

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

February 14, 2017 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	16-27800-D-13 RDG-1	RONALD/CAROL CABUTAJE	OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 1-13-17 [13]
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2. 15-24507-D-13 LILLIAN GLEASON MOTION TO MODIFY PLAN
RLG-5 1-3-17 [115]

Final ruling:

This is the debtor's motion to confirm a modified chapter 13 plan. The motion will be denied because, as pointed out by the trustee, the moving party filed the plan as an attachment to the motion rather than as a separate document, as required by LBR 3015-1(d)(2). As a result of this procedural defect, the motion will be denied and the court need not reach the other issues raised by the trustee at this time.

The motion will be denied by minute order. No appearance is necessary.

3. 16-23608-D-13 ANGELA COBB MOTION TO MODIFY PLAN
JCK-1 12-29-16 [18]

4. 14-29812-D-13 ANDRE COOPER AND KIMBERLY GILLIAM MOTION TO MODIFY PLAN
WMR-110 1-11-17 [150]

5. 16-27112-D-13 ROSA/PABLO AHUMADA MOTION FOR RELIEF FROM
ASW-1 AUTOMATIC STAY
GMAT LEGAL TITLE TRUST 1-4-17 [48]
2013-1 VS.

Final ruling:

This is GMAT Legal Title Trust 2013-1's (the "Movant") motion for relief from stay. The Movant has established that it acquired ownership to the real property that is the subject of this motion at a pre-petition foreclosure sale. Movant further asserts that as a result of this pre-petition foreclosure sale the debtor has only have a possessory interest in the property. No opposition to the motion has been filed. Accordingly, the court finds cause exists for relief from stay under Bankruptcy Code § 362(d)(1).

As Movant has established it foreclosed on the property pre-petition and the debtor has only a possessory interest in the property, relief from stay will be granted under Code § 362(d)(1) and the court will waive FRBP 4001(a)(3) by minute order. No appearance is necessary.

6. 16-27717-D-13 PAMELA BECKER
PPR-1
DEUTSCHE BANK NATIONAL TRUST
CO. VS.
CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
12-8-16 [14]
7. 16-27717-D-13 PAMELA BECKER
PPR-2
OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
1-4-17 [25]
8. 16-27717-D-13 PAMELA BECKER
RDG-2
OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-13-17 [38]
9. 12-29222-D-13 KYLE/TRACY TROCHE
PGM-1
CONTINUED MOTION TO APPROVE
LOAN MODIFICATION
11-21-16 [75]

Tentative ruling:

This is the debtors' motion to approve a mortgage loan modification that has reduced their mortgage payment by \$473 per month, apparently beginning three and a half months ago. (The motion states the "first modified payment" was due November 1, 2016.) The trustee opposed the motion on the ground the debtors' amended Schedules I and J showed an increase of almost \$1,000 per month in their income, whereas they had not reported this significant increase to the trustee or indicated when it began. The hearing was continued to allow the debtors to address this issue.

The debtors have filed a supplemental declaration in which they testify that the debtor, Kyle Troche, has received yearly wage increases since the case was commenced, almost five years ago, such that his income went from \$8,146 per month in 2012 to \$8,375 in 2016. (According to the amended Schedule I filed November 21, 2016, his income was actually \$8,591.) The debtors also testify that the joint debtor, Tracy Troche, left her job at the Tracy Unified School District on November 11, 2014 for a job with the San Joaquin County Office of Education. She says nothing about when her income increased - whether it was right away; that is, well over two years ago, or only recently. Due to the debtors' silence on the issue, in the face of the trustee's very specific request for information about when the increases occurred, the court assumes the increase occurred earlier rather than later. In any event, the joint debtor's income was \$3,736 per month when this case was filed; it was \$4,740 on November 21, 2016 - a \$1,000 per month increase. Thus, the debtors, especially Tracy Troche, have had significant increases in their income, which they failed to report to the trustee. It is arguable the orders confirming their original and amended plans did not require the reporting of Mr. Troche's wage increases, but they certainly required the reporting of Mrs. Troche's job change.

