that the plan may not modify the objecting creditor's claim because it is secured only by the debtor's residence will be overruled. While 11 U.S.C. § 1322(b)(2) does include such an "anti-modification" provision, there are exceptions to it. One of the exceptions is found at 11 U.S.C. § 1322(c)(2) which provides: "Notwithstanding subsection 1322(b)(2) . . . in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title."

Hence, because the creditor's loan admittedly matures before the end of the debtor's 60-month plan, the plan may modify the claim.

The objection that the proposed rate of interest is insufficient is likewise overruled. The creditor's claim is secured by the debtor's home which as a value of $197,795 according to the schedules. The creditor is owed less than $65,000. Hence it is, to say the least, well secured.

The Supreme Court decided in Till v. SCS Credit Corp., 124 S.Ct. 1951 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987).

To set the appropriate rate, the court is required to conduct an "objective inquiry" into the appropriate rate. However, the debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

The prime rate today is 3.25% as reported by http://www.bankrate.com/rates/interest-rates/prime-rate.aspx?ec_id=m1022561&s_kwcid=AL!1325!3!41196775088!b!!g!!wall%20street%20prime%20rate&ef_id=Uoo8gwAAAf3canga:20140705190430:s

As surveyed by the Supreme Court in Till, courts using the formula approach typically have adjusted the interest rate 1% to 3%. The debtor's proposed rate of 4.75% gives a 1.5% upward adjustment. The size of this increase, combined with the fact that the movant is secured rather than unsecured and is more than adequately protected by a huge equity cushion, satisfies section 1325(a)(B)(ii).

Fourth, the objection that the creditor is entitled to its contract rate of interest is overruled. Till requires the court to use the formula approach when setting interest rates on secured claims.

Fifth, the fact that the plan may erroneously understate the amount of the secured claim is not important because section 2.04 makes clear that the proof of claim filed by the creditor will determine the amount of its claim, not the debtor's estimate of it as stated in the plan.

And, given that the amount provided for in the plan is based on a demand from the creditor made shortly before the case was filed, the court concludes that the plan satisfies 11 U.S.C. §§ 1322(b)(5) and 1325(a)(5)(B) and it will confirm the plan and permit the claims' allowance process to finally resolve the matter. If the claim is allowed in an amount that the confirmed plan is unable to pay, it is incumbent on the debtor to modify the plan on pain of dismissal. A debtor must reconcile the plan with allowed claims, either by filing and serving a motion to modify the plan to provide for all claims within the maximum duration permitted by section 1322(d), or by objecting to claims. This is required by Local Bankruptcy Rule 3007-1(d)(5) which provides: "If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date." See also former General Order 05-03, ¶ 6; In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004).

3. 12-21951-A-13 COLIN KOPES-KERR — MOTION FOR
DBL-2 — RELIEF FROM AUTOMATIC STAY
THE VILLAGES AT WILD OAK ASSOC. VS. — 7-25-14 [150]

☐ 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 granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to foreclose upon its interest, if any, in the debtor's interest in real property, and thereafter to dispose of it in accordance with applicable nonbankruptcy law. The movant is a homeowner's association. Since this case was filed, the debtor has not paid assessments required by condominium CCR's because his plan provides for the surrender of his interest in the subject property to the holder of a mortgage secured by it.

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

4. 12-21951-A-13 COLIN KOPES-KERR — MOTION FOR RELIEF FROM CO-DEBTOR STAY
DBL-1 — 7-25-14 [145]
THE VILLAGES AT WILD OAK ASSOC. VS.

☐ 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 granted and the codebtor stay of 11 U.S.C. § 1301(a) will be terminated to allow the movant to pursue its rights in the codebtor's interest in real property and against the codebtor.

The movant is a homeowner's association. Since this case was filed, the debtor has not paid assessments required by condominium CCR's because his plan provides for the surrender of his interest in the subject property to the holder of a mortgage secured by it. The nonbankrupt codebtor owns the remaining interest in the property. Because the debtor's plan will not pay the movant's claim, there is cause to terminate the codebtor stay.

5. 10-25252-A-13 LESLIE SAWYER — MOTION TO MODIFY PLAN
WW-6 — 6-30-14 [95]

☐ Trustee Agrees with Ruling

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

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the stream of plan payments is not sufficient to fund the dividends that must be paid to creditors. The additional provisions indicate that the debtor will make a monthly plan payment of $6,859 for 0 months. The court suspects that this is a typographical error and should read 9 months. As written, the plan is under-funded.

