UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 27, 2017 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 15. 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 26, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 11, 2017, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 18, 2017. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 16 THROUGH 23 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 DECEMBER 4, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 17-20405-A-13 EFREN/ELIZABETH MEMORACION — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-1 — 10-20-17 [152]
THE BANK OF NEW YORK MELLON VS.

□ Telephone Appearance
□ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The motion seeks relief from the automatic stay in order to permit the movant to foreclose on the debtor's home. The cause asserted for this relief is the failure to make three post-petition installment payments to the movant.

However, the plan provides the movant's claim as a Class 1 secured claim. This means that the plan provides for the cure of the pre-petition arrearage owed to the movant as well as the maintenance of post-petition installments as required by the note and deed of trust. The plan requires the trustee to make both payments to the movant.

The trustee's response indicates that the debtor has maintained all post-petition installment payments to the movant. Thus, there has been no breach of the plan in connection with the movant's claim.

In order to establish cause pursuant to 11 U.S.C. § 362(d)(1) for relief from the automatic stay, it must be shown that the debtor has failed to abide by the terms of the confirmed plan. That is, the debtor must have defaulted under the terms of the plan to the detriment of the movant. See Anaheim Sav. & Loan Ass'n v. Evans, 30 B.R. 530, 531 (B.A.P. 9th Cir. 1983).

Unless the movant was not given notice of the plan (and the movant makes no such assertion), the movant may not argue that the debtor's confirmed plan fails to adequately protect its security interest. See Sun Howard Co. v. Howard (In re Howard), 972 F.2d 639 (5th Cir. 1992). This is because a debtor wishing to retain a creditor's collateral must propose a plan that provides for the secured creditor's retention of its lien and the payment of the present value of its secured claim. See 11 U.S.C. § 1325(a)(5)(B). Such treatment adequately protects the creditor's interest in its collateral. See e.g., In re Barnes, 125 B.R. 484 (Bankr. E.D. Mich. 1991).

Confirmation of the debtor's plan, then, necessarily entailed a determination that it adequately protected the movant's security interest. The movant is bound by that determination and it may not collaterally attack the confirmation order by bringing a motion for relief from the automatic stay arguing that the plan does not protect its security interests. See 11 U.S.C. § 1327(a). The sole basis for granting relief must be a breach of the plan.

2. 17-26109-A-13 GREGORY HOVEY — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-6-17 [19]

□ Telephone Appearance
□ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant

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

The objection will be sustained and the case dismissed.

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, 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.

Third, Schedule I/J and Form 122C-1 show no employment income for the debtor. However, the debtor presented payment advices to the trustee which indicate he is employed. With this income, and the income of a nonfiling spouse, the debtor's household income exceeds the median income for the a same size California family. Yet, the debtor failed to complete all portions of Form 122C-1 and 2 to calculate projected disposable income. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

3. 17-26231-A-13 RENEE COCHRAN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-6-17 [24]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the motion to dismiss the case

conditionally denied.

First, the plan assumes the arrears on Well Fargo's Class 1 secured claim are approximately $20,000. The creditor indicates that the arrears are more than $25,000. At this higher level, the plan will take 80 months to be completed in violation of 11 U.S.C. § 1322(d).

Second, the plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay unsecured creditors nothing even though Form 122C shows that the debtor will have $10,687 of projected disposable income over the next five years.

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. 17-26231-A-13 RENEE COCHRAN — OBJECTION TO CONFIRMATION OF PLAN
NLL-1 — 10-26-17 [20]
U.S. BANK, N.A. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained to the extent and for the reasons described in the ruling on the trustee's objection (JPJ-1).

5. 17-26434-A-13 TRINA ENOS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-8-17 [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 conditionally denied.

First, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Capital One Auto Finance 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."

Second, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor failed to disclose a bankruptcy case filed in 2016. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

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.

6. 12-31251-A-13 ADRIENNE HENNING — OBJECTION TO NOTICE OF FINAL CURE 10-27-17 [101]
PGM-6

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

Ocwen Loan Servicing filed a proof of claim indicating that there were $19,267.04 in arrears owed on its home loan to the debtor. The loan balance, including unmatured principal, was $308,466.25, on the date of the petition. The arrears consisted of $15,769.68 in delinquent installments, $4,031.94 in escrow charges and fees, with a credit of $534.58 for undisbursed funds in the creditor's possession.

According to the proof of claim and the promissory note, the installment payment due immediately prior to the filing of the bankruptcy case was $1,829.46. The proof of claim indicates that this installment amount includes the escrow charges. However, the promissory note indicates that it has a fixed interest rate and that the principal and interest installment was $1,829.46.

Based on the note, it appears the proof of claim incorrectly states the amount of the monthly installment because it omits the escrow component. $1,829.46 is the principal and interest only.

