

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 11, 2016 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 17. 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 7, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 24, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 31, 2016. 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 18 THROUGH 35 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 OCTOBER 17, 2016, AT 2:30 P.M.

October 11, 2016 at 1:30 p.m.

Matters to be Called for Argument

1. 14-28902-A-13 JULIE CALLAHAN MOTION TO
MC-4 SELL
9-22-16 [75]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The motion to sell real property is granted on the condition that the sale proceeds are used to pay all liens of record in full and in a manner consistent with the plan. Insofar as surplus sale proceeds are available, they shall be paid over to the trustee to the extent required by the confirmed plan with such additional amounts as volunteered by the debtor. The turnover of the surplus sale proceeds is voluntary. Burgie v. McDonald (In re Burgie), 239 B.R. 406, 409-410 (B.A.P. 9th Cir. 1999) ("The proceeds of the sale of a debtor's real estate in a chapter 13 case never become disposable income for the purposes of chapter 13. This result applies in a chapter 13 case whether or not the property is exempt from execution. . . . Postpetition disposable income does not include prepetition property or its proceeds.").

Absent either payment in full (i.e., a 100% dividend) of all filed proofs of claim or the approval of a modified plan that permits the plan to be completed without payment in full, the plan shall not be deemed completed by payment of the sale proceeds to the trustee. The debtor's plan requires that the debtor pay a monthly payment for the stated term even if the dividend promised to general unsecured creditors is exceeded. Until the plan term has run its length, or until the unsecured creditors get 100% of their claims, the debtor must make plan payments for each month of the entire term whether the unsecured creditors get the minimum dividend promised in the plan or something more.

2. 12-23807-A-13 DOUGLAS CREECH MOTION TO
JGD-5 APPROVE COMPENSATION OF DEBTOR'S
ATTORNEY
9-20-16 [75]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor's attorney, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor, 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 seeks approval of \$1,000 in fees incurred in connection with motions to vacate the dismissal and to modify the plan. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and Local Bankruptcy Rule 2016-1, if applicable.

3. 15-21528-A-13 KEVIN KRONE MOTION TO
PGM-1 MODIFY PLAN
9-2-16 [57]
- Telephone Appearance
 - Trustee Agrees with Ruling

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

First, the debtor has not explained nor corroborated the alleged increase in monthly expenses that justify reducing plan payments. Absent proof of a substantial and unanticipated change in financial circumstances, to attempt to confirm a plan in order to pay less to creditors is bad faith. 11 U.S.C. § 1325(a)(3).

Second, the modified plan makes two changes to Wells Fargo Dealer Services secured claim that are not permitted by 11 U.S.C. § 1329. The debtor seeks to change the interest rate payable on the claim, and to strip down the claim to the value of the vehicle securing it even though the first confirmed plan did not do so. As to the former, nothing in section 1329(a) permits a post-confirmation plan modification to reduce the interest rate set by the initial plan. As to the latter, no valuation motion has been filed permitting the debtor to strip down the secured claim.

4. 16-25232-A-13 GREGORY WALLACE OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS
9-22-16 [43]
- 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 will be

conditionally denied.

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

Second, the debtor admitted at the meeting of creditors that the debtor failed to file an income tax returns for the prior four years. Those returns are delinquent.

Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becoming effective, the Bankruptcy Code did not require chapter 13 debtors to file delinquent tax returns. If a debtor did not file tax returns, the trustee might object to the plan on the grounds of lack of feasibility or that the plan was not proposed in good faith. See, e.g., Greatwood v. United States (In re Greatwood), 194 B.R. 637 (9th Cir. B.A.P. 1996), *affirmed*, 120 F.3d. 268 (9th Cir. 1997).

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors.

In this case, the meeting of creditors was continued to permit the debtor to file the delinquent returns. See 11 U.S.C. § 1308(b). However, they have not been filed and given to the trustee.