The court notes that the debtors filed a motion to modify their plan in May of 2015, six months after Mrs. Troche began working for the County Office of Education, reporting that they had fallen behind in their plan payments due to Mrs. Troche's need for braces and to a break-in and vandalism to their rental property. They stated in their supporting declaration, "[t]here are no other changes to the Modified Plan." Debtors' Decl., DN 61, at 2:25. They did not report Mrs. Troche's job change or the increases in their respective incomes, and did not file amended Schedules I and J.

These facts, especially the debtors' failure to report the job change and significant increases in income to the trustee when required and their failure to address the timing of the increase in Mrs. Troche's income in response to the trustee's opposition, persuade the court the loan modification, although it appears to have already gone into effect, is not proposed in good faith, and the court intends to deny the motion. The downside, of course, is that the debtors, having waited all this time to disclose their increased income, and then having disclosed the dates of Mr. Troche's wage increases only and not Mrs. Troche's, will complete their current plan in three months, having retained the benefits of their non-disclosure. The court will look to the trustee for suggestions as to whether this situation can be remedied.

The court will hear the matter.

10. 11-41228-D-13 MELISSA BICE-WALTER
JCK-7

MOTION TO MODIFY PLAN
12-22-16 [100]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

11. 16-27328-D-13 GLORIA REYES OBJECTION TO DEBTOR'S CLAIM OF
RDG-2 EXEMPTIONS
12-30-16 [11]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. On February 7, 2017, the debtor filed an amended Schedule C and a spousal waiver. As a result of the filing of the amended Schedule C and spousal waiver, the present objection is moot. The objection will be overruled at moot by minute order. No appearance is necessary.

12. 14-21631-D-13 MICHAEL/NANNETTE FARIA CONTINUED MOTION TO MODIFY PLAN
HWW-2 6-30-16 [71]

13. 16-27633-D-13 MICHAEL STINSON OBJECTION TO DEBTOR'S CLAIM OF
RDG-1 EXEMPTIONS
1-4-17 [19]

Final ruling:

This case was dismissed on February 1, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

14. 16-26642-D-13 MARGARITA COVINGTON OBJECTION TO DEBTOR'S CLAIM OF
RDG-4 EXEMPTIONS
12-30-16 [62]

Final ruling:

This case was dismissed on January 24, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

15.	11-46044-D-13	RICKY JONES AND ROSE	MOTION TO VALUE COLLATERAL OF
	CJY-5	RUBIO-JONES	REAL TIME RESOLUTIONS, INC.
			1-9-17 [116]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Real Time Resolutions, Inc. at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Real Time Resolutions, Inc.'s secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

16.	15-22253-D-13	SEAN DAVIS	MOTION TO APPROVE LOAN
	CJY-3		MODIFICATION
			1-19-17 [41]

17.	16-27657-D-13	LAUREN/DOUGLAS MILLER	OBJECTION TO CONFIRMATION OF
	RDG-1		PLAN BY RUSSELL D. GREER
			1-13-17 [23]

18.	15-27758-D-13	HAYWARD/DEBRA LEWIS	MOTION TO MODIFY PLAN
	MC-2		12-30-16 [39]

19. 16-27063-D-13 GIL/JOANNA BUSS
MJD-1

MOTION TO CONFIRM PLAN
12-27-16 [18]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

20. 16-26469-D-13 LONEY/MARY TURPIN
TAG-4

MOTION TO CONFIRM PLAN
12-29-16 [57]

Final ruling:

This is the debtors' motion to confirm an amended chapter 13 plan. The motion will be denied because the moving parties failed to serve all creditors, as required by Fed. R. Bankr. P. 2002(b). The moving parties utilized an outdated PACER matrix for service of the motion; as a result, they failed to serve two of the three creditors who have requested special notice in this case at their designated addresses, as required by Fed. R. Bankr. P. 2002(g). In addition, they failed to serve the Franchise Tax Board at its address on the Roster of Governmental Agencies, as required by LBR 2002-1(b), and they failed to serve three of the creditors on their Schedule E/F at all. They also failed to serve AT&T Retirement Savings Plan, listed on their Schedule D, at all.

As a result of these service defects, the motion will be denied and the court need not consider the issues raised by the trustee at this time. The motion will be denied by minute order. No appearance is necessary.

