UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 2, 2015 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 7. 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 DECEMBER 7, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 23, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 30, 2015. 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 8 THROUGH 19 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 NOVEMBER 9, 2015, AT 2:30 P.M.

Matters to be Called for Argument

1. 12-35404-A-13 IAN/LILY WILLIAMS — MOTION TO CONVERT OR DISMISS CASE 9-22-15 [38]
JPJ-1

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The debtor has failed to make $4,000 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6). This is cause for dismissal or conversion of the case to one under chapter 7, whichever is in the best interests of creditors. Because there is substantial nonexempt equity in assets, conversion to chapter 7 is in the best interests of creditors.

Nonetheless, the debtor has filed a motion to confirm a modified plan that will be considered by the court on November 23. Provided the court determines that such plan will be confirmed, the motion will be denied. If not confirmed for any reason, the case will be converted to one under chapter 7.

2. 15-28046-A-13 JENNIFER MCALLISTER — MOTION FOR RELIEF FROM AUTOMATIC STAY O.S.T. 10-20-15 [8]
RCO-1
THE BANK OF NEW YORK MELLON VS.

☐ Telephone Appearance
☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) but denied insofar as it requests relief under 11 U.S.C. § 362(d)(4).

The debtor and her spouse have filed four serial chapter 13 petitions. The debtor's spouse filed Case No. 15-24113 on May 21, 2015. It was dismissed on June 8, 2015 because he failed to file all schedules, statements and a plan. He then filed Case No. 15-25834 on July 23, 2015. It was dismissed on August 10, 2015 because he failed to file the required bankruptcy documents.

Next, on September 3, 2015 the debtor filed her first chapter 13 case, Case No. 15-26996, which was dismissed on September 21, 2015 because she failed to file schedules, statements and a plan. This case was filed on October 15, 2015, and like all of the other cases, it was filed without any of the bankruptcy documents.

The timing of these cases is linked to the movant's efforts to conduct an unlawful detainer trial in state court. It or its predecessor foreclosed on the home of the debtor approximately one year ago and has been attempting to take possession of it. These bankruptcies are being filed on the eve of the unlawful detainer trial so that the automatic stay will force its delay.

Under California law, once a nonjudicial foreclosure sale has occurred, the trustor has no right of redemption. Moeller v. Lien, 25 Cal. App.4th 822, 831 (1994). In this case, therefore, the debtor has no right to ignore the foreclosure. If the foreclosure sale was not in accord with state law, this should be asserted in state court. The automatic stay is a respite from

creditor action while the debtor attempts to reorganize. Here, the debtor has no apparent right to reorganize the movant's debt because of the foreclosure unless that foreclosure was improper. Whether or not it was improper must be decided in state court.

This is cause to terminate the automatic stay to permit the unlawful detainer trial to move forward.

11 U.S.C. § 362(d)(4) provides that:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . . with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

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

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

Relief under 11 U.S.C. § 362(d)(4) will be denied because the movant is no longer "a creditor whose claim is secured by an interest in such real property," for purposes of 11 U.S.C. § 362(d)(4). The movant is the owner of the property. According to the motion, the movant purchased the property at the pre-petition foreclosure sale. The movant no longer owns a debt secured by the property. Relief under section 362(d)(4) is available only to creditors who are secured by the property. Ellis v. Yu (In re Ellis), 523 B.R. 673, 678-80 (B.A.P. 9th Cir. 2014). The movant is not secured by the property. The movant is the owner of the property.

Finally, in rem relief will be denied under 11 U.S.C. § 105 as well because such relief requires an adversary proceeding. Johnson v. TRE Holdings LLC (In re Johnson), 346 B.R. 190, 195 (B.A.P. 9th Cir. 2006).

3. 15-26750-A-13 ROBYN ANDREWS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-13-15 [15]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

When demanded by the trustee or an unsecured creditor, a chapter 13 plan must pay unsecured creditors in full or at least all of the debtor's "projected disposable income."

For purposes of 11 U.S.C. § 1325(b), the calculation of projected disposable income begins with "current monthly income." See 11 U.S.C. § 1325(b)(2). Current monthly income is an average of the debtor's and the debtor's spouse's income, excluding Social Security benefits, for the six months prior to the filing of the petition. This income includes any amount regularly paid by someone other than the debtor (or the debtor's spouse in a joint case) for the household expenses of the debtor, the debtor's dependents, and (in a joint case) the debtor's spouse. See 11 U.S.C. §§ 101(10A), 707(b)(7).

