UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 18, 2014 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 25. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON SEPTEMBER 8, 2014 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 25, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 2, 2014. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 26 THROUGH 43 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 25, 2014, AT 2:30 P.M.

Matters to be Called for Argument

1. 11-37902-A-13 JOSEPH/ROSALINA FERNANDEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-1 — 7-17-14 [37]
ONEWEST BANK, N.A. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The motion seeks relief as to property as to which Mrs. Fernandez allegedly owns an interest. However, she owns no such interest. Therefore, there is no automatic stay created by the filing of this case that impedes the creditor.

2. 14-25902-A-13 ERNESTINE OUTLIN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS
JPJ-1 — 7-15-14 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

This case was not filed by the debtor. It was filed by someone acting pursuant to a power of attorney that is effective only upon the debtor's incapacity. Incapacity has to be to be established by a court in a guardianship or conservatorship proceeding or by two doctors. There has been no conservatorship or guardianship and the record does not include the testimony of two doctors.

Further, the power invests two persons to act jointly for the debtor. Only one of those persons filed the petition.

Hence, there was no authority by the putative agent to file this petition and propose a plan for the debtor. Confirmation of the plan will be denied and the case will be dismissed.

3. 14-25902-A-13 ERNESTINE OUTLIN — COUNTER MOTION TO WAIVE DEBTOR EDUCATION REQUIREMENT AND FOR APPOINTMENT OF PERSONAL REPRESENTATIVE
JPJ-1 — 7-22-14 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

This case was not filed by the debtor. It was filed by someone acting pursuant to a power of attorney that is effective only upon the debtor's incapacity. Incapacity has to be to be established by a court in a guardianship or conservatorship proceeding or by two doctors. There has been no conservatorship or guardianship and the record does not include the testimony of two doctors.

Further, the power invests two persons to act jointly for the debtor. Only one of those persons filed the petition.

Hence, there was no authority by the putative agent to file this petition and seek any relief for the debtor.

4. 14-26702-A-13 TERRY/ELLEN AMOS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 7-29-14 [16]

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

First, the debtor has failed to make $820 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, in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The withholding of this financial information from the trustee is a breach of the duties imposed upon the debtor by 11 U.S.C. § 521(a)(3) & (a)(4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

Third, 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.

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor has failed to disclose a prior bankruptcy case filed within the prior 8 years. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Fifth, the plan fails to provide for the scheduled priority claim of the IRS in violation of 11 U.S.C. § 1322(a)(2).

Sixth, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $19,695 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay nothing to unsecured creditors.

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

5. 14-26702-A-13 TERRY/ELLEN AMOS — OBJECTION TO EXEMPTIONS
JPJ-2 — 7-29-14 [19]

- ☐ 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 objection will be sustained and the debtor's exemptions will be disallowed.

As a California resident, the debtor must claim exemptions under California law. California law precludes a California resident filing a bankruptcy petition from claiming the federal exemptions found in 11 U.S.C. § 522. Instead, the debtor must claim exemptions permitted under California law. See Cal. Civ. Pro. Code § 703.140(a). In violation of this, the debtor has claimed the federal exemptions.

6. 14-26702-A-13 TERRY/ELLEN AMOS — OBJECTION TO CONFIRMATION OF PLAN
KK-2 — 7-30-14 [22]
HSBC MORTGAGE SERVICING, INC. 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 sustained.

Even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the arrearages owed to the Class 1 home loan. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

7. 12-29204-A-13 JAMES/INGRID DAVIS — MOTION TO MODIFY PLAN 6-30-14 [39]
CA-3

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to make $1,146 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).

8. 14-26307-A-13 STEVEN PASCAL — MOTION TO CONVERT CASE 7-1-14 [15]
RLC-2

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

The assertion that notice of the motion and the hearing on it are not in accord with Local Bankruptcy Rule 9014-1(f)(1) because less than 28 days' notice was given to the debtor and his attorney is rejected. The motion was served on June 22 and 23. This means at least 28 days' notice was given. Therefore, the statement in the notice of the motion that written opposition was necessary was accurate and in compliance with the local rule.

At any rate, assuming inadequate notice as alleged, given the continuance to August 18 and the debtor's opportunity to file additional opposition to the motion, there was no prejudice caused by any initial failure to abide strictly by the notice rules.

