UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 14, 2015 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 18. 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 JANUARY 19, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JANUARY 4, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JANUARY 11, 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 19 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 DECEMBER 21, 2015, AT 2:30 P.M.

Matters to be Called for Argument

1. 15-27800-A-13 VONETTA BENOIT — OBJECTION TO CONFIRMATION OF PLAN 11-24-15 [22]
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 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.

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.

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. In response to questions 1 and 2 of the statement of financial affairs, the debtor failed to disclose child support income. Also, the statement of social security number includes an incorrect social security number for the debtor. These nondisclosures and misstatements 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).

Fourth, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $8,600 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only $4,373.16 to unsecured creditors.

2. 15-28002-A-13 KANIKA REED
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
11-25-15 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $516 is less than the $531 in dividends and expenses the plan requires the trustee to pay each month.

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.

3. 15-28204-A-13 REGINA PAGE
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN
11-24-15 [15]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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.

First, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Aaron Sales & Lease in order to strip down or strip off its secured claim from its collateral. No such motion has been filed, served, and granted. Absent a successful motion the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file,

serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Second, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The petition fails to disclose a prior bankruptcy case filed within 8 years of the current case. 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).

4. 11-46916-A-13 ROLANDO/SYLVIA GARCIA — MOTION TO INCUR DEBT 11-30-15 [41]
TOG-3

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

5. 15-27319-A-13 TARA AUSTIN — ORDER TO SHOW CAUSE 11-23-15 [26]

- ☐ 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 $56 installment when due on November 17. While the delinquent installment was paid on December 1, 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.

6. 15-27631-A-13 MICHAEL HAGERTY
JPJ-2

OBJECTION TO EXEMPTIONS
11-10-15 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The trustee objects to the debtor's exemptions because they fact based on Arizona Law. The trustee asserts that because the debtor is now resident of California he cannot claim Arizona exemptions.

11 U.S.C. § 522(b)(1) permits an individual debtor to exempt property pursuant either to state law or section 522 of the Bankruptcy Code unless state law that is "applicable to the debtor" does not authorize the debtor to claim federal exemptions. Which state law applies is determined by 11 U.S.C. § 522(b)(3)(A). Under section 522(b)(3)(A), a debtor may claim exemptions pursuant to a state's law if the debtor has been domiciled in that state for the 730 days immediately preceding the filing of the bankruptcy. If a debtor has not been domiciled in a single state during that 730-day period, the applicable state is the place where the debtor was domiciled for 180 days immediately preceding the 730-day period. If the debtor was domiciled in more than one state during the 180-day period, the applicable state is the state where the debtor was domiciled for the longer portion of the 180-day period.

The objection fails to identify when the debtor was domiciled in Arizona or California. Without this information the court cannot determine that the trustee is correct in asserting that the debtor cannot claim Arizona exemptions.

7. 15-28133-A-13 PETER LADD
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN
11-25-15 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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.

The debtor has failed to give the trustee financial records for his employment/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).

8. 15-27755-A-13 ABU ALAMIN — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 11-24-15 [52]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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.

First, the debtor has failed to make $4,438.64 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 on the Class 1 home loan. 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, 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 will receive no fees. The plan, on the other hand, requires payment of $2,500 which exceeds the agreed $0.00. Therefore, the provision in the proposed plan requiring the trustee to pay the fees contradicts the agreement with the debtor.

9. 14-32561-A-13 JONATHAN GARCIA — MOTION TO MODIFY PLAN
RJ-3 — 11-9-15 [52]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to make $250 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).

10. 15-27970-A-13 MARIEANN PEREZ — OBJECTION TO CONFIRMATION OF PLAN
APN-1
CAPITAL ONE AUTO FINANCE VS. — 11-24-15 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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.

To the extent the creditor complains about the valuation of its collateral, the objection will be overruled because the plan does not attempt to value the collateral and there is no separate valuation motion. To the extent the creditor is complaining that the plan understates the amount of its claim, the objection will be overruled because the plan provides at section 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."

However, because the plan fails to provide and acknowledge that the claim is secured by a purchase money security interest, the plan fails to provide for preconfirmation payments as required by 11 U.S.C. § 1326(a)(a)(1)(C). Also, because the claim is approximately $6,000 higher than estimated by the debtor, the total stream of payments to be paid will not pay the claim in full as required by 11 U.S.C. § 1325(a)(5)(B).

11. 15-28171-A-13 INA ANGEL — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 11-24-15 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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.

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $1,359 is less than the $1,361 in dividends and expenses the plan requires the trustee to pay each month.