When current monthly income is less than the applicable median family income, a debtor's projected disposable income is determined by resort to Schedules I and J. That is, assuming the expenses reported on Schedule J are reasonably necessary to the debtor's maintenance and support, the debtor's monthly net incomes is considered projected disposable income.

In this case, the debtor's current monthly income as reported on Form 22 is below the applicable median family income. Schedule J shows monthly net income which is used to fund the monthly plan payment and pay a 25% dividend to Class 7 unsecured creditors. This dividend will aggregate approximately $11,707.

However, as Schedule I makes clear, the debtor's monthly income has increased significantly since the case was filed. It has increased from $2,753 to $5,666. In this circumstance, Hamilton v. Lanning, 130 S.Ct 2464 (2010) permits the trustee to rebut the presumption that the amount of projected disposable income is as stated in Form 22. The debtor has come forward with no evidence that the change is not substantial or likely to continue.

At this level, the debtor's current monthly income exceeds the applicable median family income. Therefore, projected disposable income must be calculated by using Form 22, not Schedules I and J. The trustee calculates that if the debtor were to complete Form 22 this would increase the debtor's projected disposable income to approximately $1,191 a month, enough to pay unsecured creditors 100% of their claims. Because the plan fails to do so, it does not comply with section 1325(b).

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.

4. 15-21258-A-13 ELIZABETH GOMEZ — MOTION TO CONVERT OR DISMISS CASE 9-24-15 [56]
JPJ-2

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The debtor has failed to make $4,339 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the

plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6). This is cause for dismissal or conversion of the case to one under chapter 7, whichever is in the best interests of creditors. Because there is substantial nonexempt equity in assets, conversion to chapter 7 is in the best interests of creditors.

Nonetheless, the debtor has filed a motion to confirm a modified plan that will be considered by the court on November 23. Provided the court determines that such plan will be confirmed, the motion will be denied. If not confirmed for any reason, the case will be converted to one under chapter 7.

5. 14-29778-A-13 EPENESA DRONE — MOTION TO MODIFY PLAN
MLF-3 — 9-25-15 [71]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $2,500 in plan months 11 through 22 is less than the $3,648 in dividends and expenses the plan requires the trustee to pay each month.

Second, to pay the dividends required by the plan at the rate proposed by it will take 614 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Third, 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 arrearage owed to the Class 1 home loan. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

Fourth, the debtor has failed to make $10,929.36 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

6. 14-25389-A-13 FRANK NAVARRETTE — MOTION TO CONVERT OR DISMISS CASE
JPJ-3 — 9-28-15 [143]

- ☐ 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 make $2,460 of payments required by the plan. This

has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6). This is cause for dismissal or conversion of the case to one under chapter 7, whichever is in the best interests of creditors. Because there is substantial nonexempt equity in assets, conversion to chapter 7 is in the best interests of unsecured creditors.

7. 15-25698-A-13 JAMES KING
MAS-2

MOTION TO RECONSIDER
9-30-15 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

This case was filed on July 16, 2015. The debtor timely proposed a chapter 13 plan on July 29, 2015. See Docket #12. The trustee caused the proposed plan to be served on all creditors, including the movant on August 15. See Docket #19. The plan was served with the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines ("Notice"). The Notice advised the movant:

> "The debtor has filed a plan. A copy of the plan is enclosed. Objections to the confirmation of this plan must be filed and served by 09/10/2015. An objection shall state with particularity the grounds therefor, be supported by evidence, and be accompanied by a notice of the confirmation hearing on **09/28/2015 at 01:30PM in Courtroom 28, 7th Floor, at the Robert T. Matsui United States Courthouse, 501 I Street, Sacramento, CA.** The objection and the notice of the hearing must be served on the debtor, the debtor's attorney, if any, and the bankruptcy trustee. If a timely objection is not filed and served, no confirmation hearing will be conducted unless the court orders otherwise."

This notice is consistent with the court's local rules. Local Bankruptcy Rule 3015-1(c)(4) which provides:

> "Objecting to Plan Confirmation. Creditors, as well as the trustee, may object to the confirmation of the chapter 13 plan. An objection and a notice of hearing must be filed and served upon the debtor, the debtor's attorney, and the trustee within seven (7) days after the first date set for the meeting of creditors held pursuant to 11 U.S.C. § 341(a). The objection shall be set for hearing on the confirmation hearing date and time designated in the Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines. The objection shall comply with LBR 9014-1(a)-(e), (f)(2), and (g)-(l), including the requirement for a Docket Control Number on all documents relating to the objection. The notice of hearing shall inform the debtor, the debtor's attorney, and the trustee that no written response to the objection is necessary. Absent a timely objection and a properly noticed hearing on it, the Court may confirm the chapter 13 plan without a hearing."

