

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 31, 2016 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 28, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 14, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY NOVEMBER 21, 2016. 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 25 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 NOVEMBER 7, 2016, AT 2:30 P.M.

October 31, 2016 at 1:30 p.m.

Matters to be Called for Argument

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| 1. | 16-25905-A-13 RALPH/SARA GODUCO
JPJ-1 | OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-10-16 [28] |
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- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$1,991 in months 1-5 and \$2,276 in months 6-11 is less than the \$2,023.56 in months 1-5 and \$2,276 in months 6-11 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.

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| 2. | 16-25905-A-13 RALPH/SARA GODUCO
PPR-1
THE BANK OF NEW YORK VS. | OBJECTION TO
CONFIRMATION OF PLAN
9-27-16 [21] |
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- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The home lender objects because the cure of the arrears will not begin until the 13th month of the plan.

The plan provides for the creditor's secured claim in Class 1. For the first 13 months of the plan, nothing will be paid to the creditor on account of its arrearage claim. Beginning in the 13th month and continuing for the remaining duration of the plan, \$250 will be paid to the creditor on account of the arrears on its claim. The creditor objects to this treatment on the ground that 13 months of nothing and 47 months of \$250 does not yield an equal monthly installment as required by 11 U.S.C. § 1325(a)(5)(B)(iii)(I).

The plan does provide 47 months of equal monthly payments. If nothing is paid in a month, there is no payment in that month.

Nothing in § 1325(a)(5)(B)(iii)(I) requires equal monthly installments to begin at any particular moment during the chapter 13 case. In other words, when the plan proposes periodic payments to an allowed secured claim holder, section 1325(a)(5)(B)(iii)(I) does not specify that equal monthly payments must begin immediately after the petition, immediately after confirmation, or at any other particular time. As explained by the bankruptcy court in In re DeSardi, 340 B.R. 790 (Bankr. S.D. Tex. 2006):

"The equal payment provision does not state that its requirements must be met beginning in month one of the plan. Nor does the section state that payments must be equal "as of the effective date of the plan." . . . The Court understands this clause to require payments to be equal once they begin, and to continue to be equal until they cease. . . ." Id. at 805-07.

See also In re Hill, 2007 WL 499622 (Bankr. M.D.N.C. Feb. 12, 2007) (plan may pay attorney's fees and other costs allowed under section 507(a)(2) before equal monthly payments begin to a car lender. "Since Chapter 13 plans must provide for payment of section 507(a)(2) claims, which include debtors' attorneys' fees, either before or concurrently with other payments, even payments on secured claims, requiring the 'equal monthly payments' to begin at confirmation would result in many unconfirmable plans . . . an absurd result that Congress could not have intended."); In re Blevins, 2006 WL 2724153 (Bankr. E.D. Cal. Sept. 21, 2006) (equal monthly amount requirement in section 1325(a)(5)(B)(iii)(I) is satisfied by plan that begins equal monthly payments after attorney's fees are paid in full.).

To the extent the creditor maintains that the plan is not feasible because the debtor's income is speculative, the objection will be overruled. The debtor has been employed for two years at a national bank. The income seems secure.

To the extent the creditor objects because the plan does not provide for the possibility that the debtor's regular monthly installment may increase under the terms of the promissory note, the objection will be overruled. The plan provides at section 2.08(b)(4)(i): "If the holder of a Class 1 claim gives Debtor and Trustee notice of a payment change in accordance with Fed. R. Bankr. P. 3002.1(b), Debtor shall adjust the plan payment accordingly."

3. 16-25906-A-13 RANDOLPH/TAMARA RILEY OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
 DISMISS CASE
 10-11-16 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

Second, to pay the dividends required by the plan at the rate proposed by it will take 70 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d). The overage is the result of the IRS filing a proof of claim approximately \$10,000 higher than estimated 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.

4. 16-25520-A-13 DONIA WILLIAMS
JPJ-1
- OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-11-16 [19]
- ☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

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.