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured

creditors would receive $6,459 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only $1,734 to unsecured creditors.

Third, the plan fails to provide at section 2.07 for a dividend to be on account of allowed administrative expenses, including the debtor's attorney's fees. Unless counsel is working for nothing, this means that the plan does not provide for payment in full of priority claims as required by 11 U.S.C. § 1322(a)(2). Also see 11 U.S.C. §§ 503(b), 507(a).

Fourth, because the plan fails to specify how debtor's counsel's fees will be approved, either pursuant to Local Bankruptcy Rule 2016-1 or by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017, but nonetheless requires the trustee to pay counsel a monthly dividend on account of such fees, in effect the plan requires payment of fees even though the court has not approved them. This violates sections 329 and 330.

Fifth, 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.

Sixth, 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).

Seventh, 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.

12. 15-24175-A-13 REBECCA WEBER
PCJ-1
SOLANO FIRST FEDERAL CREDIT UNION VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
10-7-15 [34]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

This case was filed on May 22, 2015. Hence, since the filing, five monthly installments have fallen due under the terms of the home loan owed to the movant.

The amended plan filed by the debtor provides for this home loan in Class 1. Class 1 claims receive two dividends from the trustee. First, the trustee pays the ongoing monthly installment (whether or not the plan is confirmed) and, second, the trustee pays (after confirmation) a dividend to cure any default under the loan. The plan has not yet been confirmed.

The trustee's response to the motion indicates that he has paid the five monthly installments that have fallen due since the case was filed.

Therefore, because the home is necessary to the debtor's personal financial reorganization, and because there is no default under the terms of the proposed plan, there is no cause to terminate or modify the automatic stay.

The parties shall bear their own fees and costs. 11 U.S.C. § 506(b).

13. 15-24578-A-13 BRYAN RONK — MOTION TO CONFIRM PLAN
DEF-3 — 10-31-15 [40]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $1,725 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 fails to specify its duration. Without this term, compliance with 11 U.S.C. §§ 1322(d), 1325(a)(6) cannot be ascertained.

14. 15-22083-A-13 DANNY CLARKE — OBJECTION TO CLAIM
PLC-3
VS. MIDLAND CREDIT MANAGEMENT, INC. — 10-28-15 [51]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection seeks both to disallow a proof of claim and an award of statutory damages and fees because the debtor asserts the underlying claim was time-barred. Thus, the debtor asserst this was a violation of Cal. Civ. Proc. Code § 1788.56, the Fair Debt Buying Practices Act (FDBPA).

Insofar as the purpose of the objection is to disallow the claim, the objection is moot. The claim was voluntarily withdrawn pursuant to Fed. R. Bankr. P. 3006. However, because this objection was pending at the time it was withdrawn, it could not withdraw the claim as a matter of right.

In the absence of a pending adversary proceeding concerning the claim asserted in the proof of claim, or evidence that the claimant received a dividend on its now withdrawn claim, the court can think of no reason to not authorize the

claim's withdrawal despite the pendency of the objection

The debtor no doubt will argue that the court should not authorize the withdrawal because, as indicated above, the debtor has demanded damages and fees. However, this demand is in violation of Fed. R. Bankr. P. 3007(b), which provides: "[a] party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding."

The debtor has not filed an adversary proceeding. And, whether or not an adversary is required, the objection fails to address a number of issues, including:

Does the bankruptcy code preempt Cal. Civ. Proc. Code § 1788.56? Cf. Walls v. Wells Fargo Bank, N.A., 276 F.3d 502 (9th Cir. 2002) (Ninth Circuit Court of Appeals concludes that where FDCPA claim was based on an alleged violation of § 524, the claim was preempted by the Bankruptcy Code. "To permit a simultaneous claim under the FDCPA would allow through the back door what Walls cannot accomplish through the front door – a private right of action….Nothing in either act persuades us that Congress intended to allow debtors to bypass the Code's remedial scheme when it enacted the FDCPA.").

See also Simmons v. Roundup Funding, LLC, 622 F.3d 93 (2d Cir. 2010) ("Federal courts have consistently ruled that filing a proof of claim in bankruptcy court (even one that is somehow invalid) cannot constitute the sort of abusive debt collection practice proscribed by the FDCPA. . . .The FDCPA is designed to protect defenseless debtors and to give them remedies against abuse by creditors. There is no need to protect debtors who are already under the protection of the bankruptcy court, and there is no need to supplement the remedies afforded by bankruptcy itself.").

