UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 2, 2018 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 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 MAY 14, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL 30, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 7, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 19 THROUGH 23 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 APRIL 9, 2018, AT 2:30 P.M.

Matters to be Called for Argument

1. 18-20116-A-13 MICHAEL CHRISTIAN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-15-18 [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 conditionally denied.

First, the debtor has failed to give the trustee financial records for a closely held business. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Second, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Wayne and Jana Slocum in order to strip down or strip off a 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.

2. 18-20116-A-13 MICHAEL CHRISTIAN — OBJECTION TO CONFIRMATION OF PLAN
FHS-1 — 3-15-18 [39]
WAYNE SLOCUM VS.

- ☐ 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 to the extent and for the reasons stated in the ruling on the trustee's objection (JPJ-1).

3. 18-20128-A-13 CHARLENE SANDERS — OBJECTION TO CONFIRMATION OF PLAN 3-15-18 [37]
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 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, 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.

Second, 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).

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Schedule I/J is not accompanied by a detailed statement of business income and expenses. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

4. 18-20729-A-13 JPJ-1 — STEVEN PROTOPAPPAS AND JOSEPHINE RAMIREZ — OBJECTION TO CONFIRMATION OF PLAN 3-14-18 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

The plan proposes a duration of 36 months. However, because the debtor is an over-median income debtor, the duration must be 60 months even if the debtor has no projected disposable income reported on Form 122C. See Danielson v. Flores (In re Flores), 2013 WL 4566428 (Aug. 29, 2013). The plan does not comply with 11 U.S.C. § 1325(b)(4).

5. 17-28230-A-13 WW-1 — ROYAN WITHERS — MOTION TO CONFIRM PLAN 2-9-18 [30]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $960 is less than the $980 to $982 in dividends and expenses the plan requires the trustee to pay each month.

6. 18-20630-A-13 JPJ-1 — THANH LIEU — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 3-14-18 [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 motion to dismiss the case conditionally denied.

The plan does not comply with 11 U.S.C. § 1325(b) because it neither pays

unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay $6,691 unsecured creditors. While this is consistent with Form 122C, the debtor has overstated the monthly deduction for taxes by $664 for the reasons stated by the trustee in his objection. With this deduction reduced, the debtor will have monthly projected disposable income of $532.06, enough to pay $31,924 to unsecured creditors over the life 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.

7. 17-27538-A-13 RENE JARA — MOTION TO CONFIRM PLAN
RJ-2 — 2-19-18 [42]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to give the trustee financial records for a closely held business. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

8. 18-20350-A-13 JEFFREY/DENISE FIELDS — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 3-15-18 [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.

First, the debtor has failed to give the trustee financial records for a closely held business. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Second, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The petition fails to disclose that the debtor filed two prior cases in 2011. 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).

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 debtor has failed to commence making plan payments and has not paid approximately $1,925 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

9. 18-20461-A-13 RAM KUAR AND SHIU NATH — MOTION TO IMPOSE AUTOMATIC STAY
MRL-1 — 2-21-18 [35]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

This is debtor Shiu Nath's third bankruptcy case filed in this court. Case No. 17-20515 was filed on January 27, 2017 and dismissed on April 27, 2017 because the debtor failed to pay filing fee installments. A second case, Case No. 17-23405, was filed on May 19, 2017 and dismissed on November 22, 2017 due to the failure to propose and confirm a plan within the deadline set by the court.

This is debtor Ram Kuar's second bankruptcy case. This debtor was not a joint debtor in the first case filed by Shiu Nath but was a joint debtor in the second case.

Consequently, prior to the filing of this case, debtor Shiu Nath had filed two prior cases that were dismissed in the prior year but debtor Ram Kuar had filed only one prior case that was dismissed in the prior year.

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.

Therefore, as to debtor Ram Kuar, section 362(c)(3) is applicable. This debtor filed one prior case that was dismissed in the prior year. In order to extend the automatic stay beyond the thirtieth day, debtor Kuar had to file and have adjudicated a motion to extend the stay. While a motion was filed within the thirty-day period, it was no set for hearing within the thirty days. Therefore, the motion cannot be granted as to debtor Kuar.

11 U.S.C. § 362(c)(4) provides that the automatic stay never goes into effect in a new single or joint bankruptcy case of an individual debtor if that debtor had two or more single or joint cases pending within the previous one-year period that were dismissed.

