UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 14, 2017 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 19. 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 5, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 21, 2017, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 28, 2017. 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 20 THROUGH 34 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 21, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 14-26107-A-13 ROBIN LANGLEY — MOTION TO VACATE DISMISSAL OF CASE 5-30-17 [98]
SJD-3

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor proposed and confirmed a plan, the feasibility of which was premised on Oakbrook Note Trust's collateral for its claim having no value. The plan therefore provided for no dividend on this secured claim. However, while the debtor successfully filed a motion to value the collateral, her motion was served on Oakbrook's predecessor in interest, not Oakbrook.

As a result, Oakbrook moved to vacate the order valuing its collateral. It filed two motions, one on July 30, 2015 and a second on August 17, 2015. Docket 33 and 38. According to the certificates of service for these motions, Docket 37 and 42, both the debtor and her attorney were served with both motions.

The first motion was dismissed without prejudice on August 17, 2015 due to Oakbrook's failure to set a hearing in accordance with the court's motion procedures. Docket 43.

The second motion was heard on August 31, 2015. The debtor's attorney appeared at the hearing but did not dispute the defective service of the valuation motion. The court vacated the order valuing Oakbrook's collateral because Oakbrook had not been served with the motion. Docket 44.

When a new valuation motion was not filed and served on Oakbrook, it moved for relief from the automatic stay on December 10, 2015. That motion was served on both the debtor and her attorney. Docket 52. Although no written response to the motion was filed or required by this court's motion rule, Local Bankruptcy Rule 9014-1(f)(2), counsel for the debtor appeared in opposition to the motion. Docket 53. He was successful in his opposition. The court denied the motion and in its written ruling it explained:

The movant holds a claim secured by a second priority deed of trust encumbering the debtor's home. The movant filed a proof of claim indicating that the debt had been listed by the debtor under the name PNC Bank.

A review of the confirmed chapter 13 plan reveals that it provides for a secured claim held by PNC Bank and secured by a second priority deed of trust on the debtor's residence. The plan provides that this claim will be paid nothing because, after deducting the amount owed the first priority deed of trust, no equity remained to collateralize the second priority deed of trust. This plan was accompanied by a motion to value the home. That motion was served on PNC Bank but PNC Bank did not oppose the motion. At a hearing on August 18, 2014 that motion was granted.

However, on August 17, 2015 the movant filed a motion to vacate the order valuing its interest in the home at $0. Without opposition, that motion was granted because the debtor failed to serve the valuation motion on the movant who had succeeded to the interest of PNC by the time the

valuation motion was filed.

The debtor has not re-served the valuation on the movant.

Nonetheless, and despite the fact that the debtor has not been making contract payments to the movant, there is no cause to terminate the automatic stay because the confirmed plan neither requires contract or plan payments be made to the movant.

In order to establish cause pursuant to 11 U.S.C. § 362(d)(1) for relief from the automatic stay, it must be shown that the debtor has failed to abide by the terms of the confirmed plan. That is, the debtor must have defaulted under the terms of the plan to the detriment of the movant. See Anaheim Sav. & Loan Ass'n v. Evans, 30 B.R. 530, 531 (B.A.P. 9th Cir. 1983). No such showing has been made.

Hence, the debtor through her attorney was again informed that she had not sought to value Oakbrook's collateral.

Once again, however, the debtor did not move to value Oakbrook's collateral by serving it with a valuation motion. Therefore, Oakbrook's secured claim was not being paid even though the debtor was retaining its collateral and even though Oakbrook had filed a timely proof of claim.

Failing to successfully prosecute a valuation motion was a material default of the plan. In relevant part, the plan provided:

"**2.04.** The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim."

"**2.09(c) . . .** If this plan proposes to reduce a claim based upon the value of its collateral, the failure to move to value that collateral in conjunction with plan confirmation may result in the denial of confirmation."

Oakbrook moved for dismissal on December 15, 2016, approximately one year after its unsuccessful motion for relief from the automatic stay. The motion was duly served on the debtor and the debtor's attorney. Because no written opposition to the motion was filed as required by Local Bankruptcy Rule 9014-1(f)(1), the motion was resolved without hearing, the motion was granted, and a dismissal order was entered on April 24.