Johnson v. Midland Funding, LLC, 528 B.R. 462 (S.D. Ala. 2015) (In finding that a creditor has a right to file a time-barred proof of claim under the Bankruptcy Code, the court concludes that the Code preempts the FDCPA. "The ability to 'comply' with both statutes, however, is not the proper test when, as here, the case does not concern a comparison of the obligations imposed by one statute with the obligations imposed by another but rather a comparison of the obligations imposed by one statute with the rights conferred by another." Id. at 471.).

Assuming the state statute/FDCPA is not preempted, is filing a proof of claim for a time barred debt a violation of this nonbankruptcy law?

See Gatewood v. CP Medical, LLC (In re Gatewood), 2015 Bankr. LEXIS 2262, (B.A.P. Jul. 10, 2015) (holding that the filing of a proof of claim for a time-barred debt did not violate the FDCPA. Although the filing of the claim is an act to collect a debt and "arguably invokes the litigation machinery," it is not false, misleading, deceptive, unfair, or unconscionable under the FDCPA.).

See Broadrick v. LVNV Funding, LLC (In re Broadrick), 2015 Bankr. LEXIS 2006 (Bankr. M.D. Tenn. June 19, 2015) (holding that although the FDCPA can apply to the claims allowance process, filing an accurate and complete proof of claim for a time-barred debt, without more, is not deceptive or misleading and therefore not a violation of the FDCPA.). See also In re LaGrone, 2015 Bankr. LEXIS 212, 2015 WL 273373 (Bankr. N.D. Ill. Jan. 21, 2015).

Therefore, the court will authorize the withdrawal of the proof of claim and dismiss the objection without prejudice insofar as it attempts to state a claim under Cal. Civ. Proc. Code § 1788.56. Such claim must be presented in an adversary proceeding to the extent it has not been preempted by the Bankruptcy Code.

15. 15-22083-A-13 DANNY CLARKE — OBJECTION TO CLAIM
PLC-4
VS. MIDLAND CREDIT MANAGEMENT, INC. — 10-28-15 [57]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection seeks both to disallow a proof of claim and an award of statutory damages and fees because the debtor asserts the underlying claim was time-barred. Thus, the debtor asserst this was a violation of Cal. Civ. Proc. Code § 1788.56, the Fair Debt Buying Practices Act (FDBPA).

Insofar as the purpose of the objection is to disallow the claim, the objection is moot. The claim was voluntarily withdrawn pursuant to Fed. R. Bankr. P. 3006. However, because this objection was pending at the time it was withdrawn, it could not withdraw the claim as a matter of right.

In the absence of a pending adversary proceeding concerning the claim asserted in the proof of claim, or evidence that the claimant received a dividend on its now withdrawn claim, the court can think of no reason to not authorize the claim's withdrawal despite the pendency of the objection

The debtor no doubt will argue that the court should not authorize the withdrawal because, as indicated above, the debtor has demanded damages and fees. However, this demand is in violation of Fed. R. Bankr. P. 3007(b), which provides: "[a] party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding."

The debtor has not filed an adversary proceeding. And, whether or not an adversary is required, the objection fails to address a number of issues, including:

Does the bankruptcy code preempt Cal. Civ. Proc. Code § 1788.56? Cf. Walls v. Wells Fargo Bank, N.A., 276 F.3d 502 (9th Cir. 2002) (Ninth Circuit Court of Appeals concludes that where FDCPA claim was based on an alleged violation of § 524, the claim was preempted by the Bankruptcy Code. "To permit a simultaneous claim under the FDCPA would allow through the back door what Walls cannot accomplish through the front door – a private right of action….Nothing in either act persuades us that Congress intended to allow debtors to bypass the Code's remedial scheme when it enacted the FDCPA.").

See also Simmons v. Roundup Funding, LLC, 622 F.3d 93 (2d Cir. 2010) ("Federal courts have consistently ruled that filing a proof of claim in bankruptcy court (even one that is somehow invalid) cannot constitute the sort of abusive debt collection practice proscribed by the FDCPA. . . .The FDCPA is designed to protect defenseless debtors and to give them remedies against abuse by creditors. There is no need to protect debtors who are already under the protection of the bankruptcy court, and there is no need to supplement the remedies afforded by bankruptcy itself.").

Johnson v. Midland Funding, LLC, 528 B.R. 462 (S.D. Ala. 2015) (In finding that a creditor has a right to file a time-barred proof of claim under the Bankruptcy Code, the court concludes that the Code preempts the FDCPA. "The ability to 'comply' with both statutes, however, is not the proper test when, as here, the case does not concern a comparison of the obligations imposed by one statute with the obligations imposed by another but rather a comparison of the obligations imposed by one statute with the rights conferred by another." Id. at 471.).

