UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 11, 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 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 JANUARY 8, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 26, 2017, AND ANY REPLY MUST BE FILED AND SERVED BY JANUARY 2, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 21 THROUGH 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 DECEMBER 18, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 17-26809-A-13 NAI/CAROL SAECHAO — OBJECTION TO CONFIRMATION OF PLAN 11-22-17 [17]
JPJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

The property of the estate includes two preferential transfers of more than $21,000 to insiders. These transfers have not been included by the debtor in the liquidation analysis required by 11 U.S.C. § 1325(a)(4). With these transfers avoided, unsecured creditors would receive approximately $30,917 in a chapter 7 case. Because the plan will pay them only $25,060.56, the plan does not comply with section 1325(a)(4).

2. 17-26809-A-13 NAI/CAROL SAECHAO — MOTION TO VALUE COLLATERAL 10-30-17 [12]
JTN-1
VS. THE GOLDEN 1 CREDIT UNION

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is $16,215 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, $16,215 of the respondent's claim is an allowed secured claim. When the respondent is paid $16,215 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.

3. 16-21320-A-13 JUAN/CATHERINE MARTINEZ — MOTION TO CONFIRM PLAN
DEF-3 — 10-19-17 [95]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $2,862.52 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 debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender, Golden One, has agreed to a home loan modification. Absent that agreement, the claim cannot be modified. See 11 U.S.C. § 1322(b)(2). Instead, the debtor is limited to curing any pre-petition default while maintaining the regular monthly mortgage installment. See 11 U.S.C. § 1322(b)(5).

4. 17-26120-A-13 KIMBERLY SANTANA — ORDER TO SHOW CAUSE
11-20-17 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will remain pending but the court will modify the terms of its order permitting the debtor to pay the filing fee in installments.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $77 installment when due on November 13. While the delinquent installment was paid on December 4, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

5. 17-26821-A-13 ISABEL SIMENTAL-COLLIER — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 11-22-17 [15]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

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

6. 15-24522-A-13 ANTHONY/ANGELINA BOTELHO — MOTION TO CONVERT OR TO DISMISS CASE 11-3-17 [33]
JPJ-2

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be conditionally denied.

The debtors have failed to pay to the trustee approximately $2,128 as required by the confirmed plan. The failure of the debtors to make plan payments is prejudicial to creditors and suggests that the current plan is not feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (6).

After a review of the schedules, the court concludes that conversion rather than dismissal is in the best interests of creditors because there is in excess of $13,000 of equity in unencumbered, nonexempt assets that will benefit creditors if liquidated by a trustee.

Nonetheless, it appearing that the plan default is a result of the disabilities of both debtors that have affected their ability to work, and it further appearing that one of the debtors will soon be able to return to work, the case will remain pending under chapter 13 on condition a modified plan is confirmed within 60 days. If it is not confirmed, the petition will be converted to chapter 7 on the trustee's further ex parte application.

7. 17-26827-A-13 SUN SIN — MOTION TO VALUE COLLATERAL 11-27-17 [22]
WW-1
VS. DEUTSCHE BANK NATIONAL TRUST CO.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $315,000 as of the date the petition was filed. It is encumbered by a first

deed of trust held by U.S. Bank. The first deed of trust secures a loan with a balance of approximately $354,488 as of the petition date. Therefore, Parkside Lending'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 $315,000. 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).

8. 17-26827-A-13 SUN SIN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-22-17 [19]

- ☐ 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.

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.

9. 17-26836-A-13 BERNADETTE TEDING — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 11-22-17 [28]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant

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

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

The plan provides for a home mortgage held by Select Portfolio in the additional provisions. Absent an agreement with Select Portfolio, the debtor is limited to maintaining monthly contract installment payments to the creditor while curing the pre-petition arrears. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). The plan fails to provide such treatment. Instead, it proposes an "adequate protection payment" rather than the regular installment payment, and it fails to provide for a definite cure of the arrears. Instead, the cure of the arrears depends on the hope that the creditor will agree to a voluntary modification of its loan.

Because the plan fails to provide for a definite cure, because the ongoing installments are not being maintain, and because the creditor has not agreed to the terms of the plan, the plan cannot be confirmed.

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. 17-23644-A-13 JOSE RAMIREZ — MOTION TO CONFIRM PLAN
ULC-6 — 10-6-17 [73]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan misidentifies the holder of the mortgage on the debtor's home. It is Trinity Financial Services not Long Beach Mortgage.

Second, a plan must be feasible and there are two feasibility issues. See 11 U.S.C. § 1325(a)(6).

- the plan assumes that within 12 months the debtor's rent will end because the debtor's home will have been rebuilt with insurance proceeds. However, there is no evidence concerning the progress of the reconstruction nor evidence the insurance will be sufficient;

- the debtor's income will be supplemented by family members. While these family members have signed declarations stating how much they will contribute, there is no proof of their financial ability to make the contributions.

