UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 16, 2016 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 19. 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 MARCH 21, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY FEBRUARY 7, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 14, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 20 THROUGH 25 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 FEBRUARY 29, 2016, AT 2:30 P.M.

Matters to be Called for Argument

1. 12-37501-A-13 RAC-2 — BOBBY JOHNSON AND VALERIE CALLEN — MOTION TO MODIFY PLAN 12-31-15 [58]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $2,875 is less than the $2,992.17 in dividends and expenses the plan requires the trustee to pay each month.

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

2. 15-27903-A-13 DPR-1 — ROXANNE DYER — MOTION TO CONFIRM PLAN 1-4-16 [30]

- ☐ 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 $6,871.18 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, even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the post-petition arrears owed to Cenlar on its Class 1 home loan claim. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

Third, to pay the dividends required by the plan at the rate proposed by it will take 68 months which exceeds the maximum 5-year duration permitted by 11

U.S.C. § 1322(d).

3. 15-28604-A-13 ANN-MARIE SCOTT — MOTION TO VALUE COLLATERAL
RS-1
VS. BENEFICIAL CALIFORNIA, INC. — 2-2-16 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $382,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by WMC Mortgage Corp. The first deed of trust secures a loan with a balance of approximately $394,400 as of the petition date. Therefore, Beneficial California'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 $382,000. 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).

4. 11-46006-A-13 MICHELE STAMAS — MOTION TO VACATE DISMISSAL OF CASE 2-1-16 [47]
SDH-2

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be denied.

This case was dismissed on January 11, 2016 pursuant to the procedure authorized by Local Bankruptcy Rule 3015-1(g).
Through December 2, 2015, the debtor failed to make plan payments totaling

$3,306. This prompted the trustee to issue a notice of default pursuant to Local Bankruptcy Rule 3015-1(g). It noted this default and also demanded the additional $1,653 due on December 26, a total amount of $4,959.

This notice of default procedure, as authorized by Local Bankruptcy Rule 3015-1(g), 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 did nothing. She did not pay the amount in default, she did not propose a modified plan, and she did not contest the existence of a default. As a result, on January 7 the trustee asked that the case and the court signed a dismissal order on January 11.

On February 1, the debtor moved to vacate the dismissal. However, the motion does not establish that the debtor complied with the Notice of Default procedure and that her case should not have been dismissed. Instead, she argues that she now has the ability to cure the default.

This is not sufficient to vacate the dismissal. The debtor received notice of a default and the consequence that would result if that default was not disprove, cured, or dealt within in a modified plan. The debtor received the notice of default but did nothing. If she experienced a temporary interruption

in income, she should have used the time permitted by the notice of default procedure to modify plan and change the amount and/or frequency of the plan payments. She did not do so timely and it is now too late.

Consequently, the plan was in default and there was cause for dismissal of the case. There is no good cause to vacate the dismissal.

5. 15-29111-A-13 ERWIN/MARY ANN SANTOS — ORDER TO SHOW CAUSE 1-28-16 [22]

- ☐ 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 January 25 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

6. 16-20316-A-13 GRANT PARKISON — MOTION TO EXTEND AUTOMATIC STAY 1-29-16 [11]
MOH-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be denied.

This is the second bankruptcy case filed by the debtor. A prior case was filed on August 20, 2013. It began under chapter 13 but was voluntarily converted to one under chapter 7. That case is pending – it was not dismissed.

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

As indicated above, while the debtor filed a prior case that was pending within one year of this case, it was not dismissed. Hence, section 362(c)(3) is not applicable.

7. 15-29535-A-13 DAVID STONE
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN
1-28-16 [15]

- ☐ 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.

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

Second, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $3,176 is less than the $3,975 in dividends and expenses the plan requires the trustee to pay each month.

Third, to pay the dividends required by the plan at the rate proposed by it will take 602 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, Form 22 has not been completed in its entirety even though the debtor's current monthly income exceeds the state average, the debtor has not completed Schedule H even though a nonfiling spouse is co-liable on at least some of the scheduled debts, and the debtor failed to complete Schedules I and J in their entirety by including a detailed statement of the debtor's business income and expenses. These nondisclosures are 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).