Under section 362(c)(4), on motion of a party in interest brought within thirty days of the commencement of the latest case, after notice and a hearing, the court may order the stay to take effect only if the party seeking such action "demonstrates that the filing of the later case is in good faith as to the creditors to be stayed." Unlike section 362(c)(3)(B), there is no requirement in section 362(c)(4)(B) that the hearing on the motion to impose the stay be completed within the thirty-day period.

Here, because debtor Nath had filed two prior cases that were dismissed in the prior year, section 362(c)(4), not section 362(c)(3), is applicable. The motion was filed within the requisite thirty-day period.

The latest case is presumed not to have been filed in good faith as to any creditor that sought relief from the stay under section 362(d) in a previous case of the same debtor if the action for relief was still pending or was resolved by terminating, conditioning, or limiting the stay as to such creditor's actions.

Also, the latest case is presumed not to have been filed in good faith as to all creditors if any of three circumstances is established. First, the presumption arises if the debtor had two or more previous bankruptcy cases pending within the one-year period before the current case was filed. Second, the presumption arises if a previous bankruptcy case of the debtor was dismissed within the same one-year period for failure to file or amend the petition or other required documents without substantial excuse, failure to provide adequate protection, or failure to perform the terms of a confirmed plan. Third, the presumption arises if "there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous [bankruptcy] case" or "any other reason to conclude that the later case will not be [successfully] concluded." Because section 362(c)(4) applies only if a single or joint case is filed by or against an individual debtor who had two or more single or joint cases pending within the previous year that were dismissed, the first basis for the presumption will always be present.

The debtor may rebut the presumption that the case was not filed in good faith "by clear and convincing evidence to the contrary."

The rebuttal offered by debtor Nath is that in the first case failed because it was filed without an attorney and the debtor did not understand the obligation to make filing fee installments. The second case failed because of the financial and emotional wrought by the death of the debtor's son in April 2017.

The court is unconvinced that this case is any more apt to succeed than the

prior case. While the motion asserts that the debtors' adult daughter will increase her contribution from $2,500 to $3,000, the debtors' financial situation has deteriorated since the last case. In Schedule I/J filed in the immediately prior case, the debtors reported income of $5,097.34 (the court has discounted the listed $7,597.34 because the daughter's $2,500 contribution was listed twice). In this case, with the $3,000 contribution, the debtor's monthly income has decreased to $4,715.

On the expense side, in the immediately prior case, the debtors listed their monthly mortgage payment at $2,104.40. Without explanation, in this case the plan indicates the monthly payment has decreased to $1,806.11. The mortgage creditor's motion for relief from the automatic stay (MJ-1) confirms that the mortgage payment continues to be $2,104.40.

The debtors have also understated the arrears on their home mortgage. The plan assumes an arrearage of approximately $25,000 while the creditor claims more than $49,000. At $49,000 and with the higher monthly payment, the debtors cannot propose a plan that will pay the claim in full over a five-year period even if they have the disposable income asserted in Schedule I/J.

Also, without any explanation in this motion, the debtors' monthly household expenses have been slashed. For example, most insurance coverages have been eliminate and utilities have been reduced by $220. Since the debtors attested to the accuracy of their former budget the court will not permit them to so cavalierly ignore their former testimony for the sake of balancing their budget.

10. 18-20461-A-13 RAM KUAR AND SHIU NATH — MOTION FOR RELIEF FROM AUTOMATIC STAY
MJ-1
WELLS FARGO BANK, N.A. VS. — 2-8-18 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

To the extent the motion seeks to modify or terminate the automatic stay, the motion will be dismissed as moot. By virtue of the operation of 11 U.S.C. § 362(c)(3) and (c)(4), the automatic stay never went into effect in this case as to one debtor and the stay expired 30 days after the filing of this case as to the other debtor. There is no stay to modify or terminate. The court incorporates by reference its ruling of the motion of the debtors to impose/extend the automatic stay (MRL-1).

To the extent the motion seeks relief pursuant to 11 U.S.C. § 362(d)(4), the motion will be granted.

11 U.S.C. § 362(d)(4) provides:

"*On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .*

"*with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay,*

hinder, or defraud creditors that involved either-

"*(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or*

"*(B) multiple bankruptcy filings affecting such real property.*"

Section 362(d)(4) implicates 11 U.S.C. § 362(b)(20). Section 362(b)(20) is an "in rem" exception to the automatic stay. If the court grants relief in this case under section 362(d)(4), but then another petition is filed by any debtor who claims an interest in the subject real property, section 362(b)(20) provides that the automatic stay does not operate in the second case so as to prevent the enforcement of a lien or security interest in the subject real property. The exception to the automatic stay in the second case is effective for 2 years after the entry of the order under section 362(d)(4) in the first case.

