UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 31, 2017 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 11. 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 AUGUST 21, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 7, 2017, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 14, 2017. 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 12 THROUGH 17 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 AUGUST 7, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 17-23604-A-13 MELE VILINGIA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 7-11-17 [23]

- ☐ 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 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 is not eligible for chapter 13 relief. 11 U.S.C. § 109(h) prohibits an individual from being a debtor under any chapter unless that individual received a credit counseling briefing from an approved non-profit budget and credit counseling agency during the 180-day period immediately preceding the filing of the petition. In this case, the debtor has not filed a certificate evidencing that briefing was completed during the 180-day period prior to the filing of the petition. Hence, the debtor was not eligible for bankruptcy relief when this petition was filed.

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).

Fourth, 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.

Fifth, the debtor has failed to commence making plan payments and has not paid approximately $200 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).

Sixth, because the plan specifies no dividend for Class 7, the plan's feasibility and ability to pay unsecured creditors at least what they would receive in a chapter 7 liquidation cannot be proven by the debtor as required by 11 U.S.C. § 1325(a)(4) & (6).

Seventh, even if the plan payments were current, the court would conclude that the plan will not be feasible. Schedules I and J show monthly net income of less than the $200 plan payment.

2. 13-28417-A-13 PAUL/SARAH HAMM — MOTION TO INCUR DEBT
RJ-2 — 7-17-17 [90]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion to incur a purchase money loan in order to purchase a new home will be granted. The motion establishes a need for the home and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of the plan given that the debtor's performance of the plan is complete or nearly complete.

3. 15-25239-A-13 FREDERICK BARRETT — OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
TLA-3 — 7-17-17 [48]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be dismissed without prejudice.

This objection to a portion of the proof of claim of Wells Fargo Bank was set on 14 days of notice pursuant to Local Bankruptcy Rule 9014-1(f)(2). However, the applicable rule is Local Bankruptcy Rule 3004(b)(2) which requires a minimum notice of 30 days.

4. 13-21151-A-13 FRANCISCO ESPINAL AND ROSA HERNANDEZ
TOG-1
VS. MAIN STREET ACQUISITION CORP.

MOTION TO AVOID JUDICIAL LIEN
7-13-17 [71]

- ☐ 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.

The subject real property had an approximate value of $138,000 as of the petition date. The debtor owns the property. The unavoidable liens against the property totaled $261,000 on that same date, consisting of a single mortgage in favor of GMAC Mortgage. There is no equity in the property after accounting for the mortgage.

The debtor did not claim an exemption in the property until recently. On July 13, 2017, an amended Schedule C was filed claiming an exemption of $10,495 pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) & (5). However, the amended Schedule C was served only on the U.S. Trustee and the chapter 13 trustee. No creditors were served. Parties in interest, including creditors, have 30 days from an exemption amendment to object to any added or altered exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, the motion will be denied.

5. 11-37652-A-13 RONALD/RACHEL KALDOR
MMN-11

MOTION FOR SANCTIONS
6-16-17 [176]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor seeks to recover damages and costs from the respondent because it did not voluntarily extinguish its judicial lien after the debtor's chapter 13 discharge. This meant that the debtor was required to prosecute a motion to avoid the judicial lien pursuant to 11 U.S.C. § 522(f)(1)(A).

However, the respondent was under no obligation to extinguish its lien. The debtor's remedy was to file a motion under section 522(f)(1)(A) and avoid the lien. Just as the court would not award fees and costs in connection with such a motion, it will not award them simply because they have been requested in a separate motion.

6. 11-37652-A-13 RONALD/RACHEL KALDOR
MMN-12
VS. NORTHERN CALIFORNIA COLLECTION

MOTION TO
AVOID JUDICIAL LIEN
6-16-17 [171]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice.

The respondent holds a judicial lien encumbering the debtor's home. The debtor moves to avoid that lien pursuant to 11 U.S.C. § 522(f)(1)(A). The motion will be denied because the debtor has not established entitlement to the $22,075 exemption which was claimed in Schedule C. 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 supporting declaration makes no effort to establish the factual requirements for an exemption of the property.

7. 17-23577-A-13 LEAH ELEMEN
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
7-11-17 [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.

The debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Schedule A/B fails to accurately list rental real property owned by the debtor and Schedules I and J omit a detailed statement of business income and expenses. 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).

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.

8. 17-23390-A-13 PEDRO/MEGAN ANGUIANO
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
7-11-17 [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.

The plan's feasibility depends on the debtor successfully prosecuting motions to value the collateral of Safe Credit Union and San Francisco Fire Credit Union 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.

9. 17-23796-A-13 DIA MITCHELL

ORDER TO SHOW CAUSE
7-10-17 [18]

- ☐ 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 $79 due on July 5 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

10. 17-23597-A-13 STEVEN DE LA ROSA
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
7-11-17 [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 conditionally denied.