On May 2, 2017, the debtor moved to reconsider the dismissal (SJD-1) on the ground that there had been a "breakdown in communication" between the debtor and the debtor's attorney that had prevented the timely filing and service of a valuation motion as well as a response to the dismissal motion. This motion was dismissed without prejudice because none of the factual allegations in the motion were supported by evidence.

The motion to vacate the dismissal was re-filed (SJD-3) on May 30, 2017. This time the motion was accompanied by a declaration from the debtor. The declaration gave a bit more depth to conclusory statements in the motion concerning the breakdown in communications between the debtor and her former attorney. The debtor states that she made "several" attempts, both by email and voicemail, to contact her attorney concerning Oakbrook's motion to dismiss the case and its 2015 successful motion (MRG-1) to vacate the valuation of its collateral (the debtor's valuation motion that had been served on Oakbrook's

predecessor but not Oakbrook).

Oakbrook began its efforts to vacate the prior order valuing its collateral in July 2015. The order on that motion was entered on September 2, 2015.

Oakbrook then moved for relief from the automatic stay on December 10, 2015. After a hearing on December 28, at which counsel for the debtor appeared and opposed the motion, the court denied relief from the automatic stay.

Oakbrook then waited one year, until December 15, 2016, before moving for the dismissal of the case. Docket 58. During that year gap, the debtor neither moved to value Oakbrook's collateral by serving a valuation motion on it rather than its predecessor, nor sought to modify the plan in order to pay Oakbrook's secured claim.

The debtor and her attorney were served with the dismissal motion. Docket 63. Despite service, the debtor failed to file written opposition to the dismissal motion as required by Local Bankruptcy Rule 9014-1(f)(1) even though the hearing on the motion was not until March 27, more than three months after the motion was filed.

The debtor's explanation for the failure to oppose the dismissal motion is an alleged breakdown in communications with her attorney. The court has permitted her to supplement the record concerning her attempts to contact her attorney. Basically, the debtor claims that she began to attempt to reach her attorney on January 12, 2017 when she sent him an email concerning the dismissal motion. She heard nothing and then sent a second email March 30. When she received no response, she called and emailed the attorney's office and finally reached a receptionist on April 7. She spoke to the attorney on April 12 and learned that the dismissal motion had been granted without written opposition being filed.

The debtor's explanation for her failure to file a valuation motion and serve it on Oakbrook is that she was not served with the Oakbrook's second, successful motion to vacate the valuation order. Therefore, she claims she was unaware of the need to again value Oakbrook's collateral. This is not correct. According to the certificate of service for the second motion to vacate the valuation order, both the debtor and her attorney were served with in.

So, the root problem in this case, the failure to obtain a valid order valuing Oakbrook's collateral, has been festering since July 2015 when Oakbrook began its efforts to vacate the ill-fated valuation order. The debtor and her attorney were served with everything yet they did not fix the problem. The fact that the debtor had difficulty contacting her attorney in January 2017 explains very little given the history prior to January 2017. The court concludes that there is no excusable neglect her. The debtor should have acted long before January 2017.

2. 14-26107-A-13 ROBIN LANGLEY — MOTION TO VALUE COLLATERAL
SJD-2 — 5-24-17 [92]
VS. OAKBROOK NOTE TRUST

□ Telephone Appearance
□ Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed as moot. The case has been dismissed.

3. 17-22310-A-13 CAROLINE HEGARTY — MOTION TO CONFIRM PLAN
SNM-2 — 6-28-17 [39]

□ Telephone Appearance
□ Trustee Agrees with Ruling

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

Given the recent allowance of the unsecured claim of Property Rehab in the amount of approximately $395,000, the plan will not be feasible. That is, it will not be possible to pay unsecured claims within 60 months with a plan payment of $150 a month. See 11 U.S.C. §§ 1322(d), 1325(a)(6).