A debtor in the subsequent bankruptcy case, however, may move for relief from the in rem order. The request for relief from the in rem order may be premised upon "changed circumstances or for other good cause shown. . . ."

One debtor filed two other chapter 13 cases in 2017. Both were dismissed. The other debtor joined in one of those two prior cases. Neither case was diligently prosecuted. One was dismissed because the debtor failed to make filing fee installments. The second was dismissed because the debtor failed to meet a deadline set by the court to propose and confirm a modified plan.

While these bankruptcy cases were being filed and dismissed, the debtors made no payments on a home mortgage. This default has spanned 21 months.

Given the filing of three chapter 13 cases in quick succession, two of which were not prosecuted diligently, the court concludes that the debtor is engaged in a scheme to delay, hinder or defraud the movant in the enforcement of its claim against the property. This scheme involves multiple bankruptcy filings affecting the property which the debtor has failed to diligently prosecute. Accordingly, relief under 11 U.S.C. § 362(d)(4) is warranted.

Therefore, the court will grant relief from the automatic stay that will be effective for a period of two years in any future case filed by anyone claiming an interest in the subject property, provided the recordation requirements of section 362(d)(4) are satisfied by the movant or its successor.

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

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

11. 18-20461-A-13 RAM KUAR AND SHIU NATH — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 3-14-18 [43]

- ☐ 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.

One of the debtors has listed an incorrect social security number on the petition. As a result, that debtor has concealed the debtor's identity and prior case filings. This misstatement 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).

12. 18-20461-A-13 RAM KUAR AND SHIU NATH — OBJECTION TO CONFIRMATION OF PLAN
NLL-1
WELLS FARGO BANK, N.A. VS. — 3-5-18 [39]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

The plan will not comply with 11 U.S.C. §§ 1322(b)(2) and 1325(a)(5)(B).

First, the claim held by the objecting creditor is a home mortgage. The plan must propose to maintain the contractual payments while curing the pre-petition arrears. See 11 U.S.C. § 1322(b)(2) & (5).

The plan assumes the ongoing payment is $1,806.11 while the creditor claims it is $2,104.40.

The debtors have also understated the arrears on their home mortgage. The plan assumes an arrearage of approximately $25,000 while the creditor claims more than $49,000. At $49,000 and with the higher monthly payment, the debtors cannot propose a plan that will pay the claim in full over a five-year period even if they have the disposable income asserted in Schedule I/J.

In short, the proposed plan does not comply with section 1322(b)(5) and section 1325(a)(5)(B) because it will not, and cannot, maintain the mortgage payment while curing the arrears.

13. 18-21467-A-13 KEVIN KING
GHW-1
FEDERAL NATIONAL MORTGAGE ASSOC. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-16-18 [12]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

First, this case was commenced even though the debtor was made ineligible to file the case by 11 U.S.C. § 109(g)(2).

The debtor filed a prior chapter 13 case, Case No. 17-27766. In that case, the movant filed a motion for relief from the automatic stay requesting the same relief requested in this motion. After the motion was granted, the case was dismissed and this case was filed.

Section 109(g)(2) provides:

"*Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if —*

. . .

(2)the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title."

Even though the debtor was ineligible to file this case, its filing invoked the automatic stay. However, his ineligibility to file the case is cause to terminate the automatic stay. See 11 U.S.C. § 362(d)(1).

Second, even if the debtor had been eligible to file this case there is cause to terminate the automatic stay.

The movant completed a nonjudicial foreclosure sale before the bankruptcy case was filed. Under California law, once a nonjudicial foreclosure sale has occurred, the trustor has no right of redemption. Moeller v. Lien, 25 Cal. App.4th 822, 831 (1994). In this case, therefore, the debtor has no right to ignore the foreclosure. If the foreclosure sale was not in accord with state law, this should be asserted as a defense to an unlawful detainer proceeding in state court or the validity of the foreclosure attacked in a separate state court proceeding.

The automatic stay is a respite from creditor action while the debtor attempts to reorganize. Here, the debtor has no apparent right to reorganize the movant's debt because of the foreclosure. This is cause to permit the movant to take possession.

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

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

14. 17-24878-A-13 ORASTINE HEAGLER — MOTION TO CONFIRM PLAN
PGM-1 — 2-16-18 [48]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will denied.

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.

15. 17-24878-A-13 ORASTINE HEAGLER — COUNTER MOTION TO CONDITIONALLY DISMISS CASE
PGM-1 — 3-19-18 [58]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

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

16. 17-26685-A-13 SUKANYA TOURVILLE — MOTION TO VALUE COLLATERAL
MC-1
VS. U.S. BANK, N.A. — 3-13-18 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed without prejudice.

