UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 29, 2015 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 29. 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 ON AUGUST 3, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 20, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 27, 2015. 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 30 THROUGH 41 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 JULY 6, 2015, AT 2:30 P.M.

Matters to be Called for Argument

1. 15-21911-A-13 JULIE COLLIS-DAVIS — MOTION TO VALUE COLLATERAL
DEF-2
VS. SMUD — 5-22-15 [47]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

While there is no dispute that the subject real property has a value of $250,000, or that the property is encumbered by a deed of trust held by Nationstar Mortgage and securing a claim in excess of $265,000, these facts alone are not dispositive. This is because SMUD financed the purchase of siding and soffit/fascia installed on the debtor's home. It secured the purchase with the siding and soffit/fascia. Further, this security interest was perfected by a fixture filing in the real property records. This security interest takes priority over the deed of trust. See Cal. Comm. Code § 9334(d). Hence, because it is effectively the senior lien even though it was perfected later in time, it cannot be stripped from the subject real property because there is sufficient value to fully collateralize the loan.

2. 14-29717-A-13 CHAD ELTISTE — MOTION TO CONVERT OR DISMISS CASE
JPJ-1 — 6-10-15 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor, the creditors, 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.

In breach of section 5.02 of the plan, the debtor has failed to cooperate with the trustee and produce financial records relating to the debtor's post petition taxes, wages, and income.

The foregoing is cause for dismissal or conversion to chapter 7, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(1). Inasmuch as the motion demonstrates that there are substantial nonexempt assets, conversion rather than dismissal is in the best interests of creditors. The case will be converted to one under chapter 7.

3. 15-23419-A-13 JOHN/RATIKORN CHANDO — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-11-15 [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's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Nationstar Mortgage in order to strip down or strip off its secured claim from its collateral. No such motion has been filed, served, and granted. Absent a successful motion the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

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

4. 15-23419-A-13 JOHN/RATIKORN CHANDO — OBJECTION TO CONFIRMATION OF PLAN
PPR-1 — 6-11-15 [22]
THE BANK OF NEW YORK MELLON 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.

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Nationstar Mortgage 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.

5. 11-42124-A-13 DAVID/JENNIFER BLUMGOLD — ORDER TO SHOW CAUSE 6-9-15 [28]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: On January 6, 2012, Wells Fargo Bank filed a proof of claim. On May 26, 2015, it filed a transfer of this claim to Nationstar Mortgage. However, neither transferor nor transferee paid the $25 transfer fee required by 28 U.S.C. § 1930(b). Therefore, the transfer and assignment of the claim will be disallowed and not recognized by the court until the fee is paid.

6. 15-23724-A-13 MONTE/ALONNA MONTGOMERY — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 6-11-15 [18]
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 and a motion to dismiss the case was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Harley Davidson Credit Corp. 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.

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. 15-23724-A-13 MONTE/ALONNA MONTGOMERY — OBJECTION TO CONFIRMATION OF PLAN
MDE-1 — 5-21-15 [14]
HARLEY-DAVIDSON CREDIT CORP. 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.

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Harley Davidson Credit Corp. 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.

8. 10-21126-A-13 JOHN/CHERYL RADERCHAK — MOTION TO INCUR DEBT
WW-5 — 6-15-15 [88]

- ☐ 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.

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

the plan.

9. 13-36128-A-13 MORTISHIA FAIRCHILD — MOTION TO CONVERT OR DISMISS CASE
JPJ-1 — 6-15-15 [39]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor, the creditors, 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.

The debtor has failed to pay to the trustee approximately $4,020 as required by the confirmed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is no longer feasible. The debtor has not acted to modify the plan.

The foregoing is cause for dismissal or conversion to chapter 7, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(1). Inasmuch as the motion demonstrates that there are substantial nonexempt assets, conversion rather than dismissal is in the best interests of creditors. The case will be converted to one under chapter 7.

10. 15-23228-A-13 EDORENO/MARY GONZALES — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-11-15 [27]

- ☐ 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.

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. 15-22033-A-13 MICHAEL MURPHY — MOTION TO CONFIRM PLAN
MOH-2 — 5-18-15 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

Second, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment in the first three months of $885 is less than the $1,193 in dividends and expenses the plan requires the trustee to pay each month.

Third, even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the post-petition arrearage that accumulated in April 2015. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

12. 13-35842-A-13 JUAN/PAULINE VALADEZ — MOTION TO MODIFY PLAN
CAH-3 — 5-7-15 [34]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $2,320 is less than the $2,544.57 in dividends and expenses the plan requires the trustee to pay each month.

