UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 23, 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 16. 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 28, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 14, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 21, 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 17 THROUGH 33 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 30, 2015, AT 2:30 P.M.

Matters to be Called for Argument

1. 15-28408-A-13 BARBARA GIAMMARCO — MOTION TO EXTEND AUTOMATIC STAY 10-29-15 [8]
LBG-1

- ☐ 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 current case.

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 maintain her plan payments in the first case due to serious health condition of a household member that necessitated a one time payment for medical care. The debtor is now able to maintain her plan payments and also has financial assistance from a family member.

A review of the schedules filed in the two cases indicates that since dismissal of the first case the debtor has not amassed any significant new debt.

This is a sufficient change in circumstances rebut the presumption of bad faith.

2. 10-43310-A-13 SLH-3 — THOMAS DUNN AND JANETTE TOMAS-DUNN — MOTION TO SELL 11-7-15 [74]

- ☐ 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 motion seeks approval of a "short" sale. However, the motion is ambiguous on two scores.

First, it indicates the sale price will be "$1000,000." If the sale price is one million dollars, there will be enough to pay the first and second deeds of trust in full. If this should read "$100,000" there may not be enough to pay all liens in full.

Second, the motion indicates both that Wells Fargo holds the first and second deeds of trust and that Select Portfolio holds one of the two deeds of trust. Further, neither Wells Fargo nor Select Portfolio are identified in the confirmed plan as having deeds of trust encumbering the subject property. Consequently, if this is a short sale, it is unclear to the court which lender or lenders will not be paid in full.

Until these ambiguities and inconsistencies are cleared up, no sale will be authorized.

3. 10-43310-A-13 SLH-3 — THOMAS DUNN AND JANETTE TOMAS-DUNN — ORDER TO SHOW CAUSE 11-16-15 [80]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Appearance required.

Prior to the hearing of a motion to sell property, counsel for the debtor lodged an order requesting the court's signature on it. Not realizing the hearing had not yet occurred, the court signed the order and it was docketed. Later, the error came to light.

By lodging an order, counsel is representing to the court that the proposed

order reflects the court's announced disposition at the hearing. Since there had not yet been a hearing, this representation could not possibly have been correct.

If counsel wishes to let the trustee and opposing counsel know the terms of the order that will be requested, this can be done by attaching the proposed order to the exhibits that accompany the motion when it is filed. That is, the proposed order is filed, not lodged for signature. Local Bankruptcy Rule 9004-1(e)(4) provides" "Nothing in these local rules prohibits a party from submitting a proposed form of order or judgment as an exhibit to a notice, motion, memorandum, or other document."

Counsel shall explain to the court at the hearing why an order was lodged for signature prior to the hearing and shall confirm that no action was taken pursuant to the now vacated order.

4. 15-27210-A-13 JPJ-1 — MARTIN/MARIA DEL CARMEN ORTEGA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 11-4-15 [28]

- ☐ 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.

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Wells Fargo Bank/Santander Consumer USA 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."

Also, while the debtor belatedly filed a valuation motion set for hearing on December 7, that motion identifies the secured creditor as Santander but the plan indicates that Wells Fargo holds the security interest.

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. 15-27210-A-13 APN-1 WELLS FARGO BANK, N.A. VS.
MARTIN/MARIA DEL CARMEN ORTEGA
OBJECTION TO CONFIRMATION OF PLAN 10-14-15 [18]

- ☐ 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 violates the "hanging paragraph" following 11 U.S.C. § 1325(a)(9) which bars any attempt to "strip down" a claim secured by a vehicle if the security interest was a purchase money security interest granted less than 910 days prior to the bankruptcy case. The objecting creditor holds such a security interest yet the plan purports to strip down a claim of $16,518.09 to $4,448. Also, because the claim cannot be reduced, the adequate protection payment/plan payment is insufficient to protect the creditor's interest in its collateral and pay the claim in full. The plan does not comply with 11 U.S.C. §§ 1325(a)(5)(B) & 1326(a)(1)(C).

