

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 14, 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 33. 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 JUNE 4, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 21, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 28, 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 34 THROUGH 50 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 MAY 21, 2018, AT 2:30 P.M.

May 14, 2018 at 1:30 p.m.

Matters to be Called for Argument

1.	<u>18-21714</u> -A-13 SONIA SCALESE <u>JPJ</u> -1	OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 4-24-18 [<u>17</u>]
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- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, 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).

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, 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 fees \$4,500. The plan, on the other hand, requires payment of \$4,000. Therefore, the provision in the proposed plan fails to provide for what the debtor has agreed to pay.

Also, if \$4,500 is the correct fee, it exceeds the maximum fee permitted by Local Bankruptcy Rule 2016-1. To collect a fee of \$4,500, counsel must file fee applications before the trustee can pay his fees.

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. [15-28416](#)-A-13 PATRICIA HANSEN MOTION TO
[LBG](#)-5 APPROVE COMPENSATION FOR DEBTOR'S
ATTORNEY
4-5-18 [[71](#)]

- ☐ 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 motion seeks approval of \$1,500 in additional fees incurred principally in connection with two motions to modify the plan and two motions to approve incurring debt. 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.

3. [18-21224](#)-A-13 ARLENE MARTINEZ OBJECTION TO
[JPJ](#)-1 CONFIRMATION OF PLAN
4-11-18 [[17](#)]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$1,218 is less than the \$1,894 in dividends and expenses the plan requires the trustee to pay each month.

Second, the plan misclassifies two long term secured claims. The debtor has included in Class 1 a claim that is not in default. This claim belongs in

Class 4. Also, by including the claim in Class 4, the debtor has failed to provide for the pre-petition arrears as required by 11 U.S.C. §§ 1322(b) (2) & (5) and 1325(a) (5) (B). The debtor has included in Class 4 a secured claim that is in default. This claim belongs in Class 1.

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.

4. [18-20128](#)-A-13 CHARLENE SANDERS MOTION TO
[SS-2](#) CONFIRM PLAN
2-6-18 [[20](#)]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

Second, the 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).

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor failed to include a detailed statement of business income and expenses with Schedule I/J. 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).

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, Local Bankruptcy Rule 3015-1(b)(6) provides: "Documents Required by Trustee. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

Second, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Chrysler Capital 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, the debtor has failed to give the trustee a copy of a state income tax return that he request. 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).

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. [18-21230](#)-A-13 RODELINA SANTOS
[JHW](#)-1
SANTANDER CONSUMER USA, INC. VS. OBJECTION TO
CONFIRMATION OF PLAN
4-11-18 [[16](#)]

- ☐ 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 for the reasons stated in the ruling on the trustee's objection, JPJ-1, as well as for the reason stated below.

The objecting creditor is secured by a purchase money security interest in a vehicle purchased within 910 days of this case and for the personal use of the debtor. Therefore, the "hanging paragraph" following 11 U.S.C. § 1325(a)(9) precludes the debtor from stripping down this claim to the value of the vehicle as this plan seeks to do.

7. [18-20631](#)-A-13 SYREETA SHOALS
ORDER TO
SHOW CAUSE
4-12-18 [[26](#)]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the \$76 installment when due on April 9. While the delinquent installment was paid on May 3, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

8. [18-21039](#)-A-13 RICKIE RYAN
[JPJ](#)-1
OBJECTION TO
CONFIRMATION OF PLAN
4-12-18 [[24](#)]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

The objection will be sustained.

First, the debtor failed to appear at the continued 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).

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

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

Fourth, 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.

Fifth, the plan proposes to pay some creditors yet the plan does not require the debtor to make a plan payment. The plan is not feasible.

It is unnecessary to reach the remaining objections but the court notes they all have merit.

9. [18-22339](#)-A-13 MICHAEL/ARLENE MUNOZ
[PSB](#)-1

MOTION TO
EXTEND AUTOMATIC STAY
4-27-18 [[12](#)]

- ☐ 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

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hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be denied.

The debtor filed a prior case that was dismissed within one year of the filing of the current case. The prior case was voluntarily dismissed. Apparently, the debtor incurred income taxes during the pendency of the last case that were not paid and so dismissed the prior case in order to provide for the taxes in this 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.

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

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

Here, the debtor breached the terms of the confirmed plan in the prior case by failing to pay ongoing income taxes. Then, the debtor voluntarily dismissed the prior case and immediately refiled this case with the intention of paying the delinquent taxes as part of a new plan.

