

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

January 9, 2017 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 16 AND 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 FEBRUARY 6, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JANUARY 23, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JANUARY 30, 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 17 THROUGH 22 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 17, 2017, AT 2:30 P.M.

January 9, 2017 at 1:30 p.m.

Matters to be Called for Argument

1.	16-23912-A-13 ANN RICHARD ETW-1	MOTION TO CONFIRM PLAN 12-9-16 [36]
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- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make \$3,141.17 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).

Second, even if the plan payments were current the plan would not be feasible because the monthly plan payment of \$2,053.68 is less than the \$2,484.69 in dividends and expenses the plan requires the trustee to pay each month.

Third, because the debtor has under-estimated the amount of the claims held by the IRS, and the total amount of nonpriority unsecured claims, in order to pay the dividends required by the plan at the rate proposed by it will take 165 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Fourth, 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. This means that counsel may receive a maximum fee of up to \$4,000 for a consumer case (like this one) and have that fee approved in connection with the confirmation of the plan. In this case, however, counsel's proposed fee of \$5,000 exceeds the maximum fee allowed by Local Bankruptcy Rule 2016-1.

Fifth, 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).

Sixth, according to the proofs of claim filed by the FTB and the IRS, the debtor has not filed tax returns for the four years preceding this case.

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 or conversion to another chapter. 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.

Seventh, Local Bankruptcy Rule 3015-1(c)(3) and (d)(1) require that when the debtor files and serves a motion to confirm a chapter 13 plan, the motion to confirm it must be set for hearing on 42 days of notice to all creditors, the chapter 13 trustee, and the U.S. Trustee. If any of these parties in interest wish to object to the confirmation of the plan, they must file and serve a written objection at least 14 days prior to the hearing. See Local Bankruptcy Rules 3015-1(b)(1) and 9014-1(f)(1)(B). The debtor's notice of the hearing on the motion to confirm the plan must advise all parties in interest of the deadline for filing written objections. See Local Bankruptcy Rule 9014-1(d)(3).

This procedure complies with Fed. R. Bankr. P. 2002(b), which requires a minimum of 28 days of notice of the deadline for objections to confirmation as well as the hearing on confirmation of the plan. Because Rule 9014-1(f)(1)(B) requires that written opposition be filed 14 days prior to the hearing but Fed. R. Bankr. R. 2002(b) requires 28 days of notice of the deadline for filing opposition, the debtor must give 42 days of notice of the hearing.

Here, the debtor gave only 32 days of notice of the hearing. Therefore, parties in interest received only 18 days notice of the deadline for filing and serving written opposition to the motion. Notice was insufficient.

2. 16-23912-A-13 ANN RICHARD
JPJ-2

MOTION TO
CONVERT OR TO DISMISS CASE
12-7-16 [31]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

For the reasons given in the ruling on the motion to confirm a plan (ETW-1) there also is cause to dismiss or convert the case to one under chapter 7, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(1) & (c)(5).

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 \$167,000 of equity in unencumbered, nonexempt assets that will benefit

creditors if liquidated by a trustee.

3. 16-26614-A-13 LORI ECHOLS
JPJ-1
- OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
11-17-16 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor failed to disclose the transfer of real property within the prior two years to a former spouse. 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). Filing the information after the deadline for objecting to the plan does not purge the bad faith.

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.

4. 16-27628-A-13 ANDRE/CARLA MASURET
JPJ-1
- OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
12-22-16 [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, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$5,710 is less than the \$5,795.73 in dividends and expenses the plan requires the trustee to pay each month.

Second, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of M&H Realty Partners V 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."

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 from the VA 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, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Schedule I fails to identify one of the debtors' employer and the Statement of Financial Affairs erroneously indicates the debtors had income of \$1 in 2014 and 2015. This inaccurate disclosure 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.

5.	16-27330-A-13 STEPHEN SANDNER JPJ-1	OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 12-22-16 [20]
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- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the 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 because Schedule I indicates that the debtor has no regular income as required by 11 U.S.C. § 109(e). The court also notes that Schedule I is consistent with the information in the Statement of Financial Affairs which indicate that the debtor has had no income for the prior three years.

It is unnecessary to address the remaining objections to confirmation.

6. 16-25647-A-13 JAMES ARNOLD MOTION TO
JB-1 CONFIRM PLAN
11-25-16 [44]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, because the debtor has under-estimated the priority claims by approximately \$12,000, paying the dividends required by the plan at the rate proposed by it will take 69 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Second, the plan provides for no interest to accrue on the County's secured claim for property taxes. 11 U.S.C. § 511 provides that the interest rate payable on a tax claim or an administrative tax expense is determined by applicable nonbankruptcy law.