The motion asserts that the debtor has asserted control over the bank account of a limited liability company, admitted to interests in trusts and Nevada real estate, and asserted ownership in a large boat. His schedules and statements however do not list any of these assets. And, while his opposition states that an LLC owns the boat and he owns no interest in the LLC, he admits he is the captain of the boat, is responsible for the costs associated with its operation, and he sometimes lives on the boat. These facts suggest to the court that the debtor has not truthfully explained all of his connections to the boat or the LLC.

Further, the debtor has twice not appeared at the meeting of creditors as required by 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 or its conversion to one under chapter 7, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(6).

Therefore, the court concludes there is cause to convert the case to chapter 7. Given the uncertainty as to the debtor's interest in the boat and the LLC, conversion rather than dismissal is warranted.

9. 14-26307-A-13 STEVEN PASCAL — MOTION TO CONFIRM PLAN 7-2-14 [24]
RPH-2

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor twice 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).

It is unnecessary to address the remaining objections.

10. 10-31610-A-13 KELLY MOMOH — MOTION TO VACATE DISMISSAL OF CASE 7-31-14 [57]
NUU-2

- ☐ 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 denied.

The trustee moved to dismiss this case on June 3. His motion was set for hearing on July 21. The debtor did not appear at the hearing although opposition to the motion was filed by the debtor.

The trustee's Notice of Filed Claims was filed and served on March 29, 2011 as required by Local Bankruptcy Rule 3007-1(d) and former General Order 05-03. That notice advised the debtor of all claims filed by creditors. Given the

claims filed and their amounts, it will take 102 months to pay the dividends promised by the confirmed plan. The confirmed plan specifies that it must be completed within 60 months as required by 11 U.S.C. § 1322(d).

The trustee moved to dismiss the case because the debtor failed to reconcile the plan with the claims, either by filing and serving a motion to modify the plan to provide for all claims within the maximum duration permitted by section 1322(d), or by objecting to claims. This is required by Local Bankruptcy Rule 3007-1(d)(5) which provides: "If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date." See also former General Order 05-03, ¶ 6; In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004).

The time to modify the plan under Local Bankruptcy Rule 3007-1(d)(5) and under former General Order 05-03, ¶ 6, had expired when the motion to dismiss the case was filed. This material breach of the plan was cause for dismissal. See 11 U.S.C. § 1307(c)(6).

The opposition to the motion and this motion to reconsider the dismissal is based on the fact that after the dismissal was filed, but before the July 21 hearing on it, the debtor had filed a motion to modify the plan in order to harmonize it with the claims filed by creditors.

However, this should have been done 90 days after the March 29, 2011 notice of filed claims, not two years later. This untimeliness alone was reason to dismiss the case. And, the modified plan the debtor has proposed is not confirmable because it fails to cure an arrearage on a home mortgage as required by 11 U.S.C. §§ 1322(b)(2) and 1325(a)(5)(B). While the debtor is negotiating to modify that home loan, the lender has not modified the loan and the court cannot impose that modification.

11. 10-31610-A-13 KELLY MOMOH — MOTION TO MODIFY PLAN
NUU-1 — 7-7-14 [50]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the motion is moot given the dismissal of the case.

Second, even if the case was pending, the court would not confirm this plan because it fails to cure the arrears on a home mortgage as required by 11 U.S.C. §§ 1322(b)(2) and 1325(a)(5)(B). The fact that the debtor is negotiating with the lender to capitalize the arrears does not get around the problem. If and when the lender agrees to such a modification, the court can then confirm this plan.

12. 11-46915-A-13 JOSEPH ST. ANGELO — MOTION TO MODIFY PLAN
WW-2 — 7-8-14 [56]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to make $875 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).

13. 14-26623-A-13 ROBERT/NICHOLA DANIEL — OBJECTION TO CONFIRMATION OF PLAN
JHW-1 — 7-15-14 [16]
TD AUTO FINANCE, L.L.C. 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 objecting creditor complains that the plan impermissibly modifies its auto secured claim in violation of the hanging paragraph following numbered subparagraphs of 11 U.S.C. § 1325(a). The creditor also complains that the interest rate provided for its claim does not provide it with the present value of its claim in violation of 11 U.S.C. § 1325(a)(5)(B).

