UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 14, 2016 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 23. 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 DECEMBER 12, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 28, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 5, 2016. 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 24 THROUGH 35 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 21, 2016, AT 2:30 P.M.

Matters to be Called for Argument

1. 16-26011-A-13 KENNETH LAWSON — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-26-16 [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 will be conditionally denied.

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 $94,966 unsecured creditors but Form 122-C shows that the debtor will have $102,336 over the plan's duration. The problem is even more significant than this indicates because the debtor has not accurately completed Form 122-C. The debtor has failed to include gambling income earned within six months of the filing of the bankruptcy in current monthly income.

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. 16-26319-A-13 ANDRES/LAURA CORNELIUZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-27-16 [15]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan requires the debtor to pay a 100% dividend to unsecured creditors. Despite this, the trustee maintains that the plan does not comply with 11 U.S.C. § 1325(b) because all projected disposable income will not be paid to holders of unsecured claims. However, as section 1325(b)(1)(A) makes clear, a debtor need not pay all projected disposable income to holders of unsecured claims if those will be paid in full.

The plan also provides for an unsecured claim in the additional provisions. It

is a student loan that is nondischargeable under 11 U.S.C. § 523(a)(8). The claim is a long term debt. Apparently, the claim is not in default because the plan does not provide for a cure of the default; it provides only for the maintenance of contract installment payments.

11 U.S.C. § 1322(b)(5) permits a debtor to pay a long term claim, whether it is a secured or unsecured claim, by maintaining contract installment payments to the claim holder. Because it is a long term claim, and not because it is a student loan, the claim will not be discharged upon completion of the plan. See 11 U.S.C. § 1328(a)(1).

Finally, the treatment of the student loan differently than all other unsecured claims is not an unfair discrimination that violates U.S.C. § 1322(b)(1). Both types of claims will be paid in full and the Class 7 claims will actually be paid sooner than the student loan claim.

3. 16-26319-A-13 ANDRES/LAURA CORNELIUZ — OBJECTION TO CONFIRMATION OF PLAN
BANK OF AMERICA, N.A. VS. — 10-27-16 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The plan provides for the objecting creditor's claim in Class 4 which is reserved for long term secured claims, not in default, and which will be paid in contract installment payments directly by the debtor. The creditor complains, however, that its claim is in default. There is a pre-petition default of $3,257.65 that the plan fails to cure as required by 11 U.S.C. § 1322(b)(2) and (b)(5).

The objection fails to prove there is a default. The creditor has presented no evidence of a default and it has not filed a proof of claim. On the other hand, the debtor has presented evidence that the claim is not in default. Based on the debtor's evidence, the objection will be overruled. The court hastens to add, however, that is not a determination there is no default. If a proof of claim for a pre-petition arrearage is filed by the creditor and if that claim is allowed, it will be incumbent on the debtor to modify the plan to provide for it and if the debtor does not do so, there will be cause to terminate the automatic stay.

4. 16-25520-A-13 DONIA WILLIAMS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-11-16 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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.

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

5. 16-26121-A-13 KATHRYN MONDS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-26-16 [13]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, the debtor has failed to give the trustee financial records for bank account. 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 not been employed since September 2015. The debtor's savings will be exhausted in approximately five months. Thereafter, the debtor will not have sufficient income to fund the $5,100 monthly plan payment. The debtor has not carried the burden of proving the plan's feasibility as required by 11 U.S.C. § 1325(a)(6).

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

6. 16-26324-A-13 VON ALLEN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-26-16 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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).

Also, the debtor has failed to commence making plan payments and has not paid approximately $3,400 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).

It is unnecessary to address the trustee's other objections to the confirmation of a plan.

7. 16-26025-A-13 GAYE PERKINS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-26-16 [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.

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).

Also, the debtor has failed to commence making plan payments and has not paid approximately $680 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).

8. 16-24032-A-13 MET-1 — IGNACIO LAUDER AND WILMA FRONDA — MOTION TO CONFIRM PLAN 9-19-16 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to make $6,441 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

9. 16-23134-A-13 AP-1 WELLS FARGO BANK, N.A. VS. — DANA DREBERT — MOTION FOR RELIEF FROM AUTOMATIC STAY 10-14-16 [33]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed because it is moot.

The court confirmed a plan on October 16, 2016. That plan provides for the movant's claim in Class 4. Class 4 secured claims are long-term claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or by a third party. The plan includes the following provision at section 2.11:

"Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Because the plan has been confirmed and because the case remains pending under chapter 13, the automatic stay has already been modified to permit the movant to proceed against its collateral.