Assuming the state statute/FDCPA is not preempted, is filing a proof of claim for a time barred debt a violation of this nonbankruptcy law?

See Gatewood v. CP Medical, LLC (In re Gatewood), 2015 Bankr. LEXIS 2262, (B.A.P. Jul. 10, 2015) (holding that the filing of a proof of claim for a time-barred debt did not violate the FDCPA. Although the filing of the claim is an act to collect a debt and "arguably invokes the litigation machinery," it is not false, misleading, deceptive, unfair, or unconscionable under the FDCPA.).

See Broadrick v. LVNV Funding, LLC (In re Broadrick), 2015 Bankr. LEXIS 2006 (Bankr. M.D. Tenn. June 19, 2015) (holding that although the FDCPA can apply to the claims allowance process, filing an accurate and complete proof of claim for a time-barred debt, without more, is not deceptive or misleading and therefore not a violation of the FDCPA.). See also In re LaGrone, 2015 Bankr. LEXIS 212, 2015 WL 273373 (Bankr. N.D. Ill. Jan. 21, 2015).

Therefore, the court will authorize the withdrawal of the proof of claim and dismiss the objection without prejudice insofar as it attempts to state a claim under Cal. Civ. Proc. Code § 1788.56. Such claim must be presented in an adversary proceeding to the extent it has not been preempted by the Bankruptcy Code.

16. 15-22083-A-13 DANNY CLARKE — OBJECTION TO CLAIM
PLC-5
VS. LVNV FUNDING, LLC — 10-28-15 [69]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection seeks both to disallow a proof of claim and an award of statutory damages and fees because the debtor asserts the underlying claim was time-barred. Thus, the debtor asserst this was a violation of Cal. Civ. Proc. Code § 1788.56, the Fair Debt Buying Practices Act (FDBPA).

Insofar as the purpose of the objection is to disallow the claim, the objection is moot. The claim was voluntarily withdrawn pursuant to Fed. R. Bankr. P. 3006. However, because this objection was pending at the time it was withdrawn, it could not withdraw the claim as a matter of right.

In the absence of a pending adversary proceeding concerning the claim asserted in the proof of claim, or evidence that the claimant received a dividend on its now withdrawn claim, the court can think of no reason to not authorize the claim's withdrawal despite the pendency of the objection

The debtor no doubt will argue that the court should not authorize the withdrawal because, as indicated above, the debtor has demanded damages and

fees. However, this demand is in violation of Fed. R. Bankr. P. 3007(b), which provides: "[a] party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding."

The debtor has not filed an adversary proceeding. And, whether or not an adversary is required, the objection fails to address a number of issues, including:

Does the bankruptcy code preempt Cal. Civ. Proc. Code § 1788.56? Cf. Walls v. Wells Fargo Bank, N.A., 276 F.3d 502 (9th Cir. 2002) (Ninth Circuit Court of Appeals concludes that where FDCPA claim was based on an alleged violation of § 524, the claim was preempted by the Bankruptcy Code. "To permit a simultaneous claim under the FDCPA would allow through the back door what Walls cannot accomplish through the front door – a private right of action….Nothing in either act persuades us that Congress intended to allow debtors to bypass the Code's remedial scheme when it enacted the FDCPA.").

See also Simmons v. Roundup Funding, LLC, 622 F.3d 93 (2d Cir. 2010) ("Federal courts have consistently ruled that filing a proof of claim in bankruptcy court (even one that is somehow invalid) cannot constitute the sort of abusive debt collection practice proscribed by the FDCPA. . . .The FDCPA is designed to protect defenseless debtors and to give them remedies against abuse by creditors. There is no need to protect debtors who are already under the protection of the bankruptcy court, and there is no need to supplement the remedies afforded by bankruptcy itself.").

Johnson v. Midland Funding, LLC, 528 B.R. 462 (S.D. Ala. 2015) (In finding that a creditor has a right to file a time-barred proof of claim under the Bankruptcy Code, the court concludes that the Code preempts the FDCPA. "The ability to 'comply' with both statutes, however, is not the proper test when, as here, the case does not concern a comparison of the obligations imposed by one statute with the obligations imposed by another but rather a comparison of the obligations imposed by one statute with the rights conferred by another." Id. at 471.).

Assuming the state statute/FDCPA is not preempted, is filing a proof of claim for a time barred debt a violation of this nonbankruptcy law?