There are two consequences to a failure to comply with section 1308. The failure is cause for dismissal. See 11 U.S.C. § 1307(e). Also, 11 U.S.C. § 1325(a)(9) and an uncodified provision of BAPCPA found at section 1228(a) of the Act provide that the court cannot confirm a plan if delinquent returns have not been filed with the taxing agency and filed with the court. This has not been done and so the court cannot confirm any plan proposed by the debtor.

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

5. 16-23137-A-13 NELLIE SCHNEIDER ORDER TO
SHOW CAUSE
9-15-16 [51]

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

6. 16-23543-A-13 KENNETH/BARBARA ENDICOTT MOTION TO
DJC-1 CONFIRM PLAN
8-26-16 [23]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection will be sustained.

The plan is not feasible as required by 11 U.S.C. § 1325(a) (6). Schedules I and J show that the debtor will have monthly net income of approximately \$200.08. However, taking into account the notice of mortgage payment change filed by the holder of the second mortgage on the debtor's home, increasing the monthly payment by \$453.27, the debtor will have no monthly net income with which to fund the plan.

7. 16-23844-A-13 KATHY TOLEDO ORDER TO
SHOW CAUSE
9-19-16 [17]

- 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 September 12 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c) (2).

8. 16-25246-A-13 THOMAS/BONNIE-JANE GREEN OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN
9-22-16 [15]

- 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 debtor has failed to accurately complete Form 22. The debtor has taken the following impermissible deductions from current monthly income:

- the debtor has taken a \$517 deduction for the cost of acquiring a vehicle. The debtor is not entitled to the deduction because the debtor has no expense associated with acquiring the vehicle. See Ransom v. MBNA Am. Bank (In re Ransom), 131 S.Ct. 716 (2011).
- the debtor has taken an expense deduction for the operation of a vehicle of \$672 even though \$426 is permitted.
- the debtor has taken a \$3,057.69 deduction for taxes even though Schedule I indicates that they total only \$2,368.45;
- the debtor has overstated the debtor's plan payment at \$2,517.17 when it is only \$260; and
- the debtor is deducting \$738.74 in voluntary retirement plan contributions in violation of Parks v. Drummond (In re Parks), 475 B.R. 703 (B.A.P. 9th Cir. 2012).

With these deductions eliminated, the debtor must pay no less than \$74,678 to Class 7 unsecured creditors. Because the plan will pay these creditors nothing, it does not comply with 11 U.S.C. § 1325(b).

9. 16-25349-A-13 TERRY ARNOLD ORDER TO
SHOW CAUSE
9-19-16 [23]

Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The case will remain pending but the court will modify the terms of its order permitting the debtor to pay the filing fee in installments.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the \$79 installment when due on September 14. While the delinquent installment was paid on September 26, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

10. 16-22552-A-13 BOWEN/NADINE RIDEOUT MOTION TO
ET-1 CONFIRM PLAN
6-16-16 [29]

Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: None. This hearing was continued at the request of the objecting creditor so that an examination of the debtor could be conducted. However, the objecting creditor has failed to supplement the record with the results of that examination.

- 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, it appears that the debtor was unable to prosecute his first case because his work took him out of the country for an extended period of time. He has now returned and has filed all documents necessary to proceed to confirmation of a plan. This is a sufficient change in circumstances rebut the presumption of bad faith.

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection will be sustained and the case will be dismissed.

The objection will be sustained.

First, the debtor failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

Second, the debtor is not eligible for chapter 13 relief. 11 U.S.C. § 109(h) prohibits an individual from being a debtor under any chapter unless that individual received a credit counseling briefing from an approved non-profit budget and credit counseling agency during the 180-day period immediately preceding the filing of the petition. In this case, the debtor has not filed a certificate evidencing that briefing was completed during the 180-day period prior to the filing of the petition. Hence, the debtor was not eligible for bankruptcy relief when this petition was filed.

Third, 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).

Fourth, 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

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).