First, 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, counsel has not complied with Rule 2016-1 by filing the rights and responsibilities agreement. The abbreviated procedure for approval of the fees permitted by Local Bankruptcy Rule 2016-1 is not applicable. Therefore, the provision in the proposed plan requiring the trustee to pay the fees without counsel first making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017, permits payment of fees without the required court approval. This violates sections 329 and 330.

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

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

11. 16-27298-A-13 CARRIE NOAH
DBL-2

MOTION TO
MODIFY PLAN
6-19-17 [30]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan fails to specify the dividend payable in the first seven months of the plan.

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 owed to holder of the Class 1 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).

FINAL RULINGS BEGIN HERE

12. 14-26107-A-13 ROBIN LANGLEY
SJD-2
VS. OAKBROOK NOTE TRUST

MOTION TO
VALUE COLLATERAL
5-24-17 [92]

Final Ruling: At the request of Oakbrook, the hearing on the motion is continued to August 28, 2017 at 1:30 p.m. to permit the parties to investigate a compromise. However, no additional papers either in support or opposition to the motion may be filed. If there is a need for further briefing or evidence, a request must be made at the continued hearing for permission to file additional papers.

13. 14-26107-A-13 ROBIN LANGLEY
SJD-3

MOTION TO
VACATE DISMISSAL OF CASE
5-30-17 [98]

Final Ruling: At the request of Oakbrook, the hearing on the motion is continued to August 28, 2017 at 1:30 p.m. to permit the parties to investigate a compromise. However, no additional papers either in support or opposition to the motion may be filed. If there is a need for further briefing or evidence, a request must be made at the continued hearing for permission to file additional papers.

As the record stands now, the court determines the following relevant facts:

The debtor proposed and confirmed a plan the feasibility of which was premised on Oakbrook Note Trust's collateral for its claim having no value. The plan therefore provided for no dividend on this secured claim. However, while the debtor successfully filed a motion to value the collateral, her motion was served on Oakbrook's predecessor in interest, not Oakbrook.

As a result, Oakbrook moved to vacate the order valuing its collateral. It filed two motions, one on July 30, 2015 and a second on August 17, 2015. Docket 33 and 38. According to the certificates of service for these motions, Docket 37 and 42, both the debtor and her attorney were served with both motions.

The first motion was dismissed without prejudice on August 17, 2015 due to Oakbrook's failure to set a hearing in accordance with the court's motion procedures. Docket 43.

The second motion was heard on August 31, 2015. The debtor's attorney appeared at the hearing but did not dispute the defective service of the valuation motion. The court vacated the order valuing Oakbrook's collateral because Oakbrook had not been served with the motion. Docket 44.

When a new valuation motion was not filed and served on Oakbrook, it moved for relief from the automatic stay on December 10, 2015. That motion was served on both the debtor and her attorney. Docket 52. Although no written response to the motion was filed or required by this court's motion rule, Local Bankruptcy Rule 9014-1(f)(2), counsel for the debtor appeared in opposition to the motion. Docket 53. He was successful in his opposition. The court denied the motion and in its written ruling it explained:

The movant holds a claim secured by a second priority deed of trust

encumbering the debtor's home. The movant filed a proof of claim indicating that the debt had been listed by the debtor under the name PNC Bank.

A review of the confirmed chapter 13 plan reveals that it provides for a secured claim held by PNC Bank and secured by a second priority deed of trust on the debtor's residence. The plan provides that this claim will be paid nothing because, after deducting the amount owed the first priority deed of trust, no equity remained to collateralize the second priority deed of trust. This plan was accompanied by a motion to value the home. That motion was served on PNC Bank but PNC Bank did not oppose the motion. At a hearing on August 18, 2014 that motion was granted.

However, on August 17, 2015 the movant filed a motion to vacate the order valuing its interest in the home at $0. Without opposition, that motion was granted because the debtor failed to serve the valuation motion on the movant who had succeeded to the interest of PNC by the time the valuation motion was filed.

The debtor has not re-served the valuation on the movant.

Nonetheless, and despite the fact that the debtor has not been making contract payments to the movant, there is no cause to terminate the automatic stay because the confirmed plan neither requires contract or plan payments be made to the movant.

In order to establish cause pursuant to 11 U.S.C. § 362(d)(1) for relief from the automatic stay, it must be shown that the debtor has failed to abide by the terms of the confirmed plan. That is, the debtor must have defaulted under the terms of the plan to the detriment of the movant. See Anaheim Sav. & Loan Ass'n v. Evans, 30 B.R. 530, 531 (B.A.P. 9th Cir. 1983). No such showing has been made.

Hence, the debtor through here attorney was again informed that she had not sought to value Oakbrook's collateral.

