UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 13, 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 16. 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 10, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 27, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 4, 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 17 THROUGH 22 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 20, 2018, AT 2:30 P.M.

Matters to be Called for Argument

1. 18-23319-A-13 JPJ-1 — SANTIAGO YBARRA AND CRISTY MUNOZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 7-12-18 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to accurately complete Form 122C-2. The debtor has taken the following impermissible deductions from current monthly income:

- the debtor has taken a $584 deduction for ongoing contributions to the support of a family member without providing proof that the family member is elderly, chronically ill, or disabled, is a member of the debtor's household or immediate family, and is unable to pay for their own support.

- the debtor has taken a $160.42 deduction for food and clothing above and beyond what the IRS standards permit without demonstrating both that the expenses are actually incurred and that they are reasonably necessary.

- The debtor has taken an impermissible deduction from current monthly income for a $100 voluntary pension contribution. This is disposable income; the debtor may not make those contributions and deduct them from the debtor's current monthly income. Accord Parks v. Drummond (In re Parks), 475 B.R. 703 (B.A.P. 9th Cir. 2012).

- The debtor has taken a deduction of $974.83 to compensate for the under-withholding of income taxes. However, based on the debtor's pre-petition pay advices and tax return for 2017, this deduction should be reduced by $77.91, to $896.92.

With these deductions eliminated or reduced, the debtor will have monthly projected disposable income of $215.98, enough to pay $12,958.80 to unsecured creditors over the duration of the plan. Because the plan will pay these creditors nothing, it does not comply with 11 U.S.C. § 1325(b).

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

2. 18-23232-A-13 — LINDA CATRON — ORDER TO SHOW CAUSE 7-27-18 [48]

- ☐ 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 $77 due on July 23 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

3. 17-24834-A-13 PATRICIA LEMKE — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 7-26-18 [54]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, the debtor failed to utilize the court's mandatory form plan as required by Local Bankruptcy Rule 3015-1(a) (effective on and after December 1, 2017, in all cases regardless when filed).

Second, because counsel for the debtor has opted to be compensated pursuant to Local Bankruptcy Rule 2016-1, and because this is a consumer case, counsel is limited to a maximum of $4,000 in fees. However, section 2.06 indicates that counsel will receive $8,000. Therefore, counsel must file fee applications and obtained approval for fees. The plan does not require such and therefore cannot be confirmed consistent with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017.

Third, counsel for the debtor will be denied all fees until he complies with 11 U.S.C. § 329(a) and Fed. R. Bankr. P. 2016 by filing a statement of all compensation previously received for work related to this case.

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.

4. 17-28335-A-13 LISA KOPPLE — MOTION TO VALUE COLLATERAL
PSB-6 — 6-18-18 [67]
VS. TIMOTHY/DEBBIE LASLEY

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor asks the court to value her home at $560,000. If successful, the

debtor will ask the court to confirm a plan that "strips off" the Lasley's junior mortgage because, after considering the senior lien of $561,062.89, there is no equity to secure their mortgage. Therefore, application of 11 U.S.C. § 506(a), as interpreted 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), means that the Lasley's claim may be disallowed as secured without running afoul with 11 U.S.C. § 1322(b)(2) and Nobelman v. American Savings Bank, 508 U.S. 324, 332 (1993).

Unfortunately, the holder of the senior lien demands payment of only $548,887.77. Therefore, because the Lasley's claim is at least partially secured by actual equity in the property, Nobelman and section 1322(b)(2) are applicable. The claim must be allowed as fully secured and the plan may not modify the amount owed.

But, the court also adds that it finds the $560,000 appraisal offered by the debtor unpersuasive.

First, the Lasleys have produced two appraisals both indicating the property's value is well over $700,000. One appraisal indicated a value of $765,000 and the other $720,000.

Second, the debtor's appraisal is for $560,000. The appraiser used four comparable, three of which were substantially different in living area size and were much older construction. The fourth comparable sale was very close in living area and was constructed within 5 years of the debtor's home. That sale was for $720,000 but the appraiser adjusted this amount downward by significantly more than $100,000 to compensate for the alleged poor condition of the debtor's property. However, the debtor's property was constructed 12 years ago and the appraisal is bereft of details that suggest the property is in poor condition.

5. 17-28335-A-13 LISA KOPPLE — OBJECTION TO CLAIM
PSB-4
VS. THE BANK OF NEW YORK MELLON — 6-4-18 [54]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The debtor complains that the holder of the senior mortgage on her home has not claimed everything it is owed. It has demanded $548,887.77. The debtor maintains she owes $561,062.89.

