

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 28, 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 12. 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 SEPTEMBER 25, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 12, 2017, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 18, 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 13 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 SEPTEMBER 5, 2017, AT 2:30 P.M.

August 28, 2017 at 1:30 p.m.

Matters to be Called for Argument

1.	17-24302-A-13 OTHERINE NELSON JPJ-1	OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 8-10-17 [26]
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- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

Second, 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, 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.

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Schedules I and J omit a detailed statement of business income and expenses even though the debtor derives substantial income from the rental of real property. This

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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).

Fifth, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$2,650 is less than the \$2,673.40 in dividends and expenses the plan requires the trustee to pay each month.

2. 17-24003-A-13 ROBERT/DEANNA HAMMAN MOTION TO
PPR-1 RECONSIDER
7-31-17 [28]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The creditor asks the court to reconsider and order that does not exist. The court did not enter an order on the stipulation (now disavowed by the creditor) with the debtor concerning the value of real property.

3. 17-24410-A-13 GERALD/CHRISTINE THOMPSON OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
8-10-17 [34]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

The objection and motion concern the failure of the debtor to value the collateral of GM Financial/Americredit and Tidewater. This collateral was valued on August 21.

4. 17-24111-A-13 DOUGLAS/DOLORES GIANNI OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
8-10-17 [33]

- ☐ 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

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

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

First, the plan misclassifies a home loan that is in default as a Class 4 claim. Class 4 is reserved for long term secured claims not in default and not modified by the plan. The subject claim was in default when the case was filed. The failure to cure this default is a violation of the anti-modification provision in 11 U.S.C. § 1322(b)(2) and a violation of 11 U.S.C. § 1325(a)(5)(B) which requires secured claims provided for by a plan be paid in full.

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, 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 plan's feasibility depends on the debtor successfully prosecuting motions to value the collateral of Flagship Credit and Title Max of California in order to strip down or strip off their secured claims from their collateral. No such motions have been filed, served, and granted. Absent successful motions 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."

Fifth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Schedule D and the master address list fail to include those creditors with mortgage claims. 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).

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

5. 17-24316-A-13 KARI HUTCHINS OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
8-10-17 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$293.13 is less than the 4296.71 in dividends and expenses the plan requires the trustee to pay each month.

Second, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Capital One Auto Finance 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.

6. 17-24316-A-13 KARI HUTCHINS
BDA-1
CAPITAL ONE AUTO FINANCE VS.

AMENDED OBJECTION TO
CONFIRMATION OF PLAN
8-2-17 [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.

First, as noted in the ruling on the trustee's objection, to the extent the plan proposes to "strip down" the objecting creditor's claim, the debtor has failed to file and prevail upon a motion to value the vehicle securing the claim. The debtor has failed to demonstrate the plan is feasible and that it will comply with 11 U.S.C. § 1325(a)(5)(B).

Second, the objecting creditor holds a purchase money security interest in a vehicle acquired for the personal use of the debtor and created less than 910 days prior to bankruptcy. Therefore, 11 U.S.C. § 1325(a)(9)(*) is applicable and the debtor may not use 11 U.S.C. § 506(a) in order to reduce the secured claim to the value of the vehicle.

Third, the plan provides for no interest to accrue on this secured claim even though it will not be paid in full on the plan's effective date. Hence, the claim will not be paid its present value as required by 11 U.S.C. § 1325(a)(5)(B).

7. 14-26519-A-13 RUBEN/CRYSTAL CORTEZ
MET-1

MOTION TO
INCUR DEBT
8-14-17 [23]

- ☐ 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 to incur a purchase money loan to purchase a vehicle will be granted. The motion establishes a need for the vehicle and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of the plan.

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

checklist. The debtor failed to do so.

Fifth, 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, counsel has not complied with Rule 2016-1 by filing the rights and responsibilities agreement. The abbreviated procedure for approval of the fees permitted by Local Bankruptcy Rule 2016-1 is not applicable. Therefore, the provision in the proposed plan requiring the trustee to pay the fees without counsel first making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017, permits payment of fees without the required court approval. This violates sections 329 and 330.

9. 17-24235-A-13 RAYMOND/CHRISTINE BELCHER OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
 DISMISS CASE
 8-10-17 [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 conditionally denied.

The debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Schedules I and J omit a detailed statement of business income and expenses even though the debtor derives substantial income from the rental of real property. 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).

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

10. 17-24461-A-13 SERGEY YANOVSKIY

ORDER TO
SHOW CAUSE
8-10-17 [17]

- ☐ 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 August 7 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

11. 16-28073-A-13 JEFFREY/YELENA MAYHEW
PGM-4

MOTION TO
CONFIRM PLAN
6-23-17 [70]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to make \$1,800 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).