13. 15-20144-A-13 MORGAN FAY — MOTION TO CONFIRM PLAN
CAH-1 — 5-12-15 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

14. 15-23745-A-13 STEPHEN ADAMS — OBJECTION TO CONFIRMATION OF PLAN
APN-1 — 5-27-15 [14]
WELLS FARGO BANK, N.A. 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.

The plan does not comply with 11 U.S.C. § 1325(a)(5)(B)(ii) because it will not pay the objecting creditor's secured claim its value, as of the effective date of the plan. In order to pay this value in installments, it is necessary to pay interest on the claim. The plan provides for no interest. Therefore, when discounted to present value, the stream of payments proposed by the plan will not equal the secured claim.

15. 15-23349-A-13 JOHN SCHRIEVE — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 6-11-15 [28]

- ☐ 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 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, 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.

Third, the debtor has failed to make $50 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Fourth, 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).

16. 15-23650-A-13 RUDOLPH/RENEE LUNA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-11-15 [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 plan's feasibility depends on the debtor successfully prosecuting

motions to value the collateral of Prestigio Jewelers and Santander Consumer USA in order to strip down or strip off their secured claims from their collateral. No such motions have been filed, served, and granted. Absent successful motions 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, 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, to pay the dividends required by the plan at the rate proposed by it will take 72 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

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. 15-24652-A-13 CHRISTINA SONLEITNER — MOTION TO EXTEND AUTOMATIC STAY 6-12-15 [10]
CAH-1

- ☐ 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 was dismissed within one year of the filing of the current case. The prior case was dismissed after a plan was confirmed. The debtor failed to make the

required plan payment the month following confirmation of the plan. After the trustee noticed the default, it was cured but the debtor again went into default the month after the cure. This time, the default was not cured and the case was dismissed.

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. This motion does not establish that the debtor will be any more successful in this case. In fact, a comparison of the schedules filed in the two cases shows the debtor will have less monthly income in the most recent case. The court cannot conclude that this case is more apt to succeed.

18. 15-24358-A-13 DAVID DIAS — MOTION TO EXTEND AUTOMATIC STAY 6-10-15 [15]
AFL-2

- ☐ 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 was dismissed within one year of the filing of the current case. The prior case

was dismissed after a plan was confirmed. The debtor failed to increase the plan payment when the monthly installment due on a home mortgage increased.

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 increase the plan payment in order to pay an increased mortgage payment. While a comparison of the schedules filed in each case indicates that the debtor's monthly net income has increased by approximately $680, the arrearage owed on the home mortgage has increased by more than $12,000 and unsecured debt has increased by approximately $5,000. Given that the motion does not explain why the debtor could not maintain mortgage and plan payments in the first case, and given the marginal improvement in financial position, the court cannot conclude that this case is more apt to succeed.

19. 15-22965-A-13 JOHN PUGH — COUNTER MOTION TO DISMISS CASE
JM-1 — 6-12-15 [30]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case will be dismissed.

First, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor has not listed in the schedule of assets three valuable accounts receivable and has failed to answer questions 19 through 25 of the Statement of Financial Affairs. 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 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).

Third, the plan proposed by the debtor fails to provide for payment in full of the priority claim of the IRS in violation of 11 U.S.C. § 1322(a)(2).

20. 13-23271-A-13 BARRIE BENSON — MOTION TO MODIFY PLAN
SDB-4 — 5-20-15 [63]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The court concludes that the proposed plan has not been proposed in good faith as required by 11 U.S.C. § 1325(a)(3) based on the following facts:

- even though this motion asserts that the debtor's financial circumstances changed materially in March, the debtor failed to file amended Schedules I and J to reflect her current income and expenses.

– the debtor failed to give the trustee financial records relevant to the debtor's asserted change in financial circumstances in violation of Local Bankruptcy Rule 3015-1(b)(5). While ultimately those records were turned over to the trustee, they were provided on the day the trustee's objection to this motion was due.

– the debtor incurred a new unsecured debt without the permission of the trustee or of the court. That debt, a new lease, is for premises that are unnecessary for the maintenance and support of the debtor.

– the debtor failed to turnover to the trustee an employment bonus received in 2015 as required by the confirmed plan. The debtor instead spent the bonus and then asked to modify the plan.

