UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 15, 2018 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 13. 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 NOVEMBER 13 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 30, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 6, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 14 THROUGH 20 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 OCTOBER 22, 2018, AT 2:30 P.M.

Matters to be Called for Argument

1. 18-25003-A-13 DEVISTEEN CONLEY — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 9-26-18 [15]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

The debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Schedule I/J understates the debtor's income because the debtor's biweekly income is reported as the debtor's monthly income. 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 60 days, the case will be dismissed on the trustee's ex parte application.

2. 18-25215-A-13 STEPHANIE POWERS — ORDER TO SHOW CAUSE
9-25-18 [16]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $79 due on September 20 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

3. 18-25215-A-13 STEPHANIE POWERS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 9-26-18 [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 conditionally denied.

First, the debtor has failed to commence making plan payments and has not paid approximately $520 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).

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 60 days, the case will be dismissed on the trustee's ex parte application.

4. 18-24937-A-13 JOHN HUGHES — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 9-26-18 [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

conditionally denied.

First, the debtor has failed to commence making plan payments and has not paid approximately $860 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).

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 not filed an income tax return for 2016. The return is delinquent. Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becoming effective, the Bankruptcy Code did not require chapter 13 debtors to file delinquent tax returns. If a debtor did not file tax returns, the trustee might object to the plan on the grounds of lack of feasibility or that the plan was not proposed in good faith. See, e.g., Greatwood v. United States (In re Greatwood), 194 B.R. 637 (9th Cir. B.A.P. 1996), *affirmed*, 120 F.3d. 268 (9th Cir. 1997).

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors. This was not done.

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

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 60 days, the case will be dismissed on the trustee's ex parte application.

5. 17-23950-A-13 DEBRA MARTIN
JPJ-2

MOTION TO
VACATE DISMISSAL
9-14-18 [62]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

This case was dismissed on September 7 when the debtor failed to timely cure a default noticed by the trustee on July 27.

This marked the second time the case was dismissed. It was first dismissed on January 9, 2018 when the debtor failed to timely cure a default noticed by the trustee on November 29, 2017. The debtor successfully moved to vacate the earlier dismissal because she believed the default had been cured when a plan payment was mailed to the trustee around the same date as the notice of a default. Based on this excusable mistake, the court vacated the dismissal on April 11, 2018.

Within three months of the court's order vacating the dismissal, the debtor again failed to make the payments required by her confirmed plan and the trustee served a notice of default on July 27, 2018. It recited that the debtor had failed to pay $400 through July 2018 and that a further $200 would become due on August 25. If this default was not cured, the trustee asked that the case be dismissed.

This dismissal procedure is authorized by Local Bankruptcy Rule 3015-1(g) which provides:

(1) If the debtor fails to make a payment pursuant to a confirmed plan, including a direct payment to a creditor, the trustee may mail to the debtor and the debtor's attorney written notice of the default.

(2) If the debtor believes that the default noticed by the trustee does not exist, the debtor shall set a hearing within twenty-eight (28) days of the mailing of the notice of default and give at least fourteen (14) days' notice of the hearing to the trustee pursuant to LBR 9014-1(f)(2). At the hearing, if the trustee demonstrates that the debtor has failed to make a payment required by the confirmed plan, and if the debtor fails to rebut the trustee's evidence, the case shall be dismissed at the hearing.

(3) Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.

(4) If the debtor fails to set a hearing on the trustee's notice, or cure the default by payment, or file a proposed modified chapter 13 plan and motion, or perform the modified chapter 13 plan pending its approval, or obtain approval of the modified chapter 13 plan, all within the time constraints set out above, the case shall be dismissed without a hearing on the trustee's application.

Thus, a debtor receiving a Notice of Default has three alternatives. (1) Cure the default within 30 days of the notice of default as well as pay the additional payment that would come due during the 30-day period to cure the default. (2) Within 30 days of the notice of default, file a motion to confirm a modified plan and a modified plan in order to cure/suspend the default stated in the notice of default. (3) Contest the notice of default by setting a hearing within 28 days of the notice of default on 14 days of notice to the trustee.

Here, on September 6, 2018, the trustee reported that the debtor had not availed herself of any of these alternatives and he requested that the case be dismissed. A dismissal order was signed on September 7 and entered on September 10.

