UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 2, 2018 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 17. 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 JULY 30, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 16, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 23, 2018. 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 18 THROUGH 25 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 JULY 16, 2018, AT 2:30 P.M.

Matters to be Called for Argument

1. 18-22031-A-13 CHARLES/SANDRA INDARA — MOTION TO CONFIRM PLAN
GEL-1 — 5-17-18 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $2,663 is less than the $2,928.70 in dividends and expenses the plan requires the trustee to pay each month.

2. 17-23539-A-13 MELVIN/ESTELLE HILLIER — MOTION TO MODIFY PLAN
NF-1 — 5-15-18 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor failed to utilize the court's mandatory form plan as required by Local Bankruptcy Rule 3015-1(a) (effective on and after December 1, 2017, in all cases regardless when filed).

3. 18-22943-A-13 RACHEL BROWN ROCHESTER — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 6-13-18 [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, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor has not appended a detailed statement of business receipts and expenses to Schedules I/J. 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).

Second, the debtor has failed to give the trustee financial records for a closely held business. 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).

Third, the debtor has not satisfied the burden of proving that the plan will pay unsecured creditors the present value of the dividend they would receive in a chapter 7 liquidation. See 11 U.S.C. § 1325(a)(4).

4. 18-22943-A-13 RACHEL BROWN ROCHESTER — OBJECTION TO CONFIRMATION OF PLAN
AP-1
OCWEN LOAN SERVICING, L.L.C. VS. — 6-14-18 [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.

The plan misclassifies a home loan that is in default as a Class 4 claim. Class 4 is reserved for long term secured claims not in default and not modified by the plan. The subject claim was in default when the case was filed. The failure to cure this default is a violation of the anti-modification provision in 11 U.S.C. § 1322(b)(2) and a violation of 11 U.S.C. § 1325(a)(5)(B) which requires secured claims provided for by a plan be paid in full.

5. 18-22944-A-13 DARRIN/DEZIREE SUTLIFF — OBJECTION TO CONFIRMATION OF PLAN
CJO-1
CENLAR F.S.B. VS. — 6-14-18 [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.

The plan misclassifies a home loan that is in default as a Class 4 claim. Class 4 is reserved for long term secured claims not in default and not modified by the plan. The subject claim was in default when the case was filed. The failure to cure this default is a violation of the anti-modification provision in 11 U.S.C. § 1322(b)(2) and a violation of 11 U.S.C. § 1325(a)(5)(B) which requires secured claims provided for by a plan be paid in full.

6. 18-22856-A-13 CHERYL ALLEN
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
6-13-18 [13]

- ☐ 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 conditionally denied. The request by the debtor for a continuance will be denied.

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

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 60 days, the case will be dismissed on the trustee's ex parte application.

7. 18-22357-A-13 LEONEL/LISA LAXAMANA
BLG-1
VS. AMERICAN EXPRESS BANK, F.S.B.

MOTION TO AVOID JUDICIAL LIEN
5-30-18 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The requirements for lien avoidance under 11 U.S.C. § 522(f) are as follows: (1) there must be an exemption to which the debtor "would have been entitled" under subsection (b) of section 522; (2) the property must be listed on the debtor's schedules and claimed as exempt; (3) the lien at issue must impair the claimed exemption; and (4) the lien must be either a judicial lien or another type of lien specified by the statute. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

The debtor has not established his entitlement to the claimed exemption. It is not enough that the debtor claimed the exemption and it has been allowed because no one objected. If the debtor wishes to avoid a judicial lien, the debtor must establish that the debtor is actually entitled to the exemption. Accord Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D.

Cal. 1992).

The debtor has claimed an exemption of $175,000 in the subject property. The exemption, according to the Schedule C filed on May 3, 2018, is pursuant to Cal. Civ. Pro. Code § 704.200. That section, however, is for cemetery plots. The property in question is a single family home in Vallejo.

Presumably, the debtor meant to claim an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3), which provides that:

"(a) The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars ($25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars ($35,000) and the sale is an involuntary sale."

The debtor's declaration in support of this motion not mention anything about the exemption and the debtor's entitlement to it. The declaration does not establish that the debtor is 65 years of age or older, or that the debtor is at least 55 years of age with income of less than $25,000, or that the debtor is disabled. Thus, even if this exemption had been claimed, this motion does not establish any of the other conditions specified in Cal. Civ. Pro. Code § 704.730(a)(3)(B) & (C).

