UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 9, 2018 at 1:30 p.m.

THIS CALENDAR IS DIVIDED INTO TWO PARTS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN BOTH PARTS OF THE CALENDAR. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 24. 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 NOVEMBER 5, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 22, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 29, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 25 THROUGH 39 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 OCTOBER 15, 2018, AT 2:30 P.M.

Matters to be Called for Argument

1. 18-24701-A-13 BONNIE PRINDLE — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 9-19-18 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

11 U.S.C. § 1322(b)(2) prevents a proposed plan from modifying a claim secured only by the debtor's home. When the debtor owes a defaulted home mortgage, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults while ongoing installment payments are maintained. Here, the plan proposes to cure of the pre-petition arrears but fails to provide for the maintenance of the post-petition installment payments. By so doing, the plan impermissibly modifying a home loan.

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

2. 17-25402-A-13 FRANCES THEISS — MOTION TO MODIFY PLAN
GRK-2 — 9-10-18 [30]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan has inconsistent provisions regarding its duration. The standard language indicates that it will be 51 months but the additional provisions require payments over 53 months.

Second, 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 arrears that have accumulated since this case was filed, three

monthly installment payments have not been made to the Class 1 home lender. 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).

3. 18-24402-A-13 CORTNEY CAMPBELL — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1
WELLS FARGO BANK, N.A. VS. — 8-28-18 [25]

- ☐ 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 denied.

The debtor's spouse filed a related chapter 13 case, Case No. 17-25108, that is pending in this court. The spouse confirmed a plan that provides for the payment of the movant's claim. Neither this motion nor the docket in the related case suggests that the spouse is not performing the plan and paying the movant.

The debtor filed an earlier chapter 13 case is 2018. In it, she proposed and confirmed a plan that provided for the movant's secured claim in Class 4. That is, her plan provided that the movant's claim would be paid in connection with her husband's separate chapter 13 plan. Section 3.11(a) of that plan provided:

"Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract. . . ."

The earlier case was dismissed within one year of the filing of this case. As a result, the automatic stay expired in this case 30 days later. See 11 U.S.C. § 362(c)(3). It also bears mentioning that the plan proposed in this case but not yet confirmed, provides for the movant's claim in Class 4 and requires its payment through the husband's case. The court has determined that the plan may be confirmed although the order is pending. Once entered, the same provision quoted above will modify the automatic and codebtor stays.

Given the foregoing, there is no cause to terminate the codebtor or the automatic stay. First, there is no automatic stay in this case given the applicability of section 362(c)(3). Second, even if there was an automatic stay, the soon to be confirmed plan provides for the modification of the stays.

Nor is there a basis for granting in rem relief under 11 U.S.C. § 362(d)(4). While there are two other cases, one by the debtor and one by her spouse, affecting the property securing the movant's claim, the case filed by the spouse is paying the movant's claim and the cases filed by the debtor are complimentary to the case filed by the spouse in that they provide that the spouse will pay the claim and end the stays created by the filing of the debtor's cases.

4. 18-22405-A-13 GEORGE/TRISHA VAUGHN — MOTION TO CONFIRM PLAN
RJ-3 — 9-4-18 [67]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to accurately complete Form 122C.

The debtor has restated current monthly income by pretending the case was filed in July instead of April. This changed the six month look back period mandated by 11 U.S.C. § 101(10)(A)(i). During a period that began in January 2018 rather than October 2017, the debtor's average monthly income went down. This violates section 101(10). Nor has the debtor presented any convincing proof that known or virtually certain circumstances have reduced the debtor's likely future income. General statements that the debtor believes future overtime and work hours will be reduced is not sufficient under Hamilton v. Lanning, 130 S.Ct 2464 (2010).

The debtor has taken the following impermissible deductions from current monthly income when calculating projected disposable income:

- the debtor has taken a $400 deduction for an involuntary payroll deduction at Line 16 which has not been explained or corroborated. It appears to be an impermissible voluntary contribution to a retirement plan. Accord Parks v. Drummond (In re Parks), 475 B.R. 703 (B.A.P. 9th Cir. 2012).

- The debtor has taken a deduction for chapter 13 administrative expenses in excess of the 5.8% deduction permitted by the guidelines.

- The debtor has deducted $550 for child care which is actually a recreational expense for basketball, for a high school child. This expense is an impermissible deduction.