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. 16-25623-A-13 JOHN ANDRADE
JPJ-1
- OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-11-16 [20]
- ☐ Telephone Appearance
☐ Trustee Agrees with Ruling

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

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

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the

prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

6. 13-29029-A-13 KATHLEEN CARPENTER MOTION TO
BB-1 MODIFY PLAN
9-22-16 [32]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, because no Rights and Responsibilities Agreement was filed consistent with Local Bankruptcy Rule 2016-1, because the original confirmed plan approved no fees pursuant to that local rule, and because counsel's fee disclosure under Fed. R. Bankr. P. 2016 disclosed no fees owed, the court will not approve any attorney's fees in connection with the confirmation of a modified plan. Counsel is free to apply for fees in a separate application consistent with 11 U.S.C. § 330.

Second, if counsel intends to apply for fees, the plan must provide for their payment as required by 11 U.S.C. § 1322(a)(2). The modified plan does not provide for their payment.

Third, the proposed modified plan fails to provide for all payments previously made under the terms of the original confirmed plan. Without those payments, the plan is not feasible.

7. 16-24032-A-13 IGNACIO LAUDER AND WILMA MOTION TO
MET-1 FRONDA CONFIRM PLAN
9-19-16 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to make \$6,441 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).

8. 16-25232-A-13 GREGORY WALLACE OBJECTION TO
PHOENIX GOLD MANAGEMENT, L.L.C. VS. CONFIRMATION OF PLAN
9-21-16 [42]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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, the debtor admitted at the meeting of creditors that the debtor failed to file an income tax returns for the prior four years. Those returns are delinquent.

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.

In this case, the meeting of creditors was continued to permit the debtor to file the delinquent returns. See 11 U.S.C. § 1308(b). However, they have not been filed and given to the trustee.

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). 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.

9. 16-25935-A-13 DOUGLAS/KIM JACOBS ORDER TO
SHOW CAUSE
10-11-16 [30]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of \$79 due on October 6 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

10. 16-25939-A-13 YOLANDA ARRIAGA

ORDER TO
SHOW CAUSE
10-11-16 [31]

- ☐ 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 October 6 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

11. 16-25942-A-13 BRIGETTE WINTERS
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-10-16 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Safe Credit Union 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.

12. 11-43145-A-13 DOROTHY SMITH
SJS-5

MOTION FOR
SUBSTITUTION OF DEBTOR
10-14-16 [62]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motions will be granted in part. There is no need to substitute a party for a deceased debtor because death does not necessarily cause the dismissal of the case. See Fed. R. Bankr. P. 1016. Nonetheless, given the debtor's death, the debtor's daughter is authorized to execute the

certifications required by Local Bankruptcy Rule 5009-1 other than the certification of completion of a course of personal financial management. The court will waive the requirement of a course on personal financial management. All other certifications shall be executed by the debtor's daughter on the debtor's behalf.

13. 11-43145-A-13 DOROTHY SMITH
SJS-6

MOTION FOR
WAIVER OF THE CERTIFICATION
REQUIREMENTS FOR ENTRY OF
DISCHARGE
10-14-16 [66]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motions will be granted in part. There is no need to substitute a party for a deceased debtor because death does not necessarily cause the dismissal of the case. See Fed. R. Bankr. P. 1016. Nonetheless, given the debtor's death, the debtor's daughter is authorized to execute the certifications required by Local Bankruptcy Rule 5009-1 other than the certification of completion of a course of personal financial management. The court will waive the requirement of a course on personal financial management. All other certifications shall be executed by the debtor's daughter on the debtor's behalf.

14. 16-25647-A-13 JAMES ARNOLD
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-12-16 [30]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$2,445 is less than the \$4,001.75 in dividends and expenses the plan requires the trustee to pay each month.