The debtor's plan indicates the monthly installment payment was $1,693.69 throughout the case. While the creditor did not object to the confirmation of the plan, the plan also provides that the plan does not modify its claim in any

way. Consequently, if the plan misstated the amount of the post-petition installment payment, the creditor is not precluded from demanding the correct amount.

The basis for the debtor's position that the principal and interest component of the installment was $1,693.69 rather than $1,829.46 is unclear. Regardless, it is at least $1,829.46.

On October 25, 2016, the creditor filed a notice of mortgage payment change pursuant to Fed. R, Bankr. P. 3002.1(b). That notice advised that effective December 1, 2016, the monthly installment payment would increase to $2,271.75.

The court disallowed the additional amount demanded in this notice for the reasons explained in the ruling appended to the minutes of a hearing on January 17, 2017. In its ruling, the court concluded:

"The objection states the ongoing monthly installment is $1,643.10. Why and how the debtor comes to this conclusion is a mystery and is contradicted by the proof of claim to which the debtor has not objected. The court concludes the installment payment was $1,829.46 at least up until the effective date of the notice of payment change.

The objection also disputes the increase of the installment payment to $2,271.75. The court agrees that the notice of payment change fails to document an increase from $1,829.46. To the contrary, because the escrow impounds decreased by $135.77 (from $515.32 to $379.55), the monthly installment should be decreased to $1,693.69 ($1,829.46 - $135.77).

This ruling does not mean that a higher amount is not owed; it means only that the creditor has not complied with Fed. R. Bankr. P. 3002.1. As a matter of arithmetic, the notice is incorrect because it has demanded an increased installment payment even though the escrow impounds have decreased.

Therefore, the objection will be sustained in part. Effective 21 days after the date of notice of payment change, the monthly installment amount decreased to $1,693.69. See Fed. R. Bankr. P. 3002.1(b)."

Thus, given the creditor's defective notice of mortgage payment of change, the court determined that the installment amount was $1,829.46 from July 2012 (when the first plan payment was made) through November 2016, a total of 53 months, and then $1,693.69 for six months from December 1, 2016 through May 2017 (which is 21 days following the second notice of mortgage payment change discussed below).

On April 20, 2017, the creditor filed a second notice of mortgage payment change pursuant to Fed. R, Bankr. P. 3002.1(b). That notice advised that effective June 1, 2017, the monthly installment payment would increase to $2,275.91. There was no objection to this notice. Therefore, pursuant to this notice, the creditor should have received two monthly installments of $2,275.91.

Thus, based on the proof of claim, the two notices of mortgage payment changes, the court's ruling on the first notice, the creditor should have been paid on account of the ongoing monthly installment as follows:

53 monthly payments of $1,829.46	$ 96,961.38
6 monthly payments of $1,693.69	$ 10,162.14
2 monthly payments of $2,275.91	$ 4,551.82

Total	61	$111,675.34

On September 27, 2017, the trustee served on the creditor a notice of final cure as required by Fed. R, Bankr. P. 3002.1(f). The notice indicated that the trustee had cured the $19,267.04 arrears and that he had paid on all post-petition installment payments. However, the notice did not specify the amount of those installment payments.

This information is in the trustee's final report to which no objection was filed. From the report, the court concludes that the trustee made ongoing installment payments to the creditor through July 2017. The total paid was $101,896.43.

On October 6, 2017, the creditor filed a timely response to the notice of final cure. The response indicated that the creditor conceded that the arrears had been cured but it maintained that it was owed $6,139.88 in post-petition installments. The itemized payment history attached to the response indicates that the creditor received total installment payments of $101,798.26 during the case through May 1, 2017. The creditor asserts that a total of $107,938.10 should have been paid. However, because the trustee made payments through July 2017 and because the installment amount for June and July 2017 increased to $2,275.91 pursuant to the second notice of mortgage payment change, the creditor actually is demanding $112,489.96.

The creditor's payment history is largely incomprehensible. The history lacks column heading leaving one to guess what is being reported. As best can be deciphered, it demands:

	59	monthly payments of $1,829.46	$107,938.14
	2	monthly payments of $2,275.91	$ 4,551.82
Total	61		$112,489.96

So, while the creditor's response to the notice of final cure indicates that it is owed $6,139.88, with the amounts due in June and July 2017, it is demanding $10,691.70.

The $814.62 difference between the court's calculation of the amount due and the creditor's calculation is attributable to a $814.62 discrepancy arising from the creditor's failure to reduce its monthly installment to $1,693.69 for six months.

The debtor maintains that because the monthly installment was $1,643.10 before the bankruptcy was filed, the creditor should have filed a notice of mortgage payment change increasing the installment to $1,829.46. Having failed to do so it cannot demand more than $1,643.10 at least until June 1, 2017.

However, the installment was $1,829.46 when the case was filed. That is the amount due according to the promissory note.

