

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 15, 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 13. 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 15, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 1, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 8, 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 14 THROUGH 20 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 MAY 22, 2017, AT 2:30 P.M.

May 15, 2017 at 1:30 p.m.

Matters to be Called for Argument

1. 17-22801-A-13 MARY BROWN MOTION TO
GEL-1 VALUE COLLATERAL
VS. CAPITAL ONE BANK, N.A. 5-1-17 [8]
- ☐ 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 valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is \$4,850 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, \$4,850 of the respondent's claim is an allowed secured claim. When the respondent is paid \$4,850 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

2. 17-21533-A-13 PRANEE AREND OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
4-27-17 [25]
- ☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

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

First, the debtor has failed to make \$1,850 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, beginning in the eleventh month of the plan and continuing through the sixtieth month, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$1,850 is less than the \$1,927.56 in dividends and expenses the plan requires the trustee to pay each month.

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Schedule A/B gives an incorrect address for the debtor's real property and the petition gives an incorrect case number for a prior bankruptcy case. These errors are 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 and accurate financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

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

3. 16-24135-A-13 JAMES OLIVER
PGM-3

OBJECTION TO
NOTICE OF POST-PETITION MORTGAGE
FEES, EXPENSES, AND CHARGES
3-29-17 [75]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

The Bank of New York Mellon, etc., filed on January 17, 2017, a Notice of Postpetition Mortgage Fees, Expenses and Charges. This notice demanded \$650 in fees incurred to prepare and file a proof of claim and review the debtor's chapter 13 plan.

A review of the file reveals that the debtor did not schedule a claim held by The Bank of New York Mellon, such a claim is not provided for in the plan, the plan identifies no real property (whether or not encumbered by a deed of trust held by the creditor), and the creditor did not file a proof of claim. Thus, it appears there is no contractual relationship between the debtor and the creditor does not have a claim against the debtor or the debtor's property. The claim will be disallowed.

The request for attorney's fees by the debtor will be denied. This request is made pursuant to Cal. Civil Code §§ 1717 and 2941, both of which are not applicable.

Section 1717 provides that when a contract provides attorney's fees for one party to the contract, the other party is entitled to fees if he prevails in a legal dispute. However, this objection asserts there is no contract between the parties and therefore neither party could ever be awarded fees in the event of a dispute.

Also, this objection was unnecessary. The plan makes no provision for a secured claim held by the creditor. Hence, its secured claim would never have been paid. Even if the claim were an unsecured claim it would not have been

paid because the confirmed plan provides no dividend to holders of unsecured claims. Because the objection served no purpose, even if the court had the discretion to award fees, none would be awarded because none are reasonable.

Section 2941 allows fees to a homeowner if a lender fails to execute a reconveyance of a mortgage after it has been satisfied. Here, there is no mortgage to reconvey.

4. 17-20539-A-13 SUZANNE HANEFIELD MOTION TO
LBG-2 EMPLOY
5-1-17 [59]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be denied. Nothing in 11 U.S.C. § 327(a) requires a chapter 13 debtor to obtain prior approval of the employment of a professional. That section is limited to employment of a professional by the trustee (which includes a chapter 11 debtor in possession by virtue of 11 U.S.C. § 1107(a)).

5. 17-21551-A-13 ALVARO RODRIGUEZ OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
4-27-17 [30]

- ☐ 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.

Fourth, the debtor has failed to commence making plan payments and has not paid approximately \$2,539 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Fifth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor failed to disclose in the petition three prior cases. 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).

Further, the two immediately prior chapter 13 cases, Case Nos. 16-26743 and 16-25420, were dismissed because the debtor failed to appear at the meeting of creditors and file all required schedules and statements. Given these reasons for dismissal, and given that the debtor failed to appear at the meeting in this case, the court concludes the debtor has willfully failed to abide by orders of the court and appear in the proper prosecution of this and the prior chapter 13 cases. Therefore, this dismissal will be pursuant to 11 U.S.C. § 109(g)(1).

Sixth, 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.

6. 17-21551-A-13 ALVARO RODRIGUEZ OBJECTION TO
PPR-1 CONFIRMATION OF PLAN
BANK OF AMERICA, N.A. VS. 3-22-17 [12]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be dismissed as moot given that the court has sustained the trustee's objection and dismissed the case. The ruling on JPJ-1 is incorporated by reference.

7. 17-21551-A-13 ALVARO RODRIGUEZ OBJECTION TO
APN-1 CONFIRMATION OF PLAN
WELLS FARGO BANK, N.A. VS. 4-27-17 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be dismissed as moot given that the court has sustained the trustee's objection and dismissed the case. The ruling on JPJ-1 is incorporated by reference.

8. 16-26053-A-13 JOHN PUGH MOTION TO
JGD-4 APPROVE ASSUMPTION OF LOAN BY
THIRD PARTY
5-1-17 [60]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be denied.

The debtor was awarded the family home in a divorce subject to his ability to remove his former spouse from the mortgage. The lender is willing to permit her removal if a third party assumes the mortgage. This motion seeks permission to approve such assumption.

However, the motion fails to address two issues. If the third person is assuming the loan, does this mean the property is being transferred to that person? And, if the debtor will retain title to the property, what consideration will flow to the third party for the accommodation?

9. 17-22962-A-13 EBI FINI
MAC-1

MOTION TO
EXTEND AUTOMATIC STAY
5-1-17 [8]

- ☐ 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 in part.