The difference largely arises from the fact that the claimant has credited the debtor with $3,862.71 received before the case was filed but not applied to the loan, and its waiver of $7,498.79 in late charges.

Even if the waiver of the late charges was not given effect until after the petition on the theory they were actually owed when the case was filed, the court can think of no reason the claimant should not be required to credit the debtor's account with payments made before this case was filed but not previously applied to the loan. Just the reduction of the $561,062.89 by $3,862.71 drops the loan balance below $560,000 thereby preventing the debtor from stripping off the Lasley's claim (see rulings on PSB-6 and PSB-5).

6. 17-28335-A-13 LISA KOPPLE — MOTION TO CONFIRM PLAN
PSB-5 — 6-4-18 [50]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Mr. and Mrs. Lasley in order to strip down or strip off its secured claim from their 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, because the Lasley's secured claim has not been valued at zero, the plan must provide for its payment in full. The court incorporates its ruling on PSB-6 in its entirety.

7. 17-28335-A-13 LISA KOPPLE — MOTION TO INCUR DEBT
PSB-3 — 6-4-18 [58]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted provided the lender is willing to proceed with the second deed of trust in tact and continuing to encumber the property.

8. 18-21957-A-13 WILLIAM AMARAL — MOTION TO CONFIRM PLAN
PGM-2 — 7-3-18 [60]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan provides for the sale of real property that is the community property of the debtor and a nondebtor spouse. They are in the midst of a divorce that has not divided their community property and determined their community debt. To the extent that the divorce concerns the division of the community assets, it is stayed by 11 U.S.C. § 362(a).

All of their community property is property of the bankruptcy estate even though only one spouse is a debtor. See 11 U.S.C. § 541(a)(2). It is subject to the claims of creditors holding claims against the community regardless of which spouse incurred the debt.

In order to sell the property and disburse the proceeds beyond the creditors holding secured claims, the plan must provide for payment of all net proceeds to the trustee. The plan must require the trustee to hold the proceeds until it is determined which claims are claims against the community and which are not. Once this is determined by this court, the plan must provide that the claims of the community shall be paid from the net proceeds. If the community claims are paid in full, the plan must require payment of one-half of the then remaining sales proceeds to the nondebtor spouse. The plan must then provide that the remaining half of the sales proceeds allocable to the debtor, to the extent not exempt, be used to pay debts for which the community is not responsible.

In the event this case is dismissed before the trustee is able to pay community claims, the plan must require that the funds held by the trustee shall be refunded to the debtor and the nondebtor co-owner jointly so that it may be subject to their use as they may agree or is ordered by the state court in connection with their divorce.

9. 17-21158-A-13 CAMILLE GARRETT — OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES 6-29-18 [44]
FF-4

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

U.S. Bank filed a timely proof of claim on July 8, 2017. It demanded a total of $43,248.15 on a loan secured by the debtor's home. Of the amount claimed, $647.35 is a pre-petition arrearage, consisting of $400 of fees and a $247.35 projected escrow shortage. Both of these amounts are corroborated in attachments to the proof of claim. The $400 fee is associated with attorney's fees incurred in reviewing the debtor's proposed chapter 13 plan in case no. 15-25788 and for which the claimant filed a timely Notice of Postpetition Mortgage Fees, Expenses and Charges.

On August 16, 2017, U.S. Bank filed a Notice of Postpetition Mortgage Fees, Expenses and Charges in this case. It demands payment of $750 in fees incurred on July 8, 2017 and associated with the preparation of a proof of claim, and $400 in fees incurred March 3, 2017 in connection with the review of the proposed plan.

The plan was confirmed on July 30, 2017. It provides for U.S. Bank's claim in Class 4.

The debtor complains that the Notice does not contain any billing records, accounting, or other evidence substantiating the reasonableness of the either fee. The debtor believes the fees are unreasonable.

Under Fed. R. Bankr. P. 3002.1(d), the Notice does not constitute prima facie evidence of the validity and amount of the fees demanded in the Notice. See Fed. R. Bankr. P. 3001(f) and 3002.1(d).

The objection, however, is not accompanied by any evidence that the fees are unreasonable. Rather, the debtor merely argues the creditor has not proven they are reasonable.

