

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Sacramento, California

October 13, 2015 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 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 NOVEMBER 19, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 26, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 2, 2015. 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 27 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 OCTOBER 19, 2015, AT 2:30 P.M.

October 13, 2015 at 1:30 p.m.

- Page 1 -

Matters to be Called for Argument

1. 14-28002-A-13 TOBY/EME MOUA MOTION TO
PGM-1 SELL
9-15-15 [54]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: 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.

2. 15-25202-A-13 CLENT/LINDA CLARK MOTION TO
PLG-1 CONFIRM PLAN
8-28-15 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make \$1,469.06 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, the plan and the motion to confirm the plan state differing dividends for Class 7.

3. 13-31831-A-13 MATTHEW RIDDAGH MOTION TO
FF-2 MODIFY PLAN
8-26-15 [36]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make \$989.07 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, the proposed plan fails to provide for all prior payments made by the debtor under the terms of the confirmed plan. Without providing for the prior payments, the dividends required by the proposed plan cannot be paid and the trustee may be obligated to recoup from the creditors dividends paid with those payments.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

From the debtor's monthly net income the debtor will make a monthly plan payment of \$112. After payment of the trustee's compensation, the plan payment will do nothing more than pay the debtor's attorney. It will not pay any pre-petition claims.

The debtor owns a home encumbered by two home mortgages held by Wells Fargo Home Mortgage. The plan does not provide for the monthly payment of the ongoing mortgage installment. Instead, the debtor proposes to sell her home sometime during the next 12 months and pay each mortgage in full from the sale proceeds. The plan also proposes to pay all other secured and priority claims from the sale proceeds.

According to Schedules A and D, the home has a value of \$620,000. However, the debtor has filed a separate motion to sell the home for \$585,000 with the buyer receiving a \$15,000 credit for flooring. The debtor must also pay sale expenses which the court estimates at 8% of the gross sales price or \$46,800. Hence, the net price received for the house will be approximately \$523,200.

The debtor scheduled two home mortgages aggregating \$284,411. Also encumbering the home is a \$128,000 IRS lien, and two judicial liens totaling \$8,104. All liens total \$420,515. One of the mortgage holders, however, has demanded more than the debtor has listed. Wells Fargo Bank demands \$181,228.13 rather than the \$161,820 scheduled by the debtor, an increase of \$19,408.13.

The IRS also has demanded more than provided in the plan. Its proof of claim seeks \$141,612.73, \$13,612.73 more than the \$128,000 provided in the plan.

Taking into account the higher amounts demanded by creditors, the secured claims the debtor proposes to pay from the home sale total \$453,535.86. In addition to the secured claims, the plan proposes to pay priority claims of \$43,423 in full with the sale proceeds. Hence, from a sale, the plan must pay \$496,958.86 to creditors.

While the net sale proceeds will be approximately \$523,200, they will be insufficient to pay \$496,958.86 for two reasons. First, the debtor has claimed a \$175,000 exemption in the sale proceeds. The net proceeds are insufficient to fund the plan and pay these claims. Second, the shortfall is even larger than just indicated because the debtor has made no provision for trustee's compensation, currently 6.25% of amounts received for disbursement to creditors. Hence, the proposed plan is not feasible as required by 11 U.S.C. § 1325(a) (6).

The debtor attempt to sidestep the second problem by providing that the debtor, not the trustee, will disburse the sale proceeds to creditors. This is impermissible. All pre-petition debts that are payable during the term of the plan and/or are modified by the plan must be paid through the chapter 13 plan. This includes all of the secured debt and the priority debt the debtor proposes

to pay directly. Accord In re Fulkrod, 973 F.2d 801 (9th Cir. 1992) (all payments to creditors, other than long term debt not modified by the plan, must be through the trustee).

Finally, the plan prospectively modifies two long term mortgages in violation of 11 U.S.C. § 1322(b)(2). The debtor is limited by this anti-modification provision to maintaining mortgage installments while curing the arrears and/or paying off the loans. While the debtor may sell the property securing the claims and pay the claims from the sale proceeds, nothing permits the debtor to halt installment payments prior to a sale.

5. 15-25332-A-13 LINDA DARLINGTON-O'BRA MOTION TO
MET-2 SELL
9-17-15 [31]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally granted. The sale is in the best interests of the estate provided the sale proceeds are disbursed pursuant to the terms of a confirmed plan.

6. 15-25934-A-13 IQBAL RANDHAWA MOTION TO
SNM-3 CONFIRM PLAN
8-26-15 [37]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6). Schedules I and J show that the debtor will have monthly net income of approximately \$1; the plan requires a monthly payment of \$710.

Second, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$710 is less than the \$1,096.46 in dividends and expenses the plan requires the trustee to pay each month.

