UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

January 2, 2018 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 10. 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 29, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JANUARY 16, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY JANUARY 23, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 11 THROUGH 19 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 JANUARY 8, 2018, AT 2:30 P.M.

Matters to be Called for Argument

1. 17-22209-A-13 ROBIN/THOMAS HARLAND — MOTION TO SET ASIDE DISMISSAL OF CASE 12-4-17 [51]
RLC-5

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

This case was filed on April 3, 2017. When the plan initially proposed by the debtor was not confirmed, the court conditionally denied the trustee's motion to dismiss the case. The case would remain pending on the condition the debtor confirmed a plan by September 9.

The debtor filed a modified plan and set a hearing on September 5 to consider its confirmation. The court dismissed the motion to confirm the modified plan because the IRS was not served with notice of the hearing to confirm the plan.

The failure to confirm a plan on September 5 did not prompt the trustee to request dismissal of the case. This was because the debtor applied for an extension of time to confirm a modified plan. The court granted the debtor until November 5 to confirm a modified plan was "error on [his] part."

Clearly, there was an error but to justify vacating the dismissal the error must be excusable. There is no evidence or argument on this point.

2. 17-23129-A-13 TIMOTHY NEHER — ORDER TO SHOW CAUSE 12-12-17 [175]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor filed amended schedules in order to add additional creditors. This triggered a $31 filing fee pursuant to 28 U.S.C. § 1930(b). It was not paid when the schedules were filed on November 28 nor has it been paid since the issuance of the order to show cause. This is cause for dismissal.

3. 17-23129-A-13 TIMOTHY NEHER — MOTION TO VACATE 12-4-17 [165]
KJS-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted

Like everything in this case, the debtor's attempt to value the collateral of Sierra Central Credit Union has been followed a convoluted path.

The debtor first moved on June 5 (TLN-5) to value a trailer securing Sierra's claim at $14,000. Sierra filed opposition to the motion. Before the hearing, the debtor asked that the hearing date be continued. The court continued it to

August 28.

Then, on August 14 the debtor filed an amended valuation motion (also TLN-5_ that was supported by additional evidence.

The court dismissed the motion without prejudice because the amended motion was not served correctly on Sierra.

On October 11 the debtor filed a third motion to value Sierra's collateral (TLN-16). It is accompanied by a certificate of service indicating that the motion was served on Sierra, on its attorney "Kelly McCoy", and on Sierra's president by United States mail, first class, postage prepaid.

Sierra made no appearance at the hearing on this motion, either in person or in writing. The motion was granted for the reasons stated in the written ruling appended to the minutes of the hearing on November 20. An order was entered on November 21.

By this motion Sierra asks that the order be vacated on the ground that it and its attorney were not served with the motion the certificate of service notwithstanding. The debtor opposes the motion confirming that the valuation was mailed as indicated above.

The court should not have granted the motion because it was not served correctly. Fed. R. Bankr. P. 7004(h) requires that service of contested matters and adversary proceedings on insured depository institutions be accomplished by certified mailed addressed to an officer of the institution unless the institution has previously appeared in the case through an attorney. A credit union is an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act. The certificate of service and the opposition state that the motion was sent by regular first class mail.

Therefore, for this insufficiency of service, the motion will be granted.

4. 17-23129-A-13 TIMOTHY NEHER — MOTION TO VALUE COLLATERAL
TLN-17
VS. LENDINGHOME/LENDINGHOME FUNDING CORP. — 10-11-17 [125]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

In this valuation motion the debtor argues that a residential property, which may or may not have been his residence when the case was filed, has a value of $430,000.

Lendinghome holds a mortgage on the property securing a debt of $695,899.23. Because it believes the property was the debtor's residence, it argues there is no reason to value it because the debtor is prohibited by 11 U.S.C. § 1322(b)(2) from "stripping down" its claim by applying 11 U.S.C. § 506(a). In the alternative, if the debtor is not prevented from stripping down its claim, Lendinghome asserts that the property has a value of $470,000.

The court takes judicial notice of the petition and all schedules filed by the debtor.

According to the schedules filed May 22, the debtor has unsecured claims totaling $299,936. None are disputed, unliquidated, or contingent. The same claims are scheduled in the amended schedules filed November 28.