21. 16-26469-D-13 LONEY/MARY TURPIN
TAG-5

CONTINUED MOTION FOR ORDER
APPROVING SHORTSALE OF REAL
PROPERTY
12-28-16 [51]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

22. 16-24370-D-13 ROSARY SOTELLO
TOG-2

MOTION TO CONFIRM PLAN
12-29-16 [44]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

23. 16-27485-D-13 MONICA HERRERA
RDG-2

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
12-30-16 [24]

Final ruling:

This case was dismissed on February 1, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

24. 16-25587-D-13 MARICELA LEON
MMS-2

CONTINUED MOTION TO DISMISS
CASE
12-17-16 [49]

Final ruling:

This is the motion of Trojan Capital Investment, LLC to dismiss this chapter 13 case. The debtor filed opposition and the court continued the hearing to permit the moving party to serve the other creditors in the case, as required by Fed. R. Bankr. P. 1017(a) and 2002. The moving party has failed to serve the other creditors. As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

25. 16-25587-D-13 MARICELA LEON
MMS-3

MOTION TO CONFIRM PLAN
12-21-16 [53]

Tentative ruling:

This is the debtor's motion to confirm an amended chapter 13 plan. Trojan Capital Investment LLC ("Trojan") has filed opposition. For the following reasons, the motion will be granted.

The debtor in this case and her sister, Claudia Leon-Vanderhave, the debtor in Case No. 16-26991, reside in the same house, along with Claudia's husband, Christian Vanderhave, and their four children.¹ The family has resided in the house for 12 years. Maricela and Christian are employed; their jobs are the source of the household's income. This case, Maricela's, was filed approximately two months before Claudia's. Maricela's case started out on a bad foot. Her original Schedule I listed her gross wages as \$949 per month plus a "family contribution" of \$3,650, from which she proposed to pay the ongoing mortgage payment, \$1,967, and what, based on the relatively modest figures on Schedule J, appear to be Maricela's share of the other household expenses.

At the meeting of creditors, the trustee questioned the debtor's reported wage income because her pay advices showed income higher than \$949. The next day, the debtor filed amended Schedules I and J on which she reported her gross wage income as \$2,056, higher by \$1,107 than the amount originally reported, and lowered the "family contribution" to \$2,815, a decrease of \$835. With a corresponding increase in her tax withholdings, these changes resulted in an increase of only \$70 in Maricela's monthly net income, reported at the bottom of her Schedule J. Maricela filed an amended plan based on the amended Schedules I and J. The trustee opposed her motion to confirm that plan on the basis that she had failed to explain the significant decrease in the family contribution, which appeared to have been made for the sole purpose of offsetting the increase in Maricela's reported wage income.

As Trojan phrased it in its own opposition, the decrease "appear[ed] arbitrary and calculated to suppress the plan payment as much as legally permissible." Trojan's Opp., DN 39, at 2:15-16.2 Trojan also challenged the almost total lack of information as to the identity of the person or persons who are the source of the family contributions, their relationship to the debtor, and their ability and commitment to funding the plan.3

Unfortunately for the parties and the progress of this case, Maricela's attorney refused Trojan's attorney's request to see the debtor's bank statements for 2016 so he could verify the amount of the family contribution.4 Contrary to the position Maricela's attorney took, the financial ability and willingness of a third party to contribute to a debtor's chapter 13 plan, as often evidenced by a history of contributing to the debtor's expenses, is highly relevant to the plan's feasibility, an issue as to which the debtor has the burden of proof.

As far as the \$1,107 increase in Maricela's income reported in this case is concerned, her attorney now testifies, in reply to Trojan's opposition to the present motion, the mistake was his. He states, "[t]he debtor's income was accurately entered into the database, but I 'clicked a button,' which caused the program to 'integrate' the income as monthly, whereas the debtor was actually paid biweekly." Debtor's Resp., DN 62, at 2:3-5. The explanation is not easily understood and it is not offered under oath. However, the debtor's Form 122C-1, filed at the same time as the original schedules, shows her current monthly income (average income over the prior six months) as \$2,305 per month and her income for prior years, as listed on her statement of affairs, has been much closer to the \$2,056 now shown on her Schedule I than to the \$949 originally listed. The court concludes that the error, although it should have been caught by the debtor in the exercise of her duty to file true, complete, and accurate schedules, was inadvertent.