The respondent has filed two proofs of claim. Both are secured claims. The first claim is for a debt of $7,453.14 secured by a UCC financing statement filed on December 16, 2015. The second claim is for a debt of $7,861.68 secured by a UCC financing statement filed on February 1, 2016.

Both UCC financing statements describe the same collateral, what amounts to all of the debtor's business personal property, both tangible and intangible.

According to Schedule A/B, all of the debtor's personal property, which includes both business and nonbusiness property, has a value of $9578.22. This

is the same valuation given by the debtor to the respondent's collateral. Hence, the debtor has assumed the respondent is secured by both business and nonbusiness personal property. By so doing, the debtor has overstated the value of the respondent's collateral.

17. 18-20686-A-13 MARCUS ZARRA — OBJECTION TO CONFIRMATION OF PLAN 3-14-18 [16]
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 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 fails to provide a dividend to be paid 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).

Second, 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. This means that counsel may receive a maximum fee of up to $4,000 for a consumer case (like this one) and have that fee approved in connection with the confirmation of the plan. In this case, however, counsel's proposed fee of $4,142 exceeds the maximum fee allowed by Local Bankruptcy Rule 2016-1. Therefore, he must apply for compensation pursuant to 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. The provision in the plan for payment of compensation without the requisite application cannot be confirmed.

Third, the debtor has failed to give the trustee post-petition employment income records that were requested by the trustee. 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).

Fourth, the plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay $6,516 to unsecured creditors.

While this is consistent with Form 122C, as Schedule I makes clear, the debtor's monthly income has increased significantly as the case was filed. Due to an employment change, the debtor's monthly employment income increased to $16,666. Hamilton v. Lanning, 130 S.Ct 2464 (2010) permits the trustee to rebut the presumption that the amount of projected disposable income is as stated in Form 122C. Using the debtor's new monthly employment income rather than the average income earned over the six months prior to bankruptcy, the debtor's monthly projected disposable income increases to $3,583. This will

permit payment of approximately $215,000 to nonpriority unsecured creditors over the life of the plan. Because the plan will these creditors only $6,516, the plan does not comply with 11 U.S.C. § 1325(b).

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

Here, the debtor is asserting the exemptions of Cal. Civ. Pro. Code § 703.140(b), which require a spousal waiver. That waiver was not filed with the petition. Because the trustee's objection will be sustained, the debtor will have no exemptions unless their legal basis is changed. At present the exemptions have not been amended. Without exemptions the debtor has approximately $100,000 of assets that could be liquidated for the benefit of unsecured creditors. The plan will pay only approximately $86,000 to unsecured creditors. Therefore, the plan does not comply with 11 U.S.C. § 1325(a)(4).

18. 18-20687-A-13 JPJ-1 — ROBERT WILSON AND PATRICIA KING — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 3-14-18 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

First, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Capital One 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, 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. This means that counsel may receive a maximum fee of up to $4,000 for a consumer case (like this one) and have that fee approved in connection with the confirmation of the plan. In this case, however, counsel’s proposed fee of $4,200 exceeds the maximum fee allowed by Local Bankruptcy Rule 2016-1. Therefore, he must apply for compensation pursuant to 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. The provision in the plan for payment of compensation without the requisite application cannot be confirmed.

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. 18-21100-A-13 DOUGLAS KENNEDY — MOTION TO VALUE COLLATERAL
MRL-1
VS. AMERICAN HONDA FINANCE CORP. — 3-4-18 [8]

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 valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $30,000 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $30,000 of the respondent's claim is an allowed secured claim. When the respondent is paid $30,000 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

20. 18-20201-A-13 LISA THOMPSON — MOTION TO VALUE COLLATERAL
PGM-1
VS. CAPITAL ONE AUTO FINANCE — 3-5-18 [24]

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 valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $4,500 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $4,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $4,500 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

21. 18-21101-A-13 JAMES/ANNE-MARIE MAY — MOTION TO VALUE COLLATERAL
MRL-1
VS. TRAVIS CREDIT UNION — 3-2-18 [8]

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 valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $14,000 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $14,000 of the respondent's claim is an allowed secured claim. When the respondent is paid $14,000 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

22. 14-32504-A-13 YONG HUR — MOTION TO MODIFY PLAN
PGM-1 — 2-23-18 [51]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

23. 17-26695-A-13 JAMES COOPER — MOTION TO CONFIRM PLAN
CK-2 — 2-14-18 [36]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to

the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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