

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

July 16, 2018 at 1:30 p.m.

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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 20. 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 AUGUST 20, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 6, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 13, 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 21 THROUGH 31 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 JULY 23, 2018, AT 2:30 P.M.

July 16, 2018 at 1:30 p.m.

**Matters to be Called for Argument**

1.	18-23901-A-13    DAN/MEGHAN MILLER	MOTION TO
	PGM-1	EXTEND AUTOMATIC STAY
		7-2-18 [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. It was dismissed because the debtor was unable to maintain the payments required by a confirmed plan.

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 30<sup>th</sup> 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 30<sup>th</sup> 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."

In the prior case, filed in 2016, the debtor reported household monthly income of \$7,368 and monthly expenses of \$4,868. This left the debtor with \$2,500 to fund the monthly plan payment. The debtor was unable to confirm a plan and was unable to maintain the payments required by the plan.

A review of the schedules in the prior case reveals that the debtor had arrears

on a home loan of approximately \$21,480 and total unsecured debt of approximately \$62,000.

The schedules filed in this case show that the debtor's financial situation has deteriorated since the last case was filed. The debtor now reports home loan arrears of more than \$33,000 and unsecured debt exceeding \$138,000. Further, the debtor's monthly net income has decreased to \$2,296. The evidence with the motion fails to explain why the debtor could not exceed in the first case and why the debtor's finances have deteriorated.

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

2. 18-22502-A-13 MICHAEL/MARGARET JOHNSON OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
6-19-18 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6). According to Schedules I and J, the debtor will have monthly net income of approximately \$1,600 provided an adult son contributes \$500 a month. The plan requires a monthly payment of \$1,600. However, the debtor admitted at the meeting of creditors that the \$500 contribution is about to end.

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 60 days, the case will be dismissed on the trustee's ex parte application.

3. 18-23806-A-13 LISA THOMPSON MOTION TO  
PGM-1 EXTEND AUTOMATIC STAY  
7-2-18 [16]

- ☐ 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.

A review of the court's electronic case files reveals that this is the debtor's sixth chapter 13 case in this court since 2012. However, the debtor has only filed one prior case, 18-20201, that has been dismissed in the prior year. The immediately prior case was filed on January 12, 2018 and dismissed May 11 because the debtor failed to pay a filing fee installment as ordered by the court.

The four earlier cases, all dismissed more than one year before the most recent case, were all failures. In only one case was a plan confirmed and that case was dismissed shortly after confirmation for the debtor's failure to make plan payments. The other three cases were dismissed because the debtor failure to make payments, failed to confirm a plan within a reasonable time, and failed to file all schedules and statements.

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 30<sup>th</sup> 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 30<sup>th</sup> day after the filing of the petition. The motion will be adjudicated before the 30-day period expires.

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

Here, the motion makes very little effort to establish that this case is more apt to succeed. A comparison of the schedules in this and the immediately prior case show very little material difference other than an increase of \$4,000 in priority income taxes for 2017.

While the debtor's monthly net income has increased since the last case, this is attributable to contributions from family members. There is no evidence from these family members regarding their ability or inclination to make these contributions.

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

4. 18-21824-A-13 MICHAEL ZENDER MOTION FOR  
VVF-1 RELIEF FROM AUTOMATIC STAY  
MECHANICS BANK, INC. VS. 6-20-18 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, 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 pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess and to obtain possession of its personal property security, and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has proposed a plan that does not provide for the payment of the movant's claim. Further, the debtor has not paid the claim under the terms of the contract with the movant. Because the debtor has not paid the movant's claim, and will not pay it in connection with the chapter 13 case, there is cause to terminate the automatic stay.

To the extent applicable, the co-debtor stay of 11 U.S.C. § 1301 is terminated for the same reasons.

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.

5. 18-22926-A-13 JOSEPH RAQUIZA OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
6-27-18 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, the debtor is not eligible for chapter 13 relief. 11 U.S.C. § 109(h) prohibits an individual from being a debtor under any chapter unless that individual received a credit counseling briefing from an approved non-profit budget and credit counseling agency during the 180-day period immediately preceding the filing of the petition. In this case, the debtor has not filed a certificate evidencing that briefing was completed during the 180-day period prior to the filing of the petition. Hence, the debtor was not eligible for bankruptcy relief when this petition was filed.

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, the debtor has failed to commence making plan payments and has not paid approximately \$60 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).

Fourth, the debtor failed to utilize the court's mandatory form plan as required by Local Bankruptcy Rule 3015-1(a) (effective on and after December 1, 2017, in all cases regardless when filed).

Fifth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor's schedules fail to list debts owed to Citibank/eCast and Westlake Financial. 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).