10. 16-26041-A-13 NICOLE KELLY
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
10-26-16 [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.

The debtor's plan is premised on an attempt to reorganize a claim held by PennyMac and secured by the debtor's home. However, the debtor admitted at the meeting of creditors that PennyMac foreclosed on the home before the bankruptcy was filed. Because California law permits no redemption following a nonjudicial foreclosure sale, there is no debt remaining to reorganize and the debtor has no interest in the home. The plan proposed by the debtor is not feasible as required by 11 U.S.C. § 1325(a)(6).

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

11. 16-27145-A-13 JOHN COOKE
RJM-1

MOTION TO EXTEND AUTOMATIC STAY
10-31-16 [11]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be denied.

This is the second chapter 13 case filed by the debtor. A prior case was

dismissed within one year of the filing of the current case. The prior case, 09-28851, was not voluntarily dismissed as is alleged in the motion. It was dismissed less that two months prior to the filing of the most recent case at the trustee's request because, among other things, the debtor was unable to maintain the payments required by a confirmed plan.

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

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

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

Here, the debtor was unable to confirm a plan payments in the first case despite having almost one year to do so. Even though a plan was not confirmed, the nonpriority unsecured debt reported in this case is $43,000 less than reported in the first case. When was this paid? Nothing should have been paid during the first case because a plan was never confirmed. If payment occurred during 15-day gap between the dismissal of the first case and the filing of the second, the payment of this unsecured debt obviously would be preferential. Yet, the statement of financial affairs does not disclose any transfers during the gap period.

Also, the primary reason the debtor believes the dismissal of the first case should be overlooked is that he was unrepresented in that case. However, a review of the schedules and the plan in that case suggests to the court that while he may not have had an attorney of record, someone knowledgeable about bankruptcy practice prepared those documents. The court does not believe the first case was not successful because the debtor was unrepresented.

Finally, a comparison of Schedule D filed in each case indicates the debtor has accumulated approximately $40,000 in additional secured debt since the filing of the first case. This has not been explained.

The court cannot conclude that the debtor has carried the burden of proving by clear and convincing evidence that this case is more apt to succeed.

12. 16-26053-A-13 JOHN PUGH
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
10-27-16 [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, even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The proposed plan, however, does not provide for a cure of the arrears owed on Ocwen's Class 1 home loan. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

Second, and to the extent the debtor is not providing for the cure of the arrears because Ocwen has agreed to the modification of its home loan, the debtor has not proven that any such agreement has been reached. Therefore, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender has agreed to a home loan modification. Absent that agreement, the claim cannot be modified. See 11 U.S.C. § 1322(b)(2). Instead, the debtor is limited to curing any pre-petition default while maintaining the regular monthly mortgage installment. See 11 U.S.C. § 1322(b)(5).

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 $3,051 but Form 122C-1, when corrected to reflect the debtor's actual current monthly income, shows that the debtor will have $99,015 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.

13. 16-26053-A-13 JOHN PUGH
RAS-1
HSBC BANK USA, N.A. VS.

OBJECTION TO
CONFIRMATION OF PLAN
10-27-16 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained to the extent and for the reasons explained in the ruling on the trustee's related objection, JPJ-1.

14. 16-26257-A-13 LUIS BOLANOS LOSADA
APN-1
SOUTH PARK TOWNHOUSE ASSOC. VS.

OBJECTION TO
CONFIRMATION OF PLAN
10-5-16 [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.

While the plan provides for payment of the objecting creditor's secured claim, it under estimates the amount of the claim by approximately $4,600 and provides for the payment of no interest on the claim.

As to the underestimation, while the plan will pay the claim filed by the creditor, the difference between what the plan estimates the claim to be and the amount demanded is so significant that the plan will not be completed within 60 months. The plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

The failure to provide for interest on the claim violates 11 U.S.C. § 1325(a)(5)(B) which requires secured claims paid over time through a plan receive interest. The court, however, rejects the assertion in the objection that the debtor must pay the rate of interest required by the CC&R's. Nothing in the Bankruptcy Code prohibits modification of an interest rate on a claim by a homeowner's association.

The court also does not reach the issue of whether the creditor is entitled to its fees inasmuch as there is no proof that the creditor is over-secured. See 11 U.S.C. § 506(b).