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

7. 15-25934-A-13 IQBAL RANDHAWA COUNTER MOTION TO
SNM-3 DISMISS CASE
9-23-15 [47]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will remain pending and the counter motion will be conditionally denied.

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.

8. 12-20638-A-13 BERND/HEATHER HANSEN MOTION TO
CA-2 VALUE COLLATERAL
VS. CHASE HOME FINANCE, L.L.C. 9-23-15 [48]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of \$233,300 as of the date the petition was filed. It is encumbered by a first deed of trust held by Wells Fargo Bank. The first deed of trust secures a loan with a balance of approximately \$312,634.44 as of the petition date. Therefore, Chase Home Finance's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is \$0, because the value of the respondent's collateral is \$0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent,

validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(I).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of \$233,300. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

9. 15-21946-A-13 OSIRIS HENDERSON MOTION TO
JMC-1 CONFIRM PLAN
8-27-15 [68]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to make \$4,729 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).

10. 15-26646-A-13 GRACE KENNEDY OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
9-23-15 [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 will be conditionally denied.

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

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

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. In response to Question 1 of the Statement of Financial Affairs, the debtor has failed to disclose income earned in 2014 and 2015. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

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

Sixth, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$4,480 is less than the \$4,742 in dividends and expenses the plan requires the trustee to pay each month.

Seventh, the trustee objects to all of the debtor's Cal. Civ. Proc. Code § 703.140(b) exemptions claimed on Schedule C. The trustee argues that because

the debtor is married and because the debtor's spouse has not joined in the chapter 13 petition, the debtor must file his spouse's waiver of right to claim exemptions. See Cal. Civ. Proc. Code § 703.140(a)(2). This was not done. Without these exemptions, unsecured creditors would receive \$398,425 in a chapter 7 liquidation. Because the proposed plan will not pay the present value of this sum (it will pay these creditors nothing), it does not comply with 11 U.S.C. § 1325(a)(4).

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

11. 15-26653-A-13 VIRGINIA GROCE
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
9-23-15 [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 will be conditionally denied.

The debtor has not filed income tax returns for the prior four tax years.

Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becoming effective, the Bankruptcy Code did not require chapter 13 debtors to file delinquent tax returns. If a debtor did not file tax returns, the trustee might object to the plan on the grounds of lack of feasibility or that the plan was not proposed in good faith. See, e.g., Greatwood v. United States (In re Greatwood), 194 B.R. 637 (9th Cir. B.A.P. 1996), *affirmed*, 120 F.3d. 268 (9th Cir. 1997).

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors.

There are two consequences to a failure to comply with section 1308. The failure is cause for dismissal. See 11 U.S.C. § 1307(e). In this case, however, the trustee has held open the meeting and so it remains possible for the debtor to file the delinquent returns. Also, 11 U.S.C. § 1325(a)(9) and an uncodified provision of BAPCPA found at section 1228(a) of the Act provide that

the court cannot confirm a plan if delinquent returns have not been filed with the taxing agency and filed with the court. This has not been done and so the court cannot confirm any plan proposed by the debtor.

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.

12. 10-36964-A-13 JAVIER/ANNE ROMO MOTION TO
PLC-7 DETERMINE FINAL CURE AND MORTGAGE
PAYMENT
9-25-15 [121]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

On August 28, 2015 the trustee served on Safe Credit Union a notice that the trustee had cured the defaults on an obligation secured by the debtor's principal residence and owed to the credit union. See Fed. R. Bankr. P. 3002.1(f).

On September 16, 2015 the credit union, through its servicer, filed and served its response to the trustee's notice. The credit union acknowledged the cure but asserted that \$700 of post-petition "mortgage fees" remained unpaid.

This \$700 is not included in the credit union's proof of claim. See Claim No. 14 filed September 9, 2010. Nor can the court located on the docket any notice filed by or on behalf of the credit union pursuant to Fed. R. Bankr. P. 3002.1(c) indicating that \$700 became due after the filing of the case. Such notice was required to be filed no later 180 days after the date the fees were incurred. By failing to file such notice, the credit union deprived the debtor of the opportunity to object to the fees as permitted by Fed. R. Bankr. P. 3002.1(e).

Therefore, the \$700 in post-petition mortgage fees are disallowed and the court determines that the debtor has cured the default on the credit union's claim there are allowable post-petition fees to be paid and cured.

13. 13-27668-A-13 VINCENT MUNSON MOTION TO
NSV-4 APPROVE COMPENSATION OF DEBTOR'S
ATTORNEY
8-21-15 [64]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

Counsel agreed to be compensated pursuant to Local Bankruptcy Rule 2016-1 which provides in pertinent part:

(a) Compensation paid to attorneys for the representation of chapter 13 debtors

shall be determined according to Subpart (c) of this Local Bankruptcy Rule, unless a party-in-interest objects or the attorney opts out of Subpart (c). The failure of an attorney to file an executed copy of Form EDC 3-096, Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys, shall signify that the attorney has opted out of Subpart (c). When there is an objection or when an attorney opts out, compensation shall be determined in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017, and any other applicable authority.

