UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 26, 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 16. 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 30, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 16, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 23, 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 17 THROUGH 26 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 NOVEMBER 2, 2015, AT 2:30 P.M.

Matters to be Called for Argument

1. 15-27000-A-13 KEENAN/YAO-JANE HEATH — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-7-15 [25]

- ☐ 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 in part and the motion to dismiss the case will be conditionally denied.

First, 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.

Second, the debtor has failed to give the trustee financial records relating to the debtor's pre-petition income and bank accounts. 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 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 unsecured creditors $7,254.13 but Form 22, after eliminating the duplicative deduction of $30.46 for arrears on a car loan and the impermissible $910 deduction taken because the debtor is unsure about future bonuses, and increasing the debtor's monthly income by $722.22, shows the debtor will have $80,423.40 over the next five years to pay 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.

2. 15-22915-A-13 SHELLEY FAIRCHILD — MOTION TO APPROVE LOAN MODIFICATION
RAH-6 — 10-8-15 [101]

- ☐ 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 debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

3. 15-25717-A-13 LORIN/IRENE PARTAIN — MOTION TO CONFIRM PLAN
SJS-2 — 9-14-15 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection pertaining to the treatment of the claim of the IRS and the length of the plan will be overruled. The court has disallowed the IRS claim.

Also, the court disagrees that the debtor has materially understated the claim of United Student Aid Funds. The debtor has scheduled two claims aggregating in an amount approximately equal to the claim referenced by the trustee.

However, 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).

4. 14-20019-A-13 WALTER/PATRICIA JONES — MOTION TO MODIFY PLAN
JPJ-3 — 9-21-15 [89]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

There is a confirmed plan in this case. Therefore, the trustee has standing to propose a modified plan. See 11 U.S.C. § 1329(a).

The debtor has provided to the trustee a 2014 income tax return and pay advices for the period from December 16, 2014 through June 15, 2015. These documents record that the debtor has received an increase in three categories of monthly net income: a $2,000 increase in his base wages, a $912 increase in expense reimbursement, and a $832 increase in bonuses and commissions. Taking into account monthly variations, it appears that the debtor has an additional $2,500 in monthly net income which is available to fund a plan. By including this amount in the monthly plan payment for the remainder of the case, the debtor has the ability to pay 60% of nonpriority unsecured debt. The confirmed plan presently pays this debt nothing. The trustee's proposed plan increases the monthly plan payment by $2,500 and increases the Class 7 dividend to 60%.

While the debtor has filed opposition to the motion, it is supported by no evidence whatever.

The court concludes the proposed modified plan is feasible and complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

5. 14-22819-A-13 JULIE JACKSON — MOTION TO MODIFY PLAN
PGM-1 — 8-26-15 [53]

- ☐ 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). Schedules I and J show that the debtor will have monthly net income of approximately $655; the plan requires a monthly payment of $765. While the supplemental declaration of the debtor makes reference to "attached" amended Schedules I and J, none are attached to the declaration.

6. 15-26932-A-13 SALUD PADERNA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-6-15 [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 will be conditionally denied.

To pay the dividends required by the plan, at the rate proposed by it, will take 73 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.

7. 15-27046-A-13 JASON/CRYSTAL HEWITT — OBJECTION TO CONFIRMATION OF PLAN 10-6-15 [14]
JPJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

First, 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.

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.

8. 15-26959-A-13 PENNY ESAU — OBJECTION TO CONFIRMATION OF PLAN 10-8-15 [15]
JPJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was not required to file a written response. If no opposition is offered at the hearing, the court will

take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained.

First, the debtor has failed to give the trustee financial records relating to the debtor's pre-petition employment income, IHSS income, and bank accounts. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Second, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor has failed to disclose IHSS income in response to questions 1 and 2 of the statement of financial affairs and include it on Form 22. 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).

9. 15-26561-A-13 CATHERINE DEFAZIO — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-6-15 [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 debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor has failed to include a detailed statement of rental income and business expenses with Schedules I and J. 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, 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.

Third, 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).

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.