With current monthly income calculated per the original Form 122C-1 and after eliminating the disallowed deduction from amended Form 122C-2, the debtor has monthly projected disposable income of $1,071.28, enough to pay more than $64,000 to unsecured creditors. Given that less than this amount in claims have been filed, the debtor must pay unsecured creditors in full in order to comply with 11 U.S.C. § 1325(b).

5. 18-24606-A-13 JPJ-1 — ARNOLD POSADAS AND NILA CARDENAS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 9-12-18 [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 and the motion to dismiss the case conditionally denied.

First, the debtor has failed to give the trustee a copy of state tax return he requested. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). [It is not a violation of 11 U.S.C. § 521(e)(2)(A)(i) as argued by the trustee because this section is limited to the production of federal tax returns.] 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).

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

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

6. 18-21714-A-13 SLE-2 — SONIA SCALESE — MOTION TO CONFIRM PLAN 8-27-18 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion seeks to confirm a plan filed on July 13, 2018. No such plan has been filed and served.

7. 18-20116-A-13 MICHAEL CHRISTIAN
MOH-3

MOTION TO MODIFY PLAN
8-23-18 [64]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The court will not materially alter the relief requested and the issue raised by the trustee can be resolved by a nonmaterial modification to the plan. 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 on the condition that the plan is further modified in the confirmation order to require a monthly plan payment of $369. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

8. 18-24822-A-13 RANDY/TAMMY REOPELLE
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN
9-12-18 [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.

First, the plan fails to provide a dividend to be paid on account of allowed administrative expenses, including the debtor's attorney's fees. Unless counsel is working for nothing, this means that the plan does not provide for payment in full of priority claims as required by 11 U.S.C. § 1322(a)(2). Also see 11 U.S.C. §§ 503(b), 507(a).

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $9,842 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only $3,714 to unsecured creditors.

9. 18-24425-A-13 ARACELY RIVAS

ORDER TO SHOW CAUSE
9-20-18 [27]

- ☐ 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 $76 due on

September 14 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

10. 18-23232-A-13 LINDA CATRON
MJR-3
2614 SACRAMENTO STREET, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-29-18 [64]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to dispose of abandoned personal property in accordance with applicable nonbankruptcy law. The personal property allegedly belongs to the debtor and is located in the real property described in the motion and acquired by the movant in a pre-bankruptcy nonjudicial foreclosure sale.

The debtor maintains that her filing of an appeal from the adverse unlawful detainer judgment somehow precludes relief on this motion. The court rejects this contention. First, there is no admissible evidence of such an appeal or its pendency. Second, assuming a pending appeal, outside of bankruptcy court the movant would not be precluded from seeking possession of the real property and disposing of abandoned personal property unless the debtor obtained a stay of the enforcement of the judgment. There is no evidence of such a stay.

The parties shall bear their own fees and costs.

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

11. 18-21033-A-13 DANIEL/CARMEN CARSON
SLE-1

MOTION TO
CONFIRM PLAN
8-31-18 [45]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $26,304.71 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only $15,216.23 to unsecured creditors.

Second, the plan has inconsistent provisions regarding its duration. The standard language indicates that it will be 60 months but the additional provisions require 59 monthly payment.

12. 18-25838-A-13 JESUS/CARMEN MARAVILLA
MRL-1

MOTION TO
EXTEND AUTOMATIC STAY
9-18-18 [8]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and

any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

This is the second chapter 13 case filed by the debtor. A prior case was dismissed within one year of the most recent petition.

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

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

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

Here, the prior case under chapter 7 was dismissed when the debtors, who appeared without legal counsel, failed to timely file all schedules and statements. In this case, the debtors are represented by counsel and all schedules, statements, and a plan have been filed. This is a sufficient change in circumstances rebut the presumption of bad faith.

13. 15-21845-A-13 JOSEPH BARNES — MOTION TO RECONVERT OR TO DISMISS CASE 8-28-18 [204]
JPJ-4

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case converted to one under chapter 7.

The debtor has failed to commence making plan payments and has not paid approximately $6,680 to the trustee as required by the confirmed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal or conversion of the case to

chapter 7, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(1) & (c)(4).