The debtor's original motion to confirm the amended plan was denied for service and notice defects; she now seeks again to confirm the same plan. This time, she supplemented the record with a declaration of her brother-in-law, Christian Vanderhave, Claudia's husband. He testifies he has reviewed Maricela's amended Schedules I and J and Claudia's Schedules I and J and finds they "accurately reflect the incomes and expenses of [their] extended family." C. Vanderhave Decl., DN 57, at 1:21-22. He states that when Maricela filed her case, their house was near foreclosure (apparently by Trojan, as Maricela and Claudia were current on the first when Maricela's case was filed, but for a projected escrow shortage of \$547). He states he was told Maricela needed \$3,650 per month to fund a plan that would prevent the foreclosure. He states that figure was incorrect, but he could have funded the amount in any event with help from his mother. He testifies he has used his income to support the household for 12 years and can show a 12-year history of ability to do so. He also has "a great incentive" to continue to fund both Maricela's plan and Claudia's plan so as to provide for his family. He states the family pools its resources to pay the mortgage payments, bills, and chapter 13 plan payments. He is "committed, without reservation" to making payments toward the plans in both cases for the duration of the plans and beyond.

The trustee has raised no opposition to the plan. It is also significant that Maricela and Claudia were current on the first mortgage payments at the time of filing. Given Christian's testimony about his income and the family's collective ability to service their first mortgage debt for a long period of time (the lender's proof of claim includes a promissory note dating from 2005 and a loan modification agreement in 2012), the court concludes the debtor has made a sufficient showing

that the plan is feasible. As to good faith, it is very clear that Maricela's income alone, which, since the filing of the amended Schedule I, no one has challenged, is entirely insufficient to meet her living expenses without some contribution from the other adults who live in the home; that is, she could not fund any plan payment on her own. Her expenses are modest and the court is persuaded that, as far as Maricela is concerned, the plan is proposed in good faith.

Trojan, in opposition, urges the court to consider Maricela's and Claudia's Schedules I and J together to be sure there is no overlap (the court finds none), and also contends Maricela's transportation expense, \$400, is too high; Claudia's, \$550, is also too high; and their combined expenses for telephone, cell phone, Internet, and cable, \$385, is too high. The court disagrees. Maricela lives in Tracy and works in San Francisco. Although we don't know where Christian works, we know Claudia is responsible during the day for four young children. The court finds their expenses - the challenged ones and the others - to be reasonable, if not modest.

Finally, Trojan claims it will be harmed if both plans (Maricela's and Claudia's) are confirmed but one or the other case is later dismissed. Trojan contends Maricela and Claudia need only one discharge between them to extinguish Trojan's lien against their property,⁵ and because of the earlier problems in Maricela's case (apparently a reference to the inaccuracy in her original Schedule I), the court should confirm Claudia's plan, but only if she contributes Maricela's monthly net income to the plan as well as her own, plus the amounts by which Trojan finds their transportation and telephone expenses to be excessive. The court will decline the suggestion. The court is called upon at this time only to determine whether Maricela's plan meets the requirements for confirmation. For the reasons stated, the court concludes Maricela has met her burden to demonstrate that the plan is feasible, that it has been proposed in good faith, and that the other requirements of § 1325(a) are met. Accordingly, the motion will be granted.

The court will hear the matter.

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- 1 The court will use the parties' first names for the sake of brevity; no disrespect is intended.
 - 2 Trojan holds a junior deed of trust against the residence; Maricela's motion to value Trojan's secured claim at \$0 has been granted for purposes of plan confirmation. Trojan is the only creditor aside from the senior lienholder to have filed a proof of claim and the claims bar date has run. Thus, Trojan's claim, \$111,981, is the only one that stands to be paid through the plan.
 - 3 The debtor stated in her declaration supporting her amended plan, "My income is supplemented by family members who live with me in the residence, and my co-owner's husband, who also lives in the residence." M. Leon Decl., DN 35, at 2:7-9. Aside from that cryptic sentence, the debtor provided no information about the "family contribution" or the \$835 per month decrease in it, as shown on her amended Schedule I.
 - 4 Maricela's attorney responded as follows:

The information you request is not relevant. The debtor has at no time represented that the family contribution has been made in the past, and has not represented that the contribution had been made in the form of

payments to her, or deposited to her accounts. Mortgage payment[s] have been made from the family contribution, and would not necessarily be reflected in deposits made to her bank account. The only question is whether the family contribution will be made in the future. At this time Mr. Vanderhave has other expenses which have lessened his excess cash, while he funds his wife's Chapter 13.