These objections have no merit because the plan does not provide for the creditors claim.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the debtor adequately fund the plan with future earnings or other future income that is paid over to the trustee (section 1322(a)(1)), provide for payment in full of priority claims (section 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (section 1322(a)(3)). But, nothing in section 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may, at the option of the debtor, include. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (section 1322(b)(2)), cure any default on a secured claim, including a home loan (section 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (section 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options: (1) provide a treatment that the debtor and secured creditor agree to (section 1325(a)(5)(A)), provide for payment in full of the

entire claim if the claim is modified or will mature by its terms during the term of the plan (section 1325(a)(5)(B)), or surrender the collateral for the claim to the secured creditor (section 1325(a)(C). However, these three possibilities are relevant only if the plan provides for the secured claim.

14. 14-26424-A-13 KAROLYN JOHNSON-LOUDERMILK
JPJ-1
OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
7-31-14 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $2,100 is less than the $2,185 in dividends and expenses the plan requires the trustee to pay each month.

Second, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Santander 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."

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.

15. 14-25727-A-13 TIMOTHY/BRENDA LLOYD
LBG-2
MOTION TO INCUR DEBT
7-29-14 [24]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given

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

The motion to incur a purchase money loan to purchase a manufactured home will be granted. The motion establishes a need for the home and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of the plan.

16. 14-26630-A-13 JULIO CASTILLO
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
7-31-14 [22]

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

First, the debtor has failed to make $2,585 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 owes a domestic support obligation. Local Bankruptcy Rule 3015-1(b)(6) provides:

"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*."

The debtor failed to deliver to the trustee the Domestic Support Obligation Checklist. This checklist is designed to assist the trustee in giving the notices required by 11 U.S.C. § 1302(d).

The trustee must provide a written notice both to the holder of a claim for a domestic support obligation and to the state child support enforcement agency.

See 11 U.S.C. §§ 1302(d)(1)(A) & (B). The state child support enforcement agency is the agency established under sections 464 and 466 of the Social Security Act. See 42 U.S.C. §§ 664 & 666. Section 1302(d)(1)(C) requires a third, post-discharge notice to both the claim holder and the state child support enforcement agency.

The trustee's notice to the claimant must: (a) advise the holder that he or she is owed a domestic support obligation; (b) advise the holder of the right to use the services of the state child support enforcement agency for assistance in collecting such claim; and (c) include the address and telephone number of the state child support enforcement agency.

The trustee's notice to the State child support enforcement agency required by section 1302(d)(1)(B) must: (a) advise the agency of such claim; and (b) advise the agency of the name, address and telephone number of the holder of such claim.

By failing to provide the checklist to the trustee, the debtor has disregarded the rule that it be provided, has breached the duty to cooperate with the trustee imposed by 11 U.S.C. § 521(a)(3) & (a)(4). This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

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.

17. 14-26441-A-13 MICHAEL/JEANETTE DELOZIER — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 7-29-14 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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 $322.29 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 failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor failed to list real property owned by the debtor on Schedule A. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Third, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $78,868 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only $17,847.15 to unsecured creditors.

Fourth, because the plan fails to specify how debtor's counsel's fees will be approved, either pursuant to Local Bankruptcy Rule 2016-1 or by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017, but nonetheless requires the trustee to pay counsel a monthly dividend on account of such fees, in effect the plan requires payment of fees even though the court has not approved them. This violates sections 329 and 330.

18. 14-26948-A-13 ROBERT/MOIRA TRABERT — MOTION FOR RELIEF FROM AUTOMATIC STAY
PRK-1
FREDERICK A. FARNSWORTH VS. — 7-28-14 [24]

- ☐ 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).

The movant leased residential real property to the debtor. Prior to the filing of the petition, the debtor allegedly defaulted in the payment of rent, was served with a notice to pay or quit, then failed to pay or quit. The movant then filed and served an unlawful detainer action in state court but the filing of this case precluded a trial of that action.

Given the notice to quit that necessarily preceded it, the debtor's right to possession has terminated and there is cause to terminate the automatic stay. In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989). The debtor no longer has an interest in the subject property which can be considered either property of the estate or an interest deserving of protection by section 362(a).

The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) will be waived.

Because the movant has not established that it holds a secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

19. 11-49749-A-13 KEVIN/MICHELLE BURKE
PLC-2

OBJECTION TO
NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES AND REQUEST FOR ATTORNEY'S FEES
6-27-14 [76]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained.

The objection challenges $425 in post-petition attorney's fees incurred by the claimant. The debtor challenges the reasonableness of the fees (there are no time records supporting the demand and these fees have not been approved by this court) and the claimant's ability to claim these fees because the loan was not in default when the case was filed. The note provides for fees in the event of collection.