While the court agrees that the creditor has the ultimate burden of proving the fees are reasonable, it is not required to do so unless there is an objection. And, when an objection is filed, it would be a good idea for the objecting party to come forward with at least a suggestion as why they are unreasonable. The absence of billing records does not make the fees unreasonable (just as the debtor's fees are not unreasonable because he opted to take a flat fee for representing the debtor under Local Bankruptcy Rule 2016-1).

And, in this case, a perusal of the proof of claim and the loan history indicates the fees are reasonable.

Over the last several years, the national rules have been amended to require home lenders to provide a great deal of information in the proof of claim and in the attachments and supplements to it.

For instance, in 2011 Rule 3001(c) was amended to require secured creditors include in a proof of claim the amount to cure a pre-petition default in the proof of claim, attach an itemized statement of the interest, fees, expenses, and charges, and attach an escrow account statement showing the account balance and any amount owed.

Once a proof of claim is filed, the creditor must file two different notices. When the contract installment changes after a bankruptcy case is filed, whether because of an interest rate change, a escrow account adjustment, or any other reason, the Notice required by Fed. R. Bankr. P. 3002.1(b) must be filed.

Also, when a home lender incurs any post-petition fees, expenses, or charges that are chargeable to the debtor under the loan, the notice required by Fed. R. Bankr. P. 3002.1(c) must be filed. This is the type of notice at issue in this case.

Finally, at the conclusion of a chapter 13 case, when the trustee reports that the debtor has cured a home lender's claim and maintained contract installment payments, the lender is required to object if it disputes that a default has been cured or that all post-petition amounts have been paid. See Fed. R. Bankr. P. 3002.1(f)-(h).

If a lender fails to provide the information required by the proof of claim or these notices, it can be precluded from demanding payment of amounts otherwise due. See Fed. R. Bankr. P. 3001(c)(2)(D) and 3002.1(h).

Here, the note and deed of trust indicate that the creditor is entitled to reasonable fees and costs when necessary to protect its collateral and right to payment.

The proof of claim includes a prebankruptcy loan history, an arrearage calculation, and an escrow analysis. Compiling this information obviously required significant time to prepare. For that time, the creditor has charged a flat rate of $750 to prepare the proof of claim and a further $400 to review the proposed plan. On its face, the court cannot say that the fees are unreasonable, at least in the absence of something suggesting its unreasonableness.

The debtor also asserts the fees must be disallowed because the creditor has not obtained the approval of the fees pursuant to Fed. R. Bankr. P. 2016(a). Rule 2016, however, is not applicable. It governs the compensation of professionals representing the interests of the estate. U.S. Bank is not a

professional of the estate nor are its professionals acting for the estate.

The parties shall bear their own fees and costs.

10. 17-22962-A-13 EBI FINI — MOTION FOR RELIEF FROM AUTOMATIC STAY
PGM-1 — 7-17-18 [58]
AKRAM FINI 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 granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to enforce her claim to ownership of the subject real property.

The real property was awarded to the movant in a divorce. The debtor's schedules concede this point. The plan makes no provision for the mortgage encumbering the property. Therefore, it appears that the debtor acknowledges he has no claim to the property.

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

11. 18-23468-A-13 MEEGAN WILLIAMSON — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 7-26-18 [28]

- ☐ 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 has not filed a certificate evidencing that briefing was completed during the 180-day period prior to the filing of the petition. Hence, the debtor was not eligible for bankruptcy relief when this petition was filed.

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, 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's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Southwest Airlines 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."

12. 18-23674-A-13 DONNA DIPIETRO — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 7-26-18 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

First, the debtor has failed to commence making plan payments and has not paid approximately $1,684 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).

Second, 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).

Third, the trustee will object to all of the debtor's Cal. Civ. Proc. Code § 703.140(b) exemptions claimed on Schedule C. The trustee argues that because the debtor is married, as admitted in Schedules I and J, and because the debtor's spouse has not joined in the chapter 13 petition, the debtor must file her spouse's waiver of right to claim exemptions. See Cal. Civ. Proc. Code § 703.140(a)(2). This was not done.

A debtor's exemptions are determined as of the date the bankruptcy petition is filed. Owen v. Owen, 500 U.S. 305, 314 (1991); see also In re Chappell, 373 B.R. 73, 77 (B.A.P. 9th Cir. 2007) (holding that "critical date for determining exemption rights is the petition date"). Thus, the court applies the facts and law existing on the date the case was commenced to determine the nature and extent of the debtor's exemptions.

