UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 15, 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 22. 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 12, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 29, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY JANUARY 5, 2015. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 23 THROUGH 37 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 22, 2014, AT 2:30 P.M.

Matters to be Called for Argument

1. 14-29801-A-13 ZAFU EMBAYE — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-19-14 [21]

- ☐ 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 debtor has failed to make $2,009.11 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

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

Third, the trustee is likely to be successful on his objection to all of the debtor's Cal. Civ. Proc. Code § 703.140(b) exemptions claimed on Schedule C. 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. If the debtor has no exemptions, then all nonexempt equity in assets, approximately $8,538, must be paid to unsecured creditors. See 11 U.S.C. § 1325(a)(4). Because the plan will pay them only $1,000, it does not comply with this mandatory requirement.

Fourth, the debtor has failed to accurately complete Form 22. The debtor failed to include her own as well as her husband's pre-bankruptcy income in the calculation of current monthly income. Also, the debtor has erroneously deducted business expenses when calculating current monthly income. Gross business income, without expense deduction, is part of the debtor's current monthly income. Once total current monthly income is calculated, business expenses may be deducted as an expense when calculating current monthly income. Accord In re Weigand, 386 B.R. 238 (9th Cir. BAP 2008). The distinction is material here because with gross business income a part of the debtor's current monthly, the debtor's current monthly income exceeds the state median income for a comparably sized household.

With these errors corrected, the debtor's annualized current monthly income is $125,819.88, well in excess of the median income of the same size household in California, $67,594. This means that the debtor's deductions from current monthly income for purposes of determining projected disposable income, will be determined by the "means test." 11 U.S.C. §§ 707(b)(2)(A) and (B), 1325(b)(3). However, the debtor has failed to complete the projected disposable income portion of Form 22. Because the debtor has failed to complete the portion of Form 22 necessary to calculate projected disposable income, she cannot prove compliance 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.

2. 14-30206-A-13 STANLEY WOO — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-25-14 [51]

- ☐ 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 dismissal motion will be denied on the condition that the plan is modified to require payment of a further $3,000 in attorney's fees, and to require a lump sum payment of $33,000 in the seventh month of the case with such payment to be used to pay in full the arrears on the Class 1 claim.

3. 14-30206-A-13 STANLEY WOO — OBJECTION TO CONFIRMATION OF PLAN
SMR-1 — 12-1-14 [63]
PROFIT INVESTMENT COMPANY, 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 creditor complains that the plan, while promising to maintain monthly contract installments and to cure the pre-petition arrears, fails to provide interest at a rate consistent with Till v. SCS Credit Corp. on the arrears. The creditor is not entitled to interest on the pre-petition arrears owed on this home mortgage loan.

11 U.S.C. § 1322(e) overrules Rake v. Wade. In Rake, the Supreme Court agreed that interest must be paid on a home loan arrearage. However, the loan in question was made after the 1994 effective date of section 1322(e) which was specifically enacted to eliminate the requirement of interest on mortgage arrears in the absence of a contractual provision requiring the payment of such. Therefore, the creditor's loan documentation must require interest to be paid on arrears. Nothing in the objection points to a provision in the loan documentation that requires interest on arrears. The installment note specifies that interest accrues on the unpaid principal. Exhibit A to objecting creditor's motion for relief from the automatic stay. It does not mention interest on arrears or past due amounts. It provides for a late charge

only.

4. 14-28108-A-13 MICHELLE VANDERGAAG — OBJECTION TO CLAIM
JMC-1 — 10-27-14 [18]
VS. SHASTA PARK TOWNHOUSE ASSOC.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The objection asserts that a portion of claim, $1,628, should be disallowed because it is comprised of fees and costs not reviewed or awarded by this or any court, and fails to "sufficiently authenticate and substantiate the asserted balance and class of the underlying debt."

The claim is presented on the standard proof of claim form, it itemizes the various charges due to the claimant, and it attaches a copy of the CCR's permitting the association to claim the charges as a secured obligation.

