UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 5, 2016 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 14. 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 JANUARY 3, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 19, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 27, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 15 THROUGH 24 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 12, 2016, AT 2:30 P.M.

Matters to be Called for Argument

1. 16-26614-A-13 LORI ECHOLS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-17-16 [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 will be conditionally denied.

The debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor failed to disclose the transfer of real property within the prior two years to a former spouse. 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). Filing the information after the deadline for objecting to the plan does not purge the bad faith.

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.

2. 15-27819-A-13 DARNELL ROBINSON — MOTION TO MODIFY PLAN
TOG-3 — 10-24-16 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to make $2,125 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).

3. 16-26828-A-13 RITA SCHROEDER — ORDER TO SHOW CAUSE 11-18-16 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will remain pending on the following terms and conditions: The delinquent filing fee installment shall be paid together with the December installment on December 13. If not paid, or if any future installment is not paid timely, the case will be dismissed without further notice or hearing.

4. 16-25232-A-13 GREGORY WALLACE — OBJECTION TO CLAIM 10-18-16 [58]
BLG-2
VS. PHOENIX GOLD MANAGEMENT

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

The claimant financed the purchase of a vehicle by the debtor. The debtor financed $14,182.60 of the purchase price. This was to be repaid with 24.90% interest in 36 monthly installments of $563.15. Hence, if the debtor made 36 payments of $563.15, the creditor would receive $20,273.40 ($6,090.80 in interest and $14,182.60 in principal).

The debtor made only one partial payment of $360 in June 2016. No payment was made in July and the bankruptcy case was filed before the August 2016 was due on August 24.

The creditor repossessed the vehicle and incurred a $350 fee.

The vehicle was returned to the debtor after the filing of the case.

The proof of claim demands $1,116.30 to cure the default under the loan and states the entire claim to be $19,699.25.

While the amount to cure the loan as of the date of the August 9 bankruptcy petition is irrelevant because the plan modifies the claim and provides for payment in full through the plan, the cure amount is based on the $203.15 portion of the first installment not paid by the debtor in June, the $563.15 installment not paid in July, and the $350 repossession fee incurred by the creditor.

The court agrees, however, with the debtor that, of these three components of the cure amount, the $203.15 is not owed. The debtor expended this amount repairing the vehicle. The creditor's representative agreed that the $203.15 could be deducted from the first installment and confirmed such in an electronic message to the debtor. Therefore, the amount to cure was $913.15.

Therefore, the entire claim is comprised of unmatured principal due on August 9, plus unpaid interest up to and including August 9, plus $350 repossession fee. The court calculates this amounts as follows:

The first installment was made (partly in cash and partly with a credit) in

June, thereby reducing the loan balance to $13,913.74. No payments were made in July or in the first nine days of August. Calculating unpaid interest at the contract rate for July ($288.71) and nine days in August ($82.16), increases the loan balance to $14,284.61 as of August 9. To this must be added the $350 repossession fee. The total amount owed as of August 9 was $14,634.61.

The creditor has demanded $19,699.25. While the creditor's arithmetic is off a bit, it comes to this total by including the unmatured interest that is due under the terms of the contract with the debtor. As noted above, if the debtor made 36 payments of $563.15, the creditor would receive $20,273.40 ($6,090.80 in interest and $14,182.60 in principal). After crediting the $360 paid by the debtor, under this methodology the claim should be reduced to $19,913.40 but then it should be increased by $350, to a total of $20,263.40 for the repossession fee. How and why the creditor comes to $19,699 is unclear. What is clear is that it has included unmatured interest in its claim.

This is not permissible. For one thing, 11 U.S.C. § 502(b)(2) forbids it. For another, the interest payable on the claim from and after August 9 will be determined by the chapter 13 plan, if one is confirmed. The interest rate proposed by the plan must meet the requirements set by Supreme Court in Till v. SCS Credit Corp., 124 S.Ct. 1951 (2004). Briefly, the appropriate post bankruptcy interest rate is determined by a "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987).

A claim objection is not the time to determine the interest due on a claim for the post-bankruptcy time period. That will be determine in connection with the confirmation of the plan.

For now, the claim will be allowed in the amount of $14,634.61. It is a secured claim and because the claim was incurred with 910 days of the bankruptcy case, the debtor may not seek to reduce the claim to the value of the vehicle securing it. See "hanging paragraph" following 11 U.S.C. § 1326(a)(9).

5. 16-26637-A-13 JERRY/JAMI ARMFIELD — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-17-16 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

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.

6. 16-27145-A-13 JOHN COOKE — MOTION TO VALUE COLLATERAL
RJM-2
VS. BANK OF THE WEST — 11-16-16 [22]

- ☐ 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.