Third, Counsel for the debtor has opted to receive fees pursuant to Local Bankruptcy Rule 2016-1 rather than by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. However, counsel has not complied with Rule 2016-1 by filing the rights and responsibilities agreement. The abbreviated procedure for approval of the fees permitted by Local Bankruptcy Rule 2016-1 is not applicable. Therefore, the provision in the proposed plan requiring the trustee to pay the fees without counsel first making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017, permits payment of fees without the required court approval. This violates sections 329 and 330.

Fourth, the secured claims of Franklin Credit and Ocwen Loan Servicing are misclassified in Class 1. That class is reserved for long term claims not modified by the plan. Such claims receive their ongoing contract installment payment and any arrears are cured. See 11 U.S.C. § 1322(b)(2) and (b)(5). Franklin Credit and Ocwen Loan Servicing will not be paid their ongoing contract installments but will receive a different amount. Hence, assuming these claims may be modified, they belong in Class 2. Because the claims are being modified, the entire claim, including unmatured principal, must be paid in full through the plan. The only debt that can be permitted to remain long term debt is debt that is not modified by the chapter 13 plan. As long as the plan is only curing an arrearage, the long term debt may continue beyond the length of the plan and be classified in Class 1. See 11 U.S.C. § 1322(b)(3) & (5). Whenever a long term debt is modified prospectively in a chapter 13 case, such as by changing its interest rate or future installments, the entire claim must be paid during the chapter 13 case as a Class 2 claim. See 11 U.S.C. §§ 1322(d) and 1325(a)(5). See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004).

If the claims of Franklin Credit and Ocwen Loan Servicing are home loans, they plan may not modify them other than to cure arrears. See 11 U.S.C. § 1322(b)(2). While curing the arrears, the contract installment payments must be maintained. The only exception to this anti-modification provision arises when the creditor agrees to the modification of its claim. See 11 U.S.C. § 1325(b)(5)(B). There is no evidence that either Franklin Credit or Ocwen Loan Servicing have agreed to the modification.

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

FINAL RULINGS BEGIN HERE

18. 16-24200-A-13 LESLIE LEWIS MOTION TO
MC-1 CONFIRM PLAN
8-25-16 [28]

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.

19. 16-25503-A-13 EDGAR/BRENDA GUZMAN MOTION TO
BMV-1 VALUE COLLATERAL ETC
VS. WELLS FARGO HOME EQUITY 9-7-16 [13]

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 \$385,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Chase Bank. The first deed of trust secures a loan with a balance of approximately \$401,401.15 as of the petition date. Therefore, Wells Fargo Home Equity's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If

the secured claim is \$0, because the value of the respondent's collateral is \$0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of \$385,000. 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).

20. 12-26804-A-13 BRYAN MACMILLAN
CFH-2

MOTION TO
RECONSIDER
9-9-16 [83]

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

The motion will be granted on condition that the debtor pays to the trustee no later than October 10 the sum of \$3,140, representing the August and September plan payments, and returns the uncashed check for \$4.84 (or, if cashed, pays that amount).

In the future, counsel should not assume that it unnecessary to file opposition to a motion noticed for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) because he thinks the trustee will be dismissing the motion. If the deadline for written opposition is approaching and the motion has not been dismissed, file opposition.

21. 15-25105-A-13 FLORA NANCA MOTION FOR
ETL-1 RELIEF FROM AUTOMATIC STAY
CIT BANK, N.A. VS. 7-7-16 [79]

Final Ruling: The motion has been voluntarily dismissed.

22. 15-25105-A-13 FLORA NANCA MOTION TO
ETL-2 APPROVE LOAN MODIFICATION
9-12-16 [93]

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.

23. 16-24608-A-13 DAVID VERDUGO OBJECTION TO
JPJ-2 EXEMPTIONS
9-13-16 [19]

Final Ruling: This objection to the debtor's exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor 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 objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the debtor's default is entered and the matter will be resolved without oral argument.