As to Lendinghome's secured claim, Schedule D and amended Schedule D indicate that it totals $714,000. The amended schedule indicates that the claim is disputed without any further explanation. Lendinghome's proof of claim indicates that it is owed $695,899.23. There is no pending objection to the proof of claim.

Assuming the property is not the debtor's residence and that Lendinghome's claim can be stripped down to the value of the residence, the debtor is not eligible for chapter 13 relief. Whether the property has a value of $430,000 or $470,000, the under-secured portion of the Lendinghome debt (whether the debt is the amount stated in the schedules or the proof of claim), when added to the debtor's other $299,936 of unsecured debt, exceeds $394,725, the maximum amount of unsecured debt a person may owe and be eligible for chapter 13 relief. See 11 U.S.C. § 109(e).

The debtor may argue that because the debt owed to Lendinghome is listed as disputed in amended Schedule D, it cannot be included in the eligibility calculation. However, the Ninth Circuit requires the bankruptcy court to determine eligibility for chapter 13 relief as of the date the petition is filed by examining the schedules originally filed by the debtor and looking beyond those schedules only when not filed in good faith. See In re Slack, 187 F.3d 1070, 1073-74 (9th Cir. 1999); In re Scovis, 249 F.3d 975, 982-83 (9th Cir. 2001). The debtor has made no argument that he filed the original schedules in bad faith (which admittedly would be a strange argument for any debtor to make and likely would be precluded by judicial estoppel).

Hence, if the court were to grant this motion, it would be compelled also to conclude the debtor is not eligible for chapter 13 relief and the case should be dismissed.

If the property is the debtor's residence, the motion there cannot be granted because the anti-modification provision of section 1322(b)(2) prevents the debtor from stripping down the claim.

Finally, from the evidence the court concludes that the subject property was used by the debtor as his principal residence when this case was filed. He stated under penalty of perjury that the subject property was his home and the address at which he received mail. Further, he made the same statements in a prior case. While the Lendinghome loan documentation contains a warranty that he would not reside in the home, the petition makes clear that he did and his email with the lender confirms that he intended to live there and did live there.

Either way, the motion will be denied.

5. 17-27350-A-13 RICCY/TESSIE LABITORIA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 12-13-17 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

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

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

6. 17-26052-A-13 TANISHA MAVY — OBJECTION TO CONFIRMATION OF PLAN 10-26-17 [41]
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 in part.

First, the debtor's exemptions are defective on their face given the failure to claim a finite exemption amount. Without exemptions, unsecured creditors would receive a dividend of more than $13,000 in a chapter 7 case. Therefore, the provision in the plan for no dividend to these creditors means the plan does not comply with 11 U.S.C. § 1325(a)(4).

Second, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

Schedules I/J show that the debtor will have monthly net income of approximately $220; the plan requires a monthly payment of $300.

7. 17-27280-A-13 EVELINA TSVETANOVA — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 12-13-17 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $2,286.19 is less than the $2,607.16 in dividends and expenses the plan requires the trustee to pay each month.

Second, to pay the dividends required by the plan at the rate proposed by it will take 89 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor failed to schedule a vehicle and a debt secured by that vehicle. 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).

Fourth, 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.

Fifth, the plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay nothing to unsecured creditors but Form 122C shows that the debtor will have $32,296.20 in projected disposable income over the plan's duration.

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.

8. 17-27984-A-13 CHRISTOPHER SIMPSON — MOTION TO EXTEND AUTOMATIC STAY 12-18-17 [13]
ADR-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be 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. It was dismissed because the debtor failed to commence plan payments.

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 motion asserts that the prior chapter 13 case failed because the debtor had not obtained orders avoiding judicial liens in an even earlier

chapter 13 case.

A review of the docket of the chapter 7 case reveals that it was filed on July 11, 2016 and that the motions to avoid three judicial liens were not filed until approximately one year later. Two of the motions were granted on November 8, 2017 and a third was granted in part by stipulation on November 5. The stipulation left approximately $53,000 of one of the judicial liens on the debtor's home.

The motions to avoid the three judicial liens were filed contemporaneously with the first chapter 13 case. The plan filed in the first chapter 13 case assumed the lien avoidance motions would be successful and called for no payments to the three creditors holding these secured claims.

According the dismissal motion filed by the trustee in the first chapter 13 case, the debtor failed to commence making plan payments. When this default was not cured, the case was dismissed on November 7.