6. 12-37115-A-13 RLC-2
JOSEPH/ANGELA BIASI
MOTION TO VACATE DISMISSAL OF CASE 10-27-15 [60]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

This case was dismissed on the trustee's motion. The debtor and the debtor's attorney were served with the motion and written opposition was filed to the motion. However, counsel for the debtor did not attend the hearing on October 19. At the hearing the court adopted its tentative ruling and dismissed the case. The dismissal order was filed on October 23.

This motion asks the court to vacate the dismissal on the ground that counsel for the debtor mis-calendared the hearing date and as a result failed to appear.

As noted by the trustee, however, counsel filed written opposition to the motion which referenced the correct hearing date.

Nonetheless, whether or not the hearing date was not calendared correctly, the case was not dismissed because of the failure to appear. The court received and considered the debtor's written opposition to the motion and found that opposition unconvincing.

And, there is nothing in this motion that convinces the court that the dismissal was not warranted and would not have been ordered even if the debtor's attorney had appeared and argued for some other result.

The trustee's Notice of Filed Claims was filed and served on June 12, 2013. That notice advised the debtor that the IRS and the FTB had filed priority claims that were significantly higher than scheduled by the debtor and therefore could not be paid in full as required by the confirmed plan. The failure to provide payment in full of these claim violates 11 U.S.C. § 1322(a)(2).

The debtor failed to reconcile the plan with these claims, either by filing and serving a motion to modify the plan to provide for the claims, or by objecting to the claims. This is required by the plan at section 2.13 of the plan ("2.13. Class 5 consists of unsecured claims entitled to priority pursuant to 11 U.S.C. § 507. These claims will be paid in full except to the extent the claim holder has agreed to accept less or 11 U.S.C. § 1322(a)(4) is applicable . . . The failure to provide the foregoing treatment for a priority claim is a breach of this plan.") and Local Bankruptcy Rule 3007-1, which provides:

"If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date."

See also In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004). The time period to reconcile the claims to the plan expired on September 10, 2013 without the debtor objecting to the claims or modifying the plan to provide for their payment in full. This material breach of the plan was cause for dismissal. See 11 U.S.C. § 1307(c)(6).

The debtor has not explained the failure to act by September 10 or even sometime in remainder of 2013 or 2014 or most of 2015. The debtor did nothing. That is why the case was dismissed not because counsel failed to show up at a hearing in the fall of 2015.

7. 11-46916-A-13 ROLANDO/SYLVIA GARCIA — MOTION TO INCUR DEBT 11-5-15 [31]
TOG-2

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

there is opposition, the court may reconsider this tentative ruling.

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

8. 15-27138-A-13 DWIGHT/GWENDOLYN HAMILTON — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-4-15 [35]

- ☐ 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.

The debtor failed to file an income tax returns for 2013 and 2014. The 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 has not been concluded in order to give the debtor the opportunity to file the delinquent returns. Nonetheless, because they are not yet filed, 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 with delinquent returns unfiled.

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.

9. 15-28640-A-13 CHARLES/MARYLOU HODGE
SS-1

MOTION TO
IMPOSE AUTOMATIC STAY
11-9-15 [9]

- ☐ 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 also be denied.

This case was filed on November 6, 2015. Because the debtor has had two prior cases pending but dismissed in the prior year, the filing of the most recent petition did not trigger the automatic stay. 11 U.S.C. § 362(c)(4)(A) provides that when an individual debtor has filed 2 or more prior cases that were pending during the previous year, but were dismissed, the automatic stay never goes into effect.

The debtor may request that the court impose the automatic stay despite the filing and dismissal of multiple prior petitions. See 11 U.S.C. § 362(c)(4)(B). Such a request must be made with notice and a hearing and must be made within 30 days of the filing of the petition. To obtain the automatic stay, the party in interest must demonstrate that the latest case has been filed in good faith. If shown, the court may impose conditions on the imposition of the automatic stay.

Section 362(c)(4)(D) invokes a presumption that the case was "filed not in good faith," when 2 or more previous cases were pending for the same individual debtor within the one-year period.

The first case was dismissed voluntarily by the debtors on April 1, 2015. Before they dismissed it, their home lender filed a motion for relief from the automatic stay on the ground that it was not receiving post-petition mortgage payments. Thereafter, the debtors proposed a modified plan in an attempt to cure the arrears on the home loan. When they were unable to confirm a plan because Mrs. Hodge lost her job and the debtors were unable to afford their plan payments, they dismissed the case.