On September 14, the debtor filed this motion to vacate the dismissal. Once again, the debtor does not dispute that she defaulted under the terms of the plan as asserted by the trustee in the Notice of Default. Nor does she dispute that she did not cure the default within 30 days of the Notice of Default, August 26. Instead, she believed that an electronic payment on September 4 would resolve the issue. This payment was not timely and given that essentially the same error was made earlier in the year and given that the trustee reports that the debtor's payments are habitually late, the court finds no basis for determining that the debtor's neglect was excusable.

There is no excusable neglect or mistake. There was cause for dismissal. See 11 U.S.C. § 1307(c)(6).

6. 18-21957-A-13 WILLIAM AMARAL — MOTION TO CONVERT OR TO DISMISS CASE 9-14-18 [107]
JPJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted conditionally denied.

This case was filed on March 31, 2018. The debtor's initial plan was denied confirmation in June. The debtor proposed a modified plan on July 3 but voluntarily dismissed the motion to confirm it. Not until September 28 did the debtor propose another modified plan. It is set for confirmation on November 5.

If the court does not confirm a plan at the hearing on November 5, there will be cause to convert the case to chapter 7. The debtor has delayed unreasonably and to the prejudice of creditors in confirming a plan. This is cause for dismissal or conversion to chapter 7, whichever is in the best interests of creditors. Given the substantial nonexempt equity in assets, conversion is in the best interests of creditors.

7. 18-26061-A-13 AUREA/CARLOS GOMEZ — MOTION TO EXTEND AUTOMATIC STAY 10-1-18 [10]
RLG-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 granted in part.

This is the second chapter 13 case filed by the debtor. A prior case was dismissed within one year of the most recent petition.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case.

Section 362(c)(3)(B) allows a debtor to file a motion requesting the continuation of the stay. A review of the docket reveals that the debtor has filed this motion to extend the automatic stay before the 30th day after the filing of the petition. The motion will be adjudicated before the 30-day period expires.

In order to extend the automatic stay, the party seeking the relief must demonstrate that the filing of the new case was in good faith as to the creditors to be stayed. For example, in In re Whitaker, 341 B.R. 336, 345 (Bankr. S.D. Ga. 2006), the court held: "[T]he chief means of rebutting the presumption of bad faith requires the movant to establish 'a substantial change in the financial or personal affairs of the debtor . . . or any other reason to conclude' that the instant case will be successful. If the instant case is one under chapter 7, a discharge must now be permissible. If it is a case under chapters 11 or 13, there must be some substantial change."

Here, the first case was dismissed because the debtor failed to propose a modified plan within the deadline set by the court. However, it appears this was due to a delay in negotiating a settlement with a home lender. With that agreement in hand, this case was filed and a proposed plan has been filed. This is a sufficient change in circumstances rebut the presumption of bad faith.

As to the IRS the motion will be denied because service is deficient.

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 was not served and the second and the

third addresses listed above.

8. 18-25669-A-13 JOSE SANDOVAL
TF-1
HARSCH INVESTMENT PROPERTIES, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
9-17-18 [9]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed as moot.

The court takes judicial notice of its electronic case files as well as the petition filed by the debtor in this case. These records show that the debtor filed an earlier chapter 13 case, Case No. 17-27023, on October 24, 2017. It was dismissed on June 3, 2018. Therefore, 11 U.S.C. § 362(c)(3) is applicable in this case.

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.

This case was filed on September 7. Therefore, on October 7, the automatic stay expired as a matter of law.

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 not filed a motion to extend the automatic stay.

Because the stay has expired, there is no stay for the court to terminate or modify. This motion is moot.

9. 16-28073-A-13 JEFFREY/YELENA MAYHEW
PGM-6

MOTION TO
MODIFY PLAN
9-9-18 [132]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the objection will be overruled. While the objection is correct in its assertion that the modified plan fails to utilize the current mandatory local form, the correct version was filed and served on September 18. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

10. 18-25585-A-13 DWAYNE JACKSON
TF-1
MP HOLDINGS, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
9-17-18 [10]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion concerns the lease of nonresidential real property. Before the case was filed, the movant served the debtor with a notice to pay or quit based on a rent default under the terms of a lease. The notice provided for the forfeiture of the lease in the event the default was not cured timely. When the debtor allegedly failed to quit or pay, an unlawful detainer action was filed and served on the debtor.

Prior to trial, the debtor stipulated to entry of a judgment for possession in the event he failed to cure the default. If not cured, a judgment for possession was to be entered in favor of the movant without trial. In the stipulation, the debtor agreed that if he failed to abide by its terms he wived any relief from forfeiture of the lease.