– the motion asserts that the debtor has had a three month gap income because of a delay in the commencement of her retirement income. Not explained, however, if whether the retirement plan will retroactively pay the debtor for the three months in the fourth or at some later time.

21. 15-21472-A-13 RIGOBERTO/FELIX RODRIGUEZ — MOTION TO RECONSIDER
PGM-2 — 6-1-15 [65]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Rulin

Tentative Ruling: The motion will be denied.

The debtor filed a motion to value the collateral of Wells Fargo Bank on April 1, 2015. There is no dispute that the motion was properly served on the bank by mail on April 1. The motion was set for hearing on May 4 pursuant to Local Bankruptcy Rule 9014-1(f)(1). Therefore, the bank's opposition had to be filed in writing no later than April 20. The bank met this deadline when its

opposition was filed on April 14. The bank contested the value of the subject vehicle by relying on a value set by a commonly used market guide, the NADA Used Car Guide. The debtor's reply to the opposition was timely filed on April 27, 7 days prior to the hearing.

On May 1, long after the deadline for filing opposition to the motion, the bank supplemented its opposition with a declaration from an appraiser attesting to the value of the subject vehicle. The court declined to consider this late filed evidence as explained in its written ruling appended to the minutes of the hearing on May 4:

"On May 1, the bank filed additional evidence concerning the value of the car. Counsel for the debtor did not consent to this evidence being considered. Therefore, because it was filed after the April 20 deadline for opposition to the motion, and because the bank made no request before the April 20 for an extension of time to file additional evidence, that evidence is stricken. See Local Bankruptcy Rule 9014 1(f)(1)(B) (providing that "[o]pposition, if any, to the granting of the motion shall be in writing and shall be served and filed with the Court by the responding party at least fourteen (14) days preceding the date or continued date of the hearing." By not filing the additional evidence with the opposition filed on April 14, the bank has prevented the debtor from filing a reply to that evidence seven days prior to the hearing. See Local Bankruptcy Rule 9014-1(f)(1)(C)."

This motion asks the court to reconsider its exclusion of the late-filed declaration. However, because the motion fails to establish any excusable neglect or mistake or other cause, the motion will be denied.

The motion states that the bank's attorneys decided on April 16 that it would be beneficial to their opposition to obtain an appraisal of the vehicle, two days after the bank's opposition was filed. However, this decision could have and should have been made before the opposition was filed. The bank had the debtor's evidence shortly after April 1 and the NADA value was immediately available to the bank. If the discrepancy between the debtor's evidence and the NADA valuation is what triggered the decision to appraise the vehicle, that decision could have been made in early April.

Nonetheless, if there was some reason the light bulb was not lit until April 16, and if the appraisal could not be filed and served by April 20, the bank could have filed an application for an extension of time to file its additional opposition. As long as the request for an extension was filed by April 20, i.e., on or before the original opposition deadline, the court likely would have granted an extension, continued the May 4 hearing, and rescheduled the deadline for the debtor's reply. See Fed. R. Bankr. P. 9006. Whenever a debtor seeks to value collateral that is in the debtor's possession, the court will almost always grant an extension of time to obtain an appraisal provided the request is made before the deadline for opposition or the debtor has consented to an extension of time (which the debtor did not do here).

The motion fails to explain why an extension of time was not sought if the additional opposition could not be filed timely.

22. 15-21472-A-13 RIGOBERTO/FELIX RODRIGUEZ MOTION TO CONFIRM PLAN
PGM-3 5-14-15 [52]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

By this plan, the debtor seeks to pay nothing to all nonpriority unsecured creditors except one such creditor, Robert Russo. The apparent reason for such discrimination is that Mr. Russo's claim was determined to be nondischargeable in a prior bankruptcy case and it is likely to be determined as such in this case.

While it is possible to provide disparate treatment of similar claims in a chapter 13 plan, such discrimination cannot "discriminate unfairly." Courts have generally rejected attempts to discriminate in favor of the holder of a nonpriority, nondischargeable claim to the detriment of holders of nonpriority, dischargeable claims.

The discrimination here is unfair. Were the court to permit it, then "nondischargeable" would be equated with "priority." Lawson v. Lackey (In re Lackey), 148 B.R. 626 (Bankr. N.D. Ala. 1992). Further, there is nothing fair, measured from the perspective of the other general unsecured claim holders, about getting paid nothing when another general unsecured claim holder is paid everything. In re Warner, 115 B.R. 233 (Bankr. C.D. Cal. 1989); Groves v. La Barge (In re Groves), 39 F.3d 212, 215-16 (8th Cir. 1994); McDonald v. Sperna (In re Sperna), 173 B.R. 654, 658-60 (B.A.P. 9th Cir. 1994).

