UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 12, 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 19. 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 JANUARY 9, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 27, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JANUARY 3, 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 20 THROUGH 21 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 DECEMBER 19, 2016, AT 2:30 P.M.

Matters to be Called for Argument

1. 16-26819-A-13 JPJ-1 — ELLEN PARKER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 11-22-16 [16]

- ☐ 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, 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 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 $3,062.70 unsecured creditors. While consistent with Form 122C, the debtor has taken an impermissible deduction from current monthly income for a $163 voluntary pension contribution. This is disposable income; the debtor may not make those contributions and deduct them from the debtor's current monthly income. Accord Parks v. Drummond (In re Parks), 475 B.R. 703 (B.A.P. 9th Cir. 2012). As a result, the debtor has monthly projected disposable income sufficient to pay unsecured creditors $7,982.40 over the life of the plan. Because the plan will pay at least this amount to unsecured creditors, it does not comply with 11 U.S.C. § 1325(b).

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

2. 16-26531-A-13 JPJ-1 — HAL BUETTNER AND MICHELE ELKINS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 11-22-16 [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 and the motion to dismiss the case will be conditionally denied.

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

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

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, Schedule J includes a nonexistent deduction for a domestic support order and it fails to accurately state the debtor's monthly payroll deductions. This inaccuracy is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

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

3. 16-25232-A-13 GREGORY WALLACE — MOTION TO CONFIRM PLAN
BLG-3 — 10-31-16 [67]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to commence making plan payments and has not paid

approximately $2,000 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).

The objection that the plan understates the claim of PGM will be overruled. The plan provides for the objecting creditor's claim in Class 2A. This means that the plan will pay the claim in full. The creditor's proof of claim, subject to any claim objection that may be sustained, and not the plan will determine the amount of the claim. Section 2.04 of the plan provides that the claim shall be determined by the proof of claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim. Hence, the proposed treatment satisfies 11 U.S.C. § 1325(a)(5)(B) because it requires payment if full of the claim.

However, the objection to interest rate of 4.5% to be paid on PGM's claim will be sustained. The Supreme Court decided in Till v. SCS Credit Corp., 124 S.Ct. 1951 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987).

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

The current prime rate is 3.5% as reported by Money Cafe.com. See http://www.moneycafe.com/personal-finance/prime-rate/. As surveyed by the Supreme Court in Till, courts using the formula approach typically have adjusted the interest rate 1% to 3%. The debtor's proposed rate of 4.5% gives a 1% adjustment. The minimal size of this increase, combined with the fact that the movant is secured by a vehicle that has a value less than is owed to the objecting creditor (as evidenced by Schedule A/B), as well as the failure of the debtor to make regular payments both before and after the filing of the case convince the court that a 3% adjustment over prime is called for. Therefore, the plan's interest rate does not satisfy section 1325(a)(B)(ii).

4. 16-26742-A-13 SYLVIA HARTZELL — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-22-16 [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 debtor has failed to accurately complete Form 122C. The debtor has made a marital adjustment at line 13 that includes amounts paid for household expenses. The adjustment must be limited to the nonfiling spouse's income not contributed to the household. Hence, payment of household expenses should not be eliminated from current monthly income. And, because the $90 storage expense and the $426 pension/retirement plan contribution are not permissible deductions on Form 122C, the debtor's projected disposable income increases by $516. See Parks v. Drummond (In re Parks), 475 B.R. 703 (B.A.P. 9th Cir. 2012).

The debtor also has taken the following impermissible deductions from current monthly income:

- for $1,003 in rent above that permitted by the IRS standards incorporated by 11 U.S.C. §§ 707(b) and 1325(b). No authority permits a chapter 13 debtor to discard these limits because actual expenses happen to be more. See Ransom v. MBNA Am. Bank (In re Ransom), 131 S.Ct. 716 (2011).