The debtor seeks to value the debtor's residence at a fair market value of $245,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Bayview Loan Servicing. The first deed of trust secures a loan with a balance of approximately $249,466.32 as of the petition date. Therefore, Bank of the West'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 $245,000. 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).

7. 16-23255-A-13 RICHARD HOPE
SNM-2

MOTION TO CONFIRM PLAN
10-17-16 [56]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

The plan requires the debtor to pay 100% of nonpriority unsecured claims. Because the plan assumes these claims total $30,222.98, and because Consolidated Electrical Distributors has filed a claim of more than $28,000 that is not scheduled by the debtor, the plan will not be completed within its 60 month duration. It is not feasible as required by 11 U.S.C. § 1325(a)(6).

8. 16-23255-A-13 RICHARD HOPE
SNM-2

COUNTER MOTION TO DISMISS CASE
11-16-16 [85]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

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. 16-23255-A-13 RICHARD HOPE
MJB-1

MOTION TO FILE CLAIM AFTER BAR DATE
10-24-16 [78]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection to the creditor's tardily filed proof of claim will be sustained and the motion to file a late claim will be denied.

The last date to file a timely proof of claim was September 28, 2016. The proof of claim was filed on October 20, 2016. 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).

The creditor admits the proof of claim was filed late. This is fatal. The court has no discretion to allow a late claim in a chapter 13 case. The deadline to file a proof of claim set by Fed. R. Bankr. P. 3002(c) cannot be extended as requested by the claimant. First, Rule 3002(c) contains six exceptions to the requirement that a timely proof of claim be filed. None of those exceptions are applicable here. Second, Fed. R. Bankr. P. 9006(b)(3) specifically precludes enlargement of the time for creditors to file proofs of claim except to the extent provided in Rule 3002(c). The court concludes that

Rule 3002(c) provides no basis for an extension in this case. See Gardenhire v. IRS (In re Gardenhire), 209 F.3d 1145 (9th Cir. 2000) (claims in a chapter 13 case must be filed within deadline set by rule unless that deadline is extended on motion made within the original deadline).

The applicability of Rule 3002(c) and not Fed. R. Bankr. P. 3003(c)(3) to this case, and the wording of Rule 9006(b)(3), prevent the Supreme Court's decision in Pioneer Investment Services Company v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380 (1993), from being of assistance to the creditor. Pioneer involved a chapter 11 proceeding. In chapter 11 cases, the filing of proofs of claim is governed by Rule 3003 and not Rule 3002. Rule 3002 applies to chapter 13 cases. Rule 9006(b)(3) does not restrict extensions of the time to file proofs of claim in chapter 11 cases. Consequently, under Rule 9006(b)(1), the court may permit a creditor to file a proof of claim in a chapter 11 case after the bar date established under Rule 3003 has expired if excusable neglect prevented the filing of a timely proof of claim.

In Pioneer, the Supreme Court determined what constituted excusable neglect under Rule 9006(b)(1). That decision has little or no applicability here. In a chapter 13 case, Rule 9006(b)(1) is not applicable; Rules 9006(b)(3) and 3002(c) are applicable. And, as noted above Rule 3002(c) does not permit enlargement of the time to file proofs of claim after the expiration of the deadline even when excusable neglect is present.

In chapter 13 cases, the bankruptcy court lacks the equitable power to enlarge the time for filing a proof of claim apart from the six situations described in Rule 3002(c). See Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990). Because none of those situations are present here, and because the excusable neglect standard is not applicable in chapter 13 cases, the court cannot retroactively extend the time for the respondent to file a proof of claim.

The court also notes that there is no dispute that the debtor listed claim of the creditor in the schedules, the creditor received notice of the commencement of the case and of the deadline to file claims, as did its attorneys. Even if such notice were absent, such would not be sufficient to allow a late claim in a chapter 13 case. See Stanislaus v. Ellett (In re Ellett), 506 F.3d 774 (9th Cir. 2007). Of course, if such notice were absent, the debtor would be unable to discharge the claim. To discharge a debtor's personal liability for a claim in a chapter 13 case, the plan must provide for that claim. To provide for the claim, the creditor must be given notice so that it has the opportunity to participate in the chapter 13 case and the plan must provide for the creditor's claim. If this did not occur in this case, the claim will not be discharge discharged. In re Lee, 182 B.R. 354 (Bankr. S.D. Ga. 1995); Southtrust Bank of Alabama v. Thomas (In re Thomas), 883 F.2d 991 (11th Cir. 1989), *cert. denied*, 497 U.S. 1007 (1990). See also Ellett v. Stanislaus, 506 F.3d 774 (9th Cir. 2007).