All other objections have been resolved.

12. 17-24490-A-13 RAYMOND/ELIZABETH
JPJ-1 CAMPBELL

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
8-10-17 [15]

- ☐ 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

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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 plan fails to provide for payment in full of administrative expenses as required by 11 U.S.C. § 1322(a)(2).

Fifth, The debtor reports on Form 122C-1 that in the six months prior to filing bankruptcy the debtor had no income of any kind. If this is inaccurate (and the answer to question 4 on the statement of financial affairs indicates that it is not accurate because the debtor had income of \$46,707 in 2017), the 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). If it is accurate and the debtor had no income in the six months prior to filing bankruptcy, the ability of the debtor to fund the plan is in doubt. See 11 U.S.C. § 1325(a)(6). Either way, the plan cannot be confirmed.

FINAL RULINGS BEGIN HERE

13. 16-25913-A-7 ROBERT/EVELYN MCCARD MOTION TO
JPJ-1 CONVERT OR DISMISS CASE
7-28-17 [27]

Final Ruling: The motion will be dismissed as moot. The case was voluntarily converted to a case under chapter 7 on July 31.

14. 17-20729-A-13 ELIZABETH BART-PLANGE MOTION TO
SLE-3 OPOKU CONFIRM PLAN
7-10-17 [52]

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. 17-23129-A-13 TIMOTHY NEHER AMENDED MOTION TO
TLN-5 VALUE COLLATERAL
VS. SIERRA CENTRAL CREDIT UNION 8-14-17 [100]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing informs potential respondents that written opposition must be filed and served if they wish to oppose the motion. Because less than 28 days of notice of the hearing was given, Local Bankruptcy Rule 9014-1(f)(2) specifies that written opposition is unnecessary. Instead, potential respondents may appear at the hearing and orally contest the motion. If necessary, the court may thereafter require the submission of written evidence and briefs. By erroneously informing potential respondents that written opposition was required and was a condition to contesting the motion, the moving party may have deterred a respondent from appearing. Therefore, notice was materially deficient.

Also, Fed. R. Bankr. P. 7004(h) requires that service of contested matters and adversary proceedings on insured depository institutions be accomplished by certified mailed addressed to an officer of the institution unless the institution has previously appeared in the case through an attorney. A review of the docket reveals that the respondent has not previously appeared through an attorney. And, a credit union is an insured depository institution as defined in section 3 of the Federal Deposit Insurance Act.

Finally, a motion is a contested matter and it must be served like a summons and a complaint. See Fed. R. Bankr. P. 9014 incorporating by reference Fed. R. Bankr. P. 7004. Service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3) and 9014(b). The motion must be served to the attention of an officer, a managing or general agent, or other agent authorized by appointment

or law to receive service of process for the respondent creditor. According to the certificate of service, this motion was simply sent to the corporation. Cf. ECMC v. Repp (In re Repp), 307 B.R. 144 (B.A.P. 9th Cir. 2004) (service in accordance with Fed. R. Bankr. P. 2002(b) does not satisfy the service requirements of Fed. R. Bankr. P. 7004(b)). Service, then, is deficient.

16. 17-24944-A-13 MAURICE TALTON MOTION TO
MJD-1 VALUE COLLATERAL
VS. PACIFIC SERVICE CREDIT UNION 7-31-17 [9]

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is \$14,793 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, \$14,793 of the respondent's claim is an allowed secured claim. When the respondent is paid \$14,793 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.

17. 16-25246-A-13 THOMAS/BONNIE-JANE GREEN MOTION TO
PGM-2 SELL
7-26-17 [35]

Final Ruling: This motion to sell property 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 to sell real property will be granted on the condition that the sale proceeds are used to pay all liens of record in full in a manner consistent with the plan. If the proceeds are not sufficient to pay liens of record in full (including liens ostensibly "stripped off"), no sale may be completed without the consent of each lienholder not being paid in full.

- OBJECTION TO
CLAIM
7-13-17 [46]

The objection will be sustained and the claim disallowed but the request for attorneys' fees will be denied.

Because there is no proof that the underlying contract between the parties includes an attorneys' fee provision, the request for an award of the fees incurred in bringing this objection will be denied.

- ORDER TO
SHOW CAUSE
8-7-17 [32]

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the \$74 installment when due on August 2. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

- MOTION TO
DECONSOLIDATE CASES
8-1-17 [27]

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contesting the motion, the moving party may have deterred a respondent from appearing. Therefore, notice was materially deficient.