Exhibit to H. Paloci Decl., filed Nov. 8, 2016 as part of Trojan's Opp., DN 39. (Mr. Vanderhave's wife, Claudia, had filed her own chapter 13 petition on October 20, 2016, two weeks before Maricela's (and Claudia's) attorney responded to Trojan's attorney.)

- 5 In Trojan's view, "Discharge in either case would result in the loss of Creditor's property interest in the residence of both Debtors." Supp. Opp., DN 60, at 2:10-12. Trojan cites no authority for this proposition, but in any event, the court is called upon to consider this motion in light of Maricela's situation. She has succeeded in valuing Trojan's lien for plan confirmation purposes and has the right to seek to discharge her debt to Trojan through a chapter 13 plan, with the consequent voiding of the lien as to her interest in the property. Those are the issues that are before the court today.

26.	14-24389-D-13	ROSYLIND JASPER	MOTION TO MODIFY PLAN
	MJD-1		1-6-17 [62]

27.	16-26991-D-13	CLAUDIA LEON-VANDERHAVE	MOTION TO AVOID LIEN OF CAVALRY
	MMS-1		SPV I, LLC
			12-22-16 [44]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

28. 16-26991-D-13 CLAUDIA LEON-VANDERHAVE MOTION TO AVOID LIEN OF ASSET
MMS-2 ACCEPTANCE, LLC
12-22-16 [36]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

29. 16-26991-D-13 CLAUDIA LEON-VANDERHAVE MOTION TO AVOID LIEN OF
MMS-3 DISCOVER BANK
12-22-16 [40]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

30. 16-26991-D-13 CLAUDIA LEON-VANDERHAVE MOTION TO VALUE COLLATERAL OF
MMS-5 TROJAN CAPITAL INVESTMENT
SERVICES
12-21-16 [31]

Final ruling:

The matter is resolved without oral argument. This is the debtor's motion to value the secured claim of Trojan Capital Investment Services at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtor's residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Trojan Capital Investment Services' secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

31. 16-27693-D-13 CHARITY SEYMOUR OBJECTION TO CONFIRMATION OF
JHW-1 PLAN BY FORD MOTOR CREDIT
COMPANY, LLC
12-20-16 [19]

Final ruling:

This is the objection of Ford Motor Credit Company, LLC, to confirmation of the debtor's proposed chapter 13 plan. As the court has sustained the objection of U.S. Bank to the same plan, the court will overrule this objection as moot by minute order. No appearance is necessary.

Final ruling:

This is the objection of U.S. Bank (the "Bank") to confirmation of the debtor's proposed chapter 13 plan. The debtor has filed opposition. For the following reasons, the objection will be sustained.¹

The Additional Provisions to the debtor's proposed plan (and amended plan) begin as follows: "This plan is feasible dependent on filing an Adversary Proceeding to void 1st Mortgage. The debt has been discharged *in personam*." Chapter 11 Plan, DN 11, Add'l Provisions ("Add'l Provisions"), p. 1. As the debtor herself admits, also in the Additional Provisions to the plan (and amended plan), she filed an adversary proceeding in a chapter 7 case in 2011, and before filing that case, she had filed a federal district court action, a chapter 13 case, and a chapter 11 case. She also admits that in each of those, she alleged against her mortgage lender (the Bank's predecessor) "violations of the Truth in Lending Act, Wrongful Foreclosure, Mortgage Origination Fraud, fraudulent assignment, and ancillary issues." Id.

The federal district court action was dismissed with prejudice in June of 2010. The debtor's motion for relief from the dismissal was denied in June of 2011 and the Ninth Circuit Court of Appeals affirmed the district court's order in November of 2011. In the debtor's adversary proceeding in her chapter 7 case, this court dismissed the debtor's complaint without leave to amend in November of 2011. The Ninth Circuit Bankruptcy Appellate Panel ("BAP") affirmed this court's decision as modified in April of 2013 ² and the Ninth Circuit Court of Appeals affirmed the BAP's decision in May of 2015.

