UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 17, 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 17. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE MAY 15, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 1, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 8, 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 18 THROUGH 22 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 24, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 17-20107-A-13 RENEE BOUTROS — MOTION TO CONVERT CASE 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. The discussion in the additional brief filed by the debtor fails to address this point. The brief assumes that an asset impressed with a constructive trust cannot be obtained by a trustee via section 544(a). This is incorrect. While the property may be impressed with a resulting trust, both outside and inside of bankruptcy, it nonetheless may be subject to claims of a BFP.

Further, the additional brief is not supported by evidence from the debtor's son to the effect that he paid the purchase price or that he has the ability and the inclination to make the mortgage payments and contribute the funds necessary to perform the plan to the debtor.

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.

Finally, the scheme described in the debtor's response is an admission that her son embarked on a scheme to defraud a home lender. He was not able to qualify for a mortgage and so he had his mother do it for him which necessitated that she take title. Now that he can afford to make the payments, he wishes to leave title in his mother's name so as to not trigger a due on sale clause, but prevent his mother's bankruptcy estate from capitalizing on the fact that record title is in her name, not his. The court will not abet this scheme.

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.

While family assistance may be considered income for purposes of eligibility under 11 U.S.C. § 109(e), here that support is de minimis, just $100. It seems more an artifice that reality. And, even if considered material, there is no proof from the son of his ability or inclination to contribute it to the debtor throughout the duration of the plan. Hence, the debtor has not carried the burden of proving feasibility. See 11 U.S.C. § 1325(a)(6).

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.

2. 17-20107-A-13 RENEE BOUTROS — MOTION TO CONFIRM PLAN
MET-1 — 2-17-17 [12]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection sustained for the reasons explained in this ruling and in the ruling on the trustee's motion to dismiss the case.

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).

3. 17-20907-A-13 KENNETH JOHNSON — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-27-17 [33]

- ☐ 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 dismissed.

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

Second, 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 entire 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 only payment advice given to the trustee for the period February 16 to February 28 shows the receipt of a bonus that is not included on Form 122C-1. Assuming no other bonuses, this raises the debtor's monthly net income by $833.33 which yields enough projected disposable income to pay $37,933.80 to unsecured creditors. Because the plan proposes to pay just $11,800.09 to unsecured creditors, the plan does not comply with 11 U.S.C. § 1325(b).

4. 17-20907-A-13 KENNETH JOHNSON — OBJECTION TO CONFIRMATION OF PLAN
JCW-1
THE BANK OF NEW YORK MELLON VS. — 3-30-17 [37]

- ☐ 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 in part.

The plan proposes to pay the secured claim of the objecting creditor by selling its collateral in a "short sale." That is, the debtor will not be maintaining contract installments on the obligation even though it is a long term obligation, and the debtor will not cure the arrears with monthly dividends

paid through the plan. Instead, after the property is sold the claim will be paid from the sale proceeds. However, the reference to a short sale means that the sale proceeds will be insufficient to pay the claim in full.

There are two feasibility issues. First, the debtor has come forward with no evidence that the debtor will be able to sell the property for any particular amount. Second, there is no indication that the creditor will accept a sale of its collateral for a price that is insufficient to pay its claim in full.

5. 17-22007-A-13 DAVID/PATRICIA WEATHERBEE — MOTION TO EXTEND AUTOMATIC STAY
MJD-1 — 3-31-17 [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 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, it appears that the debtor was unable to maintain plan payments in the

first case due to a loss of employment. The debtor is now re-employed and the debtor is able to maintain plan payments. This is a sufficient change in circumstances rebut the presumption of bad faith.

6. 14-32316-A-13 ARLEANER COLLINS — ORDER TO SHOW CAUSE 3-28-17 [47]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion for relief from the automatic stay filed by creditor Reverse Mortgage Solutions will be dismissed without prejudice because the $181 filing fee for such motion was not tendered with the motion. The hearing date for such motion on April 24 is vacated.

7. 15-21845-A-13 JOSEPH BARNES — MOTION TO RECONVERT OR TO DISMISS CASE 3-14-17 [141]
JPJ-3

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

This case began as a chapter 13 case on March 9, 2015. It was converted to one under chapter 7 on the trustee's motion because the debtor failed to make timely plan payments and cooperate with the trustee by providing post-petition tax returns. The case was converted rather than dismissed because the schedules showed the debtor owned substantial nonexempt assets that could be liquidated for the benefit of creditors.

The debtor then moved to reconvert the case to one under chapter 13. In the motion for this relief, the debtor represented his intention and ability to propose, confirm and perform a plan. The court granted the motion.