- the debtor has taken an expense deduction 0f $264 for telecommunication services necessary for the health and welfare the debtor and the debtor's household. However, on Schedule J, this is the amount deducted for regular phone and cable service. There is no corroboration that this expenses is necessary for health and welfare.

With these the foregoing eliminated, the debtor must pay no less than $119,260 to Class 7 unsecured creditors. Because the plan will pay these creditors only $23,691, it does not comply with 11 U.S.C. § 1325(b).

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

5. 16-26644-A-13 IRINA RILEY
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
11-22-16 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

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

Second, 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.

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

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

It is unnecessary to address the remaining objections.

6. 16-26644-A-13 IRINA RILEY — OBJECTION TO CONFIRMATION OF PLAN
PPR-1 — 11-4-16 [20]
U.S. BANK, N.A. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

The objection will be dismissed as moot. The case will be dismissed for the reasons stated in the ruling on the trustee's objection and motion to dismiss (JPJ-1).

7. 11-47348-A-13 SCOTT/LAURA CLARK — MOTION TO WAIVE 11 U.S.C. 1328 REQUIREMENT
PGM-1 — 11-8-16 [66]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

One of the debtor passed away. The survivor has completed the plan. Both debtors filed certificates of completion of a course on personal financial management but only the surviving debtor has filed the certificates required by 11 U.S.C. § 1328, Fed. R. Bankr. P. 1007(c), and Local Bankruptcy Rules 1007-1(c) and 5009-1. While the court will not waive the requirement that these certificates be filed, the surviving debtor is authorized pursuant to Local Bankruptcy Rule 1016-1 to file them for the deceased debtor. The clerk shall enter the discharge of both debtors when the co-debtor is otherwise entitled to a discharge.

8. 16-26748-A-13 TAYLOR NAVARRO — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-22-16 [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 sustained and the motion to dismiss the case will be conditionally denied.

If requested by the U.S. Trustee or the chapter 13 trustee, a debtor must produce evidence of a social security number or a written statement that such documentation does not exist. See Fed. R. Bankr. P. 4002(b)(1)(B). In this case, the debtor has breached the foregoing duty by failing to provide evidence of the debtor's social security number. This is cause for dismissal.

Also, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Schools Financial Credit Union in order to strip down or strip off its secured claim from its collateral. No such motion has been filed, served, and granted. Absent a successful motion the debtor

cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

While the debtor and the credit union have entered into a stipulation regarding the value of the vehicle, the proposed plan fails to pay that value. Hence, the plan does not satisfy 11 U.S.C. § 1325(a)(5)(B).

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

9. 16-26748-A-13 TAYLOR NAVARRO — OBJECTION TO CONFIRMATION OF PLAN
RTD-1 — 11-25-16 [27]
SCHOOLS FINANCIAL CREDIT UNION VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained to the extent and for the reasons explained in the ruling on the trustee's objection (JPJ-1) which is incorporated here.

10. 16-26950-A-13 JEFFERY KAHN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-22-16 [15]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the motion to dismiss the case will be

conditionally denied.

First, the debtor owes a domestic support obligation. Local Bankruptcy Rule 3015-1(b)(6) provides:

"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*."

The debtor failed to deliver to the trustee the Domestic Support Obligation Checklist. This checklist is designed to assist the trustee in giving the notices required by 11 U.S.C. § 1302(d).

The trustee must provide a written notice both to the holder of a claim for a domestic support obligation and to the state child support enforcement agency. See 11 U.S.C. §§ 1302(d)(1)(A) & (B). The state child support enforcement agency is the agency established under sections 464 and 466 of the Social Security Act. See 42 U.S.C. §§ 664 & 666. Section 1302(d)(1)(C) requires a third, post-discharge notice to both the claim holder and the state child support enforcement agency.

The trustee's notice to the claimant must: (a) advise the holder that he or she is owed a domestic support obligation; (b) advise the holder of the right to use the services of the state child support enforcement agency for assistance in collecting such claim; and (c) include the address and telephone number of the state child support enforcement agency.

