UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 9, 2014 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 13. 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 ON JANUARY 5, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 22, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 29, 2014. 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 14 THROUGH 18 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 15, 2014, AT 2:30 P.M.

Matters to be Called for Argument

1. 14-31200-A-13 SHERI ARNOLD — MOTION TO EXTEND AUTOMATIC STAY 11-24-14 [11]
TLA-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 denied.

This is the second chapter 13 case filed by the debtor. 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 was unable to confirm a feasible plan in the prior case because she and her former attorney were unable to negotiate loan modifications of two home loans. However, there still are no agreed modifications. Instead, the proposed plan compels the home lenders to negotiate modifications and accept "adequate protection payments" in lieu of the payments required by the loans during the negotiations. This violates 11 U.S.C. § 1322(b)(2) which prevents modifications of home loans. Pending an agreed modification, each lender must be paid the contract installment required

by the existing loans, not some other installment, unless they agree to accept such alternate payment.

Because this case is no more likely to succeed than the prior case, there are insufficient changes in circumstances rebut the presumption of bad faith.

2. 14-30206-A-13 STANLEY WOO — MOTION TO INCUR DEBT
RJ-2 — 10-27-14 [16]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor filed two prior chapter 13 cases. The first, Case No. 14-24896, was filed on May 9, 2014 and dismissed on August 8 because the debtor failed to appear at the meeting of creditors, failed to file a delinquent income tax return for 2013, and failed to provide the trustee records concerning the debtor's self employment income.

The second case, Case No. 14-28641, was filed on August 26, 2014 and was dismissed on September 29 because the debtor failed to timely file all schedules and statements.

This case was filed approximately two weeks later, on October 14. All schedules and statements were not filed with the petition but they have now been filed. However, Schedules I and J show only enough monthly net income to fund the plan. The plan payment is $1,210 while the debtor has monthly net income of just $1,210. Therefore, it is unclear how the debtor will be able to repay the new credit and the motion fails to explain the repayment terms of the a new extension of credit.

3. 14-29613-A-13 DARRELL DIGGS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-24-14 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of GM Financial/Americredit in order to strip down or strip off its secured claim from its collateral. That motion has been denied. 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."

4. 14-29613-A-13 DARRELL DIGGS
MRL-1
VS. AMERICREDIT FINANCIAL SVCS., INC.,

MOTION TO VALUE COLLATERAL
10-29-14 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor has filed a valuation motion that accompanies a proposed chapter 13 plan. The valuation motion addresses the value of a 2008 Acura TL that secures the respondent's Class 2 claim. The debtor has opined that the vehicle has a value of $8,250 based on the vehicle's model year, 148,000 mileage, and general condition.

The respondent counters that the value of the vehicle is $11,725 based on the retail value set by the NADA Guides.

The vehicle must be valued at its replacement value. In the chapter 13 context, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). The index offered by the creditor appears to meet this standard assuming the vehicle is showing ordinary wear and tear. This has not been shown but it is not the respondent's burden to do so.

To the extent the debtor maintains that the vehicle is showing more than ordinary wear and tear, the debtor has failed to introduce competent evidence of such. Therefore, the court denies the valuation motion.

5. 14-29629-A-13 DARON HAIRABEDIAN
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
11-19-14 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $155 is less than the $2,997.87 in dividends and expenses the plan requires the trustee to pay each month.

Second, to pay the dividends required by the plan and the rate proposed by it will take 603 months which exceeds the maximum 5-year duration permitted by 11

U.S.C. § 1322(d).

Third, because Class 1 claims are by definition long term secured claims that are in default, the plan must specify the arrears and provide for the payment of the arrears. The plan fails to specify the arrears or to cure them. The plan does not comply with 11 U.S.C. §§ 1322(b)(5), 1325(a)(5)(B).

Fourth, Local Bankruptcy Rule 3015-1(b)(6) provides: "*Documents Required by Trustee*. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist,* or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

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. 14-30132-A-13 EARL/NANCY HUTCHINSON — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-19-14 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of OE Federal Credit Union 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."

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.

7. 14-31248-A-13 IMOGENE ESPINOZA — MOTION TO EXTEND AUTOMATIC STAY 11-19-14 [8]
PLC-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 denied.

This is the second chapter 13 case filed by the debtor. 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, the prior case was dismissed because the debtor failed to make plan payments. This only partially explains the failure of the first case. When the first case was filed, the debtor owed no arrearage on her home mortgage. In the approximate three year life of the first case, the debtor not only failed to make plan payments to the trustee but also failed to pay her mortgage. By the time this case was filed, her mortgage arrears totaled approximately $31,000. This mortgage default is not addressed in this motion. Instead, it is obliquely asserted the debtor may not have received the correct legal advice in the first case. This does not explain the failure to make mortgage payments for two years. Because the reason for this default is not discussed, there is no record establishing that the problem causing the default has been rectified.

