

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 30, 2017 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 17. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2) [eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE NOVEMBER 27, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 13, 2017, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 20, 2017. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 18 THROUGH 29 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 6, 2017, AT 2:30 P.M.

Matters to be Called for Argument

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| 1. | 17-25600-A-13 REBECCA ROBINSON
JPJ-1 | OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-11-17 [20] |
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- ☐ 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, 11 U.S.C. § 521(e)(2)(B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The failure to provide the return to the trustee justifies dismissal and denial of confirmation. In addition to the requirement of section 521(e)(2) that the petition be dismissed, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 found at section 1228(a) of BAPCPA provides that in chapter 11 and 13 cases the court shall not confirm a plan of an individual debtor unless requested tax documents have been turned over. This has not been done.

Second, 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 nothing to unsecured creditors even though Form 122C shows that the debtor will have \$63,192.60 in projected disposable income 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.

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| 2. | 17-25902-A-13 DEBORAH CANDATE
JPJ-1 | OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-11-17 [20] |
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- ☐ 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, 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, 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.

3. 14-32316-A-13 ARLEANER COLLINS MOTION TO
PGM-1 DISMISS CASE
10-12-17 [66]

- ☐ 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.

The debtor seeks to voluntarily dismiss this case pursuant to 11 U.S.C. § 1307(b). Because this case has not previously been converted from another chapter, the debtor may dismiss it as a matter of right.

However, inasmuch as secured creditor Reverse Mortgage Solutions filed three motions for relief from the automatic stay (all were dismissed), the debtor wishes a determination that 11 U.S.C. § 109(g)(2) and her voluntary dismissal will not prevent her from filing another chapter 13 case.

Section 109(g)(2) provides that an individual may not be a debtor if she has been a debtor in a case pending in the preceding 180 days if prior case is voluntarily dismissed "following the filing of a request for relief from the automatic stay. . . ."

As noted above, Reverse Mortgage Solutions filed three motions for relief from the automatic stay in this case. The first two were dismissed for nonsubstantive reasons. The creditor failed to give sufficient notice of the hearing on the first motion and then failed to pay the filing fee. The third motion was dismissed because it was moot. The debtor's plan, confirmed before any of the motions were filed, provided for the termination of the automatic stay.

The purpose of section 109(g)(2) is to prevent a debtor, faced with a motion for relief from the automatic stay, or after it is granted, from dismissing the case then refileing a second case in order to frustrate a creditor's attempts to be freed of the automatic stay.

In light of this purpose, section 109(g)(2) is not applicable if there is no casual relationship between the motion for relief from the automatic stay and the dismissal. So, for example, if the motion for relief is successfully defended, section 109(g)(2) is not applicable. This can be inferred from the using of the word "following" rather than "after" in section 109(g)(2). There must be some cause and effect between the motion and the dismissal. See e.g., In re Hutchins, 303 B.R. 503 (Bankr. N.D. Ala. 2003); In re Beal, 347 B.R. 87 (E.D. Wis. 2006); In re Sole, 233 B.R. 347 (Bankr. E.D. Va. 1998).

Even though such cause and effect seems absent here, the court will not so declare. This is an issue in the event another case is filed within the next 180 days and if someone challenges the debtor's ineligibility in the new case. Because eligibility under section 109 is not jurisdictional, a second petition is perfectly valid unless and until eligibility is challenged by a party in interest. See In re Wenberg, 902 F.2d 768 (9th Cir. 1990), *aff'g* 94 B.R. 631 (BAP 9th Cir. 1988). Therefore, the debtor is able to file a second case and it will proceed unless successfully challenged on eligibility grounds.

4.	17-25617-A-13 DAVID/SARA FARGO AP-1 U.S. BANK N.A. VS.	OBJECTION TO CONFIRMATION OF PLAN 10-12-17 [17]
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- ☐ 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 overruled.