The second case was filed on April 3. In their motion to extend the automatic stay pursuant to 11 U.S.C. § 362(c)(3), the debtors represented they had the financial ability to confirm a plan because, despite Mrs. Hodge's job loss, the debtors' adult children were supporting their reorganization financially. Despite the imposition of the automatic stay, the debtors were unable to confirm a plan and the court dismissed the case because they failed to maintain plan payments and because they delayed in proposing a modified plan once the court denied confirmation of their original plan. The second case was dismissed on September 14, 2015.

This case was filed on November 6. The debtors now ask the court to impose the automatic stay in their most recent case. However, there are no changed circumstances suggesting this case will be any more successful than the prior two cases.

As in the second case, the debtors have the financial support of their adult children but this was not enough to prevent the dismissal of the second case. And, while the debtors' efforts to confirm a plan in the second case were hindered by their inability to modify their home mortgage through the nonbankruptcy home loan modification process, that process is no closer to fruition. While the debtors blame the lender, perhaps with good reason, for various failures to modify their home loan, this court is unable to order a modification by virtue of 11 U.S.C. § 1322(b)(2), and any effort to seek a remedy for a wrongful failure to modify their home loan is properly before a nonbankruptcy forum.

Basically, the record suggests to the court that the debtors cannot propose and confirm a plan because its feasibility depends on a home loan modification, but this court cannot order such modification and the lender, rightly or wrongly, refuses to modify the loan. The debtors seem to want the court to impose the automatic stay even though they are unable to maintain mortgage payments on the home loan as written while curing the arrears. See 11 U.S.C. § 1322(b)(5). They seek this relief to prevent a foreclosure while they sue the lender in state court. This is a misuse of the automatic stay. It is not a preliminary injunction. It is a stay in aid of a reorganization that must be proposed and confirmed consistent with the Bankruptcy Code. Because the debtors have no ability to confirm a plan that depends on a home loan modification, the court cannot impose the automatic stay.

The debtors' remedy is injunctive relief in their pending state court suit.

10. 15-28541-A-13 BEVERLY HODGE — MOTION TO EXTEND AUTOMATIC STAY
MMM-1 — 11-9-15 [9]

- ☐ 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.

As to the IRS, the motion will be denied. 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 second and third addresses.

As to all other creditors, 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 maintain her plan payments in the first case due the need to support an adult child and his family. While the debtor continues to provide some support, the amount has diminished and a review of Schedules I and J suggests a financial ability to support the extended family as well as reorganize. This is a sufficient change in circumstances rebut the presumption of bad faith.

11. 15-27442-A-13 PATTI MINH-PHUONG TRAN — OBJECTION TO CONFIRMATION OF PLAN 11-4-15 [32]
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 failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to

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

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

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

Fourth, 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.

12. 15-27442-A-13 PATTI MINH-PHUONG TRAN — OBJECTION TO CONFIRMATION OF PLAN
BF-5 — 11-4-15 [35]
ROUNDPOINT MORTGAGE SERVICING CORP. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be overruled.

The objecting creditor's claim is secured only by the debtor's home. As such,

the debtor is limited to maintaining post-petition installment payments and curing the arrears on the claim. See 11 U.S.C. § 1322(b)(2), (b)(5).

The creditor complains that the plan understates the amount of the monthly installment payment. While true, the plan also provides at section 2.08(c) that "[o]ther than to cure of any arrearage, this plan does not modify Class 1 claims." Further, section 2.04 provides: "The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim."

Hence, even if the plan misstates the amount of the installment, the trustee will pay the amount demanded by the creditor.

The creditor also complains that the failure to commence dividends to cure the arrearage until month 20 is a violation of section 1322(b)(5). However, nothing in section 1325(b)(5) requires a particular timetable for a cure. The plan must provide for a cure but nothing requires the plan to commence immediate dividend payments.