To the extent Wells Fargo objects to the amount of its claim, the objection will be overruled. The court has granted the debtor's valuation motion and the plan provides for the claim at the value set by court as required by 11 U.S.C. § 506(a). However, the court agrees that the 4% interest rate to be paid on the claim is insufficient and therefore the plan does not satisfy 11 U.S.C. § 1325(b)(5)(B)(ii).

The Supreme Court decided in Till v. SCS Credit Corp., 124 S.Ct. 1951 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987).

To set the appropriate rate, the court is required to conduct an "objective inquiry" into the appropriate rate. However, the debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

The prime rate is currently 3.25%. As surveyed by the Supreme Court in Till,

courts using the formula approach typically have adjusted the interest rate 1% to 3%. The debtor's proposed rate of 4% gives a .75% upward adjustment. This is not enough. This is the second bankruptcy case filed by the debtor. The debtor's valuation motion established that the vehicle securing the claim has condition issues and is approximately six years old. The debtor has no equity in the vehicle. And, the plan proposes to pay Wells Fargo over 58 months. Given these facts, the risk to Wells Fargo posed by a plan default are considerable and justify the maximum 3% upward adjustment in order to comply with section 1325(a)(5)(B)(ii).

23. 15-21472-A-13 RIGOBERTO/FELIX RODRIGUEZ — MOTION TO EXTEND DEADLINE
PP-1 — 5-26-15 [60]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The last date to object to the dischargeability of debts pursuant to 11 U.S.C. § 523(a)(2), (4) and (6), to the extent incorporated by 11 U.S.C. § 1328(a), is May 26, 2015. The movant seeks to extend this deadline because the plan, if confirmed, will pay the movant's claim in full thereby obviating the need for a complaint. This is sufficient cause for an extension of the deadline set by Fed. R. Bankr. P. 4007(c).

The debtor's objection is premised on the assertion that the movant failed to ask for the extension until June 1, five days after the deadline had expired. In fact, the extension was requested on May 26. The request is timely. Fed. R. Bankr. P. 4007(c), 9006(b)(3).

However, the request to extend the deadline to object to the debtor's eligibility for a discharge under 11 U.S.C. § 1328(f) will be denied. There is no deadline to object under section 1328(f). It is not subject to the deadline set by Fed. R. Bankr. P. 4004(a) and by Fed. R. Bankr. P. 7001(4) does not even require an adversary proceeding to object to eligibility for a discharge. And so, any time prior to discharge a challenge may be filed.

24. 15-23072-A-13 BRADLEY WEINRICK AND ROBYN CHIAVERINI — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-11-15 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the case will be dismissed.

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

Second, in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The withholding of this financial information from the trustee is a breach of the duties imposed upon the debtor by 11 U.S.C. § 521(a)(3) & (a)(4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

Third, 11 U.S.C. § 521(e)(2)(B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The failure to provide the return to the trustee justifies dismissal and denial of confirmation. In addition to the requirement of section 521(e)(2) that the petition be dismissed, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 found at section 1228(a) of BAPCPA provides that in chapter 11 and 13 cases the court shall not confirm a plan of an individual debtor unless requested tax documents have been turned over. This has not been done.

It is unnecessary to address the remaining objection.

25. 15-23772-A-13 HUMBERTO/CRISTINA ALVAREZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-11-15 [18]

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

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

Third, 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 $19,952 unsecured creditors. While Form 22 suggests the debtor will not have any projected disposable income during the case, the debtor has taken an excessive deduction for rent. When that deduction is reduced to eliminate the $687 in excess the rent, the debtor's projected disposable income increases to $392.32 per month, enough to pay $25,539.20 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.

26. 15-23576-A-13 LOURDES APILADO — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-11-15 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of the Franchise Tax Board 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."

While the claim is very small, $1.00 according to the debtor, the fact remains,

the plan does not provide for payment of the claim in violation of 11 U.S.C. § 1325(a)(5)(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.