The debtor's declaration states only that the fees should be disallowed because they are "unreasonable and excessive." This, however, is stated in a conclusory fashion and without evidentiary basis. Nor is there any authority for the proposition that the prebankruptcy charges cannot be claimed unless awarded by a court.

Finally, to the extent the debtor maintains that the claim should be disallowed because it is not accompanied by sufficient proof, authentication, or substantiation, the assertion is without merit. While Fed. R. Bankr. P. 3001 specifies the contents of a proof of claim, the failure to provide that content is an insufficient basis for disallowance of the claim. See In re Heath, 331 B.R. 424, 435 (B.A.P. 9th Cir. 2005). The sole bases for disallowing a proof of claim are set out in 11 U.S.C. § 502(b), which does not permit the court to disallow a claim because it has not been appropriately documented in the proof of claim. At best, the absence of documentation will make objecting to the claim easier, but the debtor must still come forward with probative evidence that the claim is not owed. This has not been done.

5. 14-27217-A-13 MICHAEL POWELL AND DEBORAH SENNECA — MOTION TO CONFIRM PLAN
LBG-2 — 11-4-14 [45]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, counsel for the debtor has opted to be paid pursuant to Local Bankruptcy Rule 2016-1 but has asked for fees of $8,500, which exceeds the maximum $6,000 permitted by that local rule.

Second, assuming the arrears owed to the Class 1 claimant will be paid, as they must be paid absent an agreement from that lender, payment of the dividends required by the plan and the rate proposed by it will take 23771 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Third, the modifications proposed for the debtor's home loan have not been accepted by the lender. Therefore, the debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender has agreed to a home loan modification. Absent that agreement, the claim cannot be modified. See 11 U.S.C. § 1322(b)(2). Instead, the debtor is limited to curing any pre-petition default while maintaining the regular monthly mortgage installment. See 11 U.S.C. § 1322(b)(5).

6. 12-28622-A-13 TERRY JACQUES — MOTION TO MODIFY PLAN
WW-5 — 11-4-14 [44]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan payments required by the modified plan are not the same payments required by the motion seeking to confirm the modified plan. Given this confusion, inadequate notice has been given for the proposed modification.

7. 10-37324-A-13 JAMES RHODES AND DIVINA CADIZ — MOTION TO INCUR DEBT
BLG-2 — 11-26-14 [45]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

8. 14-30526-A-13 BALVIR SINGH AND NIRMAL KAUR — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-25-14 [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 in part and the motion to dismiss the case will be conditionally denied.

The plan fails to provide for the payment of a dividend to the holder of a Class 2 claim, LTD Financial. Because the debtor is retaining the collateral for this claim, it must be paid in full. Therefore, this plan does not comply with 11 U.S.C. § 1325(a)(5)(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.

9. 14-30434-A-13 YELENA MARKEVICH — ORDER TO SHOW CAUSE 11-26-14 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $77 due on November 21 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

10. 11-48744-A-13 STEVEN SCHULE — MOTION TO SELL O.S.T. 12-9-14 [43]
EJS-2

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion to sell real property will be granted on the condition that the sale proceeds are used to pay all liens of record in full in a manner consistent with the plan. If the proceeds are not sufficient to pay liens of record in full (including liens ostensibly "stripped off"), no sale may be completed without the consent of each lienholder not being paid in full.

11. 09-42046-A-13 DEBORAH/MICHAEL WILLIAMS — MOTION TO RECONSIDER DISMISSAL 11-11-14 [59]
WSS-4

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor's confirmed plan required a monthly plan payment of $678 for 60 months. It was used to pay two Class 2 vehicle loans as well as administrative expenses. While nonpriority unsecured claims, Class 7, were promised nothing, the plan provides at section 2.03:

"The monthly plan payments will continue for 60 months, the commitment period of the plan. Monthly plan payments must continue for the entire commitment period unless all allowed unsecured claims are paid in full over a shorter period of time."