4. 17-23812-A-13 CYNTHIA/DAVID RUTENSCHROER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 7-26-17 [25]

□ Telephone Appearance
□ Trustee Agrees with Ruling

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

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

The plan's feasibility does not depend upon the outcome of a valuation motion because the debtor and the creditor are in agreement as to the value of the collateral. The proof of claim states the value of the collateral and the amount of the secured claim and the plan provides for the payment of the present value of that amount as required by 11 U.S.C. § 1325(a)(5)(B).

5. 17-23214-A-13 GREG SHOOK
PP-1
COUNTY OF LASSEN VS.

OBJECTION TO
CONFIRMATION OF PLAN
7-27-17 [30]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be overruled.

The court has confirmed the absence of the automatic stay as to real property securing the objecting creditor's claim. This "conditional" objection seeks to insure that the proposed plan does not somehow reimpose the automatic stay. The objection, however, fails to identify any plan provision that so provides for a reimposition of the stay. Therefore, the objection will be overruled.

The mere fact that the plan provides for the payment of the creditor's claim is not objectionable. Nothing in the Bankruptcy Code prevents a plan from providing for the payment of a claim that is not subject to the automatic stay and is able to foreclose on its collateral. And, should such a plan be confirmed prior to a foreclosure, the creditor would be bound by that plan. See 11 U.S.C. § 1327(a).

6. 17-23829-A-13 EDWIN/SUSAN HATCH
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
7-26-17 [27]

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

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

Third, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of U.S. Bank 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."

Fourth, the plan misclassifies the secured claim of Travis Credit Union in Class 4 which is reserved for secured claims that are not modified by the plan, that are not in default, and that will not mature during the chapter 13 case. This claim will mature during the case and therefore belongs in Class 2.

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.

7. 17-23829-A-13 EDWIN/SUSAN HATCH — OBJECTION TO CONFIRMATION OF PLAN
U.S. BANK, N.A. VS. — 7-26-17 [22]

□ Telephone Appearance
□ Trustee Agrees with Ruling

Tentative Ruling: None. The hearing is continued to August 21 at 2:30 p.m.

8. 17-23829-A-13 EDWIN/SUSAN HATCH — MOTION TO VALUE COLLATERAL
JRH-1
VS. U.S. BANK, N.A., N.D. — 6-16-17 [11]

□ Telephone Appearance
□ Trustee Agrees with Ruling

Tentative Ruling: None. There is a material disputed fact, the value of the subject property. The parties shall appear on August 21 at 2:30 p.m. with their witnesses for a evidentiary hearing. The witnesses who may be called are

those persons for whom declarations have previously been filed. Their declarations will be considered as their direct testimony. They will be cross-examined at the hearing. Each side will be given 45 minutes for argument and the examination of witnesses.

9. 17-23730-A-13 JEFFREY COLVIN
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
7-26-17 [30]

- ☐ 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 $2,096,97 is less than the $2,148.49 in dividends and expenses the plan requires the trustee to pay each month.

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 plan fails to provide for payment in full of the priority tax claim of the IRS as required by 11 U.S.C. § 1322(a)(2).

Fourth, if requested by the U.S. Trustee or the chapter 13 trustee, a debtor must produce evidence of a social security number or a written statement that such documentation does not exist. See Fed. R. Bankr. P. 4002(b)(1)(B). In this case, the debtor has breached the foregoing duty by failing to provide evidence of the debtor's social security number. This is cause for dismissal.

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.

10. 17-23732-A-13 GREGORY/CHRISTINE ALLEN — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 7-26-17 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

First, the debtor has failed to make $350 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).

Second, the debtor has not provided evidence of an ability to sell the real property necessary to implement the plan at a price that will make the plan feasible. The debtor has not carried the burden under 11 U.S.C. § 1325(a)(6).

11. 17-23741-A-13 ROSE-MARIE NOCEDA — OBJECTION TO CONFIRMATION OF PLAN
JPJ-2 — 7-26-17 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

To pay the dividends required by the plan at the rate proposed by it will take 71 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

12. 17-23741-A-13 ROSE-MARIE NOCEDA — OBJECTION TO CONFIRMATION OF PLAN
TGM-1 — 7-6-17 [20]
TOYOTA MOTOR CREDIT CORP. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be overruled.