See Gatewood v. CP Medical, LLC (In re Gatewood), 2015 Bankr. LEXIS 2262, (B.A.P. Jul. 10, 2015) (holding that the filing of a proof of claim for a time-barred debt did not violate the FDCPA. Although the filing of the claim is an act to collect a debt and "arguably invokes the litigation machinery," it is not false, misleading, deceptive, unfair, or unconscionable under the FDCPA.).

See Broadrick v. LVNV Funding, LLC (In re Broadrick), 2015 Bankr. LEXIS 2006 (Bankr. M.D. Tenn. June 19, 2015) (holding that although the FDCPA can apply to the claims allowance process, filing an accurate and complete proof of claim for a time-barred debt, without more, is not deceptive or misleading and therefore not a violation of the FDCPA.). See also In re LaGrone, 2015 Bankr. LEXIS 212, 2015 WL 273373 (Bankr. N.D. Ill. Jan. 21, 2015).

Therefore, the court will authorize the withdrawal of the proof of claim and dismiss the objection without prejudice insofar as it attempts to state a claim under Cal. Civ. Proc. Code § 1788.56. Such claim must be presented in an adversary proceeding to the extent it has not been preempted by the Bankruptcy

Code.

17. 15-28294-A-13 CHARLES HOWSON — OBJECTION TO CONFIRMATION OF PLAN 11-24-15 [24]
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 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.

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, 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).

Third, 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.

Fourth, the trustee will object 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, as admitted in Schedules I and J, 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. As a result, the debtor has no allowable exemptions. Without exemptions, the debtor's nonexempt assets total more than $348,000. Because the plan does not provide for payment in full of unsecured creditors but only $73,237.29, the plan does not comply with 11 U.S.C. § 1325(a)(4).

Finally, to pay the dividends required by the plan at the rate proposed by it will take 146 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

18. 15-28096-A-13 LA KEISHA MATLOCK — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-24-15 [41]

- ☐ 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.

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.

The objection concerning the valuation of collateral of certain secured claims is moot given the granting of valuation motions.

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.

FINAL RULINGS BEGIN HERE

19. 11-38005-A-13 LARRY/PAMELA PULLMANN — MOTION TO AVOID JUDICIAL LIEN
RWF-4 — 11-16-15 [53]
VS. UNIFUND CCR PARTNERS

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

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of $150,000 as of the date of the petition. The unavoidable liens total $170,977. The debtor has an available exemption of $1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

20. 14-23032-A-13 MISAEL VERDUZCO — OBJECTION TO DEBTOR'S CERTIFICATION AND DISCHARGE
JPJ-1 — 10-27-15 [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 sustained and the debtor shall be not given a chapter 13 discharge.

The debtor filed a prior chapter 7 case, Case No. 11-40685, on August 25, 2011. He received a chapter 7 discharge in that case. Less than four years later, on March 25, 2014, the debtor filed this case. In it, he has filed a certification that he has completed plan payments, taken a course on personal financial management, and not received in a chapter 7 discharge in a case filed within four years of the filing of this chapter 13 case.

The debtor is not eligible for a chapter 13 discharge because his chapter 7 discharge was entered in a case filed less than four years prior to the filing of the chapter 7 case. See 11 U.S.C. § 1328(f)(1).

21. 15-20144-A-13 MORGAN FAY — OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
PGM-1 — 10-27-15 [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 because the creditor has rescinded its notice of mortgage payment change.

22. 15-21053-A-13 MATTHEW/MAYRA SPINKS — OBJECTION TO CLAIM
JPJ-3
VS. CAVALRY SPV I, L.L.C. — 10-14-15 [44]

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 November 25, 2009. Therefore, using this date as the date of breach, when the case was filed on February 12, 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).

23. 15-28155-A-13 TAMI FINK — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-24-15 [15]

Final Ruling: The court continues the hearing to January 11, 2016 at 1:30 p.m. Because the debtor failed to provide proof of identity to the trustee, a continuance of the meeting to January 7 was necessary. If the debtor fails to provide identification to the trustee by January 7, the case will be dismissed at the continued hearing.

24. 15-27468-A-13 EUGENE NIERI — MOTION TO CONFIRM PLAN
MRL-1 — 10-22-15 [22]

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. 15-28478-A-13 ANGEL PEREZ AND JUANA JIMENEZ — MOTION TO VALUE COLLATERAL
TOG-1 — 11-16-15 [17]
VS. WELLS FARGO BANK, N.A.

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $308,408 as of the date the petition was filed. It is encumbered by a first deed of trust held by Wells Fargo Bank. The first deed of trust secures a loan with a balance of approximately $367,937 as of the petition date. Therefore, Wells Fargo Bank's other 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 $308,408. 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).