15. 16-26160-A-13 KEVIN/SHERRIE FLOYD
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
10-26-16 [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 overruled and the motion to dismiss will be denied.

While the debtor failed to commence timely making plan payment as required by the proposed plan, the default has been cured. The default occurred because a creditor violated the automatic stay be enforcing its claim against the debtor's bank account. The default did not occur because the debtor's income was insufficient to fund the plan. The plan is feasible as required by 11 U.S.C. § 1325(a)(6).

16. 16-26169-A-13 KANIKA REED
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
10-26-16 [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 overruled and the motion to dismiss will be denied.

While the debtor failed to produce evidence of a social security number or a written statement that such documentation does not exist as demanded by the trustee at the meeting of creditors and as required by Fed. R. Bankr. P. 4002(b)(1)(B), the debtor later produced such evidence.

17. 16-26272-A-13 THELMA WHITE — ORDER TO SHOW CAUSE 10-26-16 [15]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $79 installment when due on October 21. While the delinquent installment was paid on October 31, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

18. 16-26184-A-13 CHRISTOPHER CASTRUITA — OBJECTION TO CONFIRMATION OF PLAN 10-26-16 [13]
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, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor has not listed a Cadillac owned by a nonfiling spouse on Schedule B. 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).

Third, the debtor has not carried the burden of proving that the plan will pay nonpriority unsecured creditors the present value of what they would be paid in a chapter 7 liquidation as required by 11 U.S.C. § 1325(a)(4). The debtor has not corroborated the value of the debtor's home at $460,000. If its value as higher, and the trustee's investigation suggests its value is $50,000 higher, the dividend payable to unsecured creditors will be more than is promised to Class 7 creditors.

Finally, the debtor has failed to accurately complete Form 122C-1. The debtor has taken an impermissible marital adjustment on Line 13 of $1,634 and has overstated monthly taxes by $1,054. With these deductions eliminated, the debtor must pay no less than $240,753.60 to Class 7 unsecured creditors. Because the plan will pay these creditors only $79,348.45, it does not comply with 11 U.S.C. § 1325(b).

19. 16-26293-A-13 JOHN JUDD — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-26-16 [35]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

The debtor has failed to commence making plan payments and has not paid approximately $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).

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.

20. 15-26281-A-13 STEPHEN TRUMAN — OBJECTION TO EXEMPTIONS
3-9-16 [52]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: This matter was conditionally settled by the parties. Unless otherwise informed by the parties, the court will assume those conditions have been satisfied and the objection to exemptions will be dismissed, and the case will be dismissed as well as the adversary proceedings, Adv. Nos. 16-2004, 15-2216.

21. 15-26281-A-13 STEPHEN TRUMAN — MOTION TO DISMISS CASE
MRL-4 — 7-1-16 [169]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: This matter was conditionally settled by the parties. Unless otherwise informed by the parties, the court will assume those conditions have been satisfied and the objection to exemptions will be dismissed, and the case will be dismissed as well as the adversary proceedings, Adv. Nos. 16-2004, 15-2216.

22. 15-26281-A-13 STEPHEN TRUMAN — STATUS CONFERENCE
16-2004 — 4-18-16 [20]
PARTNERS FEDERAL CREDIT UNION V. TRUMAN

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: This matter was conditionally settled by the parties. Unless otherwise informed by the parties, the court will assume those conditions have been satisfied and the objection to exemptions will be dismissed, and the case will be dismissed as well as the adversary proceedings, Adv. Nos. 16-2004, 15-2216.

23. 15-26281-A-13 STEPHEN TRUMAN — STATUS CONFERENCE
15-2216 — 5-5-16 [30]
MGM GRAND HOTEL, L.L.C. V. TRUMAN

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: This matter was conditionally settled by the parties. Unless otherwise informed by the parties, the court will assume those conditions have been satisfied and the objection to exemptions will be dismissed, and the case will be dismissed as well as the adversary proceedings, Adv. Nos. 16-2004, 15-2216.

FINAL RULINGS BEGIN HERE

24. 13-20901-A-13 WORNEL/DE JADA SIMPSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 10-13-16 [30]
MERCEDES-BENZ FIN'L SVCS. USA, L.L.C. VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee 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 above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim including any attorneys' fees awarded herein. No other relief is awarded.