This case was originally filed under chapter 7. The debtor received a chapter 7 discharge then converted the case to one under chapter 7 before the chapter 7 trustee could administer the estate. Given the prior discharge, and given the presence of nonexempt equity in assets of approximately $9,000, the best interests of creditors as well as the debtor is served by reconversion of the case to chapter 7.

14. 18-24547-A-13 LILLIE BRACY — OBJECTION TO CONFIRMATION OF PLAN 9-12-18 [25]
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, the debtor has failed to give the trustee a copy of state tax return he requested. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Second, even though the debtor operates rental properties, the debtor has not included a detailed statement of income and expenses related to the business as required by Schedules I/J.

The objection concerning the debtor's exemptions will be overruled. While the exemption of $15,000 in cash may be disallowed, this is immaterial to confirmation of the plan which proposes to pay 100% to unsecured creditors. With or without the exemption the plan complies with 11 U.S.C. § 1325(a)(4).

15. 18-20748-A-13 KAREN BLAKLEY — MOTION TO MODIFY PLAN 4-19-18 [26]
MJD-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the objection overruled.

Given the reduction in the claim of the IRS' priority claim to $0, it appears the plan will be completed within 5 years as required by 11 U.S.C. § 1322(d).

16. 18-24853-A-13 RAFAEL/MARSHA ESPINOSA — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 9-18-18 [21]

- ☐ 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, 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.

Second, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $1,609.62 is less than the $3,791.40 in dividends and expenses the plan requires the trustee to pay each month.

Third, the plan fails to provide a dividend to be paid on account of allowed administrative expenses, including the debtor's attorney's fees. Unless counsel is working for nothing, this means that the plan does not provide for payment in full of priority claims as required by 11 U.S.C. § 1322(a)(2). Also see 11 U.S.C. §§ 503(b), 507(a).

17. 14-32456-A-13 ALEJANDRO MARTINEZ — MOTION TO MODIFY PLAN
PGM-3 — 8-24-18 [67]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan fails to cure the arrears owed on the Class 1 claim of Golden One Credit Union in violation of 11 U.S.C. §§ 1322(b)(2) & (5) and 1325(a)(5)(B).

18. 18-24656-A-13 BACHAR ALBOKAI
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN
9-12-18 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

First, the debtor has failed to commence making plan payments and has not paid approximately $7500 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

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

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

Fourth, even if plan payments were current there is a feasibility issue. According to Schedules I and J, the debtor's monthly net income is less than the $750 monthly plan payment. The debtor has not proven an ability to make payments.

19. 18-24656-A-13 BACHAR ALBOKAI
AP-1
WELLS FARGO BANK, N.A. VS.

OBJECTION TO CONFIRMATION OF PLAN
8-27-18 [13]

- ☐ 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.

On a long-term 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. This plan provides only for the maintenance of the ongoing installments on the objecting creditor's home loan. As a result, the plan impermissibly modifies a home loan in violation of section 1322(b)(2) and fails to provide for payment in full of the claim as required by 11 U.S.C. § 1325(a)(5)(B).

20. 18-21957-A-13 WILLIAM AMARAL — OBJECTION TO CLAIM
PGM-4
VS. EUREKA DEVELOPMENT, L.L.C. — 8-14-18 [97]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The proof of claim is based on a commercial lease guaranteed by the debtor. The claim seeks $47,381 as a nonpriority, unsecured claim.

The debtor makes three objections to the proof of claim.

First, the debtor notes that the lease and the guaranty are with lessor College Marketplace, LLC, not the claimant, Eureka Development, LLC. There is no evidence of an assignment to the claimant, or other evidence that the claimant is entitled to assert the rights of College Marketplace, with the proof of claim.

While it is true that the proof of claim does not include an assignment or other evidence of Eureka's right to assert the claim, Eureka also filed an objection to the confirmation of the debtor's plan. That objection included evidence that Eureka was the successor to College Marketplace. Additionally, the response to the objection includes an Agreement of Merger between the claimant and College Marketplace, as well as other entities, that indicates it is the survivor of a merger and is entitled to enforce this claim against the debtor.

Second, the debtor complains that the proof of claim does not include an accounting of the amount claimed.