The requirement that a debtor, not just the debtor's attorney, be served with a contested matter is consistent with the national rules. Fed. R. Bankr. P. 9013 and 9014(a) provide that a request for an order shall be made by motion which must be served on the debtor and "the entities the court directs. . . ." Fed. R. Bankr. P. 9013(a) & (b). Fed. R. Bankr. P. 9014(b) further provides that a motion must be served in the manner provided for service of a summons and a

complaint. Fed. R. Bankr. P. 7004(b) permits service of a summons and a complaint by first class mail. When the person served is the debtor, the debtor and the debtor's attorney both must be mailed the summons and complaint. See Fed. R. Bankr. P. 7004(b)(9) & (g).

Despite receiving the Notice, and despite being represented by experienced bankruptcy counsel, the movant failed to served his objection to the confirmation of the plan and the notice of the hearing on it, on the debtor. Only the debtor's attorney was served.

As a result, the court summarily disposed of the objection by ruling:

> "The objection will be dismissed without prejudice.
>
> A review of the certificate of service for the objection reveals that while it was served on counsel for the debtor, it was not served on the debtor.
>
> Local Bankruptcy Rule 3015-1(c)(4) provides in part:
>
> 'Creditors, as well as the trustee, may object to the confirmation of the chapter 13 plan. An objection and a notice of hearing must be filed and served upon the debtor, the debtor's attorney, and the trustee within seven (7) days after the first date set for the meeting of creditors held pursuant to 11 U.S.C. § 341(a).'
>
> The notice of the commencement of the case was served on the objecting creditor. It provided:
>
> 'The objection and notice of hearing must be served on the debtor, the debtor's attorney, if any, and the bankruptcy trustee. If a timely objection is not filed and served, no confirmation hearing will be conducted unless the court orders otherwise.'
>
> Nothing has been filed by or on behalf of the debtor that might be considered a waiver of this service defect. Therefore, service is defective and the objection must be dismissed without prejudice."

With the objection dismissed, the court confirmed the plan in an order filed September 29, 2015.

The movant now asks the court to reconsider its order "overruling" his objection to the confirmation of the plan, vacate the confirmation order, and sustain his objection.

The court first points out that it did not overrule the movant's objection. It was dismissed without reaching its merits. The court further points out that its ruling dismissing the objection was posted on the court's Internet site on September 22, 2015 at 2:17 PM, six days prior to the hearing. Despite this, no application by the movant was made prior to the September 28 hearing seeking to extend the time to object to the plan so that the objection and a notice of hearing could be served correctly. As a result, on September 28 a minute order was filed dismissing the objection and on September 29 a second order was filed confirming the plan.

Second, the basis for the motion is counsel's alleged lack of knowledge that the debtor, not just the debtor's attorney, had to be served with the objection and the notice of hearing. Considering that counsel is an experienced bankruptcy attorney, his lack of this knowledge is neither excusable nor credible, particularly when the Notice, which specifically required that both the debtor and the debtor's attorney be served, was served on both the movant and his attorney.

Also, as noted in the opposition to this motion, counsel for the debtor has provided certificates of service of motions filed by counsel for the movant in unrelated cases. In those certificates, both the debtor and the debtor's attorney were served.

Third, the defect in service has never been corrected. This motion was not served on the debtor and there continues to be no proof that the objection was served on the debtor.

Given the foregoing the court cannot conclude the mistake was excusable. The requirement of service on the debtor was communicated to the movant and his counsel. That counsel regularly appears in this court and is aware of the requirement for such service but nonetheless failed to correctly serve the objection. Finally, even though the court's ruling was made six days prior to the scheduled hearing, no effort was made to apply for an extension of time to have the objection heard at a later date.

FINAL RULINGS BEGIN HERE

8. 15-23801-A-13 JPJ-2 — ALBERTO PEREZ AND ISELA RAMIREZ VS. LVNV FUNDING, L.L.C. — OBJECTION TO CLAIM 9-4-15 [33]

Final Ruling: The objection will be dismissed as moot. The claim was voluntarily withdrawn on September 24.