The objection asserts that because the plan does not provide for the objecting creditor's secured claim, it may not be confirmed.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the debtor adequately fund the plan with future earnings or other future income that is paid over to the trustee (section 1322(a)(1)), provide for payment in full of priority claims (section 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (section 1322(a)(3)). But, nothing in section 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may, at the option of the debtor, include. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (section 1322(b)(2)), cure any default on a secured claim, including a home loan (section 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (section 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options: (1) provide a treatment that the debtor and secured creditor agree to (section 1325(a)(5)(A)), provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the plan (section 1325(a)(5)(B)), or surrender the collateral for the claim to the secured creditor (section 1325(a)(C)). However, these three possibilities are relevant only if the plan provides for the secured claim.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. See 11 U.S.C. § 362(d)(1).

5. 17-25717-A-13 CLYDE/PAMELA MYERS
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-11-17 [14]

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

Second, 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, 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, the debtor has failed to commence making plan payments and has not paid approximately \$2,400 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Fifth, one of the debtors 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).

6.	16-25623-A-13	JOHN ANDRADE	OBJECTION TO
	SLH-2		CLAIM
	VS. DEUTSCHE BANK NATIONAL TRUST CO.		6-5-17 [51]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Given the numerous factual disputes, the court will treat this objection as an adversary proceeding and set deadlines for discovery and an evidentiary hearing.

7. 16-20724-A-13 STEPHEN/KAREN MALONEY
JMC-4

MOTION TO
EMPLOY SPECIAL COUNSEL
9-13-17 [74]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice.

The motion seeks to both approve the employment of special counsel pursuant to a contingency fee agreement and to approve payment of that compensation in connection with a compromise the court is being asked to approve.

This case was filed on February 9, 2016. The cause of action litigated on behalf of the debtor arose post-petition. Proposed counsel was retained pursuant to a fee agreement signed by the debtor on December 28, 2016. The motion gives no explanation for the failure to obtain court approval of special counsel's employment before work began on this claim.

Subject to court approval, 11 U.S.C. § 327(a) permits the employment of a professional to assist in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including on a contingent fee basis."

The Ninth Circuit has a two-prong standard for the retroactive approval of employment for estate professionals. Courts require: (1) satisfactory explanation for the failure of the estate to obtain prior court approval; and (2) a showing that the professional has benefitted the estate. In re THC Financial Corp., 837 F.2d 389, 392 (9th Cir. 1988). In deciding whether satisfactory explanation for the failure of the estate to obtain prior court approval exists, the court may consider not just the reason for the delay but also prejudice, or the lack thereof, to the estate resulting from the delay. In re Gutterman, 239 B.R. 828, 831 (Bankr. N.D. Cal. 1999); see also Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970, 974 (9th Cir. 1995) (listing permissive factors for nunc pro tunc approval of employment). And, the decision to grant nunc pro tunc approval of employment of a professional is committed to the discretion of the bankruptcy court. Gutterman at 831.

There is nothing in the record which permits the court to evaluate this motion in light of THC Financial.

8. 17-25530-A-13 LANCE ENGELSTAD
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-11-17 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained and the 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.

Fourth, the debtor is not eligible for chapter 13 relief. 11 U.S.C. § 109(h) prohibits an individual from being a debtor under any chapter unless that individual received a credit counseling briefing from an approved non-profit budget and credit counseling agency during the 180-day period immediately preceding the filing of the petition. In this case, the debtor has not filed a certificate evidencing that briefing was completed during the 180-day period prior to the filing of the petition. Hence, the debtor was not eligible for bankruptcy relief when this petition was filed.

Fifth, 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.

Sixth, the debtor has failed to commence making plan payments and has not paid approximately \$1,900 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).

9. 17-25530-A-13 LANCE ENGELSTAD OBJECTION TO
JL-1 CONFIRMATION OF PLAN
PREVITI FAMILY HOLDINGS, L.L.C. VS. 9-22-17 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained in part.

Because the home loan held by the objecting creditor matures in 2018, the plan must provide for payment in full. It is not a long term secured claim for which the debtor may maintain monthly installments while curing pre-petition arrears. Therefore, the claim belongs in Class 2, not Class 1, and the plan must provide for payment of all arrears, interest, and unmatured principal. The proposed does not do this and therefore does not comply with 11 U.S.C. § 1325(a)(5)(B).