6. 14-27454-A-13 LARRY PERKINS — MOTION TO EXTEND AUTOMATIC STAY
MRL-1 — 7-23-14 [10]

☐ Trustee Agrees with Ruling

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

The motion will be denied.

This is the second chapter 13 case filed by the debtor. A prior case was dismissed within one year of the filing of the current case. It was dismissed on July 15 because the debtor was unable to maintain the payments required by the debtor's plan.

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

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

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

Here, the debtor admits he could not afford to make plan payments in the prior case. But, he asserts this will change in this case because he has modified

his mortgage obligation and now he can afford to fund a plan.

However, the debtor also represents that he has only two obligations – the now modified mortgage and a homeowner's association monthly assessment. According to the plan proposed in the first case, the latter was current and was to be paid directly by the debtor. And, with the loan modification, there is no arrearage on the home mortgage. Why has this case been filed? It appears unnecessary.

7. 12-38858-A-13 PLEASANT/SUSAN BREWER — MOTION TO RECONSIDER DISMISSAL OF CASE 7-19-14 [86]
NBC-4

☐ 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 denied.

There is a confirmed plan in this case. On May 29, 2014, the trustee filed and served a notice of default and application to dismiss the case because the debtor had failed to make two payments of $464.10 as required by the plan. This procedure, as authorized by Local Bankruptcy Rule 3015-1(g), which provides:

(1) If the debtor fails to make a payment pursuant to a confirmed plan, including a direct payment to a creditor, the trustee may mail to the debtor and the debtor's attorney written notice of the default.

(2) If the debtor believes that the default noticed by the trustee does not exist, the debtor shall set a hearing within twenty-eight (28) days of the mailing of the notice of default and give at least fourteen (14) days' notice of the hearing to the trustee pursuant to LBR 9014-1(f)(2). At the hearing, if the trustee demonstrates that the debtor has failed to make a payment required by the confirmed plan, and if the debtor fails to rebut the trustee's evidence, the case shall be dismissed at the hearing.

(3) Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.

(4) If the debtor fails to set a hearing on the trustee's notice, or cure the default by payment, or file a proposed modified chapter 13 plan and motion, or perform the modified chapter 13 plan pending its approval, or obtain approval of the modified chapter 13 plan, all within the time constraints set out above, the case shall be dismissed without a hearing on the trustee's application.

Thus, a debtor receiving a Notice of Default has three alternatives. (1) Cure the default within 30 days of the notice of default as well as paying the additional payment of $464.10 that would come due during the 30-day period to cure the default. (2) Within 30 days of the notice of default, file a motion to confirm a modified plan and a modified plan in order to cure/suspend the default stated in the notice of default. (3) Contest the notice of default by setting a hearing within 28 days of the notice of default on 14 days of notice to the trustee.

Here, the debtor did not object to the notice of default, or propose a modified plan. Instead, the debtor attempted to cure the default by paying $464.10 on June 4, and $464.10 on June 19. But, the debtor failed to make the plan payment that came due during the 30-day period to cure. Therefore, the case was dismissed on the trustee's ex parte application. The motion to reconsider the dismissal denies none of these facts. Hence, the dismissal was appropriate. The plan was in default at the end of the 30-day cure period and at the time the case was dismissed.

8.	14-26058-A-13 JPJ-1	RONALD SAWYER AND SUE HARNESS	OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 7-15-14 [27]

☐ 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 in part and the motion to dismiss the case will be conditionally denied.

The plan's feasibility depends on the debtor successfully prosecuting a motion to value/lien avoidance motion concerning the collateral of Springleaf Financial Services 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."

Given that the debtor no longer owns the $90,000 real property, the objection that the plan does not comply with 11 U.S.C. § 1325(a)(4) will be overruled.

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

9. 13-34387-A-13 BRANDON/RACHELLE SCHWAB — MOTION TO MODIFY PLAN 7-2-14 [47]
DJC-3

☐ Trustee Agrees with Ruling

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

First, the plan does not provide for a cure of the entire post-petition arrearage on the Class 1 claim of the debtor's home lender. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

Second, the debtor has failed to fully and accurately provide all financial information required by the official form Schedules because the debtor has not utilized the official Schedules I and J. This is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully and completely 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).