Comparison of the schedules in the two cases indicates the debtor's financial situation has deteriorated. In the first case, total priority debt was less than \$14,000. Now, it is more than \$72,000. Also, nonpriority unsecured debt has increased by approximately \$2,200 and the debtor's home mortgage continues to be in arrears. The trustee's final report and account in the prior case indicates that approximately half of the \$83,000 arrears were paid in the last case, leaving approximately \$40,000 to be paid in this case. Aggregating the remaining arrears and the priority tax debt means that the obligations that must be paid in full have increased since the prior case. There is no demonstrated ability in this motion indicating the debtor is now able to make both plan payments and pay taxes.

10. [18-21640](#)-A-13 DZMITRY/NATALLIA UHLIK
[ASW](#)-1
THE BANK OF NEW YORK MELLON VS. OBJECTION TO
CONFIRMATION OF PLAN
4-26-18 [[30](#)]

- ☐ 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.

The plan assumes the arrears on the objecting creditor's Class 1 secured claim are approximately \$18,500. The creditor indicates that the arrears are more than \$27,000. 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).

11. [18-21349](#)-A-13 MYRNA SYKES
[TGM](#)-1
WILMINGTON SAVINGS FUND SOCIETY, F.S.B. VS. OBJECTION TO
CONFIRMATION OF PLAN
4-23-18 [[19](#)]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be overruled. While it is true that the claimholder identified in Class 1 is not the objecting creditor, its claim is the one described and the plan provides for the cure of the arrears and the maintenance of note installment payments. Provided it files a claim, the creditor's claim will be paid.

12. [18-21450](#)-A-13 SALOMON HERRERA
[JPJ](#)-1
OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
4-24-18 [[20](#)]

- ☐ 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 docket reflects that the debtor has twice 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 has failed to give the trustee financial records for a closely held business. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

It is unnecessary to address the remaining objections.

13. [18-21658](#)-A-13 CECILIA BETKER
[JPJ](#)-1
OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
4-24-18 [[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 conditionally denied.

First, Local Bankruptcy Rule 3015-1(b)(6) provides: "Documents Required by Trustee. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

Second, the debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender, Ocwen, has agreed to a home

loan modification. Absent that agreement, the claim cannot be modified. See 11 U.S.C. § 1322(b)(2). Instead, the debtor is limited to curing any pre-petition default while maintaining the regular monthly mortgage installment. See 11 U.S.C. § 1322(b)(5).

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. [18-20860](#)-A-13 DAVID/TANYA CASTILLO OBJECTION TO
[JPJ](#)-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
4-12-18 [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.

The plan does not provide for payment in full of a domestic support obligation as required by 11 U.S.C. § 1322(a)(2). While 11 U.S.C. § 1322(a)(4) carves a narrow exception to the rule that payment in full is required, to fit within the exception, the creditor must consent to less than payment in full or file a proof of claim indicating the DSO is of the type described in 11 U.S.C. § 507(a)(1)(B). Neither condition has been proven.

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.

15. [18-20861](#)-A-13 CHRISTOPHER/NEVA FULLER OBJECTION TO
[JPJ](#)-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
4-16-18 [38]

- ☐ 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

The objection will be sustained.

The plan fails to specify that the secured claim of the objecting creditor will be paid with interest and in full as required by 11 U.S.C. §§ 1325(a) (5) (B) and (a) (9) (*) or surrendered as permitted by section 1325(a) (5) (C).

18. [18-21063](#)-A-13 YVETTE TAYLOR OBJECTION TO
[JPJ](#)-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
4-11-18 [24]

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

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

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

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

19. [18-21064](#)-A-13 VIKASH SHARMA
[JPJ](#)-1
OBJECTION TO
CONFIRMATION OF PLAN
4-12-18 [[24](#)]
- ☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

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

The objection will be sustained.

First, if requested by the U.S. Trustee or the chapter 13 trustee, a debtor must produce evidence of a social security number or a written statement that such documentation does not exist. See Fed. R. Bankr. P. 4002(b)(1)(B). In this case, the debtor has breached the foregoing duty by failing to provide evidence of the debtor's social security number. To attempt to confirm a plan while withholding proof of identity is bad faith. See 11 U.S.C. § 1325(a)(3).

Second, 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.

Third, the plan misclassifies a secured claim in Class 3. Because the debtor does not wish to surrender the collateral for the claim and, if the claim is secured by a defaulted long term debt on the debtor's home, the claim must be provided for in Class 1. If, however, the claim has matured, the plan must provide for payment of the entire claim in Class 2.

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 \$6,000 exceeds the maximum fee allowed by Local Bankruptcy Rule 2016-1. Therefore, he must apply for compensation pursuant to 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. The provision in the plan for payment of compensation without the requisite application cannot be confirmed.

20. [18-20173](#)-A-13 GEORGE SLIGHT
[JPJ](#)-2

MOTION TO
CONVERT OR TO DISMISS CASE
4-16-18 [[35](#)]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

This case was filed on January 11, 2018. The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This fact suggests to the court that the debtor either does not intend to confirm a plan or does not have the ability to do so. This is cause for dismissal or conversion. See 11 U.S.C. § 1307(c)(1) & (c)(5).