In other words, if the secured and administrative claims were paid in full over a period of less than 60 months, plan payments had to continue for the full 60 months and the residual payments would be distributed to holders of unsecured claims.

By June 2014, all secured claims had been paid. There were no priority claims other than trustee compensation. June 2014 was the 56th month of the plan. Four additional plan payments were due.

The debtor erroneously assumed that because there were no unpaid secured and priority claims, the debtor could cease plan payments. The debtor's last plan payments was the June payment. This default prompted the trustee to serve the debtor and the debtor's attorney with a Notice of Default. It recited that as of August 27, two plan payments had not been made, those for July and August.

This notice of default procedure, as authorized by Local Bankruptcy Rule 3015-1(g), which provides:

(1) If the debtor fails to make a payment pursuant to a confirmed plan, including a direct payment to a creditor, the trustee may mail to the debtor and the debtor's attorney written notice of the default.

(2) If the debtor believes that the default noticed by the trustee does not exist, the debtor shall set a hearing within twenty-eight (28) days of the mailing of the notice of default and give at least fourteen (14) days' notice of the hearing to the trustee pursuant to LBR 9014-1(f)(2). At the hearing, if the trustee demonstrates that the debtor has failed to make a payment required by the confirmed plan, and if the debtor fails to rebut the trustee's evidence, the case shall be dismissed at the hearing.

(3) Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.

(4) If the debtor fails to set a hearing on the trustee's notice, or cure the default by payment, or file a proposed modified chapter 13 plan and motion, or perform the modified chapter 13 plan pending its approval, or obtain approval of the modified chapter 13 plan, all within the time constraints set out above, the case shall be dismissed without a hearing on the trustee's application.

Thus, a debtor receiving a Notice of Default has three alternatives. (1) Cure the default within 30 days of the notice of default as well as paying the

additional payment that would come due during the 30-day period to cure the default. (2) Within 30 days of the notice of default, file a motion to confirm a modified plan and a modified plan in order to cure/suspend the default stated in the notice of default. (3) Contest the notice of default by setting a hearing within 28 days of the notice of default on 14 days of notice to the trustee.

The debtor in this case opted to file a modified plan. That plan, and a motion to confirm it, were filed within 30 days of the notice of default. The trustee objected in writing to the confirmation of the modified plan on October 13. At the hearing on the motion, the court sustained the trustee's three objections: the plan proposed a dividend level that would require 66 monthly plan payments, which exceeds the maximum number permitted by 11 U.S.C. § 1322(d); the plan failed to account for all prior payments actually made by the debtor; and the plan referred to additional provisions which were not appended to the modified plan. This ruling was posted on the court's Internet site as a tentative ruling approximately one week before the October 27 hearing. No appearance was made by or on behalf of the debtors at that hearing.

No request for an extension of time to confirm a plan was made at or before the October 27 hearing. This is puzzling because the trustee's objection, the court's tentative ruling, and the court's final ruling made at the October 27 hearing, all made clear that a plan would not be confirmed. It was also clear in the Local Rule that denial of confirmation would result in dismissal. Local Bankruptcy Rule 3015-1(g)(4) provides in relevant part: "If the debtor fails to . . . obtain approval of the modified chapter 13 plan . . . the case shall be dismissed without a hearing on the trustee's application."

The trustee applied on October 30 for the dismissal of the case and the court dismissed it on November 3.

The dismissal stirred the debtor to action. On November 4, a second modified plan was proposed and served with a motion to confirm it. This was followed a week later with a motion to vacate the dismissal.

The latter motion asserts that counsel for the debtor believed the August 27 notice of default was negated merely by the filing of the first modified plan and the motion to confirm it. As long as these were filed within 30 days of the notice of default, he believed the notice of default no longer had the potential for the dismissal of the case even if the court did not confirm the modified plan.