To the extent the debtor is arguing the fees must be disallowed because the court has not awarded the claimant any fees pursuant to Fed. R. Bankr. P. 2016, the argument is rejected. Fees incurred post-petition but related to a pre-petition claim can be claimed in a proof of claim. Atwood v. Chase Manhattan Mortgage Co. (In re Atwood), 293 B.R. 227, 233 (B.A.P. 9th Cir. 2003). However, the fees must be reasonable.

The court further rejects the argument that the loan documents do not provide for attorney's fees incurred in connection with a bankruptcy case. The creditor correctly points out that the deed of trust permits the creditor to protect its interests in any legal proceeding that could affect its debt or its security. These costs, including attorney's fees, can be added to the principal obligation secured by the property. But, the fees must be reasonable.

There is nothing in or appended to the proof of claim or its supplement indicating that these fees have been previously awarded by this or some other court, that these fees are properly allowable under the terms of the contract between the parties, that these fees must be paid as part of any cure of the asserted default pursuant to applicable law and the underlying agreement, that the claimant is oversecured, or that the fees are reasonable. Time records, or comparable documentation, showing the time spent on particular tasks, are not appended to the proof of claim.

In the absence of such evidence, the court cannot presume this portion of the claim is a valid proof of claim. Fed. R. Bankr. P. 3001(f).

Because the claimant cannot rely on this presumption of validity, the claimant "has the burden of proving the reasonableness of its fee claim. . . ." Atwood v. Chase Manhattan Mortgage Co. (In re Atwood), 293 B.R. 227, 233 (B.A.P. 9th Cir. 2003). "The requirement of reasonableness requires some evidence on that question once debtors objected, pointing out the missing essential element. [Citation omitted.] As [the claimant] had the affirmative burden of showing reasonableness as a matter of law, the objection, as here, need only note the absence of any such showing, and does not require evidence of support. [Citation omitted.] In effect, the omission of the proof of claim to address an essential element of the substantive claim deprives [the claimant] of the favorable Rule 3001(f) evidentiary presumption regarding validity and amount. [Citation omitted.]" Id.

The claimant has now come forward with the necessary evidence in a response to the objection to prove that the fees are within the contract and are reasonable.

Despite initially opposing the objection on July 14, the claimant withdrew the notice amending its claim on July 21. Then, the claimant's representative withdrew the withdrawal, asserting that she believed she was required to withdraw the notice because the debtor had objected to it.

Given this explanation, the court will not construe the withdrawal of the supplement to the claims as an admission that the objection is well taken. Also, given the pendency of the objection, the claimant was precluded from withdrawing the claim. See Fed. R. Bankr. P. 3006.

Finally, the objection is untimely. The supplement to the proof of claim was filed on October 24, 2012. But, the objection to it was not filed until June 27, 2014. It had to be filed no later than October 24, 2013. Fed. R. Bankr. P. 3002.1(e) provides:

"On motion of the debtor or trustee filed within one year after service of a notice under subdivision (c) of this rule, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code."

20. 12-23663-A-13 JOE/YVETTE MARCH — MOTION TO MODIFY PLAN
PGM-12 — 7-7-14 [147]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $1,610 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 explained an approximate $2,500 monthly decrease in income since the case was filed. Without proof that income has decreased, the debtor cannot carry the burden of proving the plan has been proposed in good faith. See 11 U.S.C. § 1325(a)(3).

21. 13-24363-A-13 MICHAEL/DELENA SPONSLER — MOTION TO MODIFY PLAN
JPJ-3 — 5-19-14 [73]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The court agrees with the debtor that the trustee's proposed plan cannot compel plan payments on the basis of prior income received but spent by the debtor. Therefore, increases in the plan payment will prospective only. Retroactive increases or increases based on prior lump sum distributions to the debtor that

the debtor no longer controls will make the plan infeasible. See 11 U.S.C. § 1325(a)(6).

Second, with the consent of the parties, the monthly dividend to secured creditor Santandar must be increased to $600.

Finally, because the debtor has not documented the $850 monthly expense for college expenses nor justified their reasonableness or necessity, the expense will not be considered in calculating available income to fund the plan. Therefore, the monthly plan payment will be $2,000.

