UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 30, 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 14. 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 JUNE 26, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 12, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 19, 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 15 THROUGH 18 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 JUNE 5, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 11-44602-A-13 PAUL/JANIE BEATON — OBJECTION TO TRUSTEE'S FINAL REPORT 4-28-17 [48]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

This case was filed on October 14, 2011. The $274 filing fee was paid when the petition was filed.

The case was dismissed on October 25, 2011 because the debtors failed to file a verified master address list by October 21 as ordered by the court.

Before the case was dismissed, the debtors proposed a plan. After the case was dismissed, the debtors paid to the trustee $432.90 which, according to the proposed plan, was the monthly dividend due to the holder of a home mortgage, Chase Home Finance.

On July 2, 2012, the chapter 13 trustee filed a final report and account. It shows the trustee's receipt of $432.90 from the debtors. Because the case was dismissed, the trustee retained $250 to cover his expenses and compensation as permitted by Local Bankruptcy Rule 3015-1(h) and refunded the balance, $182.90, to the debtors. However, the debtors never negotiated the refund, causing the trustee to deposit the $182.90 into the court registry as unclaimed funds pursuant to Fed. R. Bankr. P. 3011 and 11 U.S.C. § 347(a). The trustee filed a notice on May 1, 2012 confirming the deposit into the registry. The debtors have never filed an application for the return of these funds in accordance with the applicable rules and guidelines.

On March 29, 2017, the chapter 13 trustee filed an amended final report and account. It too shows the trustee's receipt of $432.90 but the amended report shows nothing withheld to cover the trustee's expenses and compensation. The report states that the entire $432.90 was refunded to the debtors.

The reason for the amendment is not apparent from the face of the amended report. However, the court suspects that the plan payment made by the debtors was made and received by the trustee after the dismissal of the case. For that reason, it was not appropriate to retain $250 because when the payment was made there no longer was a bankruptcy estate for the trustee to administer.

Mr. Beaton filed an objection to the amended report. It complains that the debtors have not received $432.90, only $250. That is because $182.90 previously was refunded in 2012. $250 was refunded (and received by Mr. Beaton) in connection with the amended report. That is a total refund of $432.90. While the debtors did not cash the trustee's first check for $182.90, it was later deposited in the court registry where the debtors may still claim it.

The objection indicates that Mrs. Beaton has since died. In order for Mr. Beaton to claim the entire $182.90 from the registry, he must complete an application on the required form and provide the clerk with a certified copy of the Mrs. Beaton's death certificate.

2. 17-20907-A-13 KENNETH JOHNSON — MOTION TO SELL
RJ-3 — 5-9-17 [52]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion to sell real property will be granted on the condition that the sale proceeds are used to pay all liens of record in full in a manner consistent with the plan, confirmed or not. If the proceeds are not sufficient to pay liens of record in full (including liens ostensibly "stripped off"), no sale may be completed without the consent of each lienholder not being paid in full.

3. 17-20907-A-13 KENNETH JOHNSON — MOTION TO AVOID JUDICIAL LIEN
RJ-6
VS. RAZOR CAPITAL, L.L.C. — 5-16-17 [64]

- ☐ 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.

A judgment was entered against debtor in favor of the respondent for approximately $6,684.76. The abstract of judgment was recorded with Nevada County on December 7, 2015. That lien attached to the debtor's residential real property in Sacramento County.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $350,000 as of the petition date. The unavoidable liens totaled $454,541 on that same date, consisting of a single mortgage in favor of Bank of America. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $10,000 in Schedule C.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

4. 17-22007-A-13 DAVID/PATRICIA WEATHERBEE — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 5-10-17 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, Schedule I has not been updated to reflect an employment change. 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).

Second, the debtor has failed to commence making plan payments and has not paid approximately $2,007 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).

Third, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $23,806.65 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay nothing to unsecured creditors.

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.

5. 16-25421-A-13 ALIDA CASH — OBJECTION TO CLAIM
PGM-1
VS. LVNV FUNDING, L.L.C. — 4-12-17 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

Attached to the amended proof of claim is a copy of a state court judgment entered on September 19, 2013. Hence, the claim is not based on a stale contract claim barred by the statute of limitations. It was reduced to judgment either before the statute ran or, if the complaint was not timely filed, the debtor waived the statute by failing to raise it as an affirmative defense.

6. 17-20342-A-13 MEHMED/HASNIJA OBRADOVIC — MOTION TO CONFIRM PLAN
GEL-2 — 4-13-17 [31]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

While the plan provides for the ongoing mortgage payments owed to Ocwen, the amount provided, $1,42393, is less than the $2,866.27 due to Ocwen according to its claim. The plan, then, either will impermissibly modify the claim or it is not feasible given that the debtor's monthly net income is only $2,250. See 11 U.S.C. §§ 1322(b)(2), 1325(a)(5)(B), (a)(6).

7. 15-23745-A-13 STEPHEN ADAMS — MOTION TO SELL
ET-8 — 5-4-17 [91]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion to sell real property will be granted on the condition that the sale proceeds are used to pay all liens of record in full in a manner consistent with the plan. If the proceeds are not sufficient to pay liens of record in full (including liens ostensibly "stripped off"), no sale may be completed without the consent of each lienholder not being paid in full.

8. 17-21854-A-13 KIM COLLINS
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
5-10-17 [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 will be conditionally denied.

First, because the debtor failed to update the verified master address list with the names and addresses of creditors added to amended Schedule E/F, all creditors have not been served with the plan and the deadline to object to its confirmation. The debtor has not complied with Fed. R. Bankr. P. 2002(b).

Second, the plan's feasibility depends up the sale of property within the first nine months of the plan. There is no evidence demonstrating that the required sale is likely to occur. The debtor has not carried the burden of satisfying 11 U.S.C. § 1325(a)(6).