Second, the creditor is not precluded from demanding a higher installment than the debtor estimated in the plan even though the plan was confirmed without objection because the plan provides:

"2.04. 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."

And,

2.08 *"(c) No claim modification. Each Class 1 creditor shall retain its lien. Other than to cure of any arrearage, this plan does not modify Class 1 claims."*

The court notes finally that the creditor failed to demand the correct amount until it filed its second notice of mortgage payment change. Until that notice it failed to demand the escrow component of each installment. $1,829.46 was the principal and interest only. The first attempt to correct the erroneous demand made in its proof of claim was defective for the reasons explained in the court's January 17, 2017 ruling.

Therefore the objection will be sustained in part. Through July 2017 (and not through May 2017 as indicated in the response to the notice of final cure), the creditor was owed total installment payments of $111,675.34. It was paid, according to the trustee's final report and account, $101,896.43. A total of $9,778.91 remains outstanding and has not be cured.

7. 17-26052-A-13 TANISHA MAVY — OBJECTION TO EXEMPTIONS
JPJ-2 — 10-26-17 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained.

Tthe debtor's exemptions are defective on their face given the failure to claim a finite exemption amount as permitted by a specific section in the California Code of Civil Procedure.

While the debtor's response indicates she has filed amended exemptions to deal with this problem, no such amendment appears on the docket.

8. 17-26656-A-13 STACY/MICHAEL SAVOCA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-8-17 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The withholding of this financial information from the trustee is a breach of the

duties imposed upon the debtor by 11 U.S.C. § 521(a)(3) & (a)(4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

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

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

9. 17-26261-A-13 ROBERT/TERRA BROWN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-6-17 [24]

- □ Telephone Appearance
- □ Trustee Agrees with Ruling

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

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

Counsel for the debtor has opted to receive fees pursuant to Local Bankruptcy Rule 2016-1 rather than by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. This means that counsel may receive a maximum fee of up to $4,000 for a consumer case (like this one) and have that fee approved in connection with the confirmation of the plan. In this case, however, counsel's proposed fee of $4,500 exceeds the maximum fee allowed by Local Bankruptcy Rule 2016-1. Therefore, he must apply for compensation pursuant to 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. The provision in the plan for payment of compensation without the requisite application cannot be confirmed.

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.

10. 13-26465-A-13 DARREN COCREHAM
PGM-4

MOTION TO MODIFY PLAN
8-15-17 [108]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $3,310.96 is less than the $3,434.96 in dividends and expenses the plan requires the trustee to pay each month.

Second, even if the plan payment equaled the distributions, the debtor has not proven the feasibility of the plan. The plan includes an lump sum payment in the 60th month but there is no evidence that the debtor has the ability to make this payment.

Third, the plan's feasibility depends on successfully objecting to the secured claim of Ocwen. No objection has been filed and the deadline set by Local Bankruptcy Rule 3007-1(d) for filing an objection has expired.

Fourth, the treatment of Ocwen's claim also refers to an additional provision which is not appended to the plan.

11. 17-26577-A-13 DEWAYNE DIXON
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
11-8-17 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

Counsel for the debtor has opted to receive fees pursuant to Local Bankruptcy Rule 2016-1 rather than by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. This means that counsel may receive a maximum fee of up to $4,000 for a consumer case (like this one) and have that fee approved in connection with the confirmation of the plan. In this case, however, counsel's proposed fee of $4,500 exceeds the maximum fee allowed by Local Bankruptcy Rule 2016-1. Therefore, he must apply for compensation pursuant to 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. The provision in the plan for payment of compensation without the requisite application cannot be confirmed.

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.

12. 17-26577-A-13 DEWAYNE DIXON — OBJECTION TO CONFIRMATION OF PLAN 10-17-17 [15]
RMP-1
REAL TIME RESOLUTIONS, INC. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be overruled.

The objecting creditor holds a claim secured by a home owned only by the debtor. However, the debtor and his former spouse are obligated on the note secured by the home.

Separately, the court has determined that the creditor's claim can be stripped off the home by application of 11 U.S.C. § 506(a) as interpreted 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. Consequently, the creditor holds a nonpriority unsecured claim in this case. The plan proposes to pay such claims nothing.

The creditor's objection does not contend that 11 U.S.C. § 1325(a)(4) or 11 U.S.C. § 1325(b) requires that nonpriority unsecured claims receive any dividend in this case. Rather, it objects because confirmation of the plan and its completion of the debtor will result in a discharge that benefits the debtor and his former spouse.

While the court agrees that 11 U.S.C. § 1301(a) precludes the creditor from pursuing the former spouse during the pendency of this case, this stay may be terminated if it is shown that the creditor's claim will not be paid through the chapter 13 plan. It will not be paid. So, if it wishes to pursue the former spouse before the conclusion of this case, it has a remedy.

