UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 13, 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 12. 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 APRIL 10, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY MARCH 27, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY APRIL 3, 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 13 THROUGH 20 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 MARCH 20, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 17-20107-A-13 RENEE BOUTROS — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 2-23-17 [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 debtor proposed a plan that cannot be confirmed because it will not pay unsecured creditors the present value of what they would receive in a chapter 7 liquidation as required by 11 U.S.C. § 1325(a)(4). As noted by the trustee, the nonexempt net value of scheduled assets is $63,200 yet the plan proposed to pay less than $2,000 to unsecured creditors.

Apparently, at the meeting of creditors, the debtor asserted that her son is the "equitable owner" of her home and without the equity in her home included among her assets, the plan will pass muster under section 1325(a)(4). However, given the status of a chapter 7 trustee as a BFP under 11 U.S.C. § 544, an unrecorded interest in the debtor's home is likely to be avoided by a trustee. Consequently, the proceeds realized by the avoidance of the son's interest must be included in the liquidation analysis absent some evidence, not provided by the debtor, that section 544 would not be applicable.

An examination of the schedules I and J shows that the debtor has no income beyond family assistance and that assistance is insufficient to fund a plan that requires payment of a $63,200 dividend to unsecured creditors. This impacts both the plan's feasibility and the debtor's eligibility for chapter 13 relief. See 11 U.S.C. §§ 109(e), 1325(a)(6).

2. 17-20107-A-13 RENEE BOUTROS — MOTION TO CONVERT OR TO DISMISS CASE
JPJ-2 — 2-23-17 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case converted to one under chapter 7.

The debtor proposed a plan that cannot be confirmed because it will not pay unsecured creditors the present value of what they would receive in a chapter 7 liquidation as required by 11 U.S.C. § 1325(a)(4). As noted by the trustee, the nonexempt net value of scheduled assets is $63,200 yet the plan proposed to pay less than $2,000 to unsecured creditors.

Apparently, at the meeting of creditors, the debtor asserted that her son is

the "equitable owner" of her home and without the equity in her home included among her assets, the plan will pass muster under section 1325(a)(4). However, given the status of a chapter 7 trustee as a BFP under 11 U.S.C. § 544, an unrecorded interest in the debtor's home is likely to be avoided by a trustee. Consequently, the proceeds realized by the avoidance of the son's interest must be included in the liquidation analysis absent some evidence, not provided by the debtor, that section 544 would not be applicable.

An examination of the schedules I and J shows that the debtor has no income beyond family assistance and that assistance is insufficient to fund a plan that requires payment of a $63,200 dividend to unsecured creditors.

The inability of the debtor to propose a confirmable plan is cause for dismissal or conversion of the case to one under chapter 7, whichever is in the interests of creditors. See 11 U.S.C. § 1307(c)(1) & (c)(5). As noted in the trustee's motion, there are nonexempt assets that may produce a return of approximately $63,200 for unsecured creditors. Given this return, conversion rather than dismissal is in the interest of creditors.

3. 17-20031-A-13 JAMES MURRAY — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 2-22-17 [16]

- ☐ 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 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.

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. The statement of financial affairs fails to state how much was paid to the debtor's attorney. Further, the debtor has failed to provide the trustee with a state tax return. These failures are breaches of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents and of the duty to cooperate with the trustee as required by 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).

4. 17-20032-A-13 STEPHANIE MAY — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 2-22-17 [16]

- ☐ 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 debtor admitted at the meeting of creditors that the debtor failed to file an income tax returns for 2014 and 2015. The returns are delinquent.

Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becoming effective, the Bankruptcy Code did not require chapter 13 debtors to file delinquent tax returns. If a debtor did not file tax returns, the trustee might object to the plan on the grounds of lack of feasibility or that the plan was not proposed in good faith. See, e.g., Greatwood v. United States (In re Greatwood), 194 B.R. 637 (9th Cir. B.A.P. 1996), *affirmed*, 120 F.3d. 268 (9th Cir. 1997).

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors.

There are two consequences to a failure to comply with section 1308. The failure is cause for dismissal. See 11 U.S.C. § 1307(e). In this case, however, the trustee has not moved for dismissal. Also, 11 U.S.C. § 1325(a)(9) and an uncodified provision of BAPCPA found at section 1228(a) of the Act provide that the court cannot confirm a plan if delinquent returns have not been filed with the taxing agency and filed with the court. This has not been done and so the court cannot confirm any plan proposed by the debtor.

5. 17-20342-A-13 MEHMED/HASNIJA OBRADOVIC — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 2-22-17 [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 will be conditionally denied.

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

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

6. 15-20144-A-13 MORGAN FAY — MOTION TO CONVERT OR TO DISMISS CASE
JPJ-3 — 2-10-17 [81]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case converted to one under chapter 7.