Sixth, the plan misclassifies an unsecured claim in Class 1 which is reserved for long term claims not modified by the plan. The plan also includes a claim in Class 6 that has not been scheduled.

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 60 days, the case will be dismissed on the trustee's ex parte application.

6. 18-20728-A-13 ELIZABETH WILSON  
AP-1  
WELLS FARGO BANK, N.A. VS.

MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
6-12-18 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted.

The motion seeks relief from the automatic stay in order to permit the movant to foreclose on the debtor's home. The cause asserted for this relief is the failure to make three post-petition installment payments to the movant.

The plan provides the movant's claim as a Class 1 secured claim. This means that the plan provides for the cure of the pre-petition arrearage owed to the movant as well as the maintenance of post-petition installments as required by the note and deed of trust. The plan requires the trustee to make both payments to the movant.

The trustee's response indicates that because of the debtor's failure to make all plan payments, the he has been unable to make three of four monthly installments to the movant. Thus, there has been a breach of the plan in connection with the movant's claim.

In order to establish cause pursuant to 11 U.S.C. § 362(d)(1) for relief from the automatic stay, it must be shown that the debtor has failed to abide by the terms of the confirmed plan. That is, the debtor must have defaulted under the terms of the plan to the detriment of the movant. See Anaheim Sav. & Loan Ass'n v. Evans, 30 B.R. 530, 531 (B.A.P. 9<sup>th</sup> Cir. 1983).

If there has been a default, the fact that the debtor has equity in the home is not a defense. This is a defense to relief under 11 U.S.C. § 362(d)(2), not 11 U.S.C. § 362(d)(1). The debtor cannot argue that the equity cushion adequately protects the movant's interest. The plan was supposed to do that and the debtor defaulted under the plan. Cf. Sun Howard Co. v. Howard (In re Howard), 972 F.2d 639 (5<sup>th</sup> Cir. 1992).

Confirmation of the debtor's plan, then, necessarily entailed a determination that it adequately protected the movant's security interest. The movant is bound by that determination but it may seek relief from the automatic stay if the debtor breaches its terms. See 11 U.S.C. § 1327(a). The sole basis for granting relief must be a breach of the plan. A material breach is present here.

Therefore, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9<sup>th</sup> Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award

of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events and circumstances, in connection with this bankruptcy case or otherwise, from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed \$750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of \$750.

The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

7. 18-23030-A-13 REILLY COOK  
JPJ-1  
OBJECTION TO  
CONFIRMATION OF PLAN  
6-27-18 [23]

- ☐ 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 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).



8. 18-21033-A-13 DANIEL/CARMEN CARSON MOTION TO  
SLE-2 CONFIRM PLAN  
6-7-18 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan requires that all priority claims be paid in full as required by 11 U.S.C. § 1322(a)(2). However, more than \$53,000 in priority claims have been filed and scheduled. At this level, to pay the priority claims and all other dividends required by the plan will take 78 months. Thus, as it is proposed, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) and it exceeds the duration permitted by 11 U.S.C. § 1322(d).

9. 17-28335-A-13 LISA KOPPLE MOTION TO  
PSB-6 VALUE COLLATERAL  
VS. TIMOTHY & DEBBIE LASLEY 6-18-18 [67]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** None. The request for a continuance by the respondent in order to inspect the subject property for purposes of an appraisal is granted. The court continues the hearing to August 20, 2018 at 1:30 p.m. The respondent shall file and serve its appraisal evidence no later than August 6. Any reply appraisal evidence shall be filed and served by August 13. Because this motion is central to resolution of PSB-3, PSB-4, PSB-5 as well as PSB-6, all hearings are continued to the same day and time. As to each of these other motions, to the extent the appraisals are relevant, they may be filed and served on the same timetable.

10. 17-28335-A-13 LISA KOPPLE MOTION TO  
PSB-3 INCUR DEBT  
6-4-18 [58]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** None. The court continues the hearing to August 20, 2018 at 1:30 p.m. so that it may be considered in conjunction with a related valuation motion, PSB-6. To the extent the appraisals filed in connection with PSB-6 are relevant, they also may be filed in connection with this motion on the same schedule.

11. 17-28335-A-13 LISA KOPPLE OBJECTION TO  
PSB-4 CLAIM  
VS. THE BANK OF NEW YORK MELLON 6-4-18 [54]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** None. The court continues the hearing to August 20, 2018 at 1:30 p.m. so that it may be considered in conjunction with a related valuation motion, PSB-6. To the extent the appraisals filed in connection with PSB-6 are relevant, they also may be filed in connection with this motion on

the same schedule.