With this latest bankruptcy case, the debtor seeks exactly what she sought in her district court action and her adversary proceeding in her chapter 7 case - she seeks to extinguish the Bank's lien against her residence without paying anything to the Bank except, apparently, property taxes the Bank appears to have advanced on her behalf. The debtor has scheduled the Bank twice - on her Schedule D in the amount of \$0 with this description: "Mortgage Debt Discharged in Chapter 7 October 2011, in rem claim active" and on Schedule E/F in the amount of \$45,374.07 described as "Real Property Taxes / Escrow." The debtor's proposed plan classifies the Bank's claim as a Class 6 claim in the amount of \$45,374.07, with the notations "unclear : class 6 or 7" and "Adversary Proceeding to void First Mortgage - Pay Escrow." Debtor's proposed plan, DN 11, p. 4. The Bank, on the other hand, has submitted evidence that the Bank is owed pre-petition arrears of \$560,484. The Bank contends, and the debtor does not deny, she has made no payments in almost nine years.

The Additional Provisions to the plan center on the proposition that the debtor can do in chapter 13 what she was unable to do in chapter 7:

The 9th Circuit Bankruptcy Appellate Panel as affirmed by the 9th Circuit Court of Appeals (September 1, 2015), found that debtor lacked standing to bring an Adversary Proceeding in a Chapter 7. Debtor now intends to seek quiet title by asking the trustee and/or the court to disallow Mortgagee's claim in rem, as part of a plan to repay the property taxes improperly paid by the Mortgagee and establish quiet title to the real property listed on Schedule A. [¶] As shown in the syllabus

below it is well established that a Chapter 13 debtor may use lien avoidance provisions of bankruptcy.

Add'l Provisions, p. 1. For this proposition, the debtor quotes the syllabus prepared by the Reporter's Office of the United States Supreme Court for Johnson v. Home State Bank, 501 U.S. 78 (1991). The holding of the Court in that case was that a mortgage lien can be included in a chapter 13 plan although the debtor's personal obligation has been discharged in an earlier chapter 7 case. 501 U.S. at 80. "We hold that the mortgage lien in such a circumstance remains a 'claim' against the debtor that can be rescheduled under Chapter 13." Id.

The debtor seeks to apply the Johnson holding in this case in a way starkly different from the way it was applied in that case. In Johnson, the debtor proposed and the bankruptcy court confirmed, over the mortgage lender's objection, a chapter 13 plan under which the debtor would make payments to the lender "equal in total value to the Bank's in rem [foreclosure] judgment." Johnson, at 80-81. The only issue was whether the lender's surviving mortgage interest; that is, its right to foreclose if the debtor stopped making payments, was a "claim" subject to inclusion in a chapter 13 plan. See id. at 83. The Court reiterated the general principles that a chapter 7 discharge "extinguishes only 'the personal liability of the debtor'" and that the "creditor's right to foreclose on the mortgage survives or passes through the bankruptcy." Id.³ The Johnson decision has no application to the present situation, where the debtor proposes to pay past-due property taxes on the property, apparently to the Bank if the Bank has advanced them, but to pay no other part of the Bank's claim. Instead, she will seek to quiet title to the property in her, by asking the court to disallow the Bank's in rem claim. In fact, the Johnson decision counsels directly against that result.

Second, the debtor contends her standing to pursue her claims against the Bank - for "[loan] origination fraud, rescission, fraudulent assignment, etc." - "has been restored," and she proposes those claims "will be determined by claim, objection, and/or Adversary Proceeding." Add'l Provisions, p. 2. In support of the contention that her standing has been restored, the debtor cites "an article by John Rao National Consumer Law Center on the subject of claim preclusion following a Chapter 7. It's What You Didn't Say: Preclusion and Estoppel Doctrines In and Out of Bankruptcy. Whose Lawsuit is this? - The Problem of Standing after Bankruptcy." Add'l Provisions, p. 2. The debtor has not provided a copy of this article and the court has been unable to locate it. The court has no obligation to search for periodical material a party cites but fails to provide in full, and in any event, the article would have no binding effect on the court.

Finally, in her opposition to this and two other objections to confirmation, the debtor expands on her theory and cites two additional cases. She contends the Bank's objection to confirmation and portions of the trustee's objection "are all based on the premise that in personam debt for the first mortgage was not extinguished permanently by the §727 Discharge (October 2011) of debtor's previous Chapter 7 filing." Debtor's Response, DN 31 ("Resp."), p. 3. The court does not read either objection that way. Further, the debtor's premise - that her challenge to the Bank's in rem right to foreclose, which she freely admits is "based on the same issues raised in debtor's Chapter 7 Adversary Proceeding" (id.), is for some unknown reason simply restored in a chapter 13 case - is completely unfounded.