The short answer to this objection is that no accounting is required by Fed. R. Bankr. P. 3001. An itemized statement is required only when the claim is based an open-end or revolving consumer credit agreement, is secured by the debtor's principal residence, or claims in addition to principal, interest, fees, expenses and other charges for the pre-petition period. See Fed. R. Bankr. P. 3001(c)(2) and (3). This claim is not secured by the debtor's home, is not a consumer credit account, the proof of claim states at paragraph 7 that includes no interest or other charges necessitating a statement under Rule 3001(c)(2)(A).

Also, the accounting the debtor wants is included in the objection by Eureka to the debtor's plan. Dockets 40 and 42.

Third, the debtor asserts that because the guarantee provided that the debtor's liability was to be reduced by 20% each anniversary of the lease, and because the lease executed on October 29, 2013, his liability has been reduced to 20% of the rent and other charges due for one year. The claim demands 40%.

However, the lease is dated August 13, 2013 and was signed by the debtor on October 29, 2013. However, due to the construction of the tenant improvements, the debtor did not begin occupancy until August 2014. The lease states at Article 6.1 that the term of the lease began after substantial completion of those improvements. Hence, the lease began in August 2014, not an earlier date, and each anniversary, like the term of the lease, runs from August 2014. The claim under the guaranty is correctly calculated.

21. 18-23674-A-13 DONNA DIPIETRO — MOTION TO CONFIRM PLAN 8-27-18 [33]
MEV-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $1,841.58 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).

Second, even if the plan payments were current it would not be feasible because the monthly plan payment of $1,470.79 is less than the $1,734.21 in dividends and expenses the plan requires the trustee to pay each month.

Third, while the plan has nonstandard provisions, they are not included on a separate page as required by the standard plan. Therefore, they will be given no effect. As a result, the plan is incomplete.

Fourth, 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 post-petition arrears owed to a 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).

Fifth, the debtor has failed to give the trustee financial records for a closely held business. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

22. 18-25774-A-13 JAYWAUN CLARK
MAC-1

MOTION TO
EXTEND AUTOMATIC STAY
9-19-18 [10]

- ☐ 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 debtor has filed two prior chapter 13 cases.

The first case, Case No. 16-22797, was filed on April 29, 2016. In that case, the debtor confirmed a plan but was unable to maintain all plan payments. The case was dismissed on April 13, 2017.

The second case was filed days after the dismissal of the first, April 20, 2017. Once again, a plan was confirmed then not performed. The case was dismissed on September 7, 2017.

This case was filed on September 12, 2018. Because September 12, 2018 is more than one year after September 7, 2017, 11 U.S.C. § 362(c)(3) and (c)(4) are not applicable. There is no need to ask the court to impose or extend the automatic stay.

23. 17-24490-A-13 RAYMOND/ELIZABETH CAMPBELL
LBG-1

MOTION TO
SELL
9-7-18 [87]

- ☐ 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 dismissed. The court previously granted the motion to sell the subject property.

24. 18-24594-A-13 ABELETH PENALBA
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN
9-12-18 [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.

The plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay $68,020 unsecured creditors but Form 122C shows that the debtor will have $72,697 over the plan's duration. The problem is even more significant than this indicates because the debtor has not accurately completed Form 122C.

First, comparing Line 28 of Form 122C-2 to Schedule J shows that the debtor has overstated the monthly cost of life insurance by $82.62.

Second, the $1,353 deduction for childcare is not in fact for childcare for two children. It is school tuition. 11 U.S.C. §§ 707(b)(2)(A)(ii)(IV) and 1325(b) limits tuition to $1,925 per year per child. At most, then, this deduction is limited to $320.83 a motion. This deduction therefore is overstated by at least $1,032.17.

FINAL RULINGS BEGIN HERE

25. 18-25607-A-13 CRAIG DIXSON — ORDER TO SHOW CAUSE 9-19-18 [14]

Final Ruling: The order to show cause will be discharged because it is moot. The case was dismissed on September 24, 2018.

26. 17-28121-A-13 LALAINE JOHNSON — OBJECTION TO CLAIM 8-16-18 [46]
JPJ-1
VS. GOLDEN 1 CREDIT UNION

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

The objection will be sustained.

Fed. R. Bankr. P. 3001(c)(3) specifies that when a claim is based on a revolving consumer credit agreement, such as a credit card account, the claim holder must file with the proof of claim a statement that includes the name of the entity from whom the creditor purchased the account, the name of the entity to whom the debt was owed at the time of the last transaction, the date of the account holder's last transaction, the date of the last payment, and the date on which the account was charged to profit and loss.