10. 15-22663-A-13 MELINDA LACUSKY — MOTION TO CONFIRM PLAN
FF-2 — 9-10-15 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The proposed plan, while promising to pay the home mortgage claim of Citibank in full, has under-estimated the arrears on that claim by approximately $9,000. As a result, at the rate proposed by the proposed plan, it will take 89 months to pay this claim in full while paying all other claims as promised in the plan. This exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

11. 15-26768-A-13 ANGEL ZAMBRANO — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-6-15 [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 a motion to value the collateral of Rosa Rocha in order to strip down or strip off its secured claim from its collateral. No such motion has been filed, served, and granted. Absent a successful motion the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. §

1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Second, the debtor has failed to make $159 of the 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).

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.

12. 15-24175-A-13 REBECCA WEBER — MOTION FOR RELIEF FROM AUTOMATIC STAY
PCJ-1 — 10-7-15 [34]
SOLANO FIRST FEDERAL CREDIT UNION VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, 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 case was filed on May 22, 2015. Hence, since the filing, five monthly installments have fallen due under the terms of the home loan owed to the movant.

The amended plan filed by the debtor provides for this home loan in Class 1. Class 1 claims receive two dividends from the trustee. First, the trustee pays the ongoing monthly installment (whether or not the plan is confirmed) and, second, the trustee pays (after confirmation) a dividend to cure any default under the loan. The plan has not yet been confirmed.

The trustee's response to the motion indicates that he has paid the five monthly installments that have fallen due since the case was filed.

Therefore, because the home is necessary to the debtor's personal financial reorganization, and because there is no default under the terms of the proposed

plan, there is no cause to terminate or modify the automatic stay.

The parties shall bear their own fees and costs. 11 U.S.C. § 506(b).

13. 11-43877-B-13 VINCENT/SHELLY CAPERELLO — OBJECTION TO CLAIM
DF-5 — 5-20-15 [56]
VS. BANK OF AMERICA, N.A.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Although it took 17 pages to do it, it appears the debtor has voluntarily dismissed without prejudice the objection to Claim No. 9. See Docket #127. It does not appear that Bank of America objects to the dismissal but it does object to the second request for fees relating to its alleged failure to respond to discovery.

When ruling on the discovery dispute, the court ruled:

"And, while the initial discovery was propounded before the notice of the transfer of the proof of claim was filed with the court, given the likelihood that the transfer of the underlying claim predates the notice of the transfer, and given the pendency of the deposition notice, the court will deny this motion and direct the debtor to proceed with its deposition. Should that discovery reveal that the transfer did not occur prior to the date of the objection to the proof of claim, the court will entertain a renewed request for relief under Fed. R. Civ. P. 37(a)(5)."

The supplemental objection to the claim filed October 5, in addition to voluntarily dismissing the objection, renews the request for fees and costs relating to the discovery dispute. However, the supplemental objection does not allege or establish that the transfer of the claim did not occur prior to date the debtor objected to the proof of claim. Hence, the second request for fees and costs pursuant to Rule 37 also will be denied.

14. 15-26984-A-13 KASSI MARTINEZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-6-15 [24]

- ☐ 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 a motion to value the collateral of GM Financial in order to strip down or strip

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

Second, 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 unsecured creditors $50,253.75 but Form 22, after reducing the tax expense deduction by $630 for the reason argued byt the trustee, shows that the debtor will have $83,948.40 over the next five years.

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

15. 14-24691-A-13 JPJ-3 — MICHAEL LAMB AND MARGARET LEDOUX-LAMB — OBJECTION TO CLAIM
VS. BANK OF AMERICA, N.A. — 9-4-15 [107]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The last date to file a timely proof of claim was September 3, 2014. The proof of claim was filed on September 5, 2014. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

The response admits the proof of claim was filed late. The court has no discretion to allow a late claim. The deadline to file a proof of claim set by Fed. R. Bankr. P. 3002(c) cannot be extended as requested by the claimant. First, Rule 3002(c) contains six exceptions to the requirement that a timely proof of claim be filed. None of those exceptions are applicable here. Second, Fed. R. Bankr. P. 9006(b)(3) specifically precludes enlargement of the time for creditors to file proofs of claim except to the extent provided in Rule 3002(c). The court concludes that Rule 3002(c) provides no basis for an extension in this case.