First, the debtor cites Free v. Malaier (In re Free), 542 B.R. 492 (9th Cir. BAP 2015), as supporting her "premise that discharged first mortgage debt in the debtor's Chapter 7 (discharged in personam) cannot be resurrected in a subsequent

Chapter 13." Resp. at p. 3. In Free, the debtors received a discharge in a chapter 7 case and then filed a chapter 13 case seeking to "strip off" two junior mortgage liens against their property under § 506(a) of the Bankruptcy Code. The trustee moved to dismiss the case, asserting that because the junior liens were wholly unsecured, the debts secured by the junior liens should be included in the debtors' total of unsecured debt and that, with those debts included, the total exceeded the chapter 13 limit. The BAP held instead that "debts for which the in personam liability was discharged in a prior chapter 7 should not be counted toward the unsecured debt limit for eligibility under § 109(e)." 542 B.R. at 497.

The Free decision does not help the debtor in this case. In Free, no one disputed that the junior liens were wholly unsecured because the amount due on the senior lien exceeded the value of the property. In the present case, the Bank holds a first-position deed of trust against the debtor's property. There is no suggestion that the lien is unsecured by virtue of the value of the property,⁴ and the debtor has suggested no other valid basis on which she could seek to invalidate the Bank's lien.

The debtor also cites HSBC Bank USA, N.A. v. Blendheim (In re Blendheim), 803 F.3d 477 (9th Cir. 2015), which, factually, comes closer to the debtor's situation but does not carry the day for her. In that case, the debtors received a chapter 7 discharge and then filed a chapter 13 case. In the chapter 13, the debtors objected to the claim filed by the holder of the first lien against their property, contending their copy of the promissory note appeared to bear a forged signature. When the mortgage lender did not respond, the court sustained the objection and disallowed the claim. The debtors then filed an adversary complaint to void the lender's lien under § 506(d), which provides, with exceptions not relevant in Blendheim or here, "[t]o the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void." § 506(d). The debtors contended that because the lender's claim had been disallowed, it was no longer an "allowed secured claim," and thus, the lien could be avoided.

At the initial hearing in the adversary proceeding, the court advised the lender to take action to address the order disallowing its claim. A year later, when the lender had still taken no action, the court again advised it to file a motion to set aside the order disallowing the claim. The lender finally filed such a motion, alleging mistake, excusable neglect, and so on. However, the court found none of those had been demonstrated, adding that the lender "'ha[d] not provided any rationale for waiting nearly 18 months after entry of the [disallowance order] to request reconsideration.'" Blendheim, 803 F.3d at 482 (quoting the bankruptcy court). As a result, the court denied the lender's motion. The debtors then moved for summary judgment and the lender responded that it would be unfair to void the lien after the claim was disallowed for "mere failure to respond." Id. The bankruptcy court found, however, that the lender had simply "slept on its rights" and that § 506(d) required that the lien be voided.⁵ The Ninth Circuit affirmed, holding that the facts "present[ed] a straightforward application of § 506(d)'s textual command." Id. at 491.

Here, it is undisputed that HSBC's claim was not allowed. Although HSBC filed a proof of claim, the bankruptcy court expressly disallowed the claim after the Blendheims objected and HSBC failed to respond. [The bankruptcy court held that] if a claim is disallowed, then under § 506(d) and consistent with Dewsnup, the claim's associated lien is void. We agree. Although voiding HSBC's lien upon disallowance may seem a harsh consequence, we find that Congress directed such an outcome under §

506(d). Because HSBC's claim was disallowed, § 506(d) leaves HSBC with "a claim against the debtor that is not an allowed secured claim," and therefore its lien is void.

Id. at 490 (citing Dewsnup v. Timm, 502 U.S. 410 (1992)).