The court does not agree that should the debtor complete this plan and receive a chapter 13 discharge, the discharge will exonerate both he and his former spouse. 11 U.S.C. § 1328(a). The discharge will be personal to the debtor.

13. 17-27350-A-13 RICCY/TESSIE LABITORIA — MOTION TO EXTEND AUTOMATIC STAY 11-13-17 [9]
TAG-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 most recent petition because the debtor failed to appear at the meeting of creditors.

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

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

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

Here, the debtor failed to appear at the meeting due to a transportation issue, a problem that has been corrected. This is a sufficient change in circumstances rebut the presumption of bad faith.

14. 17-26591-A-13 MARGARET ROBINSON — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-6-17 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

The plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay $3,927.32 to unsecured creditors.

While this is consistent with Form 122C, the debtor's annual income has been and will be supplemented by an annual bonus in March of each year. With this bonus averaged over 12 months, the debtor's monthly income increases to $11,169.91. 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 122C. Increasing the debtor's current income to included a pro rated amount of the annual bonus is appropriate given that this income is known and certain.

Also, the debtor has deducted an expense of $824.18 on Form 122C-2. This is a voluntary pension contribution. This is disposable income; the debtor may not make voluntary retirement contributions and deduct them from the debtor's current monthly income. Accord Parks v. Drummond (In re Parks), 475 B.R. 703 (B.A.P. 9th Cir. 2012).

With this increase in the debtor's current monthly income and decrease in the debtor's deductions, the debtor will have monthly disposable income of $1,963.17, enough to pay unsecured creditors more than $117,000 over the plan's five year duration. Because the plan will these creditors only $3,937.32, the plan does not comply with 11 U.S.C. § 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.

15. 17-26397-A-13 HELEN CASACLANG — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 11-6-17 [26]

- ☐ 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 property of the estate includes a $16,500 preferential transfer to an insider. This transfer, as well as $5,000 of nonexempt equity in real property, have not been included by the debtor in the liquidation analysis required by 11 U.S.C. § 1325(a)(4). Because unsecured creditor would receive approximately $18,600 in a chapter 7 case, and because the plan will pay them only $4,821, the plan does not comply with section 1325(a)(4).

FINAL RULINGS BEGIN HERE

16. 15-28416-A-13 PATRICIA HANSEN — MOTION TO MODIFY PLAN
LBG-2 — 10-19-17 [42]

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

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

17. 17-25319-A-13 DENISE SAENZ — MOTION TO VALUE COLLATERAL
RS-1
VS. REGIONAL ACCEPTANCE CORP. — 10-25-17 [31]

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $5,243 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $5,243 of the respondent's claim is an allowed secured claim. When the respondent is paid $5,243 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.

18. 17-20246-A-13 ANDRES SUAREZ — OBJECTION TO CLAIM
JPJ-2
VS. CAVALRY SPV I, L.L.C. — 9-27-17 [58]

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 and the claim disallowed.

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 June 26, 2012. Therefore, using this date as the date of breach, when the case was filed on January 16, 2017, 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. 17-23682-A-13 CASEY GATES — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
PSB-2 — 10-24-17 [28]

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 $2,282 in fees incurred principally in connection with an adversary proceeding. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor in connection with the filing of the case and the confirmation of a plan. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan.

20. 13-35483-A-13 GREGORY/JANELLE WHEELER — MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
HLG-3 — 11-9-17 [48]

Final Ruling: The motion has been voluntarily dismissed.

21. 17-26591-A-13 MARGARET ROBINSON
PGM-1
VS. THE GOLDEN 1 CREDIT UNION

MOTION TO VALUE COLLATERAL
10-24-17 [18]

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $8,000 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $8,000 of the respondent's claim is an allowed secured claim. When the respondent is paid $8,000 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

22. 17-21994-A-13 IMOGENE ESPINOZA
PLC-1
VS. PORTFOLIO RECOVERY ASSOC., L.L.C.

MOTION TO VALUE COLLATERAL
10-20-17 [54]

Final Ruling: Given the dismissal of the case and the motion to vacate that dismissal which will be heard on December 11, 2017 at 1:30 PM, this hearing is continued to the same date and time.

23. 17-25999-A-13 RAJENDER SARIN
JPJ-2

OBJECTION TO EXEMPTIONS
10-26-17 [23]

Final Ruling: This objection to the debtor's exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the debtor's default is entered and the matter will be resolved without oral argument.

The objection will be sustained.

The trustee objects to all of the debtor's Cal. Civ. Proc. Code § 703.140(b) exemptions claimed on Schedule C. The trustee argues that because the debtor is married and because the debtor's spouse has not joined in the chapter 13 petition, the debtor must file his spouse's waiver of right to claim exemptions. See Cal. Civ. Proc. Code § 703.140(a)(2). This was not done.

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

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

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

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