The proof of claim here is for a consumer credit card account. The statement required by Rule 3001(c)(3) is not attached to the proof of claim nor has one been furnished in response to the objection. The claim will be disallowed.

27. 17-24834-A-13 PATRICIA LEMKE — MOTION TO CONFIRM PLAN 9-3-18 [64]
PGM-2

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.

28. 18-23639-A-13 JUANITO COPERO
AF-3

MOTION TO CONFIRM PLAN
8-13-18 [34]

Final Ruling: The motion has been voluntarily dismissed.

29. 18-23653-A-13 ALICIA ROJO
TAG-1

MOTION TO CONFIRM PLAN
8-13-18 [18]

Final Ruling: The motion will be dismissed without prejudice.

Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 7346, Philadelphia, PA 19101-7346; (2) United States Attorney, for the IRS, 501 I Street, Suite 10-100, Sacramento, CA 95814; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

Service in this case is deficient because the IRS was not served at any of the addresses listed above.

30. 14-24467-A-13 BENJAMIN/TAMARA MATTOX
BB-5

MOTION TO MODIFY PLAN
8-15-18 [68]

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

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

31. 18-23468-A-13 MEEGAN WILLIAMSON
SLE-2
VS. SOUTHWEST AIRLINES, F.C.U.

MOTION TO VALUE COLLATERAL
8-24-18 [43]

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 $8,000 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, $8,000 of the respondent's claim is an allowed secured claim. When the respondent is paid $8,000 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.

32. 18-23468-A-13 MEEGAN WILLIAMSON — MOTION TO CONFIRM PLAN
SLE-3 — 8-24-18 [38]

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

The objection will be overruled. The objection concerns the failure to value collateral of Southwest Credit Union. However, the debtor's valuation motion has been granted.

33. 17-27169-A-13 LAI SAECHAO — OBJECTION TO CLAIM
JPJ-1 — 8-16-18 [28]
VS. GOLDEN 1 CREDIT UNION

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

The objection will be sustained.

Fed. R. Bankr. P. 3001(c)(3) specifies that when a claim is based on a revolving consumer credit agreement, such as a credit card account, the claim holder must file with the proof of claim a statement that includes the name of the entity from whom the creditor purchased the account, the name of the entity to whom the debt was owed at the time of the last transaction, the date of the account holder's last transaction, the date of the last payment, and the date on which the account was charged to profit and loss.

The proof of claim here is for a consumer credit card account. The statement required by Rule 3001(c)(3) is not attached to the proof of claim nor has one been furnished in response to the objection. The claim will be disallowed.

34. 18-22471-A-13 CARLA ODEN
LDJ-1

MOTION TO CONFIRM PLAN
8-21-18 [29]

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.

35. 18-24875-A-13 REGINA WIDICK
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
9-18-18 [26]

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

The objection will be overruled. The objection concerns the failure to value collateral of Southwest Credit Union. However, the debtor's valuation motion has been granted.

36. 18-24875-A-13 REGINA WIDICK
MC-1
VS. INTERNAL REVENUE SERVICE

MOTION TO VALUE COLLATERAL
9-10-18 [20]

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 $5,972 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, $5,972 of the respondent's claim is an allowed secured claim. When the respondent is paid $5,972 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.

37. 18-23677-A-13 MICHAEL MCELREATH
RS-1
VS. BAYVIEW LOAN SERVICING, L.L.C.

MOTION TO VALUE COLLATERAL
9-11-18 [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 motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $259,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Bayview Loan Servicing. The first deed of trust secures a loan with a balance of approximately $319,322.68 as of the petition date. Therefore, Bayview's other 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 $259,000. 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).

38. 18-22889-A-13 SHEILA FRANCOIS — ORDER TO SHOW CAUSE 9-11-18 [67]

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

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $77 installment when due on September 6. However, after the issuance of the order to show cause, the delinquent installment as well as the remainder of the filing were paid in full. No prejudice was caused by the late payment.

39. 18-23199-A-13 JEFFREY JOHNSON — MOTION TO CONFIRM PLAN 8-22-18 [21]
MRL-1

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.