The debtor then did nothing to confirm a plan and the debtor has made no plan payments. This is cause to convert the case to one under chapter 7, again.

8. 16-25647-A-13 JAMES ARNOLD — MOTION TO CONFIRM PLAN 3-3-17 [71]
JB-4

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the objection will be overruled.

The objecting creditor holds an unsecured claim against the debtor. Earlier in the case, it received relief from the automatic stay to remove the debtor's property from its property.

The objection asserts that section 5.03 means that the creditor will not be paid a dividend on its claim. It does not say anything of the sort. It provides that when the holder of a Class 1 or Class 2 secured claim obtains

relief from the automatic stay because the debtor has defaulted in paying its claim as required by a confirmed plan, the trustee will cease paying the secured claim.

The creditor here does not have a secured claim. It does not have a Class 1 or a Class 2 secured claim. And, it did not receive relief from the automatic stay because the debtor defaulted under the terms of a confirmed plan.

Section 5.03 has no applicability to the creditor's claim.

9. 16-22552-A-13 BOWEN/NADINE RIDEOUT — MOTION TO CONFIRM PLAN
ET-1 — 6-16-16 [29]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None.

10. 16-22552-A-13 BOWEN/NADINE RIDEOUT — OBJECTION TO CLAIM
ET-3
VS. DEBORAH GARDINER — 9-8-16 [78]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None.

11. 16-22552-A-13 BOWEN/NADINE RIDEOUT — OBJECTION TO CLAIM
ET-4
VS. WILLIAM GARDINER — 9-8-16 [83]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None.

12. 17-20880-A-13 ERIKA DALTON — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-27-17 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the motion to dismiss the case 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 $150 is less than the $206.03 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.

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.

13. 15-20884-A-13 JACQUIE ROBINSON — OBJECTION TO CLAIM
JDR-3
VS. OCWEN — 3-14-17 [82]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 44 days' notice of the hearing was given by the objecting party, this objection to a proof of claim is deemed brought pursuant to Local Bankruptcy Rule 3007-1(c)(2). Consequently, the claimant was not required to file a written response or opposition to the objection. If the claimant appears at the hearing and offers opposition to the objection, 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 objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the objection. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be overruled.

This objection concerns the proof of claim of Ocwen. Ocwen holds a claim secured by a mortgage on the debtor's home. According to its timely proof of claim, there was an arrearage of $7,207.50, consisting of 5 monthly installments of $1,441.50, due and owing when this case was filed.

The debtor scheduled the the amount of the arrearage at $5,609.57. She objects to the difference. She gives two reasons for her disagreement.

First, there is no documentation attached to the proof of claim supporting the amount of the arrearage. However, what documentation needs to be attached to a proof of claim demonstrating that the debtor did not make a payment is not explained by the debtor. Appended to the claim is a statement indicating the date of the last payment made, the amount of the payments, and the number not paid by the debtor. This complies with the requirements of Fed. R. Bankr. P. 3001(c)(2). The fees and expenses are itemized and the proof of claim states the amount necessary to cure the default.

But, even if the documentation of the arrearage was insufficient, this is not a

basis for disallowing the claim.

When a debtor objects to a creditor's proof of claim that does not conform with Fed. R. Bankr. P. 3001(c) by including copies of the documentation on which it is based, the bankruptcy court must resolve the dispute by reference to the burdens of proof associated with claims litigation.

In In re Heath, 331 B.R. 424, 436 (9th Cir. BAP 2005) and In re Campbell, 336 B.R. 430, 436 (9th Cir. BAP 2005), creditors filed proofs of claim that failed to provide adequate summaries or attach the documentation as required by Fed. R. Bankr. P. 3001. The debtors in these cases objected to the proofs of claim but came forward with no evidence that the claims were not owed. Therefore, the BAP concluded that even though the failure to include the summaries and/or documentation required by Rule 3001 deprived the proofs of claim of their prima facie validity, this was not a basis for disallowing the claims in the absence of evidence the claims were not owed.

Here, the debtor's evidence in support of the objection includes no evidence that the arrearage is less than that demanded by the creditor. Her evidence instead focuses on whether Ocwen is demanding too much for the escrow component of the monthly payment. The debtor claims to have paid $831 for hazard insurance in 2015 but the creditor's records also show that it paid the $831 in January 2015.

Assuming that the debtor paid $831 and that Ocwen did not, this is not a basis for disallowing its arrearage claim. The $831 concerns the amount of the escrow component of the monthly payment, not the arrearage amount.