27. 15-23587-A-13 JOSE/SUSANA HEREDIA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-11-15 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

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

28. 13-36092-A-13 WOODROW POYNTER
GW-6

MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
6-1-15 [108]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This application seeks approval of $15,937.04 in fees and $516.20 in costs. If approved, $3,000 will be satisfied from a retainer held in trust and the remainder paid through the plan. This retainer is derived from plan payments. The confirmed plan provides at section 6.01, that $1,000 would be paid to counsel by the trustee each month for the first three plan months from the debtor's plan payments. This sum was to supplement the retainer and was to be held in trust until fees and costs were approved and payment from trust was authorized.

Schedule J filed at the beginning of the case indicates that the debtor was setting aside $175 a month to pay his bankruptcy attorney. Over a 60-month plan duration, this is enough to pay $10,500 to counsel.

Of the fees sought in this application, $6,855 (22.85 hours @ $300 per hour) relate to services associated with efforts to file the case and confirm the plan. The objections by the creditor relate only to subsequent services related to unsuccessful efforts to confirm a modified plan.

The trustee objects only because payment of $10,000 through the plan will cause the plan to be over-extended. The stated duration is the maximum 60 months permitted by 11 U.S.C. § 1322(d). This objection will be sustained. In most instances, the court would not sustain such an objection. If a plan could not be completed because fees are higher than expected, the court would generally approve the fees (assuming they are otherwise allowable) but require the debtor to modify the plan. Here, however, the debtor's monthly budget includes a line item for his attorney's fees. Over 60-months, this is sufficient to pay counsel the amount demanded. Therefore, to the extent approved and not paid by the retainer, the approved fees and costs shall be paid by the debtor.

As noted above, an unsecured creditor objects to the post-confirmation fees, approximately $9,000 on the ground that this work did not benefit the estate and were unnecessary to its administration. However, this is not a chapter 11 case where the debtor remains in possession of the estate and the debtor's professionals work on behalf of the estate rather than the debtor. As is made clear by 11 U.S.C. § 330(a)(4)(B), in a chapter 13 case the court may award reasonable compensation to the debtor's attorney for representing the interests of the debtor rather than the estate. Here, the disputed fees are largely connected to the attempt to reduce the objecting creditor's unsecured claim and then, when that objection was not successful, to modify the plan to reduce the distribution to the objecting creditor and all other unsecured creditors. While neither effort was successful, the work was a reasonable attempt to minimize the debtor's exposure to the objecting creditor and all other creditors. And, given that it is the debtor who will be paying the fees while all unsecured creditors are paid in full through the plan, the compensation appears reasonable.

29. 15-23697-A-13 HOWARD THOMAS
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN
6-11-15 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

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, to pay the dividends required by the plan at the rate proposed by it will take 77 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Third, 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.

Fourth, 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. The rights and responsibilities agreement filed indicates that of the $2,500 fee, the debtor paid $500 before the case was filed and the remaining $2,000 will be paid through the plan. The plan, however, provides for payment of only $1,500, not $2,000. Therefore, the plan does not provide for payment in full of an administrative expense as required by 11 U.S.C. § 1322(a)(2).

FINAL RULINGS BEGIN HERE

30. 15-22409-A-13 ELENITA AQUINO — MOTION TO CONFIRM PLAN
BMV-2 — 5-12-15 [28]

Final Ruling: The motion will be dismissed without prejudice.

Local Bankruptcy Rule 2002-1(b) provides that notices in adversary proceedings and contested matters that are served on the various state and federal agencies shall be to particular addresses that can be found on the Roster of Public Agencies maintained by the clerk of court.

The Roster provides that service of motions and notices on the California Franchise Tax Board shall be mailed to PO Box 2952, Sacramento, CA 95812-2952. Service in this case is deficient because the motion was not served at this address.

31. 15-21411-A-13 MARK GLOWSKI — MOTION TO CONFIRM PLAN
PGM-2 — 5-14-15 [28]

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

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

32. 15-21911-A-13 JULIE COLLIS-DAVIS — MOTION TO VALUE COLLATERAL
DEF-1 — 5-22-15 [41]
VS. FIRST TENNESSEE BANK, N.A.

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $250,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by Nationstar Mortgage. The first deed of trust secures a

loan with a balance of approximately $265,047.43 as of the petition date. Therefore, First Tennessee Bank's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is $0, because the value of the respondent's collateral is $0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(I).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of $250,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

33. 15-23913-A-13 RACHELLE SCHWAB — MOTION TO VALUE COLLATERAL
DJC-2
VS. RAC ACCEPTANCE — 5-27-15 [17]

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 motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $150 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $150 of the respondent's claim is an allowed secured claim. When the respondent is paid $150 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.