Fifth, 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, Nationstar, 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).

If Nationstar has agreed to a modification, its secured claim is misclassified in Class 1. That class is reserved for long term claims not modified by the plan. Such claims receive their ongoing contract installment payment and any arrears are cured. See 11 U.S.C. § 1322(b)(2) and (b)(5). If Nationstar has not agreed to the modification and will not be paid its ongoing contract claim but will receive a different amount, its secured claim belongs in Class 2. And, because the claim is being modified, the entire claim, including unmatured

principal, must be paid in full through the plan. The only debt that can be permitted to remain long term debt is debt that is not modified by the chapter 13 plan. As long as the plan is only curing an arrearage, the long term debt may continue beyond the length of the plan and be classified in Class 1. See 11 U.S.C. § 1322(b)(3) & (5). Whenever a long term debt is modified prospectively in a chapter 13 case, such as by changing its interest rate or future installments, the entire claim must be paid during the chapter 13 case as a Class 2 claim. See 11 U.S.C. §§ 1322(d) and 1325(a)(5). See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004).

8. 15-29648-A-13 TERI TAYLOR — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 1-28-16 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Santander in order to strip down or strip off its secured claim from its collateral. No such motion has been filed, served, and granted. Absent a successful motion the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

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

9. 15-29648-A-13 TERI TAYLOR
APN-1
SANTANDER CONSUMER USA, INC. VS.

OBJECTION TO
CONFIRMATION OF PLAN
1-21-16 [13]

- ☐ 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.

To the extent the objection to the confirmation of a plan actually objects to the valuation of the vehicle securing the creditor's claim, the objection will be overruled. The valuation motion is not before the court.

However, this plan cannot be confirmed because the debtor has valued to move to value the vehicle before or simultaneously with the deadline for confirmation. Consequently, because the debtor has not established the value of the vehicle, the debtor cannot prove that the proposed plan will pay the creditor's secured claim in full as required by 11 U.S.C. § 1325(a)(5)(B).

Second, the debtor has failed to provide evidence that the vehicle is insured, as required by 11 U.S.C. § 1326(a)(4). See Local Bankruptcy Rule 3015-1(b)(3) & Proposed Chapter 13 Plan, § 5.02.

10. 14-25254-A-13 WENDY YOSKOWITZ
MRL-1

MOTION FOR
SANCTIONS
1-11-16 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The respondent creditor filed and served a state court collection complaint before the bankruptcy was filed. The debtor then filed this bankruptcy case, gave notice of its filing to the creditor, and the creditor filed its proof of claim.

In state court, the creditor's attorney, after receiving notice of the bankruptcy case, filed a Notice of Stay of Proceedings. If the debtor had appeared in the state court matter, she would have filed the Notice as required by Cal. Rule of Court 3.650(a) which provides: "The party who requested or caused a stay of a proceeding must immediately serve and file a notice of the stay. . . ." Because the debtor had not appeared in the state court action, it was incumbent on the creditor as the plaintiff to advise the state court of the automatic stay created by the filing of the petition.

The court finds no violation of the automatic stay arising from the filing of the notice.

Further, Cal. Rule of Court 3.722 requires the state court to set an initial case management conference to review every case. The creditor/plaintiff did not set the conference, the state court set the conference. The setting of the conference then triggered an obligation on the part of the creditor/plaintiff to file a case management statement. The creditor did so here and the debtor maintains that by doing so it violated the automatic stay. See 11 U.S.C. § 362(a). The court disagrees. The statement filed by the creditor again disclosed that the bankruptcy was pending, that the action was thereby stayed, and asked the court to hold the action in abeyance until the conclusion of the bankruptcy. In short, the creditor did nothing more than maintain the status quo and derived no advantage over the debtor in the state court matter.

11. 15-29461-A-13 SUKHPAULSINGH HUNDAL
FRB-1

MOTION TO DISMISS OR TO CONVERT CASE TO CHAPTER 7
12-29-15 [29]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part and the case will be dismissed. The request for an injunction barring the debtor from filing another case for 180-days will be denied.