12. 17-28335-A-13 LISA KOPPLE  
PSB-5

MOTION TO  
CONFIRM PLAN  
6-4-18 [50]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** None. The court continues the hearing to August 20, 2018 at 1:30 p.m. so that it may be considered in conjunction with a related valuation motion, PSB-6. To the extent the appraisals filed in connection with PSB-6 are relevant, they also may be filed in connection with this motion on the same schedule.

13. 18-23158-A-13 RAFT THOMPSON  
JPJ-1

OBJECTION TO  
CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
6-27-18 [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 case will be dismissed.

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

Second, the debtor has failed to commence making plan payments and has not paid approximately \$689 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).

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

Fourth, the debtor owes a domestic support obligation. Local Bankruptcy Rule

3015-1(b) (6) provides:

"The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*."

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

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

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

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

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

14. 18-23162-A-13 EDWIN ESPINO  
JPJ-1

OBJECTION TO  
CONFIRMATION OF PLAN  
6-27-18 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

First, the debtor has failed to commence making plan payments and has not paid

approximately \$999 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, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive approximately \$14,800 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay only approximately \$6,600 to unsecured creditors.

15. 17-28364-A-13 STEPHANIE MUZZI MOTION TO  
TAG-3 CONFIRM PLAN  
5-30-18 [65]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to make \$1,235 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. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

16. 18-23178-A-13 KATHLEEN HILL ORDER TO  
SHOW CAUSE  
6-25-18 [28]

- ☐ 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 on June 20 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

17. 18-20880-A-13 RICHARD POGGIO MOTION TO  
MDA-1 CONFIRM PLAN  
5-31-18 [29]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan's feasibility depends on the debtor successfully prosecuting a motion to avoid the judicial lien of Capital One Bank in order to strip off its 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."

18. 18-20880-A-13 RICHARD POGGIO MOTION TO  
MDA-2 AVOID JUDICIAL LIEN  
VS. CAPITOL ONE BANK 6-18-18 [41]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied.

The requirements for lien avoidance under 11 U.S.C. § 522(f) are as follows: (1) there must be an exemption to which the debtor "would have been entitled" under subsection (b) of section 522; (2) the property must be listed on the debtor's schedules and claimed as exempt; (3) the lien at issue must impair the claimed exemption; and (4) the lien must be either a judicial lien or another type of lien specified by the statute. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

The debtor has not established his entitlement to the claimed exemption. It is not enough that the debtor claimed the exemption and that it has been allowed because no one objected. If the debtor wishes to avoid a judicial lien, the debtor must establish that the debtor is actually entitled to the exemption. Accord Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 152 (B.A.P. 9<sup>th</sup> Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

The debtor has claimed an exemption of \$100,000 in the subject property. This is all the debtor says in the supporting declaration. He does not attest to any other facts, such as the home was and continues to be his principal place of abode, or that he resides there with a family. The declaration establishes only that he claimed an exemption; it does not demonstrate that he is entitled to that exemption.

19. 18-22889-A-13 SHEILA FRANCOIS OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN  
6-27-18 [22]

- ☐ 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. The debtor provided evidence

of a social security number for someone with the last name of Jackson.

It is with some irony that the court notes that the debtor works for the Social Security Administration.

Further, the debtor's explanation that her name recently changed because she married, suggests a second problem. Schedule I does not identify a nonfiling spouse.

Second, the social security number listed by the debtor indicates that she has been a debtor in three other chapter 13 cases filed and dismissed in this district since 2015. Case No. 18-22064 was dismissed on April 17, 2018 because the debtor failed to file all schedules and statements. Case No. 15-22278 was dismissed on April 20, 2015 because the debtor failed to file all schedules and statements. Case No. 15-20434 was dismissed on February 20, 2015 because the debtor failed to file all schedules and statements.

The debtor has failed to fully and accurately provide all information required by the petition. The debtor has listed none of the prior cases on her petition. 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).

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

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

Fifth, 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.

Sixth, the debtor has failed to commence making plan payments and has not paid approximately \$2,400 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).

There is no need to consider the other objections to confirmation.

20.	18-23199-A-13	JEFFREY JOHNSON	OBJECTION TO
	JPJ-1		CONFIRMATION OF PLAN AND MOTION TO
			DISMISS CASE
			6-27-18 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

**FINAL RULINGS BEGIN HERE**

21. 16-25609-A-13 ENRIQUE BERTRAN AND MOTION TO  
KWS-1 CHRISTINA HELMAN MODIFY PLAN  
6-4-18 [33]

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

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

22. 17-25518-A-13 RONALD/RHONDA SHUMAN MOTION TO  
RLC-4 CONFIRM PLAN  
5-25-18 [62]

**Final Ruling:** The motion will be dismissed because it is moot. The case was dismissed on June 25.

23. 18-20128-A-13 CHARLENE SANDERS MOTION TO  
SS-3 CONFIRM PLAN  
5-18-18 [55]

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

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

24. 18-23042-A-13 RUSSELL/MIA LANG OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
6-27-18 [14]

**Final Ruling:** After the objection was filed, the debtor proposed a modified plan and set it for a confirmation hearing on August 6. This is a concession that the initial plan is not confirmable. Therefore, no hearing is necessary.