And, since the case was filed, Ocwen has filed two notices of mortgage payment changes adjusting the escrow component. In the latest, dated November 2, 2016, the escrow component was reduced and the notice indicates there was a escrow balance of $2,301.67. After keeping a $731.74 reserve, the debtor would receive a refund of the escrow balance. In other words, it appears that the creditor taken account of prior escrow expenditures and refunded to the debtor amounts held beyond what is required to pay future insurance and taxes.

14. 17-20884-A-13 LESSIE MCMILLER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-27-17 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $3,500 is less than the $3,647 in dividends and expenses the plan requires the trustee to pay each month.

Second, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Redwood Credit Union 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."

Third, 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).

Fourth, 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 122 in its entirety in order to calculate projected disposable income. The debtor has failed to complete Form 122C-1 and 122C-2 in order to calculate projected disposable income. Without doing so, the debtor cannot prove compliance with 11 U.S.C. § 1325(b).

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.

15. 17-20885-A-13 KANDICE RICHARDSON FOWLER
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
3-27-17 [32]

- ☐ 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, the debtor failed to utilize the court's mandatory form plan as required by Local Bankruptcy Rule 3015-1(a).

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 debtor has failed to commence making plan payments and has not paid approximately $1,950 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).

Fifth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, Schedule E/F fails to list student loan lenders as creditors, the petition fails to disclose three prior bankruptcy cases filed by the debtor, Schedule A/B fails to disclose a lawsuit in which the debtor is the plaintiff, and the debtor failed to disclose a $6,000 payment to an attorney in response to Question 17 on the Statement of Financial Affairs. These nondisclosures 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).

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. 17-20885-A-13 KANDICE RICHARDSON FOWLER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
TGM-1
SPECIALIZED LOAN SERVICING, L.L.C. VS.
3-17-17 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained to the extent discussed in the ruling on the trustee's objection and for the reasons discussed below. 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). The plan requires a monthly payment of $1,950 but Schedule I/J indicates the debtor will have only $350 of monthly net income with which to make that payment. Also, the plan assumes the objecting creditor's arrears are only $40,000. It claims in excess of $114,000. At the higher amount, the debtor will not complete the plan even if she has the ability to pay $1,950 a 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.

17. 17-20885-A-13 KANDICE RICHARDSON FOWLER — MOTION FOR RELIEF FROM AUTOMATIC STAY
BAW-1
SPECIALIZED LOAN SERVICING, L.L.C. VS.
3-20-17 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted pursuant to 11 U.S.C. § 362(d)(1).

For the reasons explained in the rulings on two objections to confirmation (JPJ-1 and TGM-1) the debtor has proposed a plan that is unconfirmable. No reorganization is in prospect.

Also, the proposed plan requires the debtor to cure a pre-petition default through the plan and to maintain ongoing contract installment payments directly to the movant. Those installments have not been commenced and the proposed cure of the arrears is substantially less than claimed by the creditor.

Therefore, motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

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).

FINAL RULINGS BEGIN HERE

18. 16-23414-A-13 ALFREDO/LORENA MEDINA — OBJECTION TO CLAIM
JPJ-1
VS. CAVALRY SPV I, L.L.C. — 2-17-17 [18]

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

The objection will be sustained and the claim disallowed.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on May 18, 2011. Therefore, using this date as the date of breach, when the case was filed on May 25, 2016, 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).

19. 16-27914-A-13 JANEEN WILLIAMS — MOTION TO CONFIRM PLAN
RS-1 — 2-28-17 [21]

Final Ruling: The motion will be dismissed as moot. The case was dismissed on March 15.

20. 15-20059-A-13 ELIZABETH HERRERA — MOTION TO MODIFY PLAN
MJD-1 — 3-7-17 [30]

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.

21. 17-20763-A-13 FRANK/TINA MOONEY
PGM-1
VS. CALIFORNIA CHECK CASHING STORES, L.L.C.

MOTION TO VALUE COLLATERAL
3-17-17 [13]

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 $3,500 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, $3,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $3,500 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.

22. 17-21663-A-13 DOUG LEE AND LAI SAECHAO
RK-1
VS. ONEMAIN FINANCIAL GROUP, LLC

MOTION TO VALUE COLLATERAL
3-16-17 [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 $2,500 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, $2,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $2,500 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.

23.	17-20465-A-13 JMC-4	ELIEZER/EVANGELINE DELMENDO	MOTION TO CONFIRM PLAN 2-28-17 [40]

Final Ruling: The motion will be dismissed as moot. The case was dismissed on March 1.