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

9. 17-21854-A-13 KIM COLLINS
APN-1
WELLS FARGO BANK, N.A. VS.

OBJECTION TO CONFIRMATION OF PLAN
5-8-17 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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 impermissibly modifies a home loan secured only by the debtor's home by changing the amount of future installment payments in violation of 11 U.S.C. § 1322(b)(2). Further, the plan assumes the arrears on the objecting

creditor's Class 1 secured claim are approximately $27,000. The creditor indicates that the arrears are more than $29,000. At this higher level, the plan either is not feasible or it will not pay the objecting secured claim in full. The plan fails to comply with 11 U.S.C. §§ 1325(a)(5)(B) & (a)(6).

10. 17-22055-A-13 ROBERT/JULIE WARES — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 5-10-17 [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.

First, 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).

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

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

11. 17-22978-A-13 MORGAN MITCHELL — MOTION TO EXTEND AUTOMATIC STAY
JLK-1 — 5-10-17 [11]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or

opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be denied.

This is the second chapter 13 case filed by the debtor. A prior case, Case No. 16-25663, was dismissed on April 11, 2017 because the debtor to maintain his plan payments. This case was filed on May 1, 2017.

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

In the first chapter 13 case, Schedules I and J showed income of $6,719 and expenses of $3,719, leaving $3,000 in monthly net income with which to make plan payments. The debtor's proposed plan required monthly payments of $3,000. That plan was never confirmed because the debtor was unable to maintain the plan payments despite being given an opportunity to cure the default.

In this case, Schedules I and J show exactly the same income, expenses and monthly net income, and the plan again proposes monthly payments of $3,000.

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."

Given that the debtor's monthly net income in both cases is identical, if the debtor was unable to make timely payments in the prior case, in the absence of any change is circumstances the court is unconvinced that this case will be any more successful that the prior case.

12. 17-21890-A-13 KELLY SEGURA
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
5-10-17 [13]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

The debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, Schedule I has not been updated to reflect an employment change. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

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

13. 17-21994-A-13 IMOGENE ESPINOZA
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
5-10-17 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

Third, to pay the dividends required by the plan at the rate proposed by it will take 76 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. It appears that the debtor has merely copied schedules and statements from one or more of her three prior cases without updating her answers. This 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).

Fifth, the debtor has come forward with no evidence that the plan complies with 11 U.S.C. § 1325(a)(4) by paying unsecured creditors the present value of what they would receive under chapter 7. This plan will pay approximately $3,200 to unsecured creditors even though the trustee's investigation suggests there is $40,000 of nonexempt equity available for unsecured creditors.

Sixth, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Portfolio Recovery Associates 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."

Seventh, the plan assumes the arrears on the objecting creditor's Class 1

secured claim are approximately $2,826 The creditor indicates that the arrears are more than $8,408. At this higher level, the plan either is not feasible or it will not pay the objecting secured claim in full. The plan fails to comply with 11 U.S.C. §§ 1325(a)(5)(B) & (a)(6).

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

14. 17-21994-A-13 IMOGENE ESPINOZA — OBJECTION TO CONFIRMATION OF PLAN
JHW-1
PORTFOLIO RECOVERY ASSOC., L.L.C. VS. — 5-3-17 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained to the extent the court has sustained the trustee's objection. The ruling on that objection (JPJ-1) is incorporated by reference.

FINAL RULINGS BEGIN HERE

15. 14-26107-A-13 ROBIN LANGLEY — MOTION TO VACATE DISMISSAL 5-2-17 [75]
SJD-1

Amended Final Ruling: The motion will be dismissed without prejudice.

None of the factual assertions in the motion are supported by admissible evidence. See Local Bankruptcy Rule 9014-1(d)(6). While exhibits have been filed, none are authenticated.

16. 17-21808-A-13 DOROTHY KOCIALKOSKI — OBJECTION TO CONFIRMATION OF PLAN 5-10-17 [14]
JPJ-1

Final Ruling: The court continues the hearing to June 19, 2017 at 1:30 PM to permit the debtor to file the delinquent tax returns, provide copies to the trustee, and to conclude the June 1 meeting of creditors. The trustee shall file and serve any amendment to his objection by June 5. The debtor shall file and serve a written response to the objection/amended objection by June 12.

17. 17-21741-A-13 STEVEN/ALISIA JOHNSON — MOTION TO APPROVE LOAN MODIFICATION 4-26-17 [22]
MRL-2

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

18. 17-21994-A-13 IMOGENE ESPINOZA — OBJECTION TO CONFIRMATION OF PLAN 4-26-17 [16]
U.S. BANK, N.A. VS.

Final Ruling: The objection will be dismissed without prejudice.

First, the objection does not comply with Local Bankruptcy Rule 9014-1 because when filed it was not accompanied by a separate proof/certificate of service. See Local Bankruptcy Rule 9014-1(e)(3). Appending a proof of service to one of the supporting documents does not satisfy the local rule. The proof/certificate of service must be a separate document so that it will be docketed on the electronic record. This permits anyone examining the docket to determine if service has been accomplished without examining every document filed in support of the matter on calendar. Given the absence of the required

proof/certificate of service, the objecting party has failed to establish that the motion was served on all necessary parties in interest.

Second, an objection placed on the calendar by the objecting party for hearing must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c). The purpose of the docket control number is to insure that all documents filed in support and in opposition to the objection are linked on the docket. This linkage insures that the court, as well as any party reviewing the docket, will be aware of everything filed in connection with the objection.

This objection has no docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the objection that have not been brought to the attention of the court. The court will not permit the objecting creditor to profit from possible confusion caused by this breach of the court's local rules.