The plan provides for the objecting creditor's secured claim in Class 2A. These secured claims are not reduced to the value of the collateral securing the claim. While the plan apparently understates the amount of the claim be approximately $4,000, the plan also provides at section 2.04: "The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim."

The trustee has identified the correct problem in his objection. Because the debtor has understated the amount of this claim, the plan cannot be completed within 60 months as required by 11 U.S.C. § 1322(d).

The objection that the plan is not feasible because the debtor has underestimated food expenses will be overruled. There is no evidence of this and there is nothing patently apparent from the amount estimated by the debtor on Schedule J.

13. 11-37652-A-13 RONALD/RACHEL KALDOR — MOTION TO AVOID JUDICIAL LIEN
MMN-12 — 6-16-17 [171]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice.

The respondent holds a judicial lien encumbering the debtor's home. The debtor moves to avoid that lien pursuant to 11 U.S.C. § 522(f)(1)(A). The motion will be denied because the debtor has not established entitlement to the $22,075 exemption which was claimed in Schedule C. It is not enough that the debtor claimed the exemption and it has been allowed because no one objected. If the debtor wishes to avoid a judicial lien, the debtor must establish that the debtor is actually entitled to the exemption. Accord Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992). The supporting declaration makes no effort to establish the factual requirements for an exemption of the property.

14. 17-22055-A-13 ROBERT/JULIE WARES — MOTION TO APPROVE LOAN MODIFICATION
MMM-2 — 7-31-17 [35]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

15. 15-22356-A-13 KIM SCHMIDT — ORDER TO SHOW CAUSE 7-27-17 [55]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Credit Services of Oregon Inc. transferred its proof of claim to Outsource Receivable Mgmt. but failed to pay the $25 transfer fee to the clerk of court. Therefore, the chapter 13 trustee is ordered to deduct from any dividend due to Credit Services of Oregon/Outsource Receivable Mgmt. the sum of $25 and remit it to the clerk. When the remainder of the dividend due Credit Services of Oregon/Outsource Receivable Mgmt. is paid to the creditor the trustee shall send notice of the $25 payment to the clerk. Such notice shall advise Credit Services of Oregon/Outsource Receivable Mgmt. that it shall not declare a default or assess any late charge now or in the future, whether or not this case is completed, as a result of the $25 paid to the clerk. Credit Services of Oregon/Outsource Receivable Mgmt. shall credit the debtor with the $25 as if it had been paid to Credit Services of Oregon/Outsource Receivable Mgmt.

16. 17-24867-A-13 DAVID BRYANT — MOTION FOR RELIEF FROM AUTOMATIC STAY 7-30-17 [10]
CCR-1
WERKING, INC. 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 in part.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1). The movant purchase the subject real property at a nonjudicial foreclosure sale before the bankruptcy case was filed. Under California law, once a nonjudicial foreclosure sale has occurred, the trustor has no right of redemption. Moeller v. Lien, 25 Cal. App.4th 822, 831 (1994). In this case, therefore, the debtor

has no right to ignore the foreclosure and attempt to reorganize the debt previously secured by the property.

If the foreclosure sale was not in accord with state law, this should be asserted as a defense to an unlawful detainer proceeding in state court. Alternatively, the debtor should press an independent claim for relief in state court to challenge the foreclosure. The automatic stay is a respite from creditor action while the debtor attempts to reorganize. Here, the debtor has no apparent right to reorganize the movant's debt because of the foreclosure unless that foreclosure was improper. Whether or not it was improper must be decided in state court.

Additionally, the co-debtor stay of 11 U.S.C. § 1301 is modified to permit the movant to proceed against the interest of the nonfiling spouse. Inasmuch as the movant's right to possession cannot be adjusted in chapter 13, there is cause to permit such relief.

To the extent the motion asks for prospective and in rem relief, the motion will be denied. The movant is alleged the owner of the subject property, not a creditor secured by it. 11 U.S.C. § 362(d)(4) only permits a creditor secured by the subject property to seek relief under section 362(d)(4).