22. 14-26172-A-13 MANUAL/DONNA VALDIVIA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 7-29-14 [21]

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

First, the debtor has failed to make $100 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 failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor has failed to list a 2011 bankruptcy petition on the schedules and has failed to include income from the VA on Schedule I. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

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

23. 14-26190-A-13 STEVE/MARY ARONS
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
7-29-14 [21]

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

First, the debtor has failed to make $5,140 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, because the plan fails to specify how debtor's counsel's fees will be approved, either pursuant to Local Bankruptcy Rule 2016-1 or by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017, but nonetheless requires the trustee to pay counsel a monthly dividend on account of such fees, in effect the plan requires payment of fees even though the court has not approved them. This violates sections 329 and 330.

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

Fourth, Local Bankruptcy Rule 3015-1(b)(6) provides: "*Documents Required by Trustee*. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist,* or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

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.

24. 14-26190-A-13 STEVE/MARY ARONS
PD-1
WELLS FARGO BANK, N.A. VS.

OBJECTION TO
CONFIRMATION OF PLAN
7-31-14 [24]

- ☐ 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 is not eligible for chapter 13 relief because Schedule D shows that the debtor owes $1,570,416.83 in noncontingent, liquidated secured debt. This exceeds the $1,149,525 maximum permitted by 11 U.S.C. § 109(e).

Second, because the creditor has not accepted the modification of its home loan, the confirmation of the plan would be an impermissible modification of the loan. See 11 U.S.C. § 1322(b)(2).

25. 14-26492-A-13 FRED/JENNIFER RAMOS
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
7-31-14 [21]

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

First, the debtor has failed to make $349.14 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 plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Capital One Auto Finance 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."

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.

FINAL RULINGS BEGIN HERE

26. 14-22806-A-13 JSO-2 — JEFFERY/MARJORIE CARNEIRO — MOTION TO CONFIRM PLAN 7-1-14 [35]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted and the objection will be overruled.

The trustee's objection notes that there is a minor default in making plan payments and that the debtor has failed to lodge an order on a valuation motion. However, since the objection was filed the order was lodged and entered and the default has been cured.

27. 11-44107-A-13 CYB-2 — ARCHIMEDES/JAMICE ALIMAGNO — MOTION TO MODIFY PLAN 7-11-14 [68]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted and the objection will be overruled on the condition that the plan is further modified in the confirmation order to account for all prior payments made by the debtor under the terms of the prior plan, and to provide for a plan payment of $350 beginning August 25, 2015. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

28. 14-26107-A-13 EJS-1 VS. PNC BANK, N.A. — ROBIN LANGLEY — MOTION TO VALUE COLLATERAL 7-11-14 [14]

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $290,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Green Tree Servicing. The first deed of trust secures a loan with a balance of approximately $318,377 as of the petition date. Therefore, PNC 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 $290,000. 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).

29. 13-27814-A-13 THOMAS/MARY VASQUEZ — ORDER TO SHOW CAUSE 7-29-14 [52]

Final Ruling: The order to show cause will be discharged.

The claimant transferred its claim to an assignee. Neither paid the $25 transfer fee at the time the transfer was filed. However, after the issuance of the order to show cause, the delinquent fee was paid. No prejudice was caused by the late payment.

30. 14-24216-A-13 DEBRA VASQUEZ — MOTION TO AVOID LIEN 7-14-14 [29]
PGM-2
VS. SPRINGLEAF FINANCIAL SERVICES

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

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(B). The respondent holds a nonpossessory, nonpurchase money security interest (and not a judicial lien as alleged in the motion) encumbering household furnishings and goods owned by the debtor and used by the debtor's household as such. These items have been exempted by the debtor. There is no non-exempt equity. The fixing of the respondent's security interest and lien impairs the debtor's exemption and the fixing is avoided.

31. 14-20019-A-13 WALTER/PATRICIA JONES — MOTION TO MODIFY PLAN 7-7-14 [54]
SJS-3

Final Ruling: The debtor has voluntarily dismissed the motion.

32. 11-43322-A-13 JOHN/VICKI MEDEIROS — MOTION TO MODIFY PLAN 7-1-14 [48]
JSO-3

Final Ruling: The hearing is continued to September 22, 2014 at 1:30 p.m. The debtor shall serve the plan filed July 24 no later than August 19 together with notice of the hearing and that any objection to its confirmation must be filed and served no later than September 8. Any reply by the debtor shall be filed and served no later than September 15. A proof of service shall be filed no later than August 22.