13. 12-22443-A-13 EJS-1 — PHILLIP HASLEY AND MLISSA RIOLO-HASLEY — MOTION TO SELL O.S.T. 11-9-15 [46]

- ☐ 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 a vehicle will be granted on the condition that the sale proceeds are used to any lien in full in a manner consistent with the plan with surplus proceeds to be turned over to the trustee for distribution pursuant to the terms of the plan.

14. 15-21258-A-13 MC-2 — ELIZABETH GOMEZ — MOTION TO MODIFY PLAN 10-16-15 [67]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection that the plan does not satisfy 11 U.S.C. § 1325(a)(4) because it will not pay holders of nonpriority unsecured claims what they would receive in a chapter 7 liquidation will be overruled. The plan provides that such

creditors will be paid in full.

The objection that the plan payment of $2,635 to be made during months 9 through 13 is less than the dividends and expenses to be paid by the trustee will be sustained. The shortfall ranges from a low of $71.39 to a high of $936.25. The plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

Also, because the debtor did not make timely plan payments in September and October, the trustee was unable to pay, or to pay timely, post-petition mortgage payments due to Nationstar, the holder of a Class 1 claim. As a result, the plan must cure this default. The failure to do so means the plan does not comply with 11 U.S.C. §§ 1322(b)(2), (b)(5), & 1325(a)(5)(B).

15. 15-21670-A-13 DENISE MEDINA — MOTION TO CONFIRM PLAN
SLH-3 — 10-5-15 [47]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor has failed to make $550 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, the debtor shall address issues raised by creditor Perry in a declaration filed under penalty of perjury. At a minimum she must give detailed information concerning the house in Yuba City and whether it is rented to a third person or is her residence; if rented, what income and expenses are associated withe property; what assets are in the probate estate and what are their values; who are the heirs to the estate and what are their respective interests in it; does the debtor live in Berkeley.

16. 15-28377-A-13 RODERICK/LOTTIE STEARNE — MOTION TO VALUE COLLATERAL
MMM-1 — 11-4-15 [8]
VS. CAPITAL ONE AUTO FINANCE, INC.

- ☐ 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 valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) is granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $5,516 as of the date the petition was filed and the

effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $5,516 of the respondent's claim is an allowed secured claim. When the respondent is paid $5,516 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.

THE FINAL RULINGS BEGIN HERE

17. 14-31200-A-13 SHERI ARNOLD — MOTION TO APPROVE LOAN MODIFICATION
TLA-7 — 10-26-15 [73]

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.

18. 14-32503-A-13 RUMMY SANDHU — OBJECTION TO CLAIM
JPJ-2 — 9-25-15 [55]
VS. CAVALRY SPV I, L.L.C.

Final Ruling: This objection to the proof of claim of Cavalry SPV I, L.L.C., 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.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on December 5, 2008. Therefore, using this date as the date of breach, when the case was filed on December 31, 2014, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

19. 14-32503-A-13 RUMMY SANDHU — OBJECTION TO CLAIM
JPJ-3 — 9-25-15 [59]
VS. MIDLAND CREDIT MANAGEMENT, INC.

Final Ruling: This objection to the proof of claim of Midland Credit Management 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.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on September 24, 2008. Therefore, using this date as the date of breach, when the case was filed on December 31, 2014, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

20. 14-32503-A-13 RUMMY SANDHU — OBJECTION TO CLAIM
JPJ-4
VS. MIDLAND CREDIT MANAGEMENT, INC. — 9-25-15 [51]

Final Ruling: This objection to the proof of claim of Midland Credit Management, Inc., 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.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on November 18, 2008. Therefore, using this date as the date of breach, when the case was filed on December 31, 2014, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

21. 11-38005-A-13 LARRY/PAMELA PULLMANN — MOTION TO MODIFY PLAN
RWF-3 — 10-5-15 [44]

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.

22. 11-38824-A-13 MIGUEL/SARA LEON — OBJECTION TO CLAIM
JPJ-1
VS. RBS CITIZENS, N.A. — 10-7-15 [34]

Final Ruling: This objection to the proof of claim of RBS Citizens 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 December 7, 2011. The proof of claim was filed on January 5, 2012. 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).