10. 17-25640-A-13 VYACHESLAV/IRYNA OBJECTION TO
JPJ-1 NESTERCHUK CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-11-17 [14]

- ☐ 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.

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. 16-25246-A-13 THOMAS/BONNIE-JANE GREEN MOTION TO
PGM-3 SELL
10-9-17 [42]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

12. 13-26465-A-13 DARREN COCREHAM MOTION TO
PGM-4 MODIFY PLAN
8-15-17 [108]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$3,310.96 is less than the \$3,434.96 in dividends and expenses the plan requires the trustee to pay each month.

Second, even if the plan payment equaled the distributions, the debtor has not proven the feasibility of the plan. The plan includes an lump sum payment in the 60th month but there is no evidence that the debtor has the ability to make this payment.

Third, the plan's feasibility depends on successfully objecting to the secured claim of Ocwen. No objection has been filed and the deadline set by Local Bankruptcy Rule 3007-1(d) for filing an objection has expired.

Fourth, the treatment of Ocwen's claim also refers to an additional provision which is not appended to the plan.

13. 17-24490-A-13 RAYMOND/ELIZABETH
LBG-2 CAMPBELL

MOTION TO
CONFIRM PLAN
9-11-17 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

In calculating the debtor's projected disposable income for purposes of 11 U.S.C. § 1325(b) on Form 122C, the debtor has taken impermissible expense deductions. This has artificially decreased the projected disposable income available to unsecured creditors.

First, the debtor has claimed a housing expense in excess of the IRS Local Standard. On Line 10 the debtor has deducted an additional \$621.33 for housing. Nothing in permits a debtor to deduct a housing expense in excess of the local standards. Line 10 is not an invitation otherwise.

In the bankruptcy context, the Local Standard for housing is divided between the mortgage/rent and nonmortgage/nonrent expense sub-categories. Outside of bankruptcy, the IRS permits a taxpayer with delinquent taxes to pay one aggregate amount for both mortgage/rent and nonmortgage/nonrent expenses. The IRS does not break down this aggregate amount into the two categories. The U.S. Trustee has divided the aggregate amount set by the IRS into the two categories, mortgage/rent and nonmortgage/nonrent. Line 10 allows the debtor to argue that the U.S. Trustee's allocation is not appropriate for any reason. However, the aggregate amount claimed may not exceed the amount specified in the Local Standard for housing. Here, the debtor does beyond what the standard allows; he is not reallocating the allowed amount between the two subcategories.

Second, the debtor has deducted \$373.35 in excess of the trustee's expected compensation on Line 36.

Third, the debtor has deducted 1/60th of a priority claim of \$3,098.48. There is no such priority claim. To the extent this represents secured property tax, because the debtor is surrendering the property encumbered by the tax, the tax cannot be deducted. American Express Bank v. Smith (In re Smith), 418 B.R. 359, 369 (BAP 9th Cir. 2009).

Also, the debtor has attempted to reduce his current monthly income because he anticipates a \$3,000 a month reduction in income. Because the debtor has filed no corroborating evidence of a decrease in pay, this will be disallowed.

Without these expense deductions and without allowing for a decrease in income, the debtor will have sufficient projected disposable income to pay more than \$212,000 to unsecured creditors over the plan's duration. Because the plan will pay only \$35,954.43, the plan does not comply with 11 U.S.C. § 1325(b).

14. 17-21193-A-13 WILLIAM BERNAL AND CELIA OBJECTION TO
JPJ-1 HAWKINS BERNAL CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-11-17 [69]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled and the motion to dismiss the case denied.

The objection and motion are based on the alleged failure to provide the trustee with the debtor's last filed tax return as required by 11 U.S.C. § 521(e)(2)(B) & (C). However, that return was furnished to the trustee both before and after the meeting of creditors.

15. 17-21994-A-13 IMOGENE ESPINOZA MOTION TO
PLC-4 VACATE DISMISSAL OF CASE
10-6-17 [40]

- ☐ 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.