33. 11-45524-A-13 MARTICIA DONALD — MOTION TO MODIFY PLAN 7-14-14 [58]
PGM-3

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by

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

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

34. 14-26630-A-13 JULIO CASTILLO — OBJECTION TO CONFIRMATION OF PLAN
GAR-1 — 7-30-14 [16]
NATIONSTAR MORTGAGE, L.L.C. VS.

Final Ruling: The objection will be dismissed without prejudice.

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.

35. 13-35340-A-13 RICHARD/LYNN MCBRIDE — MOTION TO MODIFY PLAN
SJS-2 — 7-11-14 [34]

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

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

36. 13-25246-A-13 CORNELIUS/GLENDA WESTBROOK — MOTION TO APPROVE LOAN MODIFICATION
NUU-6 — 7-15-14 [74]

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-

1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

37. 14-25257-A-13 DARRELL/BARBARA NEAL — MOTION TO VALUE COLLATERAL
SJS-2
VS. NCEP, L.L.C. — 7-18-14 [28]

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $9,000 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $9,000 of the respondent's claim is an allowed secured claim. When the respondent is paid $9,000 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.

38. 14-24958-A-13 JEOFFREY/ROSEMARIE BALDOVINO — AMENDED MOTION TO AVOID JUDICIAL LIEN
HDR-2
VS. SOLANO COUNTY SHERIFF'S OFFICE — 7-22-14 [46]

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

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject property is cash in the amount of $6,740.06. The debtor has an available

exemption for this entire amount. The respondent holds a judicial lien created by a levy of execution on the cash. 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 of the real property and its fixing is avoided.

39. 14-26058-A-13 APN-1 GATEWAY ONE LENDING AND FINANCE VS.
RONALD SAWYER AND SUE HARNESS
MOTION FOR RELIEF FROM AUTOMATIC STAY 7-11-14 [21]

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

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess and to obtain possession of its personal property security, and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has proposed a plan that will surrender the vehicle to the movant in satisfaction of its secured claim. That plan has not yet been confirmed. Nonetheless, the terms of the proposed plan makes two things clear: the movant's claim will not be paid and the vehicle securing its claim is not necessary to the debtor's personal financial reorganization. This is cause to terminate the automatic stay.

The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) will be waived.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

40. 14-24467-A-13 BB-2
BENJAMIN/TAMARA MATTOX
MOTION TO CONFIRM PLAN 7-8-14 [33]

Final Ruling: The objection will be dismissed without prejudice.

Local Bankruptcy Rule 3015-1(c)(3) and (b)(1) require that when the debtor files and serves a motion to confirm a chapter 13 plan, the motion to confirm it must be set for hearing on 42 days of notice to all creditors, the chapter 13 trustee, and the U.S. Trustee. If any of these parties in interest wish to object to the confirmation of the plan, they must file and serve a written objection at least 14 days prior to the hearing. See Local Bankruptcy Rules 3015-1(b)(1) and 9014-1(f)(1)(B). The debtor's notice of the hearing on the motion to confirm the plan must advise all parties in interest of the deadline for filing written objections. See Local Bankruptcy Rule 9014-1(d)(3).

This procedure complies with Fed. R. Bankr. P. 2002(b), which requires a minimum of 28 days of notice of the deadline for objections to confirmation as well as the hearing on confirmation of the plan. Because Rule 9014-1(f)(1)(B) requires that written opposition be filed 14 days prior to the hearing but Fed.

R. Bankr. R. 2002(b) requires 28 days of notice of the deadline for filing opposition, the debtor must give 42 days of notice of the hearing.

Here, the debtor gave only 41 days of notice of the hearing. Notice was insufficient.

41. 14-25768-A-13 MELISSA FINNEY
EWV-46
VS. NATIONWIDE ACCEPTANCE, INC.

AMENDED MOTION TO VALUE COLLATERAL
7-17-14 [22]

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $5,490 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $5,490 of the respondent's claim is an allowed secured claim. When the respondent is paid $5,490 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.

42. 13-33089-A-13 PRISCILLA BEINTKER
SDH-6

MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
7-18-14 [60]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the 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 moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The motion seeks approval of $2,677.71 in additional fees and costs. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan.

43. 10-24598-A-13 JACOB/JOEY FIELD
RPB-7

MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
7-15-14 [141]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the 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 moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted. The motion seeks approval of $2,294 in additional fees and costs. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan.