UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

September 18, 2017 at 1:30 a.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 OCTOBER 2, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 18, 2017, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 25, 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 28 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 SEPTEMBER 25, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 17-24409-A-13 BENJAMIN/DEBRA EDOKPAYI — OBJECTION TO CONFIRMATION OF PLAN 8-21-17 [38]
JPJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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, one of the debtors failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

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

Fourth, the debtor failed to utilize the court's mandatory form plan as required by Local Bankruptcy Rule 3015-1(a) (effective on and after May 1, 2012, in all cases regardless when filed). Requiring debtors to use a local model plan is within the court's rule making authority. See In re Escarcega, 2017 WL 3891779 (Sept. 6, 2017).

It is unnecessary to consider the other objections to confirmation.

2. 17-24409-A-13 BENJAMIN/DEBRA EDOKPAYI — OBJECTION TO CONFIRMATION OF PLAN
BDA-1
CAPITAL ONE AUTO FINANCE VS. — 8-14-17 [34]

- ☐ 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 plan proposes to "strip down" the claim of the objecting creditor. Its claim is secured by a purchase money security interest created less than 910 days prior to the filing of the bankruptcy case in a vehicle owned by the debtor for the debtor's personal use. In these circumstances, the unnumbered paragraph following 11 U.S.C. § 1325(a)(9) (sometimes referred to as the "hanging paragraph") prevents the debtor from reducing the respondent's secured claim to the value of the vehicle.

Second, the plan does not comply with 11 U.S.C. § 1325(a)(5)(B) because it provides for no interest on the objecting creditor's secured claim.

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

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

The prime rate is 4.25. See http://www.fedprimerate.com/. As surveyed by the Supreme Court in Till, courts using the formula approach typically have adjusted the interest rate 1% to 3%. The debtor's proposed rate of 0% gives a no adjustment. The absence of any interest, combined with the fact that the movant is secured by depreciating personal property, means that the debtor has not satisfied the requirements of Till and section 1325(a)(B)(ii).

3. 17-24010-A-7 STEPHEN/VALERIA DIGIANTOMMASO — ORDER TO SHOW CAUSE 8-21-17 [25]

- □ Telephone Appearance
- □ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $77 due on August 15 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2). The court is aware that the case converted to one under chapter 7. This is not a reason to not dismiss the case. A filing fee is due whatever chapter this case proceeds under.

4. 17-24512-A-13 LINDA CONKLING JPJ-1 — OBJECTION TO CONFIRMATION OF PLAN 8-21-17 [19]

- □ 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 plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $2,145 is less than the $2,280.88 in dividends and expenses the plan requires the trustee to pay each month.

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.

5. 17-24512-A-13 LINDA CONKLING — OBJECTION TO CONFIRMATION OF PLAN
RMP-1 — 8-14-17 [16]
SETERUS, 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.

The plan provides for the objecting creditor's claim in Class 1. It provides for the maintenance of the ongoing installment payment and the cure of a pre-petition arrearage. However, the debtor has understated the arrears by approximately $5,000. Therefore, the plan either will not pay the arrears in full as required by 11 U.S.C. §§ 1322(b)(2) and 1325(a)(5)(B) or the plan's duration will exceed the maximum plan duration of 5 years.

The court does not reach the issue of whether the debtor has the financial ability to fund a feasible plan because the debtor has filed a modified plan. That modified plan must be noticed for hearing. Evidence of feasibility must accompany it. See 11 U.S.C. § 1325(a)(6).

6. 17-24514-A-13 LEO BAIR AND SANDY MORGAN — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 8-21-17 [16]

- ☐ 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.

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.

7. 13-21020-A-13 LYUDMILA/SAMVEL TATINTSYAN
PGM-8
MOTION TO MODIFY PLAN 8-3-17 [79]

□ Telephone Appearance
□ Trustee Agrees with Ruling

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

The debtor has failed to make $1,850 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. 17-23732-A-13 GREGORY/CHRISTINE ALLEN
LBG-1
VS. WORDELL LAW GROUP C/O GISELE BOULDERICE
MOTION TO AVOID JUDICIAL LIEN 6-19-17 [14]

□ Telephone Appearance
□ Trustee Agrees with Ruling

Tentative Ruling: None. There is a material disputed fact – the value of the subject property – that must be resolved at an evidentiary hearing. That hearing will be on September 25, 2017 at 2:30 p.m. The written record is now closed. The court will hear the testimony only of those witnesses for whom declarations have been filed in which they express an opinion of the value of the property. Each declaration will be considered the witnesses direct testimony provided the witness is tendered for cross examination. If the witness is not tendered for cross examination, that witnesses testimony will not be considered by the court. Each side will be given 45 minutes to make all argument, questions witnesses, and object to testimony.

9. 17-23732-A-13 GREGORY/CHRISTINE ALLEN
JPJ-1
OBJECTION TO CONFIRMATION OF PLAN 7-26-17 [27]

□ Telephone Appearance
□ Trustee Agrees with Ruling

Tentative Ruling: None. Because the court is continuing the hearing on a motion that must be resolved prior to plan confirmation, the hearing on this matter is continued to September 25, 2017 at 2:30 p.m.

10. 17-21533-A-13 PRANEE AREND
WW-2
MOTION TO MODIFY PLAN 7-28-17 [45]

□ Telephone Appearance
□ Trustee Agrees with Ruling

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

The debtor has failed to make $1,050 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). Further, even if the payments were current the plan would not be feasible because the plan payment of $2,059 is less than the $2,281.21 in dividends and expenses the plan requires the trustee to pay each month.

11. 17-23644-A-13 JOSE RAMIREZ — MOTION TO VALUE COLLATERAL
ULC-2 — 6-22-17 [24]
VS. LONG BEACH MORTGAGE CO.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice.

The opposition indicates that the subject property was damaged in a pre-petition fire and had not been repaired when this case was filed. The opposition also indicates the property was insured.

The motion gives no indication of the extent of the damage and whether the debtor's opinion of value assumes the property remains in its current condition. The motion also does not address what insurance coverage exists and the amount of any claim. Because the standard form deed of trust in use in California provides that the secured creditor also is secured by any insurance, the court cannot determine the value of the creditor's collateral without information concerning the insurance coverage. The court further notes that any insurance due the debtor would be the cash collateral of both creditors holding deeds of trust and could not be used without their consent or a court order.

12. 17-23644-A-13 JOSE RAMIREZ — MOTION TO CONFIRM PLAN
ULC-3 — 6-22-17 [29]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Long Beach Mortgage 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."

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

- □ Telephone Appearance
- □ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

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.

14. 17-22153-A-13 DONNA WELCH — MOTION TO CONFIRM PLAN
DEF-1 — 8-3-17 [47]

- □ Telephone Appearance
- □ Trustee Agrees with Ruling

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

The debtor has failed to make $1,985 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).

15. 17-24768-A-13 CHRISTINE D'AMICO — OBJECTION TO CONFIRMATION OF PLAN
KEYBANK, N.A. VS. — 8-24-17 [16]

- □ 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 4. Claims in Class 4 are not modified by the plan and are paid directly to the creditor. Assuming the plan understates the amount of the monthly installment payment due to the creditor, this will not determine what is owed. The contract will determine it because the plan states that it will not modify the plan. And, if the debtor defaults in making payments, the plan provides for the modification of the automatic stay to permit the creditor to protect its interest in its collateral.

16. 17-24878-A-13 ORASTINE HEAGLER — ORDER TO SHOW CAUSE 8-29-17 [21]

□ Telephone Appearance
□ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $79 due on August 24 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

17. 17-24788-A-13 TROY FINLEY — ORDER TO SHOW CAUSE 8-25-17 [18]

□ Telephone Appearance
□ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $79 due on August 21 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

18. 17-24891-A-13 IRENE ESPIRITU
AP-1
WELLS FARGO BANK, N.A. VS. — MOTION FOR RELIEF FROM AUTOMATIC STAY 8-14-17 [16]

□ Telephone Appearance
□ Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed in part as moot and denied in part.

This case was dismissed on August 14, 2017. Therefore, the automatic stay of 11 U.S.C. § 362(a) and the codebtor stay of 11 U.S.C. § 1301 expired on August 14 and the motion is moot to the extent it asks that these stays be terminated.

The motion also asks that enter an in rem order pursuant to 11 U.S.C. § 362(d)(4) providing that the automatic stay not go into effect in any subsequent case filed in the next two years.

The debtor co-owns the subject property with Ernesto Espiritu. Since 2012 the debtor and Ernesto have filed eight individual chapter 13 petitions:

2017-24891 13 Irene F Espiritu
2017-23027 13 Ernesto M. Espiritu
2016-27113 13 Irene F Espiritu
2016-23234 13 Irene Feraro Espiritu
2014-26487 13 Irene Espiritu
2013-29608 13 Ernesto Espiritu
2013-25707 13 Irene Espiritu
2012-37878 13 Irene Espiritu

All of the petitions, including the present case, were dismissed either because each debtor failed to file documents and/or make plan payments. Given this history, it is abundantly clear that the co-owners are filing serial petitions, in a tag team strategy, without any intention of prosecuting their case and reorganizing their financial affairs. They are filing petitions solely to abuse the automatic stay.

11 U.S.C. § 362(d)(4) provides:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .

"with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

"(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

"(B) multiple bankruptcy filings affecting such real property."

Section 362(d)(4) implicates 11 U.S.C. § 362(b)(20). Section 362(b)(20) is an "in rem" exception to the automatic stay. If the court grants relief in this case under section 362(d)(4), but then another petition is filed by any debtor who claims an interest in the subject real property, section 362(b)(20) provides that the automatic stay does not operate in the second case so as to prevent the enforcement of a lien or security interest in the subject real property. The exception to the automatic stay in the second case is effective for 2 years after the entry of the order under section 362(d)(4) in the first case.

A debtor in the subsequent bankruptcy case, however, may move for relief from the in rem order. The request for relief from the in rem order may be premised upon "changed circumstances or for other good cause shown. . . ."

Given the prior cases filed the debtor and co-owner, the debtor's failure to propose a plan and file schedules in this case, the dismissal of the prior cases for failures to make plan payments and file documents, the filing of serial petitions, the court concludes that the debtor and the co-owner are embarked on a years' long scheme to delay, hinder or defraud the movant in the enforcement of its claim against the property. This scheme involves multiple bankruptcy filings affecting the property which the debtor and co-owner have failed to diligently prosecute. Accordingly, relief under 11 U.S.C. § 362(d)(4) is warranted.

Therefore, the court will grant relief from the automatic stay that will be effective for a period of two years in any future case filed by anyone claiming an interest in the subject property, provided the recordation requirements of section 362(d)(4) are satisfied by the movant or its successor.

The 14-day stay of 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 claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

19. 17-24597-A-13 FRANCISCO/LEAH OLAGUEZ — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 8-21-17 [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, while the claim identifies the secured claim of Community Assessment Recovery as a Class 2A claim, the plan provides for no dividend to this creditor. Therefore, the plan does not satisfy 11 U.S.C. § 1325(a)(5)(B) which requires that secured claims provided for in a plan be paid in full.

Second, in the fifth month of the plan will not be feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $2,100 is less than the $2,466.81 in dividends and expenses the plan requires the trustee to pay that month.

FINAL RULINGS BEGIN HERE

20. 17-24409-A-13 BENJAMIN/DEBRA EDOKPAYI — OBJECTION TO CONFIRMATION OF PLAN
ASW-1
U.S. BANK, N.A. VS. — 8-24-17 [45]

Final Ruling: The objection will be dismissed without prejudice.

The notice of the hearing on the objection indicates that notice is pursuant to Local Bankruptcy Rule 9014-1(f)(1) which requires written opposition to the objection if it is set on 28 days of notice. There are two problems with this notice. First, only 25 days of notice was given of the hearing. Therefore, the objecting party cannot demand a written response under Rule 9014-1(f)(1). Second, even if 28 days of notice of the hearing had been given, Rule 9014-1(f)(1) is not applicable. Local Bankruptcy Rule 3015-1(c)(4) requires that notice be given pursuant to Local Bankruptcy Rule 9014-1(f)(2) which requires 14 days notice of the hearing and does not require a written response.

21. 17-24111-A-13 DOUGLAS/DOLORES GIANNI — MOTION TO VALUE COLLATERAL
DEF-1
VS. FLAGSHIP CREDIT, L.L.C. — 8-3-17 [23]

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 $5,595 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, $5,595 of the respondent's claim is an allowed secured claim. When the respondent is paid $5,595 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.

22. 17-24111-A-13 DOUGLAS/DOLORES GIANNI — MOTION TO VALUE COLLATERAL
DEF-2
VS. TITLE MAX OF CALIFORNIA — 8-3-17 [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 debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $1,271 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, $1,271 of the respondent's claim is an allowed secured claim. When the respondent is paid $1,271 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.

23. 17-22312-A-13 DELIA LARIOS — MOTION TO CONFIRM PLAN
PGM-2 — 7-31-17 [44]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

24. 15-21528-A-13 KEVIN KRONE — MOTION TO APPROVE LOAN MODIFICATION
PGM-4 — 8-10-17 [87]

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. 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.

25. 17-24446-A-13 ALBERT WILSON — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 8-21-17 [19]

Final Ruling: The trustee has voluntarily dismissed the objection.

26. 17-23950-A-13 DEBRA MARTIN — MOTION TO VALUE COLLATERAL
LBG-1 — 8-11-17 [16]
VS. FAST AUTO LOAN AND PAYDAY LOAN

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 $5,183 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, $5,183 of the respondent's claim is an allowed secured claim. When the respondent is paid $5,183 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.

27. 13-21151-A-13 FRANCISCO ESPINAL AND ROSA HERNANDEZ — MOTION TO AVOID JUDICIAL LIEN
TOG-1 — 7-13-17 [71]
VS. MAIN STREET ACQUISITION CORP.

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. There is no objection to the relief requested and the court will not materially alter the relief requested. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted.

The subject real property had an approximate value of $138,000 as of the petition date. The debtor owns the property. The unavoidable liens against the property totaled $261,000 on that same date, consisting of a single mortgage in favor of GMAC Mortgage. There is no equity in the property after accounting for the mortgage. The respondent holds a judicial lien against the property but the debtor has claimed, without objection, an exemption of $10,495 to which the debtor appears entitled to claim.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application

of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

28. 12-31066-A-13 GERALD/BARBARA GOOCH — MOTION FOR WAIVER OF THE CERTIFICATE REQUIREMENTS FOR ENTRY OF DISCHARGE
MRL-1 — 8-4-17 [52]

Final Ruling: This 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.

Debtor Barbara Gooch died on July 9, 2017. Prior to her death, the debtors confirmed a plan and they apparently completed plan payments. They have filed financial management certificates. See 11 U.S.C. §§ 110, 111, 1328(g)(1) and Fed. R. Bankr. P. 1007(c). The surviving debtor is authorized pursuant to Local Bankruptcy Rule 1016-1 to file the case ending documents required by Local Bankruptcy Rules 1007(c) and 5009-1. The clerk shall enter the discharge of both debtors when the surviving debtor is otherwise entitled to a discharge.