The trustee's notice to the State child support enforcement agency required by section 1302(d)(1)(B) must: (a) advise the agency of such claim; and (b) advise the agency of the name, address and telephone number of the holder of such claim.

By failing to provide the checklist to the trustee, the debtor has disregarded the rule that it be provided, has breached the duty to cooperate with the trustee imposed by 11 U.S.C. § 521(a)(3) & (a)(4). This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

Second, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the response to question 27 on the Statement of Financial Affairs fails to disclose prior self-employment through July 2015. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

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

11. 16-27552-A-13 ALFONSO/CAMMIE MACIEL — MOTION TO IMPOSE AUTOMATIC STAY
PLC-1 — 11-23-16 [10]

- ☐ 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 debtors filed two prior chapter 13 cases which were both dismissed within 1 year of the filing to this, their third chapter 13 case.

When an individual debtor has filed 2 or more prior cases that were pending during the previous year, but were dismissed, the automatic stay never goes into effect. See 11 U.S.C. § 362(c)(4).

A party in interest may request that the court impose the automatic stay despite the filing and dismissal of multiple prior petitions. See 11 U.S.C. § 362(c)(4)(B). Such a request must be made with notice and a hearing and must be made within 30 days of the filing of the petition. To obtain the automatic stay, the party in interest must demonstrate that the latest case has been filed in good faith. If shown, the court may impose conditions on the imposition of the automatic stay.

This motion was made within 30 days of the filing of the current case. The issue is whether the case was filed in good faith. Section 362(c)(4)(D) invokes a presumption that the case was "filed not in good faith." To rebut the presumption the debtors assert the debtors blames their former attorney for the dismissal of the first two cases. In the first one, they thought he would propose a modified plan after their initial plan was not confirmed. None was proposed and the case was dismissed. A second case was filed but was dismissed when the installment filing fee was not paid as ordered. The debtors assert their attorney had agreed to pay the fees but did not.

The presumption has not been rebutted. In the second case the debtors signed an application to pay the filing fee in installments which they would pay. The rights and responsibilities agreement does not provide that their attorney would pay the installments nor does the attorney's Rule 2016(b) disclosure.

Even if the court were prepared to grant the motion, it would not impose the automatic stay as to the IRS because it has not been served with this motion at the three addresses required by Local Bankruptcy Rule 2002-1(c).

12. 16-26257-A-13 LUIS BOLANOS LOSADA
GTB-1
VS. SOUTH PARK TOWNHOUSE ASSOC.

OBJECTION TO CLAIM
11-10-16 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 44 days' notice of the hearing was given by the objecting party, this objection to a proof of claim is deemed brought pursuant to Local Bankruptcy Rule 3007-1(c)(2). Consequently, the claimant was not required to file a written response or opposition to the objection.

The creditor filed an objection to the confirmation of the plan proposed by the debtor making it clear it would contest the objection to its claim. Therefore, the court will not address the merits of the objection and will instead set a briefing schedule and a final hearing date.

The creditor shall file and serve opposition to the objection no later than December 27. The debtor shall file and serve any reply to that opposition no later than January 3. The final hearing will be on January 9, 2017 at 1:30 p.m.

13. 16-26969-A-13 JAMES DADE
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
11-22-16 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the 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 proposed plan is incomplete in that it specifies no dividend for Class 7, whether it may be $0 or 100%. Without this information, the debtor cannot meet the burden of proving compliance with 11 U.S.C. § 1325(a)(4), (a)(6) and (b).

Fifth, 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.

Sixth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor has not used the current mandatory schedules and statement and what was filed has not included all required information. As noted in the objection, the debtor has omitted financial information for a nonfiling spouse, failed to schedule all debts, and failed to answer all questions on the Statement of Financial Affairs. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Seventh, the plan understate the arrears on the objecting creditor's Class 1/4 secured claim. At this higher level, the plan either is not feasible or it will not pay the objecting secured claim in full. The plan fails to comply with 11 U.S.C. §§ 1325(a)(5)(B) & (a)(6).