The applicability of Rule 3002(c) and not Fed. R. Bankr. P. 3003(c)(3) to this case, and the wording of Rule 9006(b)(3) prevent the Supreme Court's decision in Pioneer Investment Services Company v. Brunswick Assoc. Ltd. Partnership, 507 U.S. 380 (1993), from being of assistance to the creditors. Pioneer

involved a chapter 11 proceeding. In chapter 11 cases, the filing of proofs of claim is governed by Rule 3003 and not Rule 3002. Rule 3002 applies to chapter 13 cases. Rule 9006(b)(3) does not restrict extensions of the time to file proofs of claim in chapter 11 cases. Consequently, under Rule 9006(b)(1), the court may permit a creditor to file a proof of claim in a chapter 11 case after the bar date established under Rule 3003 has expired if excusable neglect prevented the filing of a timely proof of claim.

In Pioneer, the Supreme Court determined what constituted excusable neglect under Rule 9006(b)(1). That decision has little or no applicability here. In a chapter 13 case, Rule 9006(b)(1) is not applicable; Rules 9006(b)(3) and 3002(c) are applicable. And, as noted above Rule 3002(c) does not permit enlargement of the time to file proofs of claim after the expiration of the deadline even when excusable neglect is present.

In chapter 13 cases, the bankruptcy court lacks any equitable power to enlarge the time for filing a proof of claim apart from the six situations described in Rule 3002(c). See Zidell, Inc. v. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990). Because none of those situations are present here, and because the excusable neglect standard is not applicable in chapter 13 cases, the court cannot retroactively extend the time for the respondent to file a proof of claim.

However, prior to filing of the tardy proof of claim, the respondent and the debtor entered into a stipulation concerning the bank's claim. The bank agreed that its collateral was worthless and the debtor and the bank further agreed that it would be allowed as a nonpriority unsecured claim. The written stipulation was filed on June 17, 2014 and it was signed by both the debtor's and the bank's attorneys. The stipulation also identifies the documentation for the claim and its original amount.

The Ninth Circuit recognizes that a claim may be presented informally. An informal proof of claim "must state an explicit demand showing the nature and amount of the claim against the estate and evidence an intent to hold the debtor liable." Sambo's Restaurants, Inc. v. Wheeler (In re Sambo's Restaurants, Inc., 754 F.2d 811, 815 (9th Cir. 1985). Also see In re Franciscan Vineyards, Inc., 597 F.2d 181 (9th Cir. 1979), *cert. denied*, 445 U.S. 915, 100 S.Ct. 1274, 63 L.Ed.2d 598 (1980); Matter of Pizza of Hawaii, Inc., 761 F.2d 1374, 1381 (9th Cir. 1985) (motion for relief from automatic stay considered an informal proof of claim).

The stipulation may be considered an informal proof of claim. It clearly summarizes the respondent's claim and makes clear that it intends to enforce that claim against the debtor. Thus, having filed a timely, albeit informal, proof of claim, the apparently tardy formal proof of claim relates back to June 17, 2014 and is considered timely. "A creditor is permitted to file a proof of claim after the bar date when the proof of claim is an amendment to a timely filed claim. . . ." In re Osborne, 159 B.R. 570, 573 (Bankr. C.D. Cal. 1993), *affirmed*, 167 B.R. 698 (B.A.P. 9th Cir. 1994), *affirmed*, 76 F.3d 306 (9th Cir. 1996).

The court is not granting permission to file a late claim. The court may grant such permission only under the circumstances allowed in Fed. R. Bankr. P. 3002(c)(1)-(6). This rule has no applicability here. However, the court concludes, by virtue of the informal proof of claim, that a timely proof of claim was filed.

The court also rejects the argument that because the debtor schedule the claim as undisputed, liquidated and noncontingent, no formal proof of claim was required or that such excused timely filing of a proof of claim. Were the court to hold otherwise, it would write out of the rules the requirement for a proof of claim in most instances. Nor does the fact that the trustee knew of the claim excuse the failure to file a timely claim.