That is not what Local Bankruptcy Rule 3015-1(g) provides and it is not what the notice of default stated. The latter provided that the case would be dismissed if, among other things, the debtor failed to "obtain approval of the modified chapter 13 plan." Given that this has been the practice in this court for 20 years and has been memorialized in the General Orders on chapter 13 practice that are the predecessors of Local Bankruptcy Rule 3015-1, given that the rule and the notice of default are clear, the court is hard pressed to conclude that the erroneous belief that the timely filing of an unconfirmable plan was enough to defeat the trustee's notice of default amounts to an excusable neglect or mistake. This is particularly so when one also considers the debtor ignored the plain wording of the confirmed plan and stopped making plan payments before the 60th month.

12. 09-42046-A-13 DEBORAH/MICHAEL WILLIAMS MOTION TO MODIFY PLAN
WSS-3 11-4-14 [53]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed as moot given the dismissal of the case.

13. 14-30250-A-13 KEVIN/ARLENE QUAKENBUSH OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 11-25-14 [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's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Webster Bank 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. Specifically, the debtor has under-reported pre-petition income in response to Question 1 of the Statement of Financial Affairs and on the current monthly income calculation of Form 22. This 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).

Third, the debtor admits that income during the six months prior to bankruptcy was substantially similar to the amount reported on Schedule I. Yet, Form 22 reports it a materially lower level. If calculated at the same rate, the debtor's household annualized current monthly income, $86,438.40, exceeds the

median income for the same size California household, $62,917. This means that the debtor's deductions from current monthly income for purposes of determining projected disposable income, will be determined by the "means test." 11 U.S.C. §§ 707(b)(2)(A) and (B), 1325(b)(3). However, the debtor has failed to complete the projected disposable income portion of Form 22. Because the debtor has failed to complete the portion of Form 22 necessary to calculate projected disposable income, the debtor cannot prove compliance with 11 U.S.C. § 1325(b).

Fourth, the plan proposes a duration of 36 months. However, because the debtor is an over-median income debtor, the duration must be 60 months even if the debtor has no projected disposable income reported on Form 22. See Danielson v. Flores (In re Flores), 2013 WL 4566428 (Aug. 29, 2013). The plan does not comply with 11 U.S.C. § 1325(b)(4).

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.

14. 14-30556-A-13 HARRY HERNANDEZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-25-14 [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.

The plan erroneously provides for a short-term real estate obligation in Class 1 which is reserved for long term secured obligations not modified by the plan. The claim must be paid in full as a Class 2 claim.

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. 14-26268-A-13 ROBERTO/ROSAEMMA CARRAZCO — MOTION TO MODIFY PLAN
CJY-2 — 11-10-14 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $3,500 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, in the fifth through the fourteenth months of the plan, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $3,500 is less than the $3,846 in dividends and expenses the plan requires the trustee to pay in those months.

16. 14-30268-A-13 NEERAJ/KALYANI KUMAR — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-25-14 [37]

- ☐ 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 motions to value the collateral of Santander and Chase Home Equity in order to strip down or strip off their secured claims from their collateral. No such motions have been filed, served, and granted. Absent successful motions 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 plan is ambiguous as to the treatment of the State Board of Equalization. The plan specifies it will be "paid per agreement" but the plan does not specify that agreement. Hence it is unclear how much will be paid, when it will be paid and who will pay it.

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.

17. 14-30268-A-13 NEERAJ/KALYANI KUMAR — OBJECTION TO CONFIRMATION OF PLAN
PD-1
BANK OF AMERICA, N.A. — 11-25-14 [33]

- ☐ 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 in part.

The plan fails to provide for the arrears on a home loan. This failure means that the debtor impermissibly is modifying a home loan as prohibited by 11 U.S.C. § 1322(b)(2), and that a secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

18. 14-28677-A-13 CHRISTOPHER/ELIZABETH MORRIS — MOTION TO CONFIRM PLAN
EJS-3 — 10-28-14 [37]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $5,000 of the payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, because of the foregoing default under the plan, the trustee has been unable to maintain post-petition installments due on a Class 1 home loan. The proposed plan does not provide for the cure of this arrearage. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan in violation of 11 U.S.C. § 1322(b)(2). 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).