9. 14-21318-A-13 JPJ-1 — GINA ROWLAND VS. GOLDEN ONE CREDIT UNION — OBJECTION TO CLAIM 9-8-15 [18]

Final Ruling: This objection to the proof of claim of The 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. The last date to file a timely proof of claim was June 18, 2014. The proof of claim was filed on October 9, 2014. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

10. 15-22033-A-13 JPJ-2 — MICHAEL MURPHY — MOTION TO CONVERT OR DISMISS CASE 9-22-15 [37]

Final Ruling: The motion will be dismissed as moot. The case was voluntarily dismissed on October 21.

11. 14-24138-A-13 SDB-1 — REY ACOSTA — MOTION TO MODIFY PLAN 9-21-15 [23]

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

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

12. 15-25643-A-13 VICKLYN RITCHIE
FAI-1

MOTION TO CONFIRM PLAN
9-17-15 [22]

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.

13. 15-26646-A-13 GRACE KENNEDY
JPJ-2

OBJECTION TO EXEMPTIONS
9-23-15 [17]

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. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The objection will be dismissed as moot.

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.

However, it was filed after the objection was filed. Therefore, the objection will be dismissed as moot.

14. 10-42054-A-13 GALEN/WILLMA ANDRESEN — MOTION FOR WAIVER OF THE CERTIFICATE REQUIREMENTS FOR ENTRY OF DISCHARGE
MRL-1 — 10-2-15 [48]

Final Ruling: This motion 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.

One of the debtors died after the case was filed and before the plan was completed. Plan payments are now complete and both debtors filed certifications of completion of a post-petition course on personal financial management. However, the deceased debtor is unable able to file the remaining documents required by Local Bankruptcy Rule 5009-1. Nonetheless, it appears from the electronic record that the deceased debtor has not received a prior discharge with the time periods specified in 11 U.S.C. § 1328(f), the deceased debtor had no outstanding domestic support obligations, and the deceased debtor did not owe obligations of the type described in 11 U.S.C. § 522(q). Therefore a discharge shall be issued at such time as the clerk is in a position to enter the discharge of the surviving debtor.

15. 15-26768-A-13 ANGEL ZAMBRANO — MOTION TO VALUE COLLATERAL
TOG-1 — 10-2-15 [18]
VS. ROSA ROCHA

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 $275,179 as of the date the petition was filed. It is encumbered by a first deed of trust held by Bank of America. The first deed of trust secures a loan with a balance of approximately $328,650 as of the petition date. Therefore, Rosa Rocha'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 $275,179. 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).

16. 15-26069-A-13 ALEJANDRO/ANA MARIE MUTUC — OBJECTION TO EXEMPTIONS
JPJ-2 — 9-23-15 [28]

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. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The objection will be dismissed as moot.

The trustee objects to the debtor's exemption of unpaid earnings pursuant to Cal. Civ. Pro. Code § 703.140(b)(11)(A). While the objection has merit, after it was filed, the debtor amended the exemption. Therefore, the objection will be dismissed without prejudice to any objection to the amended exemption.

17. 15-26276-A-13 JAMES/CAROL MARTYN — OBJECTION TO EXEMPTIONS
JPJ-2 — 9-23-15 [18]

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. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The objection will be dismissed as moot.

The trustee objects to the debtor's homestead exemption to the extent it exceeds $100,000. While the objection has merit, after it was filed, the debtor amended the exemption downward to $100,000. Therefore, the objection will be dismissed without prejudice to any objection to the amended exemption.

18. 12-39289-A-13 JOHN O'NEILL — MOTION FOR RELIEF FROM AUTOMATIC STAY
MAA-2 — 10-5-15 [104]
GEWEKE FAMILY PARTNERSHIP L.P. VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to file and prosecute civil litigation against the debtor with the proviso that any judgment or settlement must be satisfied solely from available insurance coverages and not pursued as a personal liability of the debtor other than to present timely a proof of claim in this case.

19. 15-25782-A-13 ANTONIO/MARTHA CORTEZ — OBJECTION TO EXEMPTIONS
JPJ-2 — 9-23-15 [31]

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 debtor has claimed a bank account deposit in the sum of $906.96 as exempt pursuant to Cal. Civ. Pro. Code § 704.070. However, this statute permits a debtor to exempt only 75% of the amount deposited that is traceable to paid earnings. At a minimum, them, the debtor is limited to 75% of $906.96 but even that amount must be traced to paid earnings.