The debtor has failed to make $2,312 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). The failure to make the payments is a material plan default which is prejudicial to creditors and is cause for dismissal or conversion of the case to one under chapter 7, whichever is in the interests of creditors. See 11 U.S.C. §

1307(c)(1) & (c)(5).

As noted in the trustee's motion, there are nonexempt assets that may produce a return of approximately $115,000 for unsecured creditors. Given this return, conversion rather than dismissal is in the interest of creditors.

7. 17-20246-A-13 ANDRES SUAREZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 2-22-17 [36]

- ☐ 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.

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

Third, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $1,063 is less than the $1,275.01 in dividends and expenses the plan requires the trustee to pay each month.

Fourth, to pay the dividends required by the plan at the rate proposed by it will take 71 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Fifth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Schedule H fails to list a nonfiling spouse as a codebtor on certain debts. 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. 17-20246-A-13 ANDRES SUAREZ
TGM-1
THE BANK OF NEW YORK MELLON VS.

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
1-31-17 [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 assumes the arrears on the objecting creditor's Class 1 secured claim are approximately 11,000. The creditor indicates that the arrears are more than $21,000. At this higher level, the plan either is not feasible or it will not pay the objecting secured claim in full. The plan fails to comply with 11 U.S.C. §§ 1325(a)(5)(B) & (a)(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 75 days, the case will be dismissed on the trustee's ex parte application.

9. 17-20053-A-13 DANIEL MASSEY
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN
2-22-17 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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 relating to a bank account and his errors and omissions insurance policy. 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).

10. 17-21068-A-13 ROBERT GANTZ — MOTION TO EXTEND AUTOMATIC STAY
PSB-1 — 2-24-17 [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 granted.

This is the second chapter 13 case filed by the debtor. A prior case, Case No. 17-20509 was dismissed on February 13, 2017 because the debtor to file schedules, statements and a proposed plan.

Hence, the debtor's earlier chapter 13 case was dismissed within one year of the most recent petition.

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, the debtor was unable to gather the information necessary to complete the bankruptcy documents because of the time demands of three different jobs. In this case, all documents have been filed. This is a sufficient change in circumstances rebut the presumption of bad faith.

11. 16-24178-A-13 GREGORY/KRISTY RAUZY — MOTION TO CONFIRM PLAN
PGM-2 — 1-30-17 [63]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The latest Form 122C-1 reports annual net income of $120,263.52, an increase of a bit less than $4,000 over what was previously reported in December 2016. While there are minor changes to expenses report on lines 1 through 24 of Form 122C-2, the latest form reports less total expenses. They decrease by $588.31 a month.

The material increases to the debtor's expenses are reported at lines 25 z(health insurance and other costs) and 26 (contributions to care for an elderly and ill family member). These and other minor changes increased the debtor's monthly expenses by $1,288.45.

The net change is an increase in monthly expenses of $700 and with other minor changes, the bottom line is that the debtor's projected disposable income decreased from $1,545.45 to $1,120.31, a decrease of $425.31. Hence, over the 5-year plan, the debtor will have $67,218.60 in projected disposable income that must be paid to unsecured creditors. See 11 U.S.C. § 1325(b). However, because the plan will pay less than $32,000 to these creditors it cannot be confirmed.

And, even if $32,000 was sufficient to satisfy section 1325(b), because unsecured creditors would receive $37,925 in a chapter 7 liquidation, the plan does not satisfy 11 U.S.C. § 1325(a)(4).

12. 13-26286-A-13 ANTHONY/BRIDGET CARDENAS — OBJECTION TO NOTICE OF MORTGAGE PAYMENT CHANGE
PGM-1 — 1-23-17 [50]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

The debtor owns a home encumbered by a mortgage held by the claimant. The loan permits periodic adjustments to the interest rate.

On November 9, 2016, the claimant filed a notice of mortgage payment change effective December 1, 2016 due to an adjustment of the interest rate. The principal and interest component of the monthly payment was to increase from $1,753.74 to $1,958.37. The notice also reports that the existing escrow component of the monthly payment, $543.37, would not be changing. This was

previously documented in a letter to the debtor dated June 30, 2014 which is attached to the notice as an exhibit. However, the notice indicated that the monthly payment would be a total of $2,786.83. Adding the increased principal and interest component, $1,958.37, to the existing escrow component, $543.37, yields a monthly payment of $2,501.74, not $2,786.83. Interestingly, one of the attachments to the notice indicates the payment would be $2,501.74, but the first page of the notice demands $2,786.83.

This obvious discrepancy was brought to the attention of the claimant by the U.S. Trustee in a letter dated November 10, 2016.