The debtor filed two prior cases, Case Nos. 15-24321 and 16-27988. The former was voluntarily dismissed on May 31, 2016 and the latter was voluntarily dismissed on January 21, 2017. Hence, both were dismissed within one year of the filing of the current case on April 30, 2017.

As a result, 11 U.S.C. § 362(c)(4) is applicable. There is no automatic stay in this case unless one is imposed by the court.

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

This motion was made within 30 days of the filing of the current case. The issue is whether the case was filed in good faith. Section 362(c)(4)(D) invokes a presumption that the case was "filed not in good faith." Here, it appears that the debtor was unable to continue the cases because of a pending divorce. That divorce has now been finalized. This is a sufficient change in circumstances rebut the presumption of bad faith.

The motion will be denied as to the IRS. 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 is deficient because the IRS was not served at the third address.

10. 17-22564-A-13 ROBERT BISHOP
PGM-1

MOTION TO
EXTEND AUTOMATIC STAY
4-25-17 [9]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be denied.

This is the second chapter 13 case filed by the debtor. A prior case was dismissed within one year of the filing of the current case.

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 last case and propose a confirmable plan - the debtor failed to meet a deadline

to catch-up delinquent plan payments and propose a modified plan. This motion does not establish that the debtor will be any more successful in this case. In fact, comparison of the Schedule I/J filed in each case indicates that the debtor's net income and expenses are exactly the same yet he motion fails to explain why this case will succeed when the last case did not with the same income stream.

Further, while the debtor has had only one case dismissed in the prior year, the debtor now has filed five chapter 13 cases in this court since January 2003. From the date the first case was filed to the date this case was filed, a period of approximately 14 years and four months, the debtor has operated under chapter 13 for all but approximately 2 years and 8 months. It seems that little has changed over a substantial period of time.

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

11. 17-21668-A-13 TACITUS/TERRA ARBUCKLE OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN
4-27-17 [31]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained in part.

First, the plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay \$29,799.80 unsecured creditors which is consistent with Form 122C as filed. However, the debtor has taken impermissible deductions from current monthly income. The debtor has taken an impermissible deduction for a \$687 voluntary pension contribution as well as \$155 for "involuntary" "stk purchase". This is disposable income; the debtor may not make those contributions and deduct them from the debtor's current monthly income. Accord Parks v. Drummond (In re Parks), 475 B.R. 703 (B.A.P. 9th Cir. 2012). As a result, the debtor has monthly projected disposable income of \$1,313.33. If paid to unsecured creditors, they would share a total of \$78,799.80 over the life of the plan. Because the plan will pay only \$29,799.80 to these creditors, it does not comply with 11 U.S.C. § 1325(b).

Second, the plan provides for a vehicle loan in Class 4 even though it will mature during the plan. Such a claim must be included in Class 2.

12. 17-21374-A-13 LEONIE SOLIS
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
4-27-17 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, the debtor has failed to commence making plan payments and has not paid approximately \$2,950 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, even if payments were current the plan would not be feasible because the monthly plan payment of \$2,950 is less than the \$3,213.13 in dividends and expenses the plan requires the trustee to pay each month.

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

13. 17-21398-A-13 MARK LUNA
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN
4-27-17 [20]

- ☐ 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 is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$1,925 is less than the \$2,095.51 in dividends and expenses the plan requires the trustee to pay each month.

FINAL RULINGS BEGIN HERE

14. 16-27628-A-13 ANDRE/CARLA MASURET MOTION TO
MJD-3 CONFIRM PLAN
4-3-17 [49]

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.

15. 17-21634-A-13 WALTER BOYD OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
4-27-17 [14]

Final Ruling: At the request of the trustee, the hearing is continued to May 22, 2017 at 1:30 p.m.

16. 16-28148-A-13 ORLANDO VALENCIA AND MOTION TO
SDH-1 MARIA SANCHEZ CONFIRM PLAN
3-29-17 [39]

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.

17. 17-22149-A-13 JOE PENA AND RAMONA MOTION TO
SLH-1 RANDOLPH VALUE COLLATERAL
VS. AMERICREDIT FINANCIAL SERVICES, INC. 4-11-17 [8]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53

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(9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is \$15,500 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, \$15,500 of the respondent's claim is an allowed secured claim. When the respondent is paid \$15,500 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

18. 13-31171-A-13 MICHAEL/LYNETTE SMITH MOTION TO
PGM-3 APPROVE LOAN MODIFICATION
4-13-17 [70]

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) 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 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 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 debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

19. 13-26286-A-13 ANTHONY/BRIDGET CARDENAS MOTION TO
PGM-2 APPROVE LOAN MODIFICATION
4-14-17 [58]

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) 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 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 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 debtor is authorized but not required to enter

into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

20. 16-20588-A-13 DEREK/DONNA HUNTER
TGM-1
TOYOTA MOTOR CREDIT CORP. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-11-17 [26]

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 the vehicle it leased to the debtor, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The plan assumes the vehicle lease with the movant and provides for direct payment of the lease by the debtor. The debtor, however, has failed to maintain those lease payments. Nine monthly payments have not been made by the debtor. This breach of the plan is cause to terminate the automatic stay.

Because the movant has not established that it holds an over-secured claim, the court awards no fees and costs. 11 U.S.C. § 506(b).