The Blendheim decision does not help the debtor in the present case for the simple reason that the Bank's secured claim - that is, that portion of its "bundle of rights" that permits it to foreclose on the property if it is not paid - has not been disallowed. True, the debtor's personal liability to the Bank has been discharged - it is extinguished. However, the "creditor's right to foreclose on the mortgage survives or passes through the bankruptcy.'" Johnson, 501 U.S. at 83. The debtor does not propose to pay the Bank an amount equal to the Bank's in rem claim, as in Johnson. Nor can she "strip off" the Bank's lien under § 506(a), as in Free, or void the Bank's lien based on disallowance of its filed secured claim, as in Blendheim. As the BAP quoted from the Johnson decision,

The Court of Appeals thus erred in concluding that the discharge of petitioner's personal liability on his promissory notes constituted the complete termination of the Bank's claim against petitioner. Rather, a bankruptcy discharge extinguishes only one mode of enforcing a claim - namely, an action against the debtor in personam - while leaving intact another - namely, an action against the debtor in rem.

Free, 542 B.R. at 497, quoting Johnson, 501 U.S. at 84.

The debtor in this case has already had her bite at the apple - in fact, she has had two, both of which she has taken all the way to the Ninth Circuit. Whereas the debtors in Blendheim prevailed on their claim objection based on an allegedly forged promissory note, the debtor failed in her similar challenges. Her standing to pursue her claims against the Bank for violations of the Truth in Lending Act, wrongful foreclosure, and so on has not been magically revived simply because she has filed a chapter 13 case. The debtor failed to schedule those claims in her chapter 7 case; thus, the claims remain property of the estate in that case, even though the case is closed. § 554(d); Cheng v. K&S Diversified Invs., Inc. (In re Cheng), 308 B.R. 448, 461 (9th Cir. BAP 2004) ["Property of the estate that is not scheduled or otherwise administered by the time the case is closed remains property of the estate forever."].

For the reasons stated, the court concludes the debtor has no standing to challenge the Bank's in rem rights; that is, its right to foreclose on its collateral if it is not paid, and therefore, that her chapter 13 plan, which proposes to make just such a challenge, cannot be confirmed. The proposed plan violates § 1325(a)(5) and is not proposed in good faith, as required by § 1325(a)(3). Accordingly, the Bank's objection will be sustained by minute order. The Bank's request in its objection to confirmation that the case be dismissed with a 180-day bar to refiling has not been properly raised and the court will not consider it at this time. No appearance is necessary.

1 On January 31, 2017, after she had filed her response to this and two other objections to confirmation, the debtor filed a Motion to Confirm First Amended Chapter 13 Plan, together with a notice of motion and declaration. The next day, she filed an amended plan. However, the Bank's treatment is essentially the same in the two plans; thus, the amended plan does not moot the present

objection.

- 2 This court had dismissed the debtor's adversary complaint on four different grounds. The BAP modified this court's order to clarify that the dismissal was based on one of those grounds - the debtor's lack of standing to pursue the claims.
- 3 Even after the debtor's personal obligations have been extinguished, the mortgage holder still retains a 'right to payment' in the form of its right to the proceeds from the sale of the debtor's property. Alternatively, the creditor's surviving right to foreclose on the mortgage can be viewed as a 'right to an equitable remedy' for the debtor's default on the underlying obligation. Either way, there can be no doubt that the surviving mortgage interest corresponds to an 'enforceable obligation' of the debtor.

Johnson, 501 U.S. at 84.

- 4 The debtor appears to acknowledge there are \$45,374 in property taxes owed against the property; she has scheduled the property's value at \$300,000.
- 5 The bankruptcy court determined that the lender's argument "would just blue pencil 506(d) right out of the equation." Id.

33. 16-27693-D-13 CHARITY SEYMOUR OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
1-13-17 [28]

Final ruling:

This is the trustee's objection to confirmation of the debtor's proposed chapter 13 plan. As the court has sustained the objection of U.S. Bank to the same plan, the court will overrule this objection as moot by minute order. No appearance is necessary.

34. 12-33998-D-13 PATRICK FERNANDEZ MOTION TO MODIFY PLAN
JCK-4 12-22-16 [83]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

35. 16-27799-D-13 ROMEO PARDILLA OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
1-13-17 [17]

Final ruling:

Objection withdrawn by moving party. Matter removed from calendar.

36. 15-00203-D-0 OPUS WEST CORPORATION
RCH-1

CONTINUED ORDER ON MOTION FOR
EXAMINATION
10-13-16 [11]

CLOSED: 12/07/2015