8. 18-22357-A-13 LEONEL/LISA LAXAMANA — MOTION TO AVOID JUDICIAL LIEN
BLG-2
VS. NANCY HOLDINGS CORP. — 5-30-18 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The requirements for lien avoidance under 11 U.S.C. § 522(f) are as follows: (1) there must be an exemption to which the debtor "would have been entitled" under subsection (b) of section 522; (2) the property must be listed on the debtor's schedules and claimed as exempt; (3) the lien at issue must impair the claimed exemption; and (4) the lien must be either a judicial lien or another type of lien specified by the statute. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

The debtor has not established his entitlement to the claimed exemption. It is not enough that the debtor claimed the exemption and it has been allowed because no one objected. If the debtor wishes to avoid a judicial lien, the debtor must establish that the debtor is actually entitled to the exemption. Accord Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992).

The debtor has claimed an exemption of $175,000 in the subject property. The exemption, according to the Schedule C filed on May 3, 2018, is pursuant to Cal. Civ. Pro. Code § 704.200. That section, however, is for cemetery plots. The property in question is a single family home in Vallejo.

Presumably, the debtor meant to claim an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3), which provides that:

"(a) The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars ($25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars ($35,000) and the sale is an involuntary sale."

The debtor's declaration in support of this motion not mention anything about the exemption and the debtor's entitlement to it. The declaration does not

establish that the debtor is 65 years of age or older, or that the debtor is at least 55 years of age with income of less than $25,000, or that the debtor is disabled. Thus, even if this exemption had been claimed, this motion does not establish any of the other conditions specified in Cal. Civ. Pro. Code § 704.730(a)(3)(B) & (C).

9. 18-22357-A-13 LEONEL/LISA LAXAMANA — MOTION TO AVOID JUDICIAL LIEN
BLG-3
VS. AMERICAN EXPRESS BANK, F.S.B. — 5-30-18 [31]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The requirements for lien avoidance under 11 U.S.C. § 522(f) are as follows: (1) there must be an exemption to which the debtor "would have been entitled" under subsection (b) of section 522; (2) the property must be listed on the debtor's schedules and claimed as exempt; (3) the lien at issue must impair the claimed exemption; and (4) the lien must be either a judicial lien or another type of lien specified by the statute. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

The debtor has not established his entitlement to the claimed exemption. It is not enough that the debtor claimed the exemption and it has been allowed because no one objected. If the debtor wishes to avoid a judicial lien, the debtor must establish that the debtor is actually entitled to the exemption. Accord Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992).

The debtor has claimed an exemption of $175,000 in the subject property. The exemption, according to the Schedule C filed on May 3, 2018, is pursuant to Cal. Civ. Pro. Code § 704.200. That section, however, is for cemetery plots. The property in question is a single family home in Vallejo.

Presumably, the debtor meant to claim an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3), which provides that:

"(a) The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability

is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars ($25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars ($35,000) and the sale is an involuntary sale."

The debtor's declaration in support of this motion not mention anything about the exemption and the debtor's entitlement to it. The declaration does not establish that the debtor is 65 years of age or older, or that the debtor is at least 55 years of age with income of less than $25,000, or that the debtor is disabled. Thus, even if this exemption had been claimed, this motion does not establish any of the other conditions specified in Cal. Civ. Pro. Code § 704.730(a)(3)(B) & (C).

10. 18-21658-A-13 CECILIA BETKER — MOTION TO CONFIRM PLAN 5-10-18 [20]
JGD-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan assumes that the monthly contract installment on the Class 1 secured claim is $1,795.55 even though the creditor demands $2,459.62, and that the arrears on the claim are $21,546.60 even though the creditor demands $50,602.31. At this larger amounts, the plan either is not feasible or it will not pay the objecting secured claim in full as required by 11 U.S.C. §§ 1322(b)(2) and 1325(a)(5)(B). See 11 U.S.C. § 1325(a)(6).

Second, with the higher monthly installment due on the Class 1 claim, the monthly plan payment will not be sufficient to pay all required dividends and expenses. In months 1 through 3, the monthly plan payment of $2,375 is less than the $3,078.21 in dividends and expenses. In months 4 through 60, the monthly plan payment of $2,600 is less than the $3,280.13 in dividends and expenses.

Third, 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). Because the debtor has failed to make timely plan payments in April and May, the trustee was unable to pay the ongoing contract installment due on the Class 1 home loan claim. The proposed plan, however, does not provide for a cure of these arrears. 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).