Second, 11 U.S.C. §§ 511(a) and 1325(a)(5)(B) combine to require that secured tax claims be paid at the rate required by applicable nonbankruptcy law. The interest due on delinquent California real property taxes is set by statute. For each installment of real property taxes not timely paid, a 10% penalty is assessed. See Cal. Rev. & Tax. Code §§ 2617, 2618, 2705. In addition, a "redemption" penalty of 1 1/2% per month is added to the tax bill. See Cal. Rev. & Tax. Code § 4103(a). For purposes of a claim in a bankruptcy case, Cal. Rev. & Tax. Code § 4103(b) provides that "the assessment of penalties . . . constitutes the assessment of interest."

Because the plan proposed by the debtor, does not provide interest on account of a secured tax claim, it is not confirmable. While the plan proposes to cure delinquent real property taxes, it provides for no interest on them while Sacramento County is paid over the plan's duration .

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor

failed to disclose the particulars of horse sales in response to question 18 of the Statement of Financial Affairs. 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.

15. 16-25749-A-13 ROBERT GARZA AND MARIA OBJECTION TO
JPJ-1 HERRERA CONFIRMATION OF PLAN AND MOTION TO
 DISMISS CASE
 10-11-16 [13]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained and the case will be dismissed.

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, to pay the dividends required by the plan at the rate proposed by it will take 84 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Third, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$1,210 is less than the \$1,341.29 in dividends and expenses the plan requires the trustee to pay each month.

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, 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).

Sixth, the debtor has scheduled a priority domestic support obligation owed to the County of Yolo in the amount of approximately \$31,000. See 11 U.S.C. § 507(a)(1). The plan does not provide for payment in full of this claim as required by 11 U.S.C. § 1322(a)(2).

16. 15-22850-A-13 DANIEL/JESSICA PUGLIA MOTION TO
SS-4 INCUR DEBT
10-19-16 [70]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

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.

17. 16-25769-A-13 RUTH DENNO
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-10-16 [12]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

To pay the dividends required by the plan at the rate proposed by it will take 113 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d). The overage is a result of El Dorado County filing a claim of secured real property taxes that exceeds the debtor's estimate by approximately \$6,500.

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. 16-25974-A-13 TROY BIRKS
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-10-16 [16]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

19. 16-25978-A-13 TRACY PAMULA

ORDER TO
SHOW CAUSE
10-12-16 [22]

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

20. 15-28574-A-13 JOHN DYNOWSKI

ORDER TO
SHOW CAUSE
8-11-16 [96]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None. The facts and circumstances are laid out in detail in the court's Memorandum and OSC. The OSC required a written response be filed on or before September 12. Nothing was filed. Nonetheless, if counsel wishes to speak to serious issues raised by the court, it will allow an oral presentation.

FINAL RULINGS BEGIN HERE

21. 16-26334-A-13 ALEJANDRO GOMEZ MOTION TO
MMM-1 VALUE COLLATERAL
VS. ALLY BANK 9-30-16 [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 motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of \$13,500 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, \$13,500 of the respondent's claim is an allowed secured claim. When the respondent is paid \$13,500 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.

22. 16-24457-A-13 DAWN BARKLEY MOTION TO
SJS-2 CONFIRM PLAN
9-15-16 [35]

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.

23. 16-20758-A-13 MASOUMEH KENNEDY MOTION TO
SDB-1 MODIFY PLAN
9-19-16 [39]

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 (9th 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 (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.

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| 24. | 16-26771-A-13 JOHN MOORE
SJS-1 | MOTION TO
EXTEND AUTOMATIC STAY
10-13-16 [8] |
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Final Ruling: This case is transferred to Judge Sargis who will hear this motion on November 1, 2016 at 3:00 p.m.

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| 25. | 16-24074-A-13 FRANCISCO ESQUIVIAS AND
ROSA GUZMAN
VS. AMERICREDIT FINANCIAL SERVICES, INC. | MOTION TO
VALUE COLLATERAL
8-8-16 [34] |
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Final Ruling: The parties have resolved this motion by stipulation.