The movant is secured by several Volvo tractors with an aggregate value of $660,000. The movant is owed in excess of $900,000. When it financed the purchase of the tractors, they were owned by a separate corporation, HTL. While the debtor, an insider of HTL, lists the tractors as his assets, the schedules admit they have no net value.

No reorganization is imminent in this case. The under-secured amounts owed to nominally secured creditors as stated by the debtor on Schedule D, the priority claims on Schedule E, and the nonpriority unsecured claims listed on Schedule F, there are unsecured claims well in excess of $400,000, an amount that makes the debtor ineligible for chapter 13 relief. See 11 U.S.C. § 109(e). This result is made even more inescapable when one includes the debtor's personal guaranty of the amounts owed by HTL to the movant. That guaranty is unsecured.

To the extent the creditor wishes the court to bar the debtor from refiling another petition, such relief requires prosecution of an adversary proceeding and such has not been filed. See Fed. R. Bankr. P. 7001(7); see also Johnson v. TRE Holdings LLC (In re Johnson), 346 B.R. 190, 195 (B.A.P. 9th Cir. 2006) (discussing in rem relief under section 105 and the necessity for an adversary proceeding when determining an interest in property).

12. 15-29461-A-13 SUKHPAULSINGH HUNDAL

COMMERCIAL CREDIT GROUP, INC. VS.

OBJECTION TO CONFIRMATION OF PLAN AND TO DISMISS OR CONVERT CASE
1-7-16 [44]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection to confirmation and the motion to dismiss will be dismissed because it is moot. The case will be dismissed pursuant to the original motion of Commercial Credit.

13. 15-29461-A-13 SUKHPAULSINGH HUNDAL
HRH-1
BMO HARRIS BANK N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
2-1-16 [65]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

The movant is secured by 6 utility trailers with a combined value of approximately $123,000. The debtor lists these trailers in the schedules as having no value. The movant is owed in excess of $100,000.

The debtor has come forward with no proof that the trailers are necessary to his reorganization. Given that the debtor is not eligible for chapter 13 relief, as explained in the ruling on the motion to dismiss the case, FRB-1, no reorganization is likely to be successful.

The motion establishes that the debtor has not making contract or adequate protection payments since the bankruptcy case was filed as required by 11 U.S.C. § 1326(a)(1)(C).

Further, the debtor has failed to provide evidence that the trailers are insured, as required by 11 U.S.C. § 1326(a)(4).

Therefore the motion will be granted pursuant to both 11 U.S.C. § 362(d)(1) to permit the movant to repossess and to obtain possession of its personal property security, and to dispose of it in accordance with applicable nonbankruptcy law.

The 14-day stay of Fed. R. Bankr. R. 4001 will be waived.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9th Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred.

If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed $750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of $750.

14. 15-29461-A-13 SUKHPAULSINGH HUNDAL — OBJECTION TO CONFIRMATION OF PLAN 1-28-16 [58]
JPJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be dismissed because it is moot. The case will be dismissed pursuant to the motion of Commercial Credit.

15. 15-29487-A-13 ALFONSO/CAMMIE MACIEL — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 1-28-16 [19]
JPJ-1

- ☐ 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.

First, the debtor has failed to commence making plan payments and has not paid approximately 1,300 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, to pay the dividends required by the plan at the rate proposed by it will take 68 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor has not disclosed income earned in 2013, 2104, and 2015 in response to Question 4 on the Statement of Financial Affairs. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See

11 U.S.C. § 1325(a)(3).

Fourth, the debtor has failed to give the trustee additional financial records concerning the debtor's earned income in 2015. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). 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).

Until the debtor has provided the wage information requested by the trustee, it is premature to address the trustee's objection that the plan does not comply with 11 U.S.C. § 1325(b).

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

16. 15-29587-A-13 MICHAEL/CYNTHIA ORTIZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 1-28-16 [24]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the case will be dismissed.