Fourth, counsel for the debtor has opted to receive fees pursuant to Local Bankruptcy Rule 2016-1 rather than by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. However, the rights

and responsibilities agreement executed and filed indicates that counsel has received %$3,190 in fees. The plan, on the other hand, requires payment of an additional $600. Therefore, the provision in the proposed plan requiring the trustee to pay the fees contradicts the agreement with the debtor.

Fifth, 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 $435.56 but Form 122C shows that the debtor will have $7,527 over the next five years.

11. 18-21064-A-13 VIKASH SHARMA — MOTION TO CONFIRM PLAN 5-22-18 [43]
SLE-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan provides for the objecting creditor's secured claim in Class 2A. Class 2A claims are paid in full through the plan. The debtor estimates the claim to be $195,914.76 and proposes to pay the claim in 60 months at a rate of $3,265.25 a month with no interest accruing on the principal. This claim is secured only by the debtor residence. The claim matured contractually on March 19, 2018, approximately three weeks after the bankruptcy case was filed.

To the extent the objecting creditor asserts that its claim cannot be modified because it is secured only by the debtor's home, this objection will be overruled. That is, the creditor asserts that 11 U.S.C. § 1322(b)(2) prevents the debtor from modifying its claim. The debtor is limited to paying the claim in full as calculated under the note and applicable nonbankruptcy law.

However, the anti-modification provision of section 1322(b)(2) does not apply here, because the creditor's claim has matured. Therefore, 11 U.S.C. § 1322(c) is applicable and it provides that "notwithstanding [section 1322](b)(2) . . . in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5)." Consequently, the plan may reamortize the loan and/or modify the contractual interest rate.

The problem is that the proposed treatment does not satisfy 11 U.S.C. § 1325(a)(5). It provides no interest. And, because the plan provides for payment of the claim over 5 years, it must provide for interest on the claim. It provides for none. This violates section 1325(a)(5)(B)(ii) which requires that the plan payments provide the secured creditor with "the value, as of the effective date of the plan, . . . not less the allowed amount of such claim. In other words, if the claim is not paid in full immediately upon confirmation of the plan, the plan must provide in interest on the claim. A dollar paid immediately is not equivalent to a dollar paid in 60 monthly installments unless interest accrues on the declining balance.

To the extent the creditor disagrees with the plan's estimate of the amount of its claim, the objection will be overruled. The plan provides: "1.04. Valuation of collateral and lien avoidance requires a separate motion. The confirmation of this plan will not limit the amount of a secured claim based on a valuation of the collateral for the claim, nor will it avoid a security interest or lien. This relief requires a separate claim objection, valuation

motion, or lien avoidance motion that is successfully prosecuted in connection with the confirmation of this plan." In short, the creditor must be paid what it demands in its claim unless the debtor successful prosecutes an objection or valuation motion.

Creditor TD Auto Finance's objection to the treatment of its Class 2A claim is sustained in part. The plan provides for the payment of the claim in 60 monthly installments of $924.20. Interest will accrue on this claim, which is secured by a 2013 Ford F350 truck, at the rate of 4.20%.

As of June 19, the Wall Street Journal reports the current prime rate 5.00%. The court takes judicial notice of the current rate. Hence, the plan proposes a discount on prime of .80%.

The Supreme Court decided in Till v. SCS Credit Corp., 124 S.Ct. 1951 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987).

To set the appropriate rate, the court is required to conduct an "objective inquiry" into the appropriate rate. However, the debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

As surveyed by the Supreme Court in Till, courts using the formula approach typically have adjusted the interest rate 1% to 3%. The debtor's proposed rate of 3.5% gives a 1.00% discount on prime. It states the obvious that a discount on prime does not satisfy Till and does not comply section 1325(a)(5)(ii).

12. 18-22870-A-13 SAMANTHA SHAFFNER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-14-18 [22]

- ☐ 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 conditionally denied.

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of GMAC Motors 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 60 days, the case will be dismissed on the trustee's ex parte application.

13. 18-22872-A-13 VALENTINA MORGAN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-13-18 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

Second, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Santander Consumer 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 60 days, the case will be dismissed on the trustee's ex parte application.

14. 18-23686-A-13 EVELINA TSVETANOVA — MOTION TO EXTEND AUTOMATIC STAY
MDA-1 — 6-15-18 [8]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be denied.