. . .

(c) Fixed Fees Approved in Connection with Plan Confirmation. The Court will, as part of the chapter 13 plan confirmation process, approve fees of attorneys representing chapter 13 debtors provided they comply with the requirements to this Subpart.

(1) The maximum fee that may be charged is \$4,000.00 in nonbusiness cases, and \$6,000.00 in business cases.

. . .

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed. Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. . . .

. . .

(5) The Court may allow compensation different from the compensation provided under this Subpart any time prior to entry of a final decree, if such compensation proves to have been improvident in light of developments not capable of being anticipated at the time the plan is confirmed or denied confirmation.

Counsel here opted to be paid \$3,500 pursuant to Rule 2016-1(c). The plan also required payment of the \$3,500 after confirmation of the plan. However, the order confirming the plan failed to include a provision approving the \$3,500 fee. Hence, this application is filed seeking approval of fees.

And, while the application includes contemporaneous time records indicating that \$6,270 has been billed to the debtor, the application only asks the court to approve \$3,500 as compensation for services in this case. This is granted inasmuch as counsel has opted into Rule 2016-1(a).

To the extent any more than \$3,500 is requested, the motion will be denied. First, as noted in the trustee's objection to an earlier attempt to have this compensation approved, \$1,145 is for services that are clerical in nature and are not compensable as professional services. Second, the motion does not make the showing required by Local Bankruptcy Rule 2016-1(c)(3). Most of the services relate to preconfirmation services and no showing has been made that substantial and unanticipated post-confirmation work was necessary.

14. 11-39370-A-13 JORGEN/DANA EIREMO
SS-5

MOTION TO
MODIFY PLAN
9-7-15 [74]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make \$241 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, the proposed plan seeks to reduce the interest rate on the Class 1 secured claim held by Consolidated Utilities from 20% to 10%. Nothing in 11 U.S.C. § 1329 permits a modified plan to increase or decrease the interest rate payable on a secured claim after that interest rate has been fixed in a prior plan confirmed by the court.

15. 12-34570-A-13 AARON/MONICA PETERSEN
HLG-7

MOTION TO
MODIFY PLAN
8-25-15 [99]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make \$1,400 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the post-petition arrears owed to JPMorgan Chase on its Class 1 home loan. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

16. 15-26373-A-13 JOSE/GRACIELA BIVIESCAS
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN
9-24-15 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained.

First, Local Bankruptcy Rule 3015-1(b)(6) provides: "Documents Required by Trustee. The debtor shall provide to the trustee, not later than the fourteen

(14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee.*" Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

Second, the plan fails to provide at section 2.07 for a dividend to be on account of allowed administrative expenses, including the debtor's attorney's fees. Unless counsel is working for nothing, this means that the plan does not provide for payment in full of priority claims as required by 11 U.S.C. § 1322(a)(2). Also see 11 U.S.C. §§ 503(b), 507(a).

17. 15-26275-A-13 LOUIS OLIVEREZ
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
9-16-15 [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, if requested by the U.S. Trustee or the chapter 13 trustee, a debtor must produce evidence of a social security number or a written statement that such documentation does not exist. See Fed. R. Bankr. P. 4002(b)(1)(B). In this case, the debtor has breached the foregoing duty by failing to provide evidence of the debtor's social security number. This is cause for dismissal.

Second, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$313 is less than the \$322 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.

18. 15-26276-A-13 JAMES/CAROL MARTYN
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN
9-23-15 [15]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained.

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$4,225 is less than the \$4,238 in dividends and expenses the plan requires the trustee to pay each month.

Second, given the likelihood that the trustee's objection to the debtor's homestead exemption is well taken, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive \$53,202.36 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay nothing to unsecured creditors.

19. 15-26984-A-13 KASSI MARTINEZ
FF-1
VS. GM FINANCIAL

MOTION TO
VALUE COLLATERAL
9-11-15 [11]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has filed a valuation motion that accompanies a proposed chapter 13 plan. The valuation motion addresses the value of a 2009 VW CC that secures GM Financial Class 2 claim. While the debtor has opined that the vehicle has a value of \$9,445 based on the vehicle's model, year of manufacture, and 64,258 mileage, no specific information is given in the motion regarding condition, equipment and accessories.

GM counters that the value of the vehicle is \$12,025 based on a retail evaluation by the NADA Guides.