The debtor filed this case on March 27, 2017. A proposed plan accompanied the petition. The plan was not confirmed as a result of objections filed by the trustee. The court's ruling on the trustee's objection and related motion to dismiss the case concluded that the debtor had failed to provide him with a tax return as required by 11 U.S.C. § 521(e)(2)(B) & (C), failed to provide him with the Class 1 checklist, failed to complete in good faith the schedules and statements, and further concluded that the plan was unconfirmable because it failed to pay unsecured creditors the present value of what they would receive in a chapter 7 case as required by 11 U.S.C. § 1325(a)(4), it would take more than 5 years to complete the plan in violation of 11 U.S.C. § 1322(d), failed to provide for payment in full of the arrears on a Class 1 home loan as required by 11 U.S.C. § 1325(a)(5)(B), and was not accompanied by the valuation motion necessary to strip off the junior home loan held by Portfolio Recovery Associates.

Despite the deficiencies in the original plan, the court did not dismiss the case. Instead, it permitted the case to remain pending on condition that the debtor confirmed a modified plan within 75 days of the June 26, 2017 entry of the order sustaining the trustee's objection and conditionally denying his motion to dismiss the case. If not timely modified, the order permitted the

trustee to make an ex parte application to dismiss the case.

A review of the docket reveals that the 75-day period expired without a modified plan being proposed, much less confirmed. Therefore, on October 3, 99 days after the entry of the order, the trustee applied for the dismissal of the case. A dismissal order was issued the same day.

This motion to vacate the dismissal was filed October 6. It asserts that because counsel had prepared on May 10 a modified plan, amended schedules, and a motion to confirm the modified plan but thereafter, these documents "fell through the cracks and were never filed."

However, inasmuch as the hearing on the trustee's objection and motion to dismiss the case was not until May 30, and as the order was not entered and served until June 26, counsel for the debtor received two indications after May 10 that the case was in jeopardy.

Second, while a mistake may have been made, to qualify for relief under Fed. R. Bankr. P. 60(b)(1) as incorporated by Fed. R. Bankr. P. 9024 the neglect must be excusable. The record is bereft of details concerning the error committed. There is no information explaining the failure to attend the May 30 hearing, or the failure to diary the deadline set in the June 26 order.

Third, this case has some history. The table below identifies all of the debtor's prior cases:

17-21994 filed 3/27/2017 dismissed 10/3/2017 [failure to propose modified plan within deadline set by court; original plan denied confirmation due to failure to provide tax return to trustee, failure to provide Class 1 Checklist to trustee]

16-21429 filed 3/8/2016 dismissed 5/19/2016 [failure to commence plan payments, failure to appear at meeting of creditors, failure to provide tax return to trustee]

15-24879 filed 6/17/2015 dismissed 11/9/2016 [failure to propose modified plan within deadline set by court; original plan denied confirmation due to failure to provide tax return to trustee, failure to commence plan payments, failure to provide Class 1 Checklist to trustee]

14-31248 filed 11/14/2014 dismissed 4/27/2015 [failure to propose modified plan within deadline set by court; original plan denied confirmation due to failure to provide payment advices to trustee, failure to make plan payments, failure to provide Class 1 Checklist to trustee, failure to provide proof of social security number]

11-45014 filed 10/20/2011 dismissed 5/7/2014 [plan confirmed but case dismissed due to failure to make plan payments]

Given these prior cases, particularly all of the case filed since 2014, it is abundantly clear that the debtor is filing successive cases without the intention or ability to confirm a plan. She is playing a delay game. Given this history the court concludes that even if it were to vacate the dismissal there is no likelihood that a plan would be confirmed.

- ☐ 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.

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).

Fifth, 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.

Sixth, the debtor has failed to commence making plan payments and has not paid approximately \$2,500 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).

Seventh, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$2,500 is less than the \$6,333.33 in dividends and expenses the plan requires the trustee to pay each month.

Eighth, to pay the dividends required by the plan at the rate proposed by it will take 124 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Ninth, 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 no monthly net income with which to fund any plan.

It is unnecessary to address the remaining objections.

17.	17-25499-A-13	WILLIAM VENARD	OBJECTION TO
	TGM-1		CONFIRMATION OF PLAN
	DEUTSCHE BANK NATIONAL TRUST CO. VS.		9-26-17 [31]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained in part.