19. 14-30283-A-13 LARRY/VALERIE JONES
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
11-25-14 [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 on the condition that the provision for the payment of case filing fee is eliminated from the plan and paid directly to the court by the debtors. The stipulation determining the value of GM Financial's security resolves the trustee's other objection.

20. 12-34290-A-13 VASCO DEMELLO
WSS-5

MOTION TO RECONSIDER DISMISSAL OF CASE
11-28-14 [107]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor's confirmed plan required a monthly plan payment of $1,427 for 60 months. This plan payment was used to pay an ongoing mortgage payment, a mortgage arrearage, delinquent real property taxes, as well as administrative expenses.

The debtor failed to make his June, July and August plan payments. This default prompted the trustee to serve the debtor and the debtor's attorney with a Notice of Default. It recited that as of August 28, three plan payments had not been made, those for June, July, August.

This notice of default procedure, as authorized by Local Bankruptcy Rule 3015-1(g), which provides:

(1) If the debtor fails to make a payment pursuant to a confirmed plan, including a direct payment to a creditor, the trustee may mail to the debtor and the debtor's attorney written notice of the default.

(2) If the debtor believes that the default noticed by the trustee does not exist, the debtor shall set a hearing within twenty-eight (28) days of the mailing of the notice of default and give at least fourteen (14) days' notice of the hearing to the trustee pursuant to LBR 9014-1(f)(2). At the hearing, if the trustee demonstrates that the debtor has failed to make a payment required by the confirmed plan, and if the debtor fails to rebut the trustee's evidence, the case shall be dismissed at the hearing.

(3) Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.

(4) If the debtor fails to set a hearing on the trustee's notice, or cure the default by payment, or file a proposed modified chapter 13 plan and motion, or perform the modified chapter 13 plan pending its approval, or obtain approval of the modified chapter 13 plan, all within the time constraints set out above, the case shall be dismissed without a hearing on the trustee's application.

Thus, a debtor receiving a Notice of Default has three alternatives. (1) Cure the default within 30 days of the notice of default as well as paying the additional payment that would come due during the 30-day period to cure the default. (2) Within 30 days of the notice of default, file a motion to confirm a modified plan and a modified plan in order to cure/suspend the default stated in the notice of default. (3) Contest the notice of default by setting a hearing within 28 days of the notice of default on 14 days of notice to the trustee.

The debtor opted to file a modified plan. That plan, and a motion to confirm it, were filed within 30 days of the notice of default. The trustee objected in writing to the confirmation of the modified plan on October 14. At the November 3 hearing on the motion, the court sustained the trustee's objections: the plan had inconsistent provisions regarding its duration – it specified a 60 month duration but only provided for 59 plan payments – and it failed to provide for the cure of a post-petition arrearage on a home mortgage that resulted from the failure to make plan payments for 3 months. This ruling was posted on the court's Internet site as a tentative ruling approximately one week before the November 3 hearing. No appearance was made by or on behalf of the debtors at that hearing.

No request for an extension of time to confirm a plan was made at or before the November 3 hearing. This is puzzling because the trustee's objection, the court's tentative ruling, and the court's final ruling made at the November 3 hearing, all made clear that a plan would not be confirmed. It was also clear in the Local Rule that denial of confirmation would result in dismissal. Local Bankruptcy Rule 3015-1(g)(4) provides in relevant part: "If the debtor fails to . . . obtain approval of the modified chapter 13 plan . . . the case shall be dismissed without a hearing on the trustee's application."

The trustee applied on November 18 for the dismissal of the case and the court dismissed it on November 18.