Once again, however, the debtor did not move to value Oakbrook's collateral by serving it with a valuation motion. Therefore, Oakbrook's secured claim was not being paid even though the debtor was retaining its collateral and even though Oakbrook had filed a timely proof of claim.

Failing to successfully prosecute a valuation motion was a material default of the plan. In relevant part, the plan provided:

"**2.04.** The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim."

"**2.09(c)** . . . If this plan proposes to reduce a claim based upon the value of its collateral, the failure to move to value that collateral in conjunction with plan confirmation may result in the denial of confirmation."

Oakbrook moved for dismissal on December 15, 2016, approximately one year after its unsuccessful motion for relief from the automatic stay. The motion was duly served on the debtor and the debtor's attorney. Because no written

opposition to the motion was filed as required by Local Bankruptcy Rule 9014-1(f)(1), the motion was resolved without hearing, the motion was granted, and a dismissal order was entered on April 24.

On May 2, 2017, the debtor moved to reconsider the dismissal (SJD-1) on the ground that there had been a "breakdown in communication" between the debtor and the debtor's attorney that had prevented the timely filing and service of a valuation motion as well as a response to the dismissal motion. This motion was dismissed without prejudice because none of the factual allegations in the motion were supported by evidence.

The motion to vacate the dismissal was re-filed (SJD-3) on May 30, 2017. This time the motion was accompanied by a declaration from the debtor. The declaration gave a bit more depth to conclusory statements in the motion concerning the breakdown in communications between the debtor and her former attorney. The debtor states that she made "several" attempts, both by email and voicemail, to contact her attorney concerning Oakbrook's motion to dismiss the case and its 2015 successful motion (MRG-1) to vacate the valuation of its collateral (the debtor's valuation motion that had been served on Oakbrook's predecessor but not Oakbrook).

Oakbrook began its efforts to vacate the prior order valuing its collateral in April 2015. The order on that motion was entered on September 2, 2015.

Oakbrook then moved for relief from the automatic stay on December 10, 2015. After a hearing on December 28, at which counsel for the debtor appeared and opposed the motion, the court denied relief from the automatic stay.

Oakbrook then waited one year, until December 15, 2016, before moving for the dismissal of the case. Docket 58. During that year gap, the debtor neither moved to value Oakbrook's collateral by serving a valuation motion on it rather than its predecessor, nor sought to modify the plan in order to pay Oakbrook's secured claim.

The debtor and her attorney were served with the dismissal motion. Docket 63. Despite service, the debtor failed to file written opposition to the dismissal motion as required by Local Bankruptcy Rule 9014-1(f)(1) even though the hearing on the motion was not until March 27, more than three months after the motion was filed.

The debtor's explanation for the failure to oppose the dismissal motion is an alleged breakdown in communications with her attorney. The court has permitted her to supplement the record concerning her attempts to contact her attorney. Basically, the debtor claims that she began to attempt to reach her attorney on January 12, 2017 when she sent him an email concerning the dismissal motion. She heard nothing and then sent a second email March 30. When she received no response, she called and emailed the attorney's office and finally reached a receptionist on April 7. She spoke to the attorney on April 12 and learned that the dismissal motion had been granted without written opposition being filed.

The debtor's explanation for her failure to file a valuation motion and serve it on Oakbrook is that she was not served with the Oakbrook's second, successful motion to vacate the valuation order. Therefore, she claims she was unaware of the need to again value Oakbrook's collateral.

14. 17-21428-A-13 ROBERT/VALERIE KUSHNER — ORDER TO SHOW CAUSE 7-10-17 [69]

Final Ruling: The order to show cause will be discharged.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $77 installment when due on July 5. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

15. 17-23129-A-13 TIMOTHY NEHER — MOTION TO CONFIRM PLAN 6-5-17 [24]
TLN-3

Final Ruling: The motion will be denied without prejudice. The debtor acknowledged on the record at the hearings on two valuation motion on July 24, 2017 that he wished to file and confirm a modified plan. He is not pursuing confirmation of this plan. Because nothing has been filed by the debtor dismissing this motion, the court will dismiss it without prejudice.

16. 17-22153-A-13 DONNA WELCH — ORDER TO SHOW CAUSE 7-6-17 [36]

Final Ruling: The order to show cause will be discharged.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $23 installment when due on July 17. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

17. 13-20087-A-13 JOSEFINA/JOSE LORICO — MOTION FOR RELIEF FROM AUTOMATIC STAY 5-31-17 [125]
NLG-1
SETERUS, INC., VS.

Final Ruling: The motion will be dismissed because it is moot.

The court confirmed a plan on May 22, 2013. The plan places the movant's claim in Class 4 and provides:

"Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Given the foregoing plan provision, and given the pendency of this case under chapter 13, the automatic stay and the dodebtor stay have been modified. No further relief is necessary.