The interest due on delinquent California real property taxes is set by statute. For each installment of real property taxes not timely paid, a 10% penalty is assessed. See Cal. Rev. & Tax. Code §§ 2617, 2618, 2705. In addition, a "redemption" penalty of 1 1/2% per month is added to the tax bill. See Cal. Rev. & Tax. Code § 4103(a). For purposes of a claim in a bankruptcy case, Cal. Rev. & Tax. Code § 4103(b) provides that "the assessment of penalties . . . constitutes the assessment of interest."

Third, the plan fails to provide for payment in full of the EDD priority tax claim in Class 5. The plan does not comply with 11 U.S.C. § 1322(a)(2).

7. 16-27148-A-13 NAMATH KANDAHARI OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
12-22-16 [34]

- ☐ 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 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).

Given the dismissal and given that confirmation of the proposed plan previously was denied on the objection by Wilmington Trust, it is unnecessary to address the other objections to confirmation.

8. 15-22850-A-13 DANIEL/JESSICA PUGLIA MOTION TO
SS-8 APPROVE COMPENSATION OF DEBTORS'
ATTORNEY
12-6-16 [93]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

The motion seeks approval of \$4,280 in additional fees incurred principally in connection with multiple motions to confirm plans and to obtain credit. For the reasons argued by the trustee, the court disallows \$390 for the services identified by the trustee. The remainder 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.

9. 12-22065-A-13 BETTY CHANDLER MOTION TO
MET-3 LOAN MODIFICATION
12-26-16 [46]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted. The debtor is authorized but not required to enter

10. 16-27372-A-13 SHANE/MICHELLE GALLEGOS OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
12-22-16 [26]

- 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.

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).

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. 16-27372-A-13 SHANE/MICHELLE GALLEGOS OBJECTION TO
AP-1 CONFIRMATION OF PLAN
DITECH FINANCIAL, L.L.C. VS. 12-22-16 [29]

- ☐ 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.

The objection that the plan does not provide for a cure of the arrears on the objecting creditor's secured claim will be overruled. The plan provides for the objecting creditor's claim in Class 1. This means that the plan will cure the pre-petition arrearage while maintaining the monthly contract installment. The plan explicitly provides that the claim is not modified in any way. This treatment satisfies the requirements of 11 U.S.C. §§ 1322(b)(2), (b)(5), and 1325(a)(5)(B). The fact that the plan may erroneously understate the amount of the arrears is no import because of two plan provisions.

First, section 2.04 provides: "The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim." The debtor here has filed no motion or objection that will affect any claim that may be filed by the debtor.

Second, section 2.08(c) provides: "**(c) No claim modification.** Each Class 1 creditor shall retain its lien. Other than to cure of any arrearage, this plan does not modify Class 1 claims." The objecting creditor's claim is provided for as a Class 1 claim.

However, the court will sustain an objection to the plan's feasibility. The plan assumes the arrears on the objecting creditor's Class 1 secured claim are approximately \$18,000. The creditor indicates that the arrears are more than \$23,000. At this higher level, the debtor will be unable to pay the claim in full over a 60-month duration as proposed. The plan fails to comply with 11 U.S.C. §§ 1322(d) and 1325(a)(6).

12. 16-27475-A-13 DAVID MUNRO OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
12-22-16 [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, 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, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. In particular, the petition fails to disclose a prior bankruptcy case filed in 2010. 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, the plan misclassifies secured claims in Class 5 which is reserved for priority unsecured claims. Because the latter are paid post-petition interest, this means the plan does not pay the present value of such secured claims in violation of 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.

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

Second, the trustee will object to all of the debtor's Cal. Civ. Proc. Code § 703.140(b) exemptions claimed on Schedule C. The trustee argues that because the debtor is married, as admitted in the Statement of Financial Affairs, and because the debtor's spouse has not joined in the chapter 13 petition, the debtor must file his spouse's waiver of right to claim exemptions. See Cal. Civ. Proc. Code § 703.140(a)(2). This was not done.

A debtor's exemptions are determined as of the date the bankruptcy petition is filed. Owen v. Owen, 500 U.S. 305, 314 (1991); see also In re Chappell, 373 B.R. 73, 77 (B.A.P. 9th Cir. 2007) (holding that "critical date for determining exemption rights is the petition date"). Thus, the court applies the facts and law existing on the date the case was commenced to determine the nature and extent of the debtor's exemptions.

11 U.S.C. § 522(b)(1) permits the states to opt out of the federal exemption statutory scheme set forth in section 522(d). In enacting Cal. Civ. Proc. Code § 703.130, the State of California opted out of the federal exemption scheme relegating a debtor to whatever exemptions are provided under state law. Thus, substantive issues regarding the allowance or disallowance of a claimed exemption are governed by state law in California.