The debtor appears to be arguing the chapter 13 case could not move forward because the lien avoidance motions had not been resolved when the first chapter 13 case was filed. This makes no sense.

First, the obligation to make plan payments is not contingent on the outcome of lien avoidance motions, valuation motions, claim objections, or anything else. The first case was dismissed because plan payments were not commenced. The pendency of lien avoidance motions explains nothing.

Second, the motion fails to explain why the debtor waited one year in the chapter 7 case to file the lien avoidance motions. Assuming the unresolved issues raised by the motions had some relevance to the reasons the chapter 13 case was dismissed, why did the debtor create the problem by not more seasonably filing the motions? This is unexplained.

The court cannot conclude that this case is more apt to succeed.

9. 17-27290-A-13 SHARI FRAZIER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 12-13-17 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Wells Fargo Dealer Services 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, Counsel for the debtor has opted to receive fees pursuant to Local Bankruptcy Rule 2016-1 rather than by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. However, the rights and responsibilities agreement executed and filed indicates that counsel will receive $2,450 in fees. The plan, on the other hand, requires payment of $1,000. Therefore, the provision in the proposed plan requiring the trustee to pay the fees contradicts the agreement with the debtor.

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

10. 17-26397-A-13 HELEN CASACLANG — OBJECTION TO CONFIRMATION OF PLAN 11-6-17 [26]
JPJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained.

The property of the estate includes a $16,500 preferential transfer to an insider. The insider is the debtor's sister. This transfer, as well as $5,000 of nonexempt equity in real property, have not been included by the debtor in the liquidation analysis required by 11 U.S.C. § 1325(a)(4). Because unsecured creditor would receive approximately $18,600 in a chapter 7 case, and because the plan will pay them only $4,821, the plan does not comply with section 1325(a)(4).

The following additional facts are relevant to a determination of the plan's confirmability.

First, the debtor has filed three prior chapter 13 cases since 2009. The most recent prior case, Case No 15-29496, was dismissed on September 6, 2017, 21 days before this case was filed.

Second, the debtor's spouse died in July 2017.

Third, as a result of the spouse's death the debtor received a $187,000 life insurance benefit. When the current case was filed on September 27, 2017, the debtor indicated that $165,000 of this insurance was on hand. The $16,500 payment to her sister came from the insurance and was made on August 17.

Fourth, because the payment was made to the sister from the insurance on August 17, and because the prior case was not dismissed until September 6, it can be inferred that the debtor received the insurance settlement while the prior case was pending. In fact, a review of the docket of the prior case indicates that with the insurance proceeds in hand in August, the debtor could have easily cured the default that caused the dismissal of that case on September 6. See Docket 93, 95, 96, Case No. 15-29496. Still, the debtor did not cure the payment default.

Fifth, instead of curing the default, the debtor permitted the prior case to be dismissed even though the confirmed plan required no payments to unsecured creditors. Once dismissed, the debtor paid her sister in full knowing that distance (the sister is in Africa), the sister's financial circumstances (she has spent the money and is unable to repay it), and the relatively modest amount of the transfer, likely insulated the sister from any demand by a bankruptcy trustee that the money be returned. The debtor then filed another chapter 13 case proposing to pay a nominal 2% dividend to unsecured creditors.

These events have been orchestrated by the debtor in order to make a preferential payment to the sister and then re-file for bankruptcy relief and pay nothing or next to nothing to her unsecured creditors. Whether or not the preferential transfer can be recovered, these facts indicate bad faith in both filing this case and in proposing the plan. See 11 U.S.C. § 1325(a)(3) & (a)(7).

FINAL RULINGS BEGIN HERE

11. 17-27307-A-13 KIMBERLY WELCH — OBJECTION TO CONFIRMATION OF PLAN 12-13-17 [34]
JPJ-1

Final Ruling: Because this objection is affected by a hearing on motion to avoid a judicial lien continued to January 8 at 1:30 PM, the hearing on this objection is also continued to January 8.

12. 17-25108-A-13 CHRISTOPHER CAMPBELL — MOTION FOR RELIEF FROM AUTOMATIC STAY 11-30-17 [26]
APN-1
GLOBAL LENDING SERVICES, 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 and to obtain possession of its personal property security, and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has proposed a plan that does not provide for the payment of the movant's claim. Further, the debtor has not paid the claim under the terms of the contract with the movant. Because the debtor has not paid the movant's claim, and will not pay it in connection with the chapter 13 case, there is cause to terminate the automatic stay.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

13. 17-27417-A-13 LAURA NEWQUIST — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 12-13-17 [13]
JPJ-1

Final Ruling: The objection and motion have been voluntarily dismissed.