To the extent the objection urges the court to reject the debtor's opinion of value because the debtor's opinion is not admissible, the court instead rejects the objection. As the owner of the vehicle, the debtor is entitled to express an opinion as to the vehicle's value. See Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

Any opinion of value by the owner must be expressed without giving a reason for the valuation. Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08). Indeed, unless the owner also qualifies as an expert, it is improper for the owner to give a detailed recitation of the basis for the opinion. Only an expert qualified under Fed. R. Evid. 702 may rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject. . . ." Fed. R. Evid. 703. "For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay, should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of

his or comparable properties unless, the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc." Barry Russell, Bankruptcy Evidence Manual, § 701.2, p. 1278-79 (2007-08).

The creditor has come forward with evidence that the replacement value of the vehicle, based on its retail value as reported by a commonly used market guide, is \$12,025. Such valuations, however, usually presume the condition of the vehicle is excellent.

The vehicle must be valued at its replacement value. In the chapter 13 context, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The retail value suggested by the creditor cannot be relied upon by the court to establish the vehicle's replacement value. First, the creditor's retail value assumes that the vehicle is in excellent condition. This is not based on any facts, at least facts proven to the court. 11 U.S.C. § 506(a)(2) asks for "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." That is, what would a retailer charge for the vehicle as it is?

Nor has the debtor proven to the court's satisfaction the replacement value of the vehicle. The motion contains very little specific information about the vehicle other than its model, year, and mileage.

While neither party has persuaded the court as to the replacement value of the vehicle under section 506(a)(2), it is the debtor who has the burden of proof. Accordingly, the valuation motion must be denied.

20. 15-26286-A-13 MARK/JENNIFER GALISATUS OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
 DISMISS CASE
 9-23-15 [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 will be conditionally denied.

First, the debtor failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). 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 not filed income tax returns for the prior four tax years.

Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becoming effective, the Bankruptcy Code did not require chapter 13 debtors to file delinquent tax returns. If a debtor did not file tax returns, the trustee might object to the plan on the grounds of lack of feasibility or that the plan was not proposed in good faith. See, e.g., Greatwood v. United States (In re Greatwood), 194 B.R. 637 (9th Cir. B.A.P. 1996), *affirmed*, 120 F.3d. 268 (9th Cir. 1997).

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors.

There are two consequences to a failure to comply with section 1308. The failure is cause for dismissal. See 11 U.S.C. § 1307(e). In this case, however, the trustee has held open the meeting and so it remains possible for the debtor to file the delinquent returns. Also, 11 U.S.C. § 1325(a)(9) and an uncodified provision of BAPCPA found at section 1228(a) of the Act provide that the court cannot confirm a plan if delinquent returns have not been filed with the taxing agency and filed with the court. This has not been done and so the court cannot confirm any plan proposed by the debtor.

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

Sixth, to pay the dividends required by the plan at the rate proposed by it

will take 81 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Seventh, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6). Schedules I and J show that the debtor will have monthly net income of approximately \$1,617; the plan requires a monthly payment of \$3,141.

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.

THE FINAL RULINGS BEGIN HERE

21. 15-24504-A-13 TERRANCE/APEAR MOTION TO
MET-1 HENDRICKSON CONFIRM PLAN
8-20-15 [20]

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.

22. 15-25717-A-13 LORIN/IRENE PARTAIN OBJECTION TO
SJS-1 CLAIM
VS. INTERNAL REVENUE SERVICE 8-26-15 [31]

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

The objection will be sustained and the claim for income taxes for 2012, 2103, and 2014 will be disallowed. The debtor's income for 2012, 2013, and 2014 was below the level at which taxes begin to accrue.

23. 14-20019-A-13 WALTER/PATRICIA JONES MOTION TO
JPJ-3 MODIFY PLAN
9-3-15 [79]

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 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 modified plan complies with 11 U.S.C. §§

1322(a) & (b), 1323(c), 1325(a), and 1329.

24. 15-25047-A-13 LONEY DANIELS MOTION FOR
APN-1 RELIEF FROM AUTOMATIC STAY
SANTANDER CONSUMER USA, INC. VS. 9-8-15 [33]

Final Ruling: The motion will be dismissed as moot. The debtor dismissed this case on September 22, 2015. As a result, the automatic stay has expired as a matter of law. See 11 U.S.C. § 362(c).

25. 13-32948-A-13 ERIC/CLAUDINE BERKE MOTION TO
PGM-1 PURCHASE REAL PROPERTY
9-15-15 [31]

Final Ruling: This motion to new credit 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 incur a purchase money loan in order to purchase a new home will be granted. The motion establishes a need for the home and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of the plan given that the debtor's performance of the plan is complete or nearly complete.

26. 11-42380-A-13 NORMAN/LORI UTLEY MOTION TO
MRL-1 APPROVE COMPENSATION OF DEBTORS'
ATTORNEY
9-7-15 [44]

Final Ruling: The motion will be dismissed without prejudice.

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

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

27. 15-24980-A-13 MONETA HOLLIS MOTION TO
BLG-1 CONFIRM PLAN
8-31-15 [24]

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.