First, the debtor twice failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

Second, the debtor has failed to commence making plan payments and has not paid approximately $3,650 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Third, the plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay unsecured creditors nothing even though Form 22 shows that the debtor will have $92,176.80 in projected disposable income over the next five years.

Fourth, the plan's feasibility depends on the debtor successfully prosecuting motions to value the collateral of Ally Financial and JPMorgan Chase 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."

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. 15-29587-A-13 MICHAEL/CYNTHIA ORTIZ — OBJECTION TO CONFIRMATION OF PLAN
SW-1
ALLY FINANCIAL VS. — 1-12-16 [14]

- ☐ 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 and to the extent explained in trustee's objection to valuation. The court does not determine the value of the vehicle.

18. 15-29687-A-13 LAURENCE KRAUSE — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 1-28-16 [18]

- ☐ 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.

First, the debtor has failed to make $1,049 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 does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $33,678.20 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only $5,176.31 to unsecured creditors.

19. 15-25595-A-13 DEAN KASSUBE — MOTION TO CONFIRM PLAN 9-11-15 [30]
PGM-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan fails to provide for the priority tax claim of the IRS in the amount fo $431,582.14. As a result, the plan does not comply with 11 U.S.C. § 1322(a)(2).

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $10,100 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay nothing to unsecured creditors.

Third, if the debtor provides for payment of the IRS's priority tax claim and its secured claim, it will take more than 60 months to complete the plan. This exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Finally, the plan provides for the IRS's secured claim in Class 4. Because the claim is for delinquent taxes, it must be paid in Class 2 absent the affirmative consent of the IRS. The Class 4 claim will not be paid during the pendency of the plan even though this claim is not a long term claim and was in default when the case was filed.

THE FINAL RULINGS BEGIN HERE

20. 15-28646-A-13 LESLIE SAWYER — OBJECTION TO EXEMPTIONS
JPJ-2 — 12-24-15 [37]

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

The objection will be dismissed as moot.

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

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

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

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

Here, the debtor is asserting the exemptions of Cal. Civ. Proc. Code § 703.140(b), which require a spousal waiver. That waiver was not filed with the petition. It was filed, however, after the trustee's objection was filed. That objection, therefore, is moot.

21. 15-22663-A-13 MELINDA LACUSKY — OBJECTION TO CLAIM
JPJ-2
VS. CAVALRY SPV I, L.L.C. — 12-15-15 [51]

Final Ruling: This objection to the proof of claim of Cavalry SPV I, L.L.C., has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court

will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on March 3, 2009. Therefore, using this date as the date of breach, when the case was filed on April 1, 2015, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

22. 15-26773-A-13 DEMAR RICHARDSON — OBJECTION TO CONFIRMATION OF PLAN
JAA-1
OCWEN LOAN SERVICING, LLC VS. — 1-13-16 [49]

Final Ruling: The objection will be dismissed as moot. The objection is both late and moot. The court considered confirmation of the plan on January 19. This objection should have been filed by January 5 as opposition to the debtor's motion to confirm a plan, CA-1. Further, the court denied confirmation. See Docket #53.

23. 15-28586-A-13 JOE BAKER — OBJECTION TO EXEMPTIONS
JPJ-2 — 12-24-15 [26]

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

The objection will be sustained.

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

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

11 U.S.C. § 522(b)(1) permits the states to opt out of the federal exemption

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

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

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

24. 15-28294-A-13 CHARLES HOWSON — MOTION TO CONFIRM PLAN
MRL-1 — 12-18-15 [36]

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

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

25. 15-29696-A-13 ANDRE LOPEZ AND JENNIFER CAVALIER-LOPEZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 1-28-16 [37]

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

The objection will be dismissed as moot but the motion to dismiss the case will be conditionally denied.

The objection pertains to the original plan proposed by the debtor. The debtor has since proposed a modified plan that will be considered by the court on March 7. To the extent the trustee may object to the modified plan, he should file opposition to the debtor's motion to confirm the modified plan.

Because the initial plan proposed by the debtor was not confirmable and was abandoned by the debtor, 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.