On November 4, before the case had been dismissed but after the court had denied confirmation of the modified, another modified plan was proposed and served with a motion to confirm it. This was followed ten days later with a motion to vacate the dismissal.

The latter motion asserts that counsel for the debtor believed the August 28 notice of default was negated merely by the filing of the first modified plan and the motion to confirm it. As long as these were filed within 30 days of the notice of default, he believed the notice of default no longer had the potential for the dismissal of the case even if the court did not confirm the

modified plan.

That is not what Local Bankruptcy Rule 3015-1(g) provides and it is not what the notice of default stated. The latter provided that the case would be dismissed if, among other things, the debtor failed to "obtain approval of the modified chapter 13 plan." Given that this has been the practice in this court for 20 years and has been memorialized in the General Orders on chapter 13 practice that are the predecessors of Local Bankruptcy Rule 3015-1 (see e.g., General Orders 03-03 ¶ 7, 05-03 ¶ 7, given that the rule and the notice of default are clear, the court is hard pressed to conclude that the erroneous belief that the timely filing of an unconfirmable plan was enough to defeat the trustee's notice of default amounts to an excusable neglect or mistake.

21. 12-34290-A-13 VASCO DEMELLO — MOTION TO MODIFY PLAN
WSS-4 — 11-4-14 [92]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed as moot given the dismissal of the case.

22. 14-22793-A-13 ANDRES/DEANNE SUAREZ — MOTION TO MODIFY PLAN
CAH-1 — 10-31-14 [29]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $1,247 of the payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, because of the foregoing default under the plan, the trustee has been unable to maintain post-petition installments due on a Class 1 home loan. The proposed plan does not provide for the cure of this arrearage. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan in violation of 11 U.S.C. § 1322(b)(2). 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).

THE FINAL RULINGS BEGIN HERE

23. 14-28904-A-13 JAMES HINSON — MOTION TO CONFIRM PLAN
HN-1 — 10-24-14 [30]

Final Ruling: The motion will be dismissed without prejudice.

The certificates of service for the motion, Nos. 34 and 43 on the docket, refer to an attached service list but there is not list appended to either certificate. Therefore, there is no proof that all parties in interest were given notice of the plan, the motion, and the hearing as required by Fed. R. Bankr. P. 2002(b).

24. 12-39409-A-13 RICHEY HARRISON — MOTION TO MODIFY PLAN
MC-4 — 11-4-14 [102]

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

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

25. 13-24216-A-13 AMANDA ROSE — MOTION TO MODIFY PLAN
CA-2 — 10-30-14 [31]

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.

26. 14-20818-A-13 SCOTT/FRANCES KILGORE — OBJECTION TO CLAIM
JPJ-1
VS. CALVARY S.P.V. I, L.L.C. — 10-2-14 [51]

Final Ruling: This objection to the proof of claim of Calvary S.P.V., 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.

According to the documentation attached to the proof of claim, 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. According to the claim, the last payment was received on October 23, 2008, which is more than four years prior to the filing of this case. Hence, when the case was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

27. 14-26623-A-13 ROBERT/NICHOLA DANIEL — MOTION TO VALUE COLLATERAL
BSJ-2
VS. AMERICREDIT FINANCIAL SERVICES, INC. — 11-14-14 [44]

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 motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property has a replacement value of $19,000 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $19,000 of the respondent's claim is an allowed secured claim. When the respondent is paid $19,000 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.

28. 14-27961-A-13 GASOLO TAWAKE
GDG-5
VS. WHITE AND WHITLEY GROUP, L.L.C.

MOTION TO
AVOID JUDICIAL LIEN
11-7-14 [50]

Final Ruling: This motion to avoid a judicial lien 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 pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $250,000 as of the date of the petition. The unavoidable liens total $224,590. The debtor has an available exemption of $24,410. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

29. 14-29766-A-13 MICHAEL SCHEIBLI
MAS-2

MOTION TO
CONFIRM PLAN
10-28-14 [24]

Final Ruling: Because the meeting of creditors has not been concluded, the court continues the hearing on this motion to January 20, 2015 at 1:30 p.m.