14. 17-27340-A-13 BRANDY KLOPF — MOTION FOR RELIEF FROM AUTOMATIC STAY 11-27-17 [13]
AP-1
WELLS FARGO BANK, N.A. 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 in part.

To the extent the motion seeks to terminate the automatic stay of 11 U.S.C. § 362(a) and the codebtor of 11 U.S.C. § 1301, the motion will be dismissed as moot. The case was dismissed on December 4. As a result, both stays have expired as a matter of law. See 11 U.S.C. §§ 362(c)(1)) & (c)(2), 1301(a).

To the extent the motion seeks relief pursuant to 11 U.S.C. § 362(d)(4), the motion will be granted.

11 U.S.C. § 362(d)(4) provides:

"*On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .*

"*with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-*

"*(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or*

"*(B) multiple bankruptcy filings affecting such real property.*"

Section 362(d)(4) implicates 11 U.S.C. § 362(b)(20). Section 362(b)(20) is an "in rem" exception to the automatic stay. If the court grants relief in this case under section 362(d)(4), but then another petition is filed by any debtor who claims an interest in the subject real property, section 362(b)(20) provides that the automatic stay does not operate in the second case so as to prevent the enforcement of a lien or security interest in the subject real property. The exception to the automatic stay in the second case is effective for 2 years after the entry of the order under section 362(d)(4) in the first case.

A debtor in the subsequent bankruptcy case, however, may move for relief from the in rem order. The request for relief from the in rem order may be premised upon "changed circumstances or for other good cause shown. . . ."

The debtor filed two other chapter 13 cases in 2017. Both were dismissed, like this most recent case, because the debtor failed to file all required schedules and statements. Given the filing of three chapter 13 cases in quick succession, none of which was prosecuted diligently, the court concludes that the debtor is engaged in a scheme to delay, hinder or defraud the movant in the enforcement of its claim against the property. This scheme involves multiple bankruptcy filings affecting the property which the debtor has failed to diligently prosecute. Accordingly, relief under 11 U.S.C. § 362(d)(4) is warranted.

Therefore, the court will grant relief from the automatic stay that will be effective for a period of two years in any future case filed by anyone claiming

an interest in the subject property, provided the recordation requirements of section 362(d)(4) are satisfied by the movant or its successor.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

15. 17-24944-A-13 MAURICE TALTON — MOTION TO CONFIRM PLAN
MJD-2 — 11-15-17 [35]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The court will not materially alter the relief requested and the issue raised by the trustee can be resolved by a nonmaterial modification to the plan. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted on the condition that the plan is modified in the confirmation order to correct the payment dates, changing them from 2017 to 2018. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

16. 14-25050-A-13 STEPHEN PATTON — MOTION FOR RELIEF FROM AUTOMATIC STAY
AP-2 — 12-1-17 [65]
WELLS FARGO BANK, N.A. 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 dismissed as moot.

The court confirmed a modified plan on September 26, 2014. That plan provides for the movant's claim in Class 4.

"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.

17. 15-24459-A-13 THOMAS/HEATHER PINTO
SDH-5

MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
12-1-17 [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 $5,737.50 in additional fees and $37.52 in costs incurred principally in connection with obtaining approval for the financing of a new vehicle as well as a new home. This work was necessitated by a car accident and a move to Texas. 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.

18. 17-27065-A-13 ARNOLDO/NORMA NAVARRO
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN
12-13-17 [20]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The debtor's response to the objection and the filing of a modified plan concede the merit of 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).

First, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Form 122C-1 is missing the first two pages. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Second, a secured claim in Class 4 is misclassified. Class 4 is reserved for, among other things, claims that will mature after the completion of the plan. The plan of The Golden One Credit Union will mature before the completion of the plan.

19. 17-27290-A-13 SHARI FRAZIER
MAC-1
VS. WELLS FARGO DEALER SERVICES

MOTION TO
VALUE COLLATERAL
12-8-17 [16]

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $13,008 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $13,008 of the respondent's claim is an allowed secured claim. When the respondent is paid $13,008 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.