11 U.S.C. § 522(b)(1) permits the states to opt out of the federal exemption statutory scheme set forth in section 522(d). In enacting Cal. Civ. Proc. Code § 703.130, the State of California opted out of the federal exemption scheme relegating a debtor to whatever exemptions are provided under state law. Thus, substantive issues regarding the allowance or disallowance of a claimed exemption are governed by state law in California.

California state law gives debtors filing for bankruptcy the right to choose (1) a set of state law exemptions similar but not identical to the Bankruptcy Code exemptions; or (2) California's regular non-bankruptcy exemptions. See Cal. Civ. Proc. Code §§ 703.130, 703.140. In the case of a married debtor, if either spouse files for bankruptcy individually, California's regular non-bankruptcy exemptions apply unless, while the bankruptcy case is pending, both spouses waive in writing the right to claim the regular non-bankruptcy state exemptions in any bankruptcy proceeding filed by the other spouse. See Cal. Civ. Proc. Code § 703.140(a)(2).

Here, the debtor is asserting the exemptions of Cal. Civ. Proc. Code § 703.140(b), which require a spousal waiver. That waiver was not filed with the petition. As a result, the debtor has no allowable exemptions. Without exemptions, the debtor's nonexempt assets total more than $18,000. Because the plan provides for payment of approximately $15,000, the plan does not comply with 11 U.S.C. § 1325(a)(4).

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.

13. 18-23677-A-13 MICHAEL MCELREATH — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 7-26-18 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

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.

14. 18-23686-A-13 EVELINA TSVETANOVA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 7-26-18 [29]

- ☐ 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.

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).

15. 17-25999-A-13 RAJENDER SARIN — MOTION TO VALUE COLLATERAL 5-24-18 [87]
LBG-2
VS. REAL TIME RESOLUTIONS, INC.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None. The parties have not complied with the briefing schedule ordered by the court.

16. 17-25999-A-13 RAJENDER SARIN — MOTION TO CONFIRM PLAN 4-27-18 [76]
LBG-4

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $300 is less than the $336 in dividends and expenses the plan requires the trustee to pay each month.

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

FINAL RULINGS BEGIN HERE

17. 18-22806-A-13 ARACELI FLORES — MOTION TO CONFIRM PLAN
PR-2 — 7-7-18 [26]

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. 18-22339-A-13 MICHAEL/ARLENE MUNOZ — ORDER TO SHOW CAUSE
7-23-18 [31]

Final Ruling: The case will remain pending and the order to show cause will be discharged.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $77 installment when due on July 18. However, after the issuance of the order to show cause, the delinquent installment and the remainder of the filing was paid in full. No prejudice was caused by the late payment.

19. 18-22357-A-13 LEONEL/LISA LAXAMANA — MOTION TO AVOID JUDICIAL LIEN
BLG-1
VS. AMERICAN EXPRESS BANK, F.S.B. — 5-30-18 [23]

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. 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 motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $569,883 as of the petition date. The unavoidable liens totaled approximately $420,786 on that same date, consisting of two mortgages.

The debtor is entitled to claim an exemption of $175,000 pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) 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).

20. 18-22357-A-13 LEONEL/LISA LAXAMANA — MOTION TO AVOID JUDICIAL LIEN
BLG-2
VS. NANCY HOLDINGS CORP. — 5-30-18 [27]

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. 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 motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $569,883 as of the petition date. The unavoidable liens totaled approximately $420,786 on that same date, consisting of two mortgages.

The debtor is entitled to claim an exemption of $175,000 pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) 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).

21. 18-22357-A-13 LEONEL/LISA LAXAMANA — MOTION TO AVOID JUDICIAL LIEN
BLG-3
VS. AMERICAN EXPRESS BANK, F.S.B. — 5-30-18 [31]

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. 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 motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $569,883 as of the petition date. The unavoidable liens totaled approximately $420,786 on that same date, consisting of two mortgages.

The debtor is entitled to claim an exemption of $175,000 pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) 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).

22. 18-21496-A-13 DANILO SESE
DWE-2
WELLS FARGO BANK, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-31-18 [82]

Final Ruling: The motion will be dismissed without prejudice.

This motion ostensibly was filed pursuant to Local Bankruptcy Rule 9014-1(f)(2). That local rule, however, requires the motion to be served and filed at least 14 calendar days before the hearing. This motion was filed 13 calendar days and served 13 days prior to the hearing.