16. 15-25595-A-13 DEAN KASSUBE — MOTION TO CONFIRM PLAN 9-11-15 [30]
PGM-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan fails to provide for the priority tax claim of the IRS in the amount fo $188,038.85. As a result, the plan does not comply with 11 U.S.C. § 1322(a)(2).

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $10,100 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay nothing to unsecured creditors.

Third, if the debtor provides for payment of the IRS's priority tax claim and its secured claim, it will take 288 months to complete the plan. This exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Finally, the plan provides for the IRS's secured claim in Class 4. Because the claim is for delinquent taxes, it must be paid in Class 2 absent the affirmative consent of the IRS. The Class 4 claim will not be paid during the pendency of the plan even though this claim is not a long term claim and was in default when the case was filed.

THE FINAL RULINGS BEGIN HERE

17. 15-27000-A-13 KEENAN/YAO-JANE HEATH — MOTION TO VALUE COLLATERAL
AFL-1
VS. RC WILLEY HOME FURNISHINGS, INC. — 9-25-15 [15]

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 $1,500 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, $1,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $1,500 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

18. 15-27000-A-13 KEENAN/YAO-JANE HEATH — MOTION TO VALUE COLLATERAL
AFL-2
VS. ZALES/CITIBANK, N.A. — 9-25-15 [20]

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 $1,200 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, $1,200 of the respondent's claim is an allowed secured claim. When the respondent is paid $1,200 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.

19. 14-28303-A-13 SHARRY STEVENS-GOREE — OBJECTION TO CLAIM
JPJ-1
VS. NAVIENT SOLUTIONS/ EDUCATIONAL MANAGEMENT CORPORATION
9-4-15 [28]

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

The objection will be sustained. The last date to file a timely proof of claim was December 17, 2014. The proof of claim was filed on August 21, 2015. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

20. 14-21318-A-13 GINA ROWLAND — OBJECTION TO CLAIM
JPJ-1
VS. GOLDEN ONE CREDIT UNION
9-8-15 [18]

Final Ruling: The parties have continued the hearing to November 2, 2015 at 1:30 p.m.

21. 13-25634-A-13 PHILLIP AVERY AND MICHELLE GIBBLE — AMENDED MOTION TO INCUR DEBT
NF-3
9-21-15 [53]

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

The motion to incur an government or government insured education loan in order to finance the debtor's college education will be granted. The motion establishes a need for the loan and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of the plan inasmuch as payments will not commence until after the completion of the case.

22. 15-26657-A-7 ROBERT/LEE-ANN MAHAN — OBJECTION TO CONFIRMATION OF PLAN
JPJ-2 — 10-5-15 [77]

Final Ruling: The objection will be dismissed as moot. The case converted to one under chapter 7 on October 7.

23. 15-27267-A-13 ANGELIA DICKENS — MOTION FOR RELIEF FROM AUTOMATIC STAY
RDN-1 — 9-28-15 [10]
U.S. BANK, N.A. VS.

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 dismissed as moot. The case was dismissed on October 20. As a result, the automatic stay has expired as a matter of law. See 11 U.S.C. § 362(c)(1) & (c)(2).

24. 15-24175-A-13 REBECCA WEBER — MOTION TO CONFIRM PLAN
MG-2 — 8-17-15 [27]

Final Ruling: The motion will be dismissed without prejudice.

According to the certificate of service, the parties identified in a list appended to the certificate were served with the motion, notice of the hearing and the proposed plan. However, there is no list appended to the certificate and hence no proof that any creditors were served as is required by Fed. R. Bankr. P. 2002(b).

25. 15-24175-A-13 REBECCA WEBER — COUNTER MOTION TO DISMISS CASE
MG-2 — 10-7-15 [44]

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 counter motion will be conditionally denied.

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

26. 11-42380-A-13 NORMAN/LORI UTLEY — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
MRL-1 — 10-9-15 [49]

Final Ruling: The motion will be dismissed without prejudice.

According to the certificate of service, the debtor was not served with the motion. All contested matters must be served on the debtor.