California state law gives debtors filing for bankruptcy the right to choose (1) a set of state law exemptions similar but not identical to the Bankruptcy

Code exemptions; or (2) California's regular non-bankruptcy exemptions. See Cal. Civ. Proc. Code §§ 703.130, 703.140. In the case of a married debtor, if either spouse files for bankruptcy individually, California's regular non-bankruptcy exemptions apply unless, while the bankruptcy case is pending, both spouses waive in writing the right to claim the regular non-bankruptcy state exemptions in any bankruptcy proceeding filed by the other spouse. See Cal. Civ. Proc. Code § 703.140(a)(2).

Here, the debtor is asserting the exemptions of Cal. Civ. Proc. Code § 703.140(b), which require a spousal waiver. That waiver was not filed with the petition. As a result, the debtor has no allowable exemptions. Without exemptions, the debtor's nonexempt assets total more than \$7,177. Because the plan does not provide for payment in full of unsecured creditors but only \$5,570, the plan does not comply with 11 U.S.C. § 1325(a)(4).

Third, the debtor has failed to give the trustee a copy of the 2015 state income tax return as requested by the trustee. 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).

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The responses to questions 4 and 5 are contradicted by the debtor's federal income tax return for 2015. This 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 accurate and 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.

14.	16-27280-A-13 DEANNE SUAREZ BDA-1 CAPITAL ONE AUTO FINANCE VS.	OBJECTION TO CONFIRMATION OF PLAN 12-22-16 [22]
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- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection that the plan violates the "hanging paragraph" following 11 U.S.C. § 1325(a)(9) will be overruled.

The hanging paragraph provides that "section 506 shall not apply to a claim described in [section 1325(a)(5)] if the creditor has a purchase money security interest," the secured debt was incurred within 910 days of the filing of the

petition, and the collateral is a motor vehicle acquired for the personal use of the debtor.

According to the objection, the creditor here holds a claim secured by a purchase money security interest in a vehicle acquired by the debtor for personal use less than 910 days prior to filing this case. Therefore, the debtor may not "strip down" the objecting creditor's claim to the value of the vehicle. The debtor may, however, modify the claim such as by curing the arrears, changing the interest rate, reamortizing the claim, etc.

A review of the plan indicates that the debtor is not attempting to strip down the claim to the value of the vehicle securing it.

First, there is no motion to value that vehicle. A valuation motion is a predicate to stripping down the claim. In the absence of a valuation motion, the plan provides at section 2.04 that the creditor's proof of claim will dictate the amount of the claim.

Second, the plan provides for the creditor's claim in Class 2A and specifically provides that the claim will not be reduced to the value of the vehicle.

However, the objection to the interest payable under the plan to the creditor will be sustained. The plan indicates the claim will be paid in full with interest at the rate of 2.79%.

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 prime rate is 3.75%. 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 2.79 is a discount under prime. This discount, combined with the fact that the movant is not oversecured and is secured by depreciating personal property convince the court that the plan does not satisfy section 1325(a) (B) (ii).

15. 16-27387-A-13 RODNEY O'BRINE
JPJ-1

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

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).

16. 16-27489-A-13 PALMER COOKE
KEJ-1

MOTION TO
CONFIRM TERMINATION OR ABSENCE OF
STAY
12-9-16 [32]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part and the court will confirm the absence of the automatic stay in this case as of December 11, 2016.

11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has expired under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii).

The debtor filed a prior chapter 13 case, Case No. 15-28634, which was dismissed on February 5, 2016. This case was filed on November 10, 2016. Hence, the latest case was filed within one year of the dismissal of the prior case.

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.

As of December 11, 2016, the current case had been pending more than 31 days. Section 362(c)(3)(B) allows a debtor to file a motion requesting the continuation of the stay beyond the 30th day.

However, a review of the docket in this case reveals that the debtor has not a motion to extend the automatic stay beyond the 30th day after the filing of the petition. Hence, as a matter of law, the automatic stay has expired.

The debtor's opposition raises no meritorious argument. Whether or not a plan is confirmed at the scheduled hearing on January 23, there is no automatic stay in this case because it has expired and it is now too late to extend that stay. Therefore, the court confirms the absence of the automatic stay from and after December 11.

FINAL RULINGS BEGIN HERE

17. 16-26524-A-13 ANTHONY/CAMILLE BROOKS MOTION TO
TBK-2 CONFIRM PLAN
12-13-16 [30]

Final Ruling: The motion will be dismissed without prejudice.