34. 14-26022-A-13 FRANK/LORI HALVORSON — MOTION TO CONVERT OR DISMISS CASE
JPJ-2 — 6-10-15 [60]

Final Ruling: The movant has voluntarily dismissed the motion.

35. 13-26242-A-13 LINDA HARRINGTON — MOTION TO MODIFY PLAN
MS-2 — 5-22-15 [31]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted on the condition that the plan is further modified in the confirmation order to require the debtor to pay over to the trustee all tax refunds in excess of $2,000, to account for the $39,100 in prior payments made by the debtor under the terms of the confirmed plan, and to provide for a plan payment of $1,410 beginning May 25, 2015. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

36. 15-23562-A-13 JANET VALDEZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 6-11-15 [19]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The objection will be overruled and the motion to dismiss the case will be denied. The objection and the motion are both based on the fact that the plan filed on April 30 was not signed. However, on June 11 a signed copy of that plan was filed by the debtor.

37. 15-20565-A-13 REV KENNETH ANDERSON — MOTION TO CONFIRM PLAN
KG-4 — 5-20-15 [74]

Final Ruling: The motion will be dismissed without prejudice.

First, insufficient notice was given of the hearing. The debtor gave 40 days' notice even though Local Bankruptcy Rule 3015-1(d)(1) requires 42 days of notice:

"Modified Plans Proposed Prior to Confirmation. If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, the debtor shall file and serve the modified chapter 13 plan together with a motion to confirm it. Notice of the motion shall comply with Fed. R. Bankr. P. 2002(b), which requires twenty-eight (28) days' of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-1(f)(1) requires twenty-eight (28) days' notice of the hearing and notice that opposition must be filed fourteen (14) days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties-in interest shall be served at least forty-two (42) days prior to the hearing."

Second, the notice of hearing fails to inform the respondents that written opposition must be filed, that it must be filed and served at least 14 days prior to the hearing, and that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition. Local Bankruptcy Rule 9014-1(d)(3) and (f)(1). Therefore, notice of this motion is materially deficient.

38. 15-22965-A-13 JOHN PUGH — MOTION TO CONFIRM PLAN
JM-1 — 5-5-15 [24]

Final Ruling: The motion will be dismissed without prejudice.

Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 7346, Philadelphia, PA 19101-7346; (2) United States Attorney, for the IRS, 501 I Street, Suite 10-100, Sacramento, CA 95814; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

Service in this case is deficient because the IRS was not served at the second

and third addresses listed above.

39. 14-26268-A-13 ROBERTO/ROSAEMMA CARRAZCO — OBJECTION TO CLAIM
JPJ-2
VS. OCWEN LOAN SERVICING, L.L.C. — 5-7-15 [52]

Final Ruling: The objection will be dismissed because it is moot. The case was dismissed by the debtor on May 7.

40. 15-20675-A-13 MARY-LOUISE STEELE — MOTION TO CONFIRM PLAN
CAH-1
5-15-15 [25]

Final Ruling: The motion will be dismissed without prejudice.

Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 7346, Philadelphia, PA 19101-7346; (2) United States Attorney, for the IRS, 501 I Street, Suite 10-100, Sacramento, CA 95814; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

Service in this case is deficient because the IRS was not served at the last address listed above.

41. 15-23190-A-13 ANDREW/ERICA BENZINGER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1
6-11-15 [20]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

Given that the debtor has filed a proposed amended plan and set it for hearing on August 3, the court deems the original plan to have been voluntarily dismissed. The trustee's objection will be dismissed as moot.

Because the original plan proposed by the debtor is not being confirmed, 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 by August 3, the case will be dismissed on the trustee's ex parte application.

42. 13-36092-A-13 WOODROW POYNTER — MOTION TO TAX, REDUCE, OR DENY DEBTOR'S REQUEST FOR ATTORNEY'S FEES AND/OR COSTS
HM-1
6-15-15 [119]

Final Ruling: The court deems this motion to be opposition to the debtor's attorney's motion (GW-6) for fees rather than an independent request for relief in favor of the creditor or its attorneys. The court will consider it as opposition even though it fails to include the docket control number of the debtor's motion. To the extent such relief is requested, the motion should be

refiled with supporting evidence and set for hearing on at least 28 days' notice pursuant to Local Bankruptcy Rule 9014-1(f)(1).