30. 14-20467-A-13 LEONARD TUMATH AND ALBERT LARA-TUMATH
JPJ-2
VS. ASSET ACCEPTANCE, L.L.C.

OBJECTION TO
CLAIM
10-2-14 [37]

Final Ruling: This objection to the proof of claim of Asset Acceptance, 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.

According to the documentation attached to the proof of claim, 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. According to the claim, the last payment was received on December 7, 2007, which is more than four years prior to the filing of this case. Hence, when the case was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

31. 14-20467-A-13 LEONARD TUMATH AND ALBERT LARA-TUMATH — OBJECTION TO CLAIM
JPJ-3
VS. PREMIER BANKCARD/CHARTER
10-2-14 [41]

Final Ruling: This objection to the proof of claim of Premier Bankcard/Charter 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.

According to the documentation attached to the proof of claim, 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. According to the claim, the last payment was received on March 31, 2008, which is more than four years prior to the filing of this case. Hence, when the case was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

32. 14-20467-A-13 LEONARD TUMATH AND ALBERT LARA-TUMATH — OBJECTION TO CLAIM
JPJ-4
VS. ASSET ACCEPTANCE, L.L.C.
10-2-14 [45]

Final Ruling: This objection to the proof of claim of Asset Acceptance, 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.

According to the documentation attached to the proof of claim, 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. According to the claim, the last payment was received on January 5, 2002, which is more than four years prior to the filing of this case. Hence, when the case was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

33. 13-32371-A-13 CARL LEON — MOTION TO VALUE COLLATERAL
MET-2
VS. U.S. BANK, N.A.
11-12-14 [29]

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 $175,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Ocwen Loan Servicing, LLC. The first deed of trust secures a loan with a balance of approximately $199,340 as of the petition date. Therefore, U.S. Bank, N.A.'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 $175,000. 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).

34. 14-20879-A-13 JPJ-2 — JASON OGDEN AND SHALYN SWATON — OBJECTION TO CLAIM
VS. ASSET ACCEPTANCE, L.L.C. — 10-2-14 [31]

Final Ruling: This objection to the proof of claim of Asset Acceptance, 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.

According to the documentation attached to the proof of claim, 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. According to the claim, the last payment was received on August 5, 2003, which is more than four years prior to the filing of this case. Hence, when the case was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

35. 12-33386-A-13 CJY-3 — JESUS ALCARAZ ESCAMILLA AND VANESSA OCHOA-ALCARAZ — MOTION TO MODIFY PLAN
11-10-14 [35]

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.

36. 14-30299-A-13 RICHARD SCHRIVER — MOTION TO CONFIRM PLAN
CAH-2 — 10-31-14 [20]

Final Ruling: The motion will be dismissed.

This case was filed on October 17, 2014. The meeting of creditors was set by the trustee on December 4. This was 48 days after the case was filed and therefore was timely. Fed. R. Bankr. P. 2003 requires the meeting of creditors be convened no earlier than 20 days and no later than 50 days after the order for relief.

The debtor proposed a plan on October 31 but then filed a modified plan on that same day. A motion to confirm the modified plan was set for hearing on December 15. This is only 11 days after the meeting of creditors. This was premature. 11 U.S.C. § 1324(b) requires a confirmation hearing no earlier than 20 days after the meeting and no more than 45 days after it. This was prejudicial. It meant that the trustee and creditor's were required to file objections to the confirmation of the modified plan before they had an opportunity to examine the debtor and review the debtor's payment advices and tax return.

37. 14-30299-A-13 RICHARD SCHRIVER — COUNTER MOTION TO DISMISS CASE
CAH-2 — 12-1-14 [35]

Final 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. The 45 day deadline of 11 U.S.C. § 1324(b) is extended accordingly.