In apparent response to the letter, the claimant filed an amended notice of mortgage payment change on January 6, 2017. However, it again demanded the same monthly payment of $2,786.83 based on the same principal and interest component change to $1,958.37. Again, on its first page, the amended notice indicates there is no change in the escrow component of the payment. This time, a different letter to the debtor is attached to the notice. This letter, dated September 20, 2016 and it advises the debtor of a change to the escrow component of the payment, from $543.37 to $828.46.

The court has no evidence in the objection that the increase in the escrow component is incorrect or unwarranted in any respect.

There is one problem. The amended notice was filed on January 6. The change in the escrow component was not earlier noted in an earlier notice. Fed. R. Bankr. P. 3002.1(c) required notice of the change 21 days before the adjusted payment is due. The original notice failed to advise the debtor of the change in the escrow component. The amended notice did give notice but it is not effective until January 27. Hence, it is effective beginning with the February payment.

Therefore, effective December 1, 2016 the debtor’s mortgage payment increased to $2,501.74 and effective February 1, 2017, it increased to $2,786.83.

Counsel for the debtor is awarded his fees and costs as prayed.

FINAL RULINGS BEGIN HERE

13. 16-27606-A-13 JON STANFIELD — MOTION TO CONFIRM PLAN
DMB-1 — 1-26-17 [26]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The debtor's response to the trustee's objection to the confirmation of the plan concedes the merit of the objection. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted on condition that the plan is modified in the confirmation order to reduce the dividend specified in section 2.07 and payable on account of administrative expenses is reduced to $155 a month. As modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b) and 1325(a).

14. 16-23723-A-13 LUCIAN/LISA FREIRE — MOTION TO APPROVE LOAN MODIFICATION
MET-1 — 2-9-17 [25]

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) 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 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 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 debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

15. 16-27044-A-13 ZULEMA MANGAN — MOTION TO CONFIRM PLAN
MJD-1 — 1-18-17 [23]

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.

16. 17-20465-A-13 ELIEZER/EVANGELINE DELMENDO
JDM-1
TRAVIS CREDIT UNION VS.
MOTION FOR RELIEF FROM AUTOMATIC STAY
2-24-17 [23]

Final Ruling: The motion will be dismissed as moot. The case was dismissed on March 1. Consequently, the automatic stay has expired as a matter of law. See 11 U.S.C. § 362(c)(1) & (c)(2).

17. 16-23070-A-13 PAUL RODRIGUEZ
JPJ-2
MOTION TO CONVERT OR TO DISMISS CASE
2-10-17 [23]

Final Ruling: The motion will be dismissed as moot. The case was dismissed on March 6.

18. 16-27372-A-13 SHANE/MICHELLE GALLEGOS
LR-1
MOTION TO CONFIRM PLAN
1-30-17 [40]

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.

19. 16-28572-A-13 SUKHVINDER DHOOT
TOG-2
MOTION TO CONFIRM PLAN
1-27-17 [25]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The debtor's response to the trustee's objection to the confirmation of the plan concedes the merit of the objection. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The objection will be sustained.

First, the debtor has not established that the plan will pay all projected disposable income to unsecured creditors as required by 11 U.S.C. § 1325(b) because the debtor has erroneously deducted business expenses when calculating current monthly income. Gross business income, without expense deduction, is part of the debtor's current monthly income. Once total current monthly income is calculated, business expenses may be deducted as an expense when calculating current monthly income. Accord In re Weigand, 386 B.R. 238 (9th Cir. BAP 2008). The distinction is material here because with gross business income a part of the debtor's current monthly, the debtor's current monthly income exceeds the state median income for a comparably sized household. As a result,

the debtor must complete Form 122C-1 in its entirety in order to calculate projected disposable income. The debtor has failed to complete the portion of Form 122C-1 necessary to calculate projected disposable income. Without doing so, the debtor cannot prove compliance with 11 U.S.C. § 1325(b).

Second, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Schedule J fails to include payments on account of Class 4 debts as monthly expenses. Further, the debtor has failed to provide the trustee with a pay advices for a nonfiling spouse. These failures are breaches of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents and of the duty to cooperate with the trustee as required by 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).

20. 16-21694-A-7 ALICE PEREZ — MOTION TO CONVERT OR TO DISMISS CASE 2-10-17 [110]
JPJ-2

Final Ruling: This motion dismiss the case or to convert it to one 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 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 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 converted to one under chapter 7.

The debtor has failed to make $1,100 of the 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). The failure to make the payments is a material plan default which is prejudicial to creditors and is cause for dismissal or conversion of the case to one under chapter 7, whichever is in the interests of creditors. See 11 U.S.C. § 1307(c)(1) & (c)(5).

As noted in the trustee's motion, there are nonexempt assets that may produce a return of approximately $14,722 for unsecured creditors. Given this return, conversion rather than dismissal is in the interest of creditors.