Eighth, the plan impermissibly splits a home loan by placing the claim in two mutually exclusive classes, Classes 1 and 4. Assuming the claim belongs in either of these classes, it belongs in one, not both.

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.

14. 16-26969-A-13 JAMES DADE
ETL-1
WELLS FARGO BANK, N.A. VS.

OBJECTION TO CONFIRMATION OF PLAN
11-17-16 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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 stated in the ruling on the trustee's objection (JPJ-1) which is incorporated by reference.

15. 16-24671-A-13 KIMBERLY LAWSON
CAH-2

MOTION TO CONFIRM PLAN
11-1-16 [29]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to make $1,313 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).

16. 16-26872-A-13 ALFREDO BOLANOS AND SOFIA MONTANO-GOMES
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
11-22-16 [12]

- ☐ 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, the plan provides for a Class 2 secured claim but fails to identify either the creditor or the collateral. Without this information the trustee will be unable to pay the claim.

Third, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $14573.25 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only $4,282.10 to unsecured creditors.

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

17. 16-26086-A-13 KAREN CRANE — MOTION TO CONFIRM PLAN
MJD-1 — 10-27-16 [16]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $695 in months 26-32 is less than the $710.81 in dividends and expenses the plan requires the trustee to pay each month.

18. 16-26589-A-13 KAREN LAVOW — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-7-16 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained and the case will be dismissed.

First, the debtor has not filed a federal income tax return for 2013. The return is delinquent.

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

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods

during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors.

In this case, the meeting of creditors was held and concluded. While it is possible for the deadline to file the delinquent returns to be extended, to receive an extension the trustee hold the meeting of creditors open. See 11 U.S.C. § 1308(b). The trustee did not hold the meeting open. Hence, the deadline for filing the delinquent returns has expired and it is impossible for the debtor to comply with section 1308.

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

Second, to pay the dividends required by the plan at the rate proposed by it will take 155 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d). This problem arises because the plan requires payment in full of the IRS's priority claim. Because the claim is more than $10,000 greater than assumed by the plan, the plan will exceed the maximum 5-year duration.

Third, the debtor proposes to retain the debtor's home but fails to provide for payment in full of the homeowner's association's lien on it. Thus, the plan either is not feasible as required by 11 U.S.C. § 1325(a)(6), or it will not pay a secured claim in full as required by 11 U.S.C. § 1325(a)(5)(B).

19. 16-20699-A-13 ALEXANDER SCOTT — MOTION TO CONVERT OR TO DISMISS CASE 10-26-16 [31]
JPJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

the debtor has failed to make $1,638.44 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). The failure to make the payments is a material plan default which is prejudicial to creditors and is cause for dismissal.

Given the foreclosure of the debtor's home, the trustee's argument that conversion to chapter 7 rather than dismissal is in the best interests of unsecured creditors is no longer the case.

FINAL RULINGS BEGIN HERE

20. 16-27606-A-13 JON STANFIELD
DMB-1

MOTION TO
EXTEND AUTOMATIC STAY
11-17-16 [8]

Final Ruling: The motion will be dismissed.

The notice of hearing informs potential respondents that written opposition must be filed and served within 14 days prior to the hearing if they wish to oppose the motion. Because less than 28 days of notice of the hearing was given, Local Bankruptcy Rule 9014-1(f)(2) specifies that written opposition is unnecessary. Instead, potential respondents may appear at the hearing and orally contest the motion. If necessary, the court may thereafter require the submission of written evidence and briefs. By erroneously informing potential respondents that written opposition was required and was a condition to contesting the motion, the moving party may have deterred a respondent from appearing. Therefore, notice was materially deficient.

21. 13-26081-A-13 ELAINE WEBB
PGM-5

MOTION TO
APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
11-10-16 [69]

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 $2,865 in additional fees incurred principally in connection with a dispute concerning property taxes. 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.