17. 16-28073-A-13 JEFFREY/YELENA MAYHEW — MOTION TO CONFIRM PLAN
PGM-4 — 6-23-17 [70]

- □ Telephone Appearance
- □ Trustee Agrees with Ruling

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

The debtor has failed to make $1,800 of the 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).

All other objections have been resolved.

18. 17-23793-A-13 RANJIT SINGH — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 7-26-17 [32]

- □ Telephone Appearance
- □ Trustee Agrees with Ruling

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

The objection will be sustained.

First, the debtor has failed to commence making plan payments and has not paid approximately $1,566 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, even if the plan payments were current, the plan would not be feasible because the monthly plan payment of $1,566 is less than the $3,021.03 in dividends and expenses the plan requires the trustee to pay each month.

Third, the plan provides for the cure and payment of secured claims by the payment of negative amounts. Just how this is supposed to work is not explained and defies basic laws of arithmetic. Again, the plan is not feasible.

Fourth, the debtor has come forward with no evidence of an ability to make the lump sum payment required in month 13 of the plan. Again, the plan is not feasible.

Fifth, the debtor's household's current monthly income exceeds the California median. Therefore, the debtor's applicable commitment period must be 60 months. 11 U.S.C. § 1325(b)(4); Danielson v. Flores (In re Flores), 2013 WL 4566428 (Aug. 29, 2013). The plan provides for a duration of only 13 months.

Sixth, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would be paid in full in a chapter 7 liquidation as of the effective date of the plan. This plan will pay nothing to unsecured creditors.

19. 17-24597-A-13 FRANCISCO/LEAH OLAGUEZ — MOTION TO VALUE COLLATERAL
MMM-1
VS. E-TRADE BANK — 7-31-17 [15]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $245,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by JPMorgan Chase Bank. The first deed of trust secures a loan with a balance of approximately $246,649 as of the petition date. Therefore, E-Trade Bank's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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

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

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

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of $245,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

FINAL RULINGS BEGIN HERE

20.	17-20729-A-13 SLE-2 VS. WELLS FARGO BANK, N.A.	ELIZABETH BART-PLANGE OPOKU	MOTION TO VALUE COLLATERAL 7-10-17 [58]

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 $6,366 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, $6,366 of the respondent's claim is an allowed secured claim. When the respondent is paid $6,366 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.

21.	16-24032-A-13 TGM-1 TOYOTA MOTOR CREDIT CORP. VS.	IGNACIO LAUDER AND WILMA FRONDA	MOTION FOR RELIEF FROM AUTOMATIC STAY 7-12-17 [61]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter.

The motion will be dismissed as moot.

The court confirmed a plan on March 28, 2017. That plan provides for the movant's claim in Class 4. 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.

22. 16-28033-A-13 MARIA NUNEZ — MOTION TO CONFIRM PLAN
TOG-2 — 6-30-17 [79]

Final Ruling: The motion will be dismissed without prejudice.

The initial meeting of creditors was set for August 3. 11 U.S.C. § 1324(b) requires that the hearing on confirmation of a chapter 13 plan be no earlier than 20 days after the meeting. This hearing has been set by the debtor 11 days after the initial meeting.

23. 17-23644-A-13 JOSE RAMIREZ — MOTION TO CONFIRM PLAN
ULC-3 — 6-22-17 [29]

Final Ruling: The hearing will be continued to September 18, 2017 at 1:30 p.m.

24. 17-23644-A-13 JOSE RAMIREZ — COUNTER MOTION TO DISMISS CASE
ULC-3 — 7-31-17 [40]

Final Ruling: The hearing will be continued to September 18, 2017 at 1:30 p.m.