This is the second chapter 13 case filed by the debtor. A prior case was dismissed within one year of the filing of the current case. It was dismissed two days before this case was filed. The dismissal was at the trustee's request because the debtor was unable to maintain the payments required by a confirmed plan.

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

Section 362(c)(3)(B) allows a debtor to file a motion requesting the continuation of the stay. A review of the docket reveals that the debtor has filed this motion to extend the automatic stay before the 30th day after the filing of the petition. The motion will be adjudicated before the 30-day period expires.

In order to extend the automatic stay, the party seeking the relief must demonstrate that the filing of the new case was in good faith as to the creditors to be stayed. For example, in In re Whitaker, 341 B.R. 336, 345 (Bankr. S.D. Ga. 2006), the court held: "[T]he chief means of rebutting the presumption of bad faith requires the movant to establish 'a substantial change in the financial or personal affairs of the debtor . . . or any other reason to conclude' that the instant case will be successful. If the instant case is one under chapter 7, a discharge must now be permissible. If it is a case under

chapters 11 or 13, there must be some substantial change."

Here, it appears that the debtor was unable to maintain plan payments in the first case. This motion does not establish that the debtor will be any more successful in this case. The motion states only that the debtor failed to make all plan payments in the prior case "due to circumstances beyond" the debtor fell behind with her plan payments and "this contributed to [the debtor's] unknowing and unintentional failure to fulfill [her] duties. . . ." This does not explain the failure to make payments nor does it establish a likelihood of success in this case. The court cannot conclude that this case is more apt to succeed.

15. 18-22988-A-13 MARTHA ROCHA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-13-18 [14]

- ☐ 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 conditionally denied.

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

Second, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $545.20 is less than the $952.78 in dividends and expenses the plan requires the trustee to pay each month.

Third, in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The withholding of this financial information from the trustee is a breach of the duties imposed upon the debtor by 11 U.S.C. § 521(a)(3) & (a)(4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

Finally, 11 U.S.C. § 521(e)(2)(B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case

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

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 60 days, the case will be dismissed on the trustee's ex parte application.

16. 18-22889-A-13 SHEILA FRANCOIS — ORDER TO SHOW CAUSE 6-13-18 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will remain pending but the court will modify the terms of its order permitting the debtor to pay the filing fee in installments.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $79 installment when due on June 8. While the delinquent installment was paid on June 19, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

17. 18-21496-A-13 DANILO SESE — OBJECTION TO CLAIM 5-17-18 [37]
PGM-1
VS. AMERICAN EXPRESS NATIONAL BANK

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

Federal choice-of-law rules in the Ninth Circuit follow the Restatement (Second) of Conflict of Laws. See Liberty Tool, & Mfg. (In re Vortex Fishing Systems), 277 F.3d 1057, 1069 (9th Cir. 2001), Harris v. Polskie Linie Lotnicze, 820 F.2d 1000, 1003 (9th Cir. 1987), Flores v. American Seafoods Co., 335 F.3d 904, 919 (9th Cir. 2003).

Section 142 of the 1988 version of the Restatement provides: "[I]n general, unless the exceptional circumstances of the case make such a result unreasonable . . . The forum will apply its own statute of limitations barring the claim."

Hence, absent an exceptional circumstance, when a creditor pursues a claim in California for breach of a written contract, Cal. Civ. Pro. Code § 337 will be applicable. This statute prescribes a 4-year limitations period that begins to run from the date of the contract's breach, but the statute renews upon each

payment made after default.

The debtor points out that the proof of claim filed by American Express National Bank indicates the last payment was in March 2013. Therefore, using March 31, 2013 as the date of breach, when the case was filed on March 14, 2018, more than 4 years had elapsed. Therefore, the debtor asks that the claim be disallowed as time barred. See 11 U.S.C. § 502(b)(1).

However, according to the documentation in the proof of claim, as supplemented by the opposition to the objection, the contract between the parties selected Utah law as the law governing their contract. Utah law provides for a six year limitations period for an action for a breach of contract. See Utah Code Ann. § 78B-2-309 (2017). As noted above, ordinarily the Utah limitations period would not be applicable on a breach of contract action filed in California. California law would apply absent an exceptional circumstance.