Assuming for sake of argument that the plan understates the arrears and the monthly plan payment, the plan nonetheless does not modify the home loan held by the objecting creditor in violation of 11 U.S.C. § 1322(b)(2). This is because the plan provides that the proof of claim will determine the amount of the arrears (see section 2.04 of the plan), and it provides that the plan will not modify the loan in any respect (see section 2.08(c) of the plan). Nonetheless, the fact that the plan understates the arrears as well as the ongoing installment payment means that the feasibility issues addressed in the ruling of the trustee's objection are even more acute. The court incorporates by reference the ruling on the trustee's objection (JPJ-1).

FINAL RULINGS BEGIN HERE

18. 17-20701-A-13 KEVIN/COREN TRIGALES MOTION TO
ALF-1 MODIFY PLAN
9-25-17 [31]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

19. 17-25404-A-13 MARIA AZTIAZARAIN MOTION TO
HLG-1 CONFIRM PLAN
9-12-17 [24]

Final Ruling: The court continues the hearing on motion to November 6 at 1:30 p.m. If the debtor fails to provide proof of her social security number at the November 2 continued meeting, confirmation will be denied.

20. 16-25517-A-13 LORETTA COONEY MOTION TO
MET-2 MODIFY PLAN
9-24-17 [33]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

21. 16-28033-A-13 MARIA NUNEZ MOTION TO
TOG-3 CONFIRM PLAN
9-13-17 [106]

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

October 30, 2017 at 1:30 p.m.

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.

22. 17-24235-A-13 RAYMOND/CHRISTINE BELCHER MOTION FOR
RPZ-1 RELIEF FROM AUTOMATIC STAY
WILMINGTON SAVINGS FUND SOCIETY, F.S.B. VS. 10-2-17 [32]

Final Ruling: The motion has been voluntarily dismissed. While the debtor filed opposition to the motion prior to the movant's attempt to dismiss it, inasmuch as disbursements from the trustee to the movant were made just four days prior to the motion, the court will permit the dismissal.

23. 17-23338-A-13 RHONDA RYAN AND MICHAEL MOTION TO
PSB-1 DELGADO MODIFY PLAN
9-25-17 [29]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

24. 13-28449-A-13 OSCAR CARDOZA MOTION TO
PGM-1 MODIFY PLAN
9-20-17 [30]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

25. 16-25154-A-13 CRAIG/MARQUITA TOMASEK OBJECTION TO
JPJ-3 CLAIM
VS. TWO JINN INC. 9-8-17 [50]

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

The objection will be sustained and the claim disallowed.

The last date to file a timely proof of claim was December 14, 2016. The proof of claim was filed on August 9, 2017. 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).

26. 16-27065-A-13 GWENDOLYN WHITE MOTION TO
MMN-5 MODIFY PLAN
9-10-17 [44]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. There is no objection to the relief requested and the court will not materially alter the relief requested. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted on the condition that the plan is further modified in the confirmation order to require a \$164 monthly dividend for 23 months in order to pay in full the post-petition arrears of \$3,642 without interest accruing on such sum. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

27. 16-28370-A-13 RAFAEL BERRIOS OBJECTION TO
JPJ-1 CLAIM
VS. CAVALRY SPV I, L.L.C. 9-8-17 [31]

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

The objection will be sustained and the claim disallowed.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on December 31, 2007. Therefore, using this date as the date of breach, when the case was filed on December 21, 2016, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

28. 13-31071-A-13 ILON GRIFFIN
HLG-4

MOTION TO
MODIFY PLAN
9-22-17 [72]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. There is no objection to the relief requested and the court will not materially alter the relief requested. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted on the condition that the plan is further modified in the confirmation order to require a \$275 monthly dividend for 11 months in order to pay in full the post-petition arrears of \$3,018.94 without interest accruing on such sum. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

29. 16-28493-A-13 MARINA MASALOV
JPJ-2
VS. PG&E

OBJECTION TO
CLAIM
9-8-17 [31]

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

The objection will be sustained and the claim disallowed.

The last date to file a timely proof of claim was May 3, 2017. The proof of claim was filed on May 24, 2017. 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).