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

The provision for Class 7 indicates that these creditors will receive a dividend greater than 100%. Given that the debtor meant to provide no dividend, and given the amount of unsecured claims and the debtor's monthly net income, the proposed plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

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 60 days, the case will be dismissed on the trustee's ex parte application.

25. 18-23748-A-13 DANA MOORE MOTION FOR  
CJC-2 RELIEF FROM AUTOMATIC STAY  
2013-1 IH BORROWER, L.P. VS. 6-28-18 [11]

**Final Ruling:** The motion will be dismissed as moot. The case was dismissed on July 3. Consequently, the automatic stay has expired as a matter of law. See 11 U.S.C. § 362(c)(1) & (c)(2).

26. 18-22870-A-13 SAMANTHA SHAFFNER MOTION TO  
MRL-1 VALUE COLLATERAL  
VS. GENERAL MOTORS, L.L.C. 6-8-18 [14]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 \$9,500 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 (9<sup>th</sup> Cir. 2004). Therefore, \$9,500 of the respondent's claim is an allowed secured claim. When the respondent is paid \$9,500 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.

27. 18-20571-A-7 MARK ENOS MOTION TO  
PLC-6 RECONSIDER  
7-2-18 [90]

**Final Ruling:** This case is now pending under chapter 7. Therefore, this

motion must be heard on a calendar reserved for chapter 7 cases. The court continues the hearing to July 30 at 10:00 a.m. Counsel for the debtor is to give notice of the continuance to all parties in interest and file a certificate attesting to such service no later than July 19.

28. 18-22872-A-13 VALENTINA MORGAN MOTION TO  
MRL-1 VALUE COLLATERAL  
VS. SANTANDER CONSUMER USA, INC. 6-8-18 [13]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 \$7,500 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 (9<sup>th</sup> Cir. 2004). Therefore, \$7,500 of the respondent's claim is an allowed secured claim. When the respondent is paid \$7,500 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.

29. 18-22593-A-13 BRANDON/TRACY MCBROOM MOTION TO  
KWS-2 CONFIRM PLAN  
6-19-18 [36]

**Final Ruling:** The motion will be dismissed without prejudice.

Local Bankruptcy Rule 3015-1(c)(3) and (d)(1) require that when the debtor files and serves a motion to confirm a chapter 13 plan, the motion to confirm it must be set for hearing on 35 days of notice to all creditors, the chapter 13 trustee, and the U.S. Trustee. If any of these parties in interest wish to object to the confirmation of the plan, they must file and serve a written objection at least 14 days prior to the hearing. See Local Bankruptcy Rules 3015-1(b)(1) and 9014-1(f)(1)(B). The debtor's notice of the hearing on the motion to confirm the plan must advise all parties in interest of the deadline for filing written objections. See Local Bankruptcy Rule 9014-1(d)(3).

This procedure complies with Fed. R. Bankr. P. 2002(a)(9) and (b), which requires a minimum of 28 days of notice of the hearing and 21 days of notice of the deadline for objections to confirmation as well as the hearing on confirmation of the plan. Because Rule 9014-1(f)(1)(B) requires that written opposition be filed 14 days prior to the hearing but Fed. R. Bankr. R. 2002(a)(9) requires 21 days of notice of the deadline for filing opposition, the debtor must give 35 days of notice of the hearing.

Here, the debtor gave only 34 days of notice of the hearing. Further, even if Fed. R. Bankr. P. 2002(a)(9) and (b) did not require 21 days' notice of the deadline for objections to the plan, the 27 days' notice given in this case did not comply with Local Bankruptcy Rule 9014-1(f)(1) which requires 28 days' notice of the hearing and 14 days notice of the deadline for written opposition to a motion. Notice was insufficient.

30. 16-24394-A-13 ANTHONY/JENNIFER OBJECTION TO  
RJM-1 BARTHOLOMEW CLAIM  
VS. DEPARTMENT STORE NATIONAL BANK 5-18-18 [17]

**Final Ruling:** This objection to the proof of claim of Department Store National Bank 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 allowed in the reduced amount of \$3,455.87. The claim filed by the creditor fails to include a credit of \$531.42 in favor of the debtor.

31. 18-23198-A-13 MICHAEL LATIMER OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
6-27-18 [17]

**Final Ruling:** The trustee has voluntarily dismissed the objection and motion.