In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988), the Ninth Circuit concluded that once the notice to quit has expired, the debtor's tenancy ends. Therefore, nothing remains to be assumed in a later bankruptcy. While an unlawful detainer action is necessary to obtain possession, it is the expiration of the notice to quit that triggers the lease forfeiture. In a later unlawful detainer action the state court confirms only that the notice to quit was in accordance with the lease and applicable law. Here, the debtor stipulated that in the event he did not cure the default as agreed in the stipulation for judgment, the movant was entitled to possession. He gave up any argument that the notice to quit was deficient and any right to seek relief from the lease forfeiture.

11. 18-24188-A-13 VINCENT/WENDY CHALK — MOTION TO VALUE COLLATERAL
JSO-2
VS. THE ROBERT L. GRIFFIN 2002 TRUST — 9-13-18 [24]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor seeks to value the debtor's residence at a fair market value of $175,000 as of the date the petition was filed. It is encumbered by a first deed of trust held by the Dept. of Veterans Affairs. The first deed of trust secures a loan with a balance of approximately $197,261 as of the petition date. Therefore, the debtor argues that the Robert L. Griffin 2022 Trust's claim secured by a junior deed of trust is completely under-collateralized and should not be allowed as a secured claim. See 11 U.S.C. § 506(a).

The debtor's valuation is based on the debtor's opinion. He is not an expert. Rather, as the owner he is qualified to state his opinion as to his home's value. 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).

However, the respondent has produced the opinion of an expert that the property has a value of $225,000. Given the qualifications of the expert to give this opinion, and the absence of any reply from the debtor explaining why the expert should be disbelieved, the court can give little weight to the debtor's lay opinion.

12. 18-25088-A-13 DANIEL MASSEY
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN
9-26-18 [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.

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, 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, 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).

Fourth, 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.

Fifth, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment in the first five months of the plan of $2,200 is less than the $2,926.63 in dividends and expenses the plan requires the trustee to pay each month.

13. 18-25189-A-13 SARAH SANNEBECK — ORDER TO SHOW CAUSE 9-24-18 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will remain pending but the court will modify the terms of its order permitting the debtor to pay the filing fee in installments.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $79 installment when due on September 19. While the delinquent installment was paid on October 4, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

FINAL RULINGS BEGIN HERE

14. 16-25215-A-13 MEREDITH LAWLER — ORDER TO SHOW CAUSE 9-27-18 [49]

Final Ruling: The order to show cause will be discharged. The conversion fee has been paid.

15. 16-25215-A-13 MEREDITH LAWLER — MOTION FOR RELIEF FROM AUTOMATIC STAY 9-13-18 [36]
EAT-2
WELLS FARGO BANK, N.A. VS.

Final Ruling: The motion will be dismissed because it is moot. The bankruptcy case was dismissed on October 3. Therefore, the automatic stay has expired as a matter of law. See 11 U.S.C. § 362(c)(1) & (2).

16. 18-21224-A-13 ARLENE MARTINEZ — MOTION TO CONFIRM PLAN 9-4-18 [31]
MAC-1

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.

17. 18-24547-A-13 LILLIE BRACY — OBJECTION TO EXEMPTIONS 9-17-18 [28]
JPJ-2

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

The objection will be sustained.

The exemption pursuant to Cal. Civ. Pro. Code § 704.080(b)(2) in $13,000 of cash is disallowed. By its terms, the exemption is limited to deposit accounts of social security benefits.

18. 18-25255-A-13 VICTORIA JIMENEZ — MOTION TO DISMISS DUPLICATE CASE
PGM-1 — 8-29-18 [11]

Final Ruling: The motion will be granted and the case dismissed. This is a duplicative filing and because it is pending under chapter 13 and has not previously been converted from another chapter, the debtor may unilaterally dismiss the case.

19. 18-24188-A-13 VINCENT/WENDY CHALK — MOTION TO VALUE COLLATERAL
JSO-1 — 9-13-18 [19]
VS. MEDALLION BANK

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $5,000 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $5,000 of the respondent's claim is an allowed secured claim. When the respondent is paid $5,000 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

20. 18-24489-A-13 MATTHEW/ARIANA VICKERS — MOTION FOR RELIEF FROM AUTOMATIC STAY
PP-2 — 9-14-18 [34]
LAKE WILDWOOD ASSOCIATION VS.

Final Ruling: The motion has been resolved by stipulation.