Also, the debtor has failed to make any plan payments in this case. The inability of the debtor to confirm and a plan and make plan payments is prejudicial to creditors and suggests that no plan will be feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c) (1).

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 \$279,000 of equity in unencumbered, nonexempt assets that will benefit creditors if liquidated by a trustee.

The objection to conversion by creditors Robinson and Schaffner will be overruled. They complain that conversion will hamper their efforts to foreclose on their collateral for a secured claim. However, if their interests are not adequately protected, they have a remedy – they can seek relief from the automatic stay, whether this case is pending under chapter 7 or any other chapter. Unsecured creditors will be greatly prejudiced by dismissal – they will lose efficient access to more than \$279,000 that is available to pay their claims.

21. [18-20173](#)-A-13 GEORGE SLIGHT MOTION TO
[KSR](#)-2 DISMISS CASE
4-11-18 [[30](#)]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Given the conversion of the case to chapter 7, the motion will be denied.

22. [17-28378](#)-A-13 ANGELA VICENTE MOTION TO
[TOG](#)-1 CONFIRM PLAN
3-26-18 [[22](#)]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has the burden of proving that the proposed plan will pay the present value of what unsecured creditors would receive in a chapter 7 liquidation. See 11 U.S.C. § 1325(a) (4). Because the debtor has failed to convince the court as to the value of her home, she has not met this burden.

23. [18-20880](#)-A-13 RICHARD POGGIO OBJECTION TO
[JPJ](#)-1 CONFIRMATION OF PLAN
4-12-18 [[19](#)]

- ☐ 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.

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. To attempt to confirm a plan while withholding proof of identity is bad faith. See 11 U.S.C. § 1325(a)(3).

Third, the plan fails to provide a dividend to be paid 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).

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of OneMain 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."

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.

25. [17-27885](#)-A-13 PATRICIA HOWARD
[MJD](#)-1

MOTION TO
MODIFY PLAN
3-21-18 [[18](#)]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has not carried the burden of proving that she is able to perform the plan. See 11 U.S.C. § 1325(a)(6). There are two reasons to be concerned. First, the debtor has failed to make \$950 of the payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. Second, the debtor has not demonstrated her financial ability to increase the monthly plan payment from \$950 to \$1,605.

26. [18-21585](#)-A-13 ELMER/CARLEEN MOORE

ORDER TO
SHOW CAUSE
4-23-18 [[30](#)]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of \$79 due on April 18 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

27. [18-21585](#)-A-13 ELMER/CARLEEN MOORE
[JPJ](#)-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
4-24-18 [[31](#)]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

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

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

It is unnecessary to address the remaining grounds for dismissal and denial of confirmation.

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.

28. [18-20792](#)-A-13 YELENA MARKEVICH MOTION TO
[YM-1](#) VACATE
4-10-18 [[55](#)]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed as moot. The motion seeks to vacate an order regarding the automatic stay. However, the case was dismissed on April 23 and as a result there no longer is an automatic stay. Hence, nothing will change if the order is vacated.

29. [18-20993](#)-A-13 GEOFF CUMMINS AND LAURA OBJECTION TO
[JPJ-1](#) BRAMBILA CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
4-24-18 [[24](#)]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

First, Local Bankruptcy Rule 3015-1(b)(6) provides: "Documents Required by Trustee. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

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

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

30. [17-28394](#)-A-13 GARY/SANDRA LOWNDES MOTION FOR
[RMP-1](#) RELIEF FROM AUTOMATIC STAY
SETERUS, INC. VS. 4-11-18 [[34](#)]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan provides for the movant's secured claim in Class 3. That is, the claim is satisfied by the surrender of collateral. The plan was confirmed in this case on April 18, 2018. That plan also provides at section 3.11(a):

"Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral. . . ."

31. [18-21496](#)-A-13 DANILO SESE
[JPJ](#)-1

OBJECTION TO
CONFIRMATION OF PLAN
4-24-18 [[24](#)]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

First, the plan fails to comply with 11 U.S.C. §§ 1322(a)(2) & (a)(5) and 1325(a)(5)(B) by providing for payment in full of the arrears on a home mortgage. Section 3.07 refers to additional provisions that are not attached to the plan.

Second, the provision for payment of "adequate protection payments in lieu of the maintenance of note installments to a home lender also violates section 1322(b)(2).

Third, the debtor has failed to give the trustee financial records for a closely held business. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

32. [18-21496](#)-A-13 DANILO SESE
[DWE](#)-1
WELLS FARGO BANK, N.A. VS.