23. 15-28024-A-13 ARTEMIO/MARISA VILLEGAS — MOTION TO VALUE COLLATERAL
KE-1
VS. WELLS FARGO BANK, N.A. — 10-22-15 [8]

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 $264,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Nationstar Mortgage. The first deed of trust secures a loan with a balance of approximately $307,629 as of the petition date. Therefore, Wells Fargo Bank's claim secured by a junior deed of trust is

completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

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

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is $0, because the value of the respondent's collateral is $0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

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

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

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

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any

contrary evidence of value. According to the debtor, the residence has a fair market value of $264,000. 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).

24. 11-35234-A-13 STEPHEN/HAZEL HUTCHINS — MOTION TO MODIFY PLAN
PGM-1 — 10-14-15 [41]

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.

25. 13-31135-A-13 JOSIE TORRES — MOTION FOR RELIEF FROM AUTOMATIC STAY
MDE-1 — 10-20-15 [48]
HARLEY-DAVIDSON 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 repossess and to obtain possession of its personal property security, and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has confirmed a plan that does not provide for the payment of the movant's claim. Further, the debtor has not paid the claim under the terms of the contract with the movant. Nine monthly contract instalment payments have not been paid. Because the debtor has not paid the movant's claim, and will not pay it in connection with the chapter 13 case, there is cause to terminate the automatic stay.

The codebtor stay of 11 U.S.C. § 1301 will also be modified to permit the movant to proceed against it collateral and to pursue any claims it may have against the codebtor. The plan does not provide for payment in full of any unsecured claims.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The

court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events and circumstances, in connection with this bankruptcy case or otherwise, from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

26. 12-25140-A-13 KENNETH/CRYSTAL MENEELY — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
GW-5 — 10-22-15 [79]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The motion seeks approval of $5,546.25 in additional fees and $30 in costs incurred principally in connection with services related to modifying the plan,

obtaining approval of new debt, advising the debtor concerning a long term commercial mortgage and the sale of a business. 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 directly by the debtors, who have consented to paying the fees because the plan is otherwise complete.

27. 12-35244-A-13 GARY EILER — MOTION TO MODIFY PLAN
DBL-2 — 9-28-15 [63]

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.

28. 12-34455-A-13 SHARYL STURDEVANT — MOTION TO MODIFY PLAN
PGM-3 — 10-19-15 [56]

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.

29. 15-20565-A-13 REV KENNETH ANDERSON — MOTION TO MODIFY PLAN
KG-10 — 10-16-15 [111]

Final Ruling: The motion will be dismissed without prejudice.

A review of the certificate of service accompanying the motion indicates that only one creditor, Patelco, was served with the motion. The master address list filed January 27, 2015 identifies 11 creditors. All are entitled to notice of the hearing and of the deadline to object to confirmation. See Fed. R. Bankr. P. 3015(g).

30. 15-27468-A-13 EUGENE NIERI
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
11-4-15 [28]

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

The objection and motion will be dismissed as moot. The plan referred to in the objection has been superceded by a modified plan set for confirmation on December 14. To the extent the trustee believes his objections warrant denial of confirmation of the modified plan and/or dismissal, he should raise them again in connection with the motion to confirm the modified plan.

31. 11-39370-A-13 JORGEN/DANA EIREMO
JPJ-3
VS. ECMC

OBJECTION TO CLAIM
10-7-15 [83]

Final Ruling: This objection to the proof of claim of ECMC 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 December 14, 2011. The proof of claim was filed on September 23, 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).

32. 11-32475-A-13 DUANE/THEA COUNTRYMAN
JPJ-1
VS. THE BANK OF NEW YORK MELLON

OBJECTION TO CLAIM
10-7-15 [34]

Final Ruling: This objection to the proof of claim of the Bank of New York Mellon 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 September 21, 2011. The proof of claim was filed on February 24, 2012. 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).

33. 15-20379-A-13 ALBERTO/KATHARINE OBREGON — OBJECTION TO CLAIM
JPJ-2
VS. JPMORGAN CHASE BANK, N.A. — 10-7-15 [132]

Final Ruling: This objection to the proof of claim of JPMorgan Chase Bank 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 May 20, 2015. The proof of claim was filed on July 17, 2015. 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).