The court finally notes that the creditor has made no argument that it filed a timely informal claim. The Ninth Circuit recognizes that a claim may be presented informally. An informal proof of claim by a creditor "must state an explicit demand showing the nature and amount of the claim against the estate and evidence an intent to hold the debtor liable." Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Restaurants, Inc., 754 F.2d 811, 815 (9th Cir. 1985). Also see In re Franciscan Vineyards, Inc., 597 F.2d 181 (9th Cir. 1979), *cert. denied*, 445 U.S. 915, 100 S.Ct. 1274, 63 L.Ed.2d 598 (1980); Matter of Pizza of Hawaii, Inc., 761 F.2d 1374, 1381 (9th Cir. 1985) (motion for relief from

automatic stay considered an informal proof of claim).

10. 16-23255-A-13 RICHARD HOPE — OBJECTION TO CLAIM
SNM-4
VS. INDEPENDENT ELECTRIC SUPPLY, INC. — 10-23-16 [71]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained for the reasons explained in the ruling on the creditor's motion to allow its late claim, MJB-1, which is incorporated by reference.

11. 16-22958-A-13 KELLY TIMOTHY — MOTION TO MODIFY PLAN
MMM-2 — 10-20-16 [42]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

Even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the post-petition arrears owed to the Class 1 home loan owed to Wells Fargo. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

12. 16-24566-A-13 LEWIS/MARY HACKETT — MOTION TO CONFIRM PLAN
FF-1 — 10-21-16 [24]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $2,001 is less than the $2,464 in dividends and expenses the plan requires the trustee to pay each month.

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

13. 16-27372-A-13 SHANE/MICHELLE GALLEGOS — MOTION TO EXTEND AUTOMATIC STAY
LR-1 — 11-21-16 [14]

- ☐ 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.

This is the second chapter 13 case filed by the debtor. A prior case, Case No. 16-21717, was dismissed on August 29, 2016 because the debtor failed to propose a modified plan with the time frame ordered by the court after confirmation of an initial plan was denied. This motion indicates only that the debtor was unaware of the need to review and sign a declaration to support a motion to confirm a modified plan. As a result, the motion was not filed and the case was dismissed.

The debtor's earlier chapter 13 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's neglect in prosecuting the first case resulted in its dismissal. A promise to be more diligent in the prosecution of this case is not enough for the court to conclude that there has been a substantial change of circumstances.

14. 13-24296-A-13 RHONDA MILES — MOTION FOR OMNIBUS RELIEF UPON DEATH OF DEBTOR
MMN-4 — 10-12-16 [44]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor died on July 25, 2015. Prior to her death, the debtor confirmed but had not completed, a chapter 13 plan. The debtor filed a financial management certificate on May 2, 2013. See 11 U.S.C. §§ 110, 111, 1328(g)(1) and Fed. R. Bankr. P. 1007(c).

Despite the debtor's death, the debtor's son has continued to make the payments required by the plan and will continue to do so. Fed. R. Bankr. P. 1016 permits a chapter 13 case to be continued if further administration is possible and is in the best interests of the parties. Given that a plan has been confirmed, and given the willingness of the debtor's son to complete the plan payments, the best interests of the debtor's heirs and those creditors whose claims are provided for in the plan are served by continuing with the case. The objection by G2 Capital no doubt is premised on the fact that its claim will receive nothing under the terms of the plan. Nonetheless, other claims will be paid.

The debtor's is authorized pursuant to Local Bankruptcy Rule 1016-1 to file, if warranted by the facts, a motion for a hardship discharge pursuant to 11 U.S.C. § 1328(b), as well as the case-ending documents required by Local Bankruptcy Rules 1007(c) and 5009-1. The clerk shall enter the discharge when the debtor is otherwise entitled to a discharge.

FINAL RULINGS BEGIN HERE

15. 16-21007-A-13 ELIZABETH PAZ — OBJECTION TO CLAIM
AF-10
VS. AURORA C. MACAWILE — 11-3-16 [146]

Final Ruling: The objection will be dismissed without prejudice.

The notice of hearing informs the claimant that written opposition must be filed and served 14 days prior to the hearing if the claimant wishes to oppose the objection to the proof of claim. Because less than 44 days of notice of the hearing was given, Local Bankruptcy Rule 3007-1(b)(2) specifies that written opposition is unnecessary. Instead, the claimant may appear at the hearing and orally contest the objection. If necessary, the court may thereafter require the submission of written evidence and briefs. By erroneously informing the claimant that written opposition was required and was a condition to contesting the objection, the objecting party may have deterred the claimant from appearing. Therefore, notice was materially deficient.