OBJECTION TO
CONFIRMATION OF PLAN
4-25-18 [[27](#)]

- ☐ 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 to confirmation, JPJ-1. That ruling is incorporated by reference.

OBJECTION TO
CLAIM
3-11-18 [[42](#)]

- Tentative Ruling:** The objection will be sustained in part.

The remainder of the objection will be overruled. The objection is that the fees associated with the collection of indisputable amount owed are unreasonable. However, on their face, the fees do not appear unreasonable and there is no proof with the objection that they were not actually incurred or were unnecessary to collect the amount due.

FINAL RULINGS BEGIN HERE

34. [17-20701](#)-A-13 KEVIN/COREN TRIGALES MOTION TO
[JPJ](#)-2 CONVERT CASE OR TO DISMISS CASE
3-30-18 [[46](#)]

Final Ruling: The motion will be dismissed as moot. The case was dismissed on May 3.

35. [18-20201](#)-A-13 LISA THOMPSON ORDER TO
SHOW CAUSE
4-23-18 [[52](#)]

Amended Final Ruling: The order to show cause will be discharged as moot. The case was dismissed on May 10 pursuant to the order entered on March 14.

36. [18-21211](#)-A-13 EDEN ELMIDO OBJECTION TO
[AP](#)-1 CONFIRMATION OF PLAN
U.S. BANK, N.A. VS. 4-12-18 [[35](#)]

Final Ruling: The objection will be dismissed as moot. The objection pertains to a plan that the debtor no longer seeks to confirm. A modified plan has been filed and will be considered for confirmation on June 11. To the extent this objection still has relevance to the modified plan, it should be interposed timely as an opposition to the confirmation of the modified plan.

37. [18-21211](#)-A-13 EDEN ELMIDO OBJECTION TO
[JPJ](#)-1 CONFIRMATION OF PLAN
4-11-18 [[32](#)]

Final Ruling: The objection will be dismissed as moot. The objection pertains to a plan that the debtor no longer seeks to confirm. A modified plan has been filed and will be considered for confirmation on June 11. To the extent this objection still has relevance to the modified plan, it should be interposed timely as an opposition to the confirmation of the modified plan.

38. [17-28121](#)-A-13 LALAINA JOHNSON MOTION TO
[MRL](#)-2 CONFIRM PLAN
3-12-18 [[34](#)]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

39. [17-28129](#)-A-13 HUMBERTO HERNANDEZ AND OBJECTION TO
[JPJ](#)-1 LETICIA GARCIAHERNANDEZ CLAIM
VS. CAVALRY SPV I, L.L.C. 3-12-18 [[19](#)]

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

The objection will be sustained and the claim disallowed.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on January 2, 2009. Therefore, using this date as the date of breach, when the case was filed on December 15, 2017, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

40. [18-21129](#)-A-13 TERINA BAILEY OBJECTION TO
[JPJ](#)-1 CONFIRMATION OF PLAN
4-11-18 [[13](#)]

Final Ruling: The objection has been voluntarily dismissed.

41. [17-26434](#)-A-13 TRINA ENOS MOTION TO
[PLG](#)-4 MODIFY PLAN
4-5-18 [[52](#)]

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 further modified in the confirmation order to account for all prior payments made by the debtor under the terms of the prior plan, and to provide for a plan payment of \$0 in April and May 2018 and plan payments of \$551 thereafter. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

42. [18-20239](#)-A-13 CAROLYN SCHMIDT MOTION TO
[MRL](#)-2 CONFIRM PLAN
3-13-18 [[23](#)]

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-

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

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

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on January 22, 2004. Therefore, using this date as the date of breach, when the case was filed on October 1, 2017 more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

- Final Ruling:** The objecting party has voluntarily dismissed the objection.

- 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 will surrender the vehicle to the movant in satisfaction of its secured claim. That plan has not yet been confirmed. Nonetheless, the terms of the proposed plan makes two things clear: the movant's claim will not be paid and the vehicle securing its claim is not necessary to the debtor's personal financial reorganization. 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.

46. [17-27366](#)-A-13 IAN FONTANILLA OBJECTION TO
[MJD](#)-1 CLAIM
VS. LVNV FUNDING, L.L.C. 3-6-18 [[17](#)]

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

The objection will be sustained and the claim disallowed.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on January 16, 2002. Therefore, using this date as the date of breach, when the case was filed on November 7, 2017, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

47. [17-27366](#)-A-13 IAN FONTANILLA OBJECTION TO
[MJD](#)-2 CLAIM
VS. LVNV FUNDING, L.L.C. 3-9-18 [[22](#)]

Final Ruling: This objection to the proof of claim of LVNV Funding has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file

The objection will be sustained and the claim disallowed.

The objection will be sustained and the claim disallowed.

May 14, 2018 at 1:30 p.m.
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Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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