8. 14-30152-A-13 GWENDOLYN/HORACE SIMPSON — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-19-14 [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 overruled and the motion to dismiss the case will be denied.

Given the recent amendments to Schedule C, it does not appear that the trustee's calculations are accurate. There are no nonexempt assets and hence the plan complies with 11 U.S.C. § 1325(a)(4).

9. 14-25257-A-13 DARRELL/BARBARA NEAL — MOTION TO VACATE DISMISSAL OF CASE
SJS-4 — 11-20-14 [53]

- ☐ 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.

On July 30, 2014, the court entered its order sustaining the trustee's objection to the confirmation of the debtor's initial chapter 13 plan. That order also conditionally denied the trustee's request that the case be dismissed. The court permitted the case to remain pending on the condition that the debtor confirmed a plan within 75 days of July 30, which was October 13. A review of the docket reveals that the debtor failed, by the October 13 deadline, to file a modified plan, failed to give the trustee a Domestic Support Obligation Checklist as required by Local Bankruptcy Rule 3015-1, failed to give the trustee all employer payments advices as demanded by the trustee, failed to make a motion to confirm a modified plan or the original plan because circumstances had changed permitting its confirmation, or failed to move to reconsider the imposition of the 75-day deadline. As a result, the case was dismissed on October 29.

This motion was filed on November 20 and it asks the court to vacate the dismissal even though the October 13 deadline was not met. The motion concedes that plan payments are delinquent and that the October 13 deadline in the particulars itemized above. The motion fails to offer an excuse or mistake that rises to the level of excusable neglect warranting reconsideration of the dismissal of the case.

10. 10-44658-A-13 DENNIS DIGMAN — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
ACW-2 — 10-8-14 [107]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The fees represent 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 by the debtor and not through the plan because the plan includes no provision for payment of fees through the plan.

11. 14-30069-A-13 JOSEPH/LORI AUGUSTINE — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-19-14 [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 will be dismissed.

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).

Also, the debtor has failed to pay the case filing fee according to the installment filing fee order and is attempting to require the trustee to pay future installments as an administrative expense. They are not an administrative expense and must be paid directly to the court by the debtor by the deadline set by the court.

12. 14-30076-A-13 THOMAS/CYNTHIA MOORE — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-19-14 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

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

Third, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $940 in months 13 and 14 is less than the $1,039.36 in dividends and expenses the plan requires the trustee to pay each month.

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.

13. 10-27982-A-13 OSOTONU/BETTY OSOTONU — MOTION TO MODIFY PLAN
PGM-5 — 10-31-14 [82]

Tentative Ruling: 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 $2,700 beginning December 25, 2014. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

THE FINAL RULINGS BEGIN HERE

14. 14-26000-A-13 ROBIN SMITH — MOTION TO VALUE COLLATERAL 11-10-14 [32]
FF-2
VS. FRANCHISE TAX BOARD

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

The claim of the FTB is secured by all of the debtor's real and personal property. The real property has a value of $173,780 but is encumbered by a senior consensual lien of $236,880.66. The personal property, after deducting consensual liens has a net value of $8,940.24 but is encumbered by the prior tax lien of the IRS to secure taxes exceeding $8,940.24. Therefore, the collateral of the FTB has no net value and its secured claim is determined to be $0.

15. 14-27909-A-13 JUAN/REINA TORRES — MOTION TO CONFIRM PLAN 10-21-14 [33]
ALF-2

Final Ruling: The motion will be dismissed without prejudice.

Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 7346, Philadelphia, PA 19101-7346; (2) United States Attorney, for the IRS, 501 I Street, Suite 10-100, Sacramento, CA 95814; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

Service in this case is deficient because the IRS was not served at the second and third addresses listed above.

16. 14-30268-A-13 NEERAJ/KALYANI KUMAR — MOTION FOR RELIEF FROM AUTOMATIC STAY 11-7-14 [24]
APN-1
BMW BANK OF NORTH AMERICA 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 fails to provide for the movant's claim which is secured by a vehicle. The claim is in default, the debtor having failed to make monthly installment payments both before and after the filing of the bankruptcy case. Given the failure to

provide for the claim and make payments, 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) is ordered waived due to the fact that the movant's collateral is being used by the debtor without compensation and is depreciating in value.

17. 14-29778-A-13 EPENESA DRONE — OBJECTION TO CONFIRMATION OF PLAN 11-19-14 [27]
JPJ-1

Final Ruling: While the trustee's objection has merit, his objection pertains to the original plan proposed by the debtor. That plan has been abandoned by the filing of a modified plan that the court will consider for confirmation on January 10, 2015. If the trustee has objections to the modified plan, they should be interposed as opposition to the motion to confirm the modified plan.

18. 12-41081-A-13 CHERYL MORRIS — MOTION TO MODIFY PLAN 10-29-14 [87]
PGM-3

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

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