First, Local Bankruptcy Rule 3015-1(c)(3) and (d)(1) require that when the debtor files and serves a motion to confirm a chapter 13 plan, the motion to confirm it must be set for hearing on 42 days of notice to all creditors, the chapter 13 trustee, and the U.S. Trustee. If any of these parties in interest wish to object to the confirmation of the plan, they must file and serve a written objection at least 14 days prior to the hearing. See Local Bankruptcy Rules 3015-1(b)(1) and 9014-1(f)(1)(B). The debtor's notice of the hearing on the motion to confirm the plan must advise all parties in interest of the deadline for filing written objections. See Local Bankruptcy Rule 9014-1(d)(3).

This procedure complies with Fed. R. Bankr. P. 2002(b), which requires a minimum of 28 days of notice of the deadline for objections to confirmation as well as the hearing on confirmation of the plan. Because Rule 9014-1(f)(1)(B) requires that written opposition be filed 14 days prior to the hearing but Fed. R. Bankr. R. 2002(b) requires 28 days of notice of the deadline for filing opposition, the debtor must give 42 days of notice of the hearing.

Here, the debtor gave only 28 days of notice of the hearing. Therefore, parties in interest received only 14 days notice of the deadline for filing and serving written opposition to the motion. Notice was insufficient.

Second, Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 7346, Philadelphia, PA 19101-7346; (2) United States Attorney, for the IRS, 501 I Street, Suite 10-100, Sacramento, CA 95814; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

Service in this case is deficient because the IRS was not served at the second and third addresses listed above.

18. 16-26828-A-13 RITA SCHROEDER ORDER TO
SHOW CAUSE
12-19-16 [37]

Final Ruling: The order to show cause will be discharged as moot. The case was dismissed on December 27.

19. 16-25232-A-13 GREGORY WALLACE MOTION FOR
RELIEF FROM AUTOMATIC STAY
PHOENIX GOLD MANAGEMENT, L.L.C. VS. 12-1-16 [85]

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 in a commercially reasonable manner, and to apply the sale proceeds to its claim in accordance with its loan documentation.

The movant is secured by a vehicle owned by the debtor. The plan, which is not confirmed, places the movant's claim in Class 2. In addition to providing that the claim be paid in full, the plan requires the debtor to maintain insurance on the vehicle as required by the contract between the parties. See First Amended Plan filed October 31, 2016, §§ 2.09, 5.02; Local Bankruptcy Rule 3015-1(b)(3). No insurance has been in place since August 29. This breach of the contract and the proposed plan is cause to terminate the automatic stay.

In breach of the plan and the security documentation, the debtor has failed to pay all post-petition real estate taxes and also has failed to insure the property. This 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.

20.	15-26254-A-13 TIMOTHY/ROBIN PEPPEL CYB-1	MOTION TO MODIFY PLAN 12-1-16 [37]
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Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

21.	16-27065-A-13 GWENDOLYN WHITE MMN-1 VS. EDD	OBJECTION TO CLAIM 12-1-16 [15]
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Final Ruling: The objection will be dismissed without prejudice.

The notice of hearing informs the claimant that written opposition must be filed and served 14 days prior to the hearing if the claimant wishes to oppose the objection to the proof of claim. Because less than 44 days of notice of

the hearing was given, Local Bankruptcy Rule 3007-1(b)(2) specifies that written opposition is unnecessary. Instead, the claimant may appear at the hearing and orally contest the objection. If necessary, the court may thereafter require the submission of written evidence and briefs. By erroneously informing the claimant that written opposition was required and was a condition to contesting the objection, the objecting party may have deterred the claimant from appearing. Therefore, notice was materially deficient.

22. 16-25168-A-13 TERI TAYLOR MOTION TO
TAG-3 MODIFY PLAN
11-22-16 [46]

Final Ruling: The motion will be dismissed without prejudice.

Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 7346, Philadelphia, PA 19101-7346; (2) United States Attorney, for the IRS, 501 I Street, Suite 10-100, Sacramento, CA 95814; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

Service in this case is deficient because the IRS was not served at the second and third addresses listed above.

Add-On Matter

23. 16-28267-A-13 CARLOS/KELLY SMITH MOTION TO
MCN-1 EXTEND AUTOMATIC STAY O.S.T.
12-29-16 [11]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

This is the second chapter 13 case filed by the debtor. A prior case in the Northern District of California, Case No. 15-41482, was dismissed in September 2016 because the debtor to maintain plan payments. This case was filed on December 16, 2016. Hence, the debtor's earlier chapter 13 case was dismissed within one year of the most recent petition.

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, it appears that the debtor was unable to maintain plan payments in the first case due to post-petition unemployment. Since that unemployment, the debtor has successfully started back up a janitorial business with sufficient contracts, combined with the other debtor's employment income, sufficient to fund a plan. This is a sufficient change in circumstances rebut the presumption of bad faith.