While the plan provides for payment of the movant's claim in Class 2A, the vehicle securing its claim was completely destroyed in an accident. The vehicle was insured. Because the plan also preserved the movant's lien on its collateral and because the insurance names the movant as a loss payee, the movant is entitled to recover the insurance and the vehicle. The automatic stay is terminated to permit such recourse.

The trustee shall cease paying the movant's claim as a secured claim and if the insurance and/or salvage value realized exceeds the amount of the movant's claim, it shall pay over the balance to the trustee.

The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) will be waived.

25. 16-21203-A-13 RAYMOND/CHRISTINE BELCHER — MOTION TO MODIFY PLAN
PGM-4 — 10-10-16 [105]

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.

26. 16-23209-A-13 MICHAEL RAPPORT
JPJ-2

MOTION TO
CONVERT OR DISMISS CASE
10-3-16 [39]

Final Ruling: This motion to convert the case to one under chapter 7 or to dismiss it has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted and the case will be converted to one under chapter 7.

The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The court sustained the trustee's objection to confirmation on July 25. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This fact suggests to the court that the debtor either does not intend to confirm a plan or does not have the ability to do so. This is cause for dismissal or conversion to chapter 7, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(1) & (c)(5).

Also, the debtor has made no plan payments for at least two months.

After a review of the schedules, the court concludes that conversion rather than dismissal is in the best interests of creditors because there is in excess of $17,025 of equity in unencumbered, nonexempt assets that will benefit creditors if liquidated by a trustee.

27. 15-21528-A-13 KEVIN KRONE
PGM-3

MOTION TO
APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
10-13-16 [79]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the 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 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 above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

` The motion will be granted.

The motion seeks approval of $1,200 in additional fees incurred principally in connection with obtaining a loan modification and prosecuting related motion to modify the chapter 13 plan. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any

retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and Local Bankruptcy Rule 2016-1, if applicable.

28. 16-25939-A-13 YOLANDA ARRIAGA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-26-16 [34]

Final Ruling: The objection to the confirmation of the plan as well as the motion to dismiss the case will be dismissed as moot. The case was dismissed on November 2.

29. 15-22547-A-13 TINA CLARK — MOTION TO MODIFY PLAN
BLG-4 — 10-5-16 [69]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. While there is an objection to the confirmation of the plan, the debtor agrees to the modification of the plan to address the objection. 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 condition that the plan is further modified in the confirmation order to reduce the debtor's attorney's fees to a total of $4,000, with $3,000 to be paid through the plan. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

30. 16-26272-A-13 THELMA WHITE — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-26-16 [16]

Final Ruling: The objection to the confirmation of the plan as well as the motion to dismiss the case has been voluntarily dismissed.

31. 16-25974-A-13 TROY BIRKS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-10-16 [16]

Final Ruling: The objection to the confirmation of the plan as well as the motion to dismiss the case has been voluntarily dismissed.

32. 16-25978-A-13 TRACY PAMULA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-26-16 [25]

Final Ruling: The objection and the related dismissal motion will be dismissed because they are moot. The case was dismissed on November 2.

33. 16-20883-A-13 WALTER FLETSCHER — MOTION TO CONVERT OR DISMISS CASE
JPJ-4 — 10-6-16 [124]

Final Ruling: The motion will be dismissed because it is moot. The case was dismissed on October 31.

34. 16-26086-A-13 KAREN CRANE — OBJECTION TO CONFIRMATION OF PLAN
JHW-1 — 10-14-16 [12]
CREDIT ACCEPTANCE CORP. VS.

Final Ruling: The objection has been voluntarily dismissed.

35. 16-26094-A-13 WALTER/ALEXANDRA SILVA — OBJECTION TO CONFIRMATION OF PLAN
LHL-1 — 10-21-16 [13]
SACRAMENTO VALLEY INVESTMENT PROPERTIES, L.L.C. VS.

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The debtor has filed a response to the objection that concedes its merit. 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 objection will be sustained.

The objecting creditor holds two claims secured by the debtor's home. The debtor is retaining the home but has provided only for the creditor's claim secured by the senior lien. The claim secured by the junior lien will not be paid, either through the plan or directly by the debtor. This violates 11 U.S.C. §§ 1322(b)(2) and 1325(a)(5)(B).

The plan's provision for claim secured by the senior lien falls short in two respects. First, because the claim will mature during the case, it must be paid in full as a Class 2 claim. The plan fails to provide for payment in full as required by 11 U.S.C. § 1325(a)(5)(B). Second, the plan understates the arrears on the claim.