16. 16-20210-A-13 FRANKLIN RAMIREZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-2
CAMBRIDGE ESTATES OF FAIRFIELD OWNERS' ASSOCIATION VS. — 11-2-16 [42]

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) and 1301(c)(3).

While the confirmed plan provides for the pre-petition arrears owed to the movant (who is identified as LLW Properties in Class 2A of the plan), the motion establishes that the debtor has not paid post-petition homeowners' association assessments for a period of eight months and aggregating $3,585.24. Because the plan makes no provision for post-petition assessments and because they have not been paid directly by the debtor, there is cause to terminate the automatic stay and the codebtor stay. The assessments, to the extent a lien on the subject property, are junior to two senior encumbrances that exceed the scheduled #$220,000 value of the property. Hence, continuation of the stay will cause irreparable injury to the movant's interest in the property, if any. This is cause to permit the movant to proceed against the subject property in order to satisfy its claim, both pre and post-petition.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

17. 16-26325-A-13 DIANA CABELLO
PGM-1
VS. SANTANDER CONSUMER USA, INC.

MOTION TO
VALUE COLLATERAL
11-4-16 [17]

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 $4,000 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, $4,000 of the respondent's claim is an allowed secured claim. When the respondent is paid $4,000 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.

18. 15-21526-A-13 DEE LINDERER
PSB-2

MOTION TO
APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
11-3-16 [57]

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 seeks approval of $1,750 in additional fees and $25.92 in additional incurred principally in connection with a reverse mortgage and a motion to incur credit. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and Local Bankruptcy Rule 2016-1, if applicable.

19. 16-25434-A-13 SHAWN MCCRARY
BLG-1

MOTION TO CONFIRM PLAN
10-13-16 [24]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

20. 16-25434-A-13 SHAWN MCCRARY
BLG-2
VS. SOLANO COUNTY TAX COLLECTOR

OBJECTION TO CLAIM
10-17-16 [33]

Final Ruling: This objection to the proof of claim of Solano County Tax Collector 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.

This case was filed on August 17, 2016. The County of Solano filed a claim for secured real property taxes. Of the $5,194.69 demanded, $5,105.16 was assessed on July 1, 2016 (the first day of the 2016-17 fiscal year) but was not payable until December 12, 2016 and April 10, 2017. Because these amounts were neither due nor payable when the bankruptcy case was filed, this portion of the proof of claim will be disallowed. That is, $5,105.16 will not be paid through the chapter 13 plan; these sums are payable by the debtor (or the debtor's mortgagee if the taxes are impounded by it) when they fall due on December 12, 2016 and April 10, 2017.

The remainder of the claim is for $16.14 which was delinquent on August 31, 2014 and $73.79 which was delinquent on August 31, 2016. Because the later falls after the filing of the petition, it too shall be paid directly by the debtor and not through the plan.

The proof of claim is allowed in the amount of $16.14.

21. 16-27148-A-13 NAMATH KANDAHARI — MOTION TO VALUE COLLATERAL
TJW-1
VS. BANK OF AMERICA, N.A. — 11-1-16 [11]

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 $640,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Nationwide Mortgage. The first deed of trust secures a loan with a balance of approximately $889,294 as of the petition date. Therefore, Bank of America'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 $640,000. 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).

22. 15-22850-A-13 DANIEL/JESSICA PUGLIA — MOTION TO MODIFY PLAN
SS-7 — 10-26-16 [76]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The court will not materially alter the relief requested and the issue raised by the trustee can be resolved by a nonmaterial modification to the plan. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted on the condition that the plan is further modified in the confirmation order to account for all prior payments made by the debtor under the terms of the prior plan, and to provide for a plan payment of $242 beginning November 25, 2016. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

23. 16-23255-A-13 RICHARD HOPE — OBJECTION TO CLAIM
SNM-3 — 10-17-16 [62]
VS. CONSOLIDATED ELECT. DISTRIBUTORS, INC.

Final Ruling: The objection has been voluntarily dismissed.

24. 16-26791-A-13 MONICA WILSON-POUGH — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 11-1-16 [15]
DAIMLER TRUST 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 proposed a plan that will surrender the vehicle to the movant in satisfaction of its secured claim. That plan has not yet been confirmed. Nonetheless, the terms of the proposed plan makes two things clear: the movant's claim will not be paid and the vehicle securing its claim is not necessary to the debtor's personal financial reorganization. This is cause to terminate the automatic stay.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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