According to the Ninth Circuit in PNC v. Sterba (In re Terba), 852 F.3d 1175, 1180, when a party to a contract files bankruptcy in California, the other party to the contract is compelled by the Bankruptcy Code to pursue its claim in the California bankruptcy case. The court concluded:

"the unique strictures of the bankruptcy code mean that, through no fault of PNC's, there is no forum for its claim other than the Northern District of California. This is not a case filed voluntarily in California, in which a dismissal on statute of limitations grounds would be without prejudice to bringing the same claim in Ohio. See Mid-Century Ins. Co. v. Superior Court, 138 Cal.App.4th 769, 41 Cal. Rptr.3d 833, 837 (2006). Rather, once the Sterbas declared bankruptcy, PNC was obligated to bring all its claims in the district where the Sterbas filed. Under these circumstances, to reject PNC's claim as time-barred would be the functional equivalent of a dismissal on the merits. Where another jurisdiction – [PNC]'s home state of Ohio – would hear the claim, and has a substantial interest in its resolution, disallowing it by mechanical adoption of California's statute of limitations would be wholly unreasonable. We hold that under these exceptional circumstances, the bankruptcy court was correct to apply Ohio's six-year statute of limitations and overrule the Sterbas' objection to PNC's claim."

This case presents the same basic facts. The only material difference is that the claimant's home state is Utah, not Ohio, but both states provide a six-year limitations period. Because the proof of claim was filed within six years of the last payment, the claim is not stale and the objection will be overruled.

FINAL RULINGS BEGIN HERE

18. 18-21714-A-13 SONIA SCALESE — MOTION TO CONFIRM PLAN
SLE-1 — 5-29-18 [27]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, 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 trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

19. 17-25518-A-13 RONALD/RHONDA SHUMAN — MOTION FOR RELIEF FROM AUTOMATIC STAY
NLG-1 — 6-1-18 [67]
MTGLQ INVESTORS, L.P. VS.

Final Ruling: The motion for relief from the automatic and codebtor stays of 11 U.S.C. § 362(a) and 1301 will be dismissed as moot. The case was dismissed on June 25. As a result, all stays have expired as a matter of law. No basis for relief under 11 U.S.C. § 362(d)(4) has been alleged.

20. 17-26753-A-13 STEFAN ROSAURO AND APRIL CRUZ — OBJECTION TO CLAIM
PGM-1 — 5-17-18 [38]
VS. CAVALRY SPV I, L.L.C.

Final Ruling: This objection to the proof of claim of Cavalry SPV I has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained and the claim disallowed.

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 February 15, 2012. Therefore, using this date as the date of breach, when the case was filed on October 11, 2017, 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).

The request for $900 in attorney's fees will be denied. There is no convincing proof in the record of a contractual provision providing for an award of fees to either party in the event of an action to enforce the contract.

21. 18-21064-A-13 VIKASH SHARMA
JHW-1
VS. TD AUTO FINANCE, L.L.C.

OBJECTION TO CONFIRMATION PLAN
6-6-18 [53]

Final Ruling: This objection should have been filed as opposition to the debtor's motion to confirm a plan, SLE-1. It should not have been filed as a separate contested matter. The court has dealt with the substance of the objection in its ruling on SLE-1.

22. 18-21481-A-13 EDGAR CARRILLO AND MARIA GONZALEZ
TOG-2

MOTION TO CONFIRM PLAN
5-26-18 [28]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, 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 trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

23. 18-22588-A-13 DAWN BASCIANO
APN-1
TOYOTA MOTOR CREDIT CORP. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-4-18 [13]

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

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle it leased to the debtor, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The movant leased a vehicle to the debtor. That lease has expired. Hence, in the absence of a right to purchase the vehicle on the expiration of the lease that the debtor intends to exercise, the debtor has no interest in the vehicle. This is cause to terminate the automatic stay.

Because the movant has not established that it holds an over-secured claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

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

24. 18-21496-A-13 DANILO SESE — MOTION TO EMPLOY
PGM-2 — 5-30-18 [47]

Final Ruling: While the motion by the chapter 13 debtor to retain a professional is appropriate given the absence of a confirmed plan and because the estate has not yet revested in the debtor, employment applications may be presented ex parte. Counsel for the debtor shall lodge a proposed order.

25. 17-26097-A-13 JANACE LIPPI — MOTION TO CONVERT OR DISMISS CASE
JPJ-1 — 6-1-18 [25]

Final Ruling: This motion to dismiss the case or to convert it to a case under chapter 7 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted and the case is converted to one under chapter 7.

The debtor has failed to pay to the trustee approximately $13,344.80 as required by the proposed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal or dismissal, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(1). Given that the schedules indicate that the debtor has more than $140,000 on nonexempt equity in assets, conversion rather than dismissal is in the best interests of creditors.