11. 17-20053-A-13 DANIEL MASSEY
TLC-2

MOTION TO
MODIFY PLAN
10-25-17 [39]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the objection overruled.

According to the objecting mortgage creditor, at the beginning of this case, the ongoing monthly mortgage payment was $1,861.04. This was the installment amount through June 2017. Effective July 1, 2017, the installment decreased to $1,858.04. This change allegedly was noted in a notice of mortgage payment change filed pursuant to Fed. R. Bankr. P. 3002.1(b) on June 1, 2017.

The plan required the debtor to maintain, through the trustee, all ongoing mortgage payments. Therefore, the mortgage creditor believes it should have received a total of $16,738.84 in the first nine months of the plan (February through October 2017) on account of the monthly installments (five payments of $1,861.04 and one payment of $1,858.46). It objects to the plan's provision that it was entitled to only $15,841.20.

The court has reviewed the docket and it can locate no notice of mortgage payment filed in this case, whether filed on June 1 or any other date. The creditor did file a notice of postpetition mortgage fees, expenses and charges pursuant to Fed. R. Bankr. P. 3002.1(e) on July 24, 2017 but this notice has nothing to do with the monthly installment amount. It demands $275, the fees it demands for filing a proof of claim and a notice of mortgage payment change. While there is a proof of claim on file, there is no notice of mortgage payment change.

The debtor maintains that when the case was filed, the ongoing mortgage installment was $1,558.32, not $1,861.04. This was the amount last demanded in a notice of mortgage payment change filed in the debtor's prior chapter 13 case, Case No. 16-20361. The earlier case was filed on January 22, 2016 and dismissed on November 19, 2016.

It is the debtor's position that $1,558.32 was the monthly installment amount when this case was filed because the mortgage creditor gave no notice of an installment change after the dismissal of the first case and before this second case was filed. Further, it was not until the mortgage creditor filed its proof of claim on May 17, 2017 did the creditor demand an installment amount greater than $1,558.32. The proof of claim indicates that the payment amount was $1,861.04.

Based on the plan, the trustee paid the creditor three monthly installments of $1,558.32 for February, March and April 2017. When the trustee received the creditor's proof of claim, and consistent with the plan, the trustee paid $1,861.04 a month for the period May through October 2017. Hence, for the first nine months of the plan, the trustee distributed a total of $15,841.20 to the mortgage creditor on account of monthly installments.

Given the absence of any proof that the mortgage creditor gave the debtor a notice that the mortgage installment had increased before this bankruptcy case was filed, then the last amount demanded, $1,558.32, was the installment amount when this case was filed. It did not change until a different installment was demanded during the case. While it might be argued that there has been no such

demand in this case because the creditor has not filed a notice of mortgage payment change pursuant to Fed. R. Bankr. P. 3002.1(b), the debtor's response to the objection concedes that the creditor is able to demand a payment increase in its proof of claim.

Therefore, this aspect of the objection will be overruled. The amount paid by the trustee on account of the monthly installment during the first nine months of the case is all that the creditor may demand. This is consistent with Fed. R. Bankr. P. 3002.1(i) which permits the court to award appropriate relief when a creditor fails to give the notice required by Rule 3002.1(b).

The objection that the plan must provide for the ongoing mortgage payment as it may from time to time in the future be adjusted pursuant to Fed. R. Bankr. P. 3002.1(b) will be overruled. The plan in fact contains such provision at section 2.08(b)(4)(i):

"(4) The automatic stay is modified to permit the holders of Class 1 claims to send statements, impound, and escrow notices, and notices concerning interest rate adjustments or the assessment of fees and costs to Debtor. However, Trustee will not make post-petition payment adjustments or pay post-petition fees, charges, or assessments until they are demanded in accordance with Fed. R. Bankr. P. 3002.1.

(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."

12. 17-26753-A-13 JPJ-1 — STEFAN ROSAURO AND APRIL CRUZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 11-22-17 [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 motion to dismiss the case 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 has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtors

have transposed their respective incomes on Schedule I and have failed to disclose gambling losses incurred in 2015 through 2017. This error and nondisclosure are a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant 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.

13. 17-27375-A-13 DAWN TRIBBEY — ORDER TO SHOW CAUSE 11-21-17 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor did not pay the petition filing fee of $310, as required by Fed. R. Bankr. P. 1006(a), when the petition was filed. Nor did the debtor request permission to pay the fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The failure to pay the filing fee or to arrange for its payment in installments is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

14. 17-26678-A-13 JOHN SHAFER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 11-22-17 [19]
JPJ-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $705 is less than the $757 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.