The objection will be sustained.

The trustee objects to all of the debtor's Cal. Civ. Proc. Code § 703.140(b) exemptions claimed on Schedule C. The trustee argues that because the debtor

is married and because the debtor's spouse has not joined in the chapter 13 petition, the debtor must file his spouse's waiver of right to claim exemptions. See Cal. Civ. Proc. Code § 703.140(a)(2). This was not done.

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

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

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

Here, the debtor is asserting the exemptions of Cal. Civ. Proc. Code § 703.140(b), which require a spousal waiver. That waiver was not filed with the petition.

24. 16-23812-A-13 SANDRA HARRIS MOTION TO
MMM-2 CONFIRM PLAN
8-15-16 [24]

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.

25. 16-25317-A-13 JUAN/MARGARITA MALDONADO OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS
9-22-16 [13]

Final Ruling: The court concludes that a hearing will not be helpful to its

consideration and resolution of this matter. The debtor's response indicates that the debtor intends to file and confirm a modified plan rather than the plan to which an objection has been filed. 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 objection will be sustained and the motion to dismiss the case will be conditionally denied.

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 \$3,960.12 is less than the \$4,129 in dividends and expenses the plan requires the trustee to pay each month.

Third, the plan attempts to pay a debt "secured" by the debtor's retirement plan as a Class 2 secured claim. This is not a liability on a claim that may be provided for in a plan.

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

26. 15-21526-A-13 DEE LINDERER
PSB-1

MOTION TO
INCUR DEBT
9-9-16 [46]

Final Ruling: This motion to new credit 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 to borrow a reverse mortgage will be granted on condition that the loan will be sufficient to pay all transactional expenses and existing liens in full. The motion establishes that the new loan will like enhance the ability of the debtor to complete the plan inasmuch as the reverse mortgage will not require ongoing mortgage payments.

provided this case is then pending under chapter 13.”

A review of the docket reveals that the case remains pending under chapter 13. Therefore, the above provision remains effective and the automatic stay is not an impediment to the movant proceeding against its collateral.

The movant shall bear its own fees and costs.

30. 15-20968-A-13 MICHAEL/ARLENE MUNOZ MOTION TO
PBL-1 MODIFY PLAN
8-26-16 [45]

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 the third address listed above.

31. 16-25168-A-13 TERI TAYLOR OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS
9-22-16 [31]

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

The objection will be overruled and the motion to dismiss the case will be denied. Both are premised on the failure of the debtor to value the collateral of Santander. However, a valuation motion was granted at a hearing on October 3.

32. 16-24273-A-13 RACHEL LUNDE MOTION TO
JSO-4 CONFIRM PLAN
9-6-16 [38]

Final Ruling: The motion will be dismissed without prejudice.

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

33. 16-24588-A-13 GREGORY MONACO ORDER TO
SHOW CAUSE
9-19-16 [34]

Final Ruling: The order to show cause will be discharged because it is moot. The case was dismissed on September 26.

34. 11-42993-A-13 KEVIN/LISA SPESERT MOTION TO
HDR-2 SET ASIDE DISMISSAL
9-13-16 [58]

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

The motion will be granted on condition that the debtor pays to the trustee no later than October 10 the sum of \$1,666 representing the refunds paid by the trustee to the debtor after the dismissal, as well as all other plan payments necessary to complete the plan.

In the future, counsel should not assume that it unnecessary to respond to a notice of default because he thinks the trustee will be dismissing the motion or that the debtor may have cured the default. If the deadline for written opposition is approaching and the trustee has not confirmed a cure, file opposition to the notice of default and set a hearing.

35. 16-25194-A-13 DAMON TURNER OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS
9-22-16 [22]

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

The objection will be overruled and the motion to dismiss the case will denied. Both are premised on the failure of the debtor to value the collateral of Ditech. However, a valuation motion was granted at a hearing on October 3.