Third, the debtor has failed to make $2,580 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

10. 11-42797-A-13 VICTOR OYEYEMI — MOTION TO MODIFY PLAN 6-25-14 [50]
MAC-2

☐ Trustee Agrees with Ruling

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

First, the plan does not provide for a cure of the entire post-petition arrearage on the Class 1 claim of the debtor's home lender. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

Second, the debtor has failed to fully and accurately provide all financial information required by the official form Schedules because the debtor has not utilized the official Schedule J. This is a breach of the duty imposed by 11

U.S.C. § 521(a)(1) to truthfully and completely 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

11. 13-32140-A-13 IOAN/FLOARE DEJEU — OBJECTION TO
BLF-5 — CLAIM

Final Ruling: The objection will be dismissed without prejudice. According to the certificate of service, the respondent was served at the payment address not the address given for notice.

12. 13-32140-A-13 IOAN/FLOARE DEJEU — OBJECTION TO
BLF-6 — CLAIM
VS. GREEN TREE SERVICING, LLC — 6-20-14 [57]

Final Ruling: The objection will be dismissed without prejudice because service of the objection did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant." The debtor served the objection on respondent, which is a corporation, without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 60.

13. 13-32140-A-13 IOAN/FLOARE DEJEU — MOTION TO
BLF-7 — AVOID JUDICIAL LIEN
VS. GCFS, INC. — 6-21-14 [61]

Final Ruling: The motion will be dismissed without prejudice.

First, the motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant." The debtor served the motion on respondent, which is a corporation, without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 64.

Second, the debtor has claimed an exemption of $0.00 in the property. Claiming an exemption of $0.00 is tantamount to claiming no exemption because a judicial lien cannot reduce an exemption value of $0.00. See e.g., In re Berryhill, 254 B.R. 242, 244 (Bankr. N.D. Ind. 2000). The formula in section 522(f)(2)(A)(iii) expressly considers "the amount of the exemption that the debtor could claim if there were no liens on the property." Claiming an exemption of $0.00 reflects no right of the debtor to claim any exemption in the absence of liens. And, if the debtor is not entitled to an exemption in the absence of the liens, he may not claim an impairment of such an exemption. Accordingly, the motion will be denied.

14. 13-32140-A-13 IOAN/FLOARE DEJEU — MOTION TO AVOID JUDICIAL LIEN
BLF-8
VS. GCFS, INC. — 6-21-14 [65]

Final Ruling: The motion will be dismissed without prejudice.

First, the motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant." The debtor served the motion on respondent, which is a corporation, without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 68.

Second, the debtor has claimed an exemption of $0.00 in the property. Claiming an exemption of $0.00 is tantamount to claiming no exemption because a judicial lien cannot reduce an exemption value of $0.00. See e.g., In re Berryhill, 254 B.R. 242, 244 (Bankr. N.D. Ind. 2000). The formula in section 522(f)(2)(A)(iii) expressly considers "the amount of the exemption that the debtor could claim if there were no liens on the property." Claiming an exemption of $0.00 reflects no right of the debtor to claim any exemption in the absence of liens. And, if the debtor is not entitled to an exemption in the absence of the liens, he may not claim an impairment of such an exemption. Accordingly, the motion will be denied.

15. 14-26058-A-13 RONALD SAWYER AND SUE HARNESS — MOTION TO AVOID LIEN
MOH-1
VS. SPRINGLEAF FINANCIAL SERVICES, INC. — 7-24-14 [30]

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 denied without prejudice.

The motion seeks to avoid a nonpossessory, nonpurchase money lien encumbering personal property owned by the debtor. However, in order to avoid such a lien, the debtor must have exempted the subject personal property. Schedule C, as filed on June 6, 2014 fails to identify this property as exempt. While Schedule C was amended on July 29 to claim an exemption, that amendment was not served on the respondent. Even if served, the time to object to the exemption has not yet expired. See Fed. R. Bankr. P. 4003(b)(1). Until the exemption is no longer subject to attack, the court will not consider the motion to avoid the lien.

16. 14-24359-A-13 LORETTA SHACKLEFORD — MOTION TO CONFIRM PLAN
DPR-1 — 6-16-14 [14]

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.

17. 10-50176-A-13 BRANDON OLIVERA — OBJECTION TO EXEMPTIONS
JPJ-2 — 7-8-14 [83]

Final Ruling: This objection to the debtor's exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the 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 objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the debtor's default is entered and the matter will be resolved without oral argument.

The objection will be sustained.

The debtor has claimed 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).

To the extent the debtor might argue that it makes no difference that the inheritance is not exempt because it is not property of the estate, the court rejects the argument. While 11 U.S.C. § 541(a)(5) makes only inheritances received within 180 days of a bankruptcy petition property of the estate, the argument fails to take account of 11 U.S.C. § 1306(a)(1) which sweeps into the chapter 13 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.