25. 17-23644-A-13 JOSE RAMIREZ — MOTION TO VALUE COLLATERAL
ULC-2 — 6-22-17 [24]
VS. LONG BEACH MORTGAGE COMPANY

Final Ruling: The hearing will be continued to September 18, 2017 at 1:30 p.m. Evidence in support of the opposition shall be filed and served no later than September 5. Evidence in reply shall be filed and served no later than September 12. The debtor's objection to the request for a continuance in order to procure an appraisal is overruled. As a practical matter, it is usually not possible to obtain an appraisal during the period required by Local Bankruptcy Rule 9014-1 for filing opposition to a motion.

26. 14-32456-A-13 ALEJANDRO MARTINEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
RMP-1 — 7-20-17 [27]
DITECH FINANCIAL, L.L.C. VS.

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing informs potential respondents that written opposition must be filed and served within 14 days prior to the hearing if they wish to oppose the motion. Because less than 28 days of notice of the hearing was given, Local Bankruptcy Rule 9014-1(f)(2) specifies that written opposition is unnecessary. Instead, potential respondents may appear at the hearing and orally contest the motion. If necessary, the court may thereafter require the submission of written evidence and briefs. By erroneously informing potential respondents that written opposition was required and was a condition to contesting the motion, the moving party may have deterred a respondent from appearing. Therefore, notice was materially deficient.

27. 13-21273-A-13 GLENN/LISA TOOF — MOTION TO MODIFY PLAN
JPJ-4 — 6-15-17 [72]

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.

28. 16-28073-A-13 JEFFREY/YELENA MAYHEW — OBJECTION TO CLAIM
PGM-5
VS. REAL TIME RESOLUTIONS, INC. — 6-23-17 [76]

Final Ruling: This objection to the proof of claim of Real Time Resolutions 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 evidence does not indicate the date the last payment was made but the security for the claim was foreclosed upon on proof of claim indicates the last payment was on June 30, March 8, 2009. Therefore, using this date as the date of breach, when the case was filed on December 8, 2016, 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).

29. 17-23390-A-13 PEDRO/MEGAN ANGUIANO — MOTION TO VALUE COLLATERAL
GW-1
VS. SAFE CREDIT UNION — 7-14-17 [19]

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 $15,700 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, $15,700 of the respondent's claim is an allowed secured claim. When the respondent is paid $15,700 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.

30. 17-23390-A-13 PEDRO/MEGAN ANGUIANO — MOTION TO VALUE COLLATERAL
GW-2
VS. SAN FRANCISCO FIRE CREDIT UNION — 7-14-17 [24]

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 $13,200 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, $13,200 of the respondent's claim is an allowed secured claim. When the respondent is paid $13,200 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.

31. 16-26691-A-13 DAVID ADKINS — OBJECTION TO CLAIM
JPJ-1
VS. CAVALRY SPV I, L.L.C. — 6-13-17 [17]

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

The objection will be sustained. The proof of claim fails to provide the information required by Fed. R. Bankr. P. 3001(c)(3). This is without prejudice to filing an amended proof of claim.

32. 17-23793-A-13 RANJIT SINGH — OBJECTION TO CONFIRMATION OF PLAN
HSBC BANK USA, N.A. VS. — 6-29-17 [26]

Final Ruling: The objection will be dismissed without prejudice.

First, the objection does not comply with Local Bankruptcy Rule 9014-1 because when filed it was not accompanied by a separate proof/certificate of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents does not satisfy the local rule. The proof/certificate of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar. Given the absence of the required proof/certificate of service, the objecting party has failed to establish that the motion was served on all necessary parties in interest.

Second, an objection placed on the calendar by the objecting party for hearing must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c). The purpose of the docket control number is to insure that all documents filed in support and in opposition to the objection are linked on the docket. This linkage insures that the court, as well as any party reviewing the docket, will be aware of everything filed in connection with the objection.

This objection has no docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the objection that have not been brought to the attention of the court. The court will not permit the objecting creditor to profit from possible confusion caused by this breach of the court's local rules.

33. 13-24296-A-13 RHONDA MILES — MOTION TO MODIFY PLAN
MMN-7 — 6-26-17 [87]

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.

34. 17-23796-A-13 DIA MITCHELL — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 7-26-17 [20]

Final Ruling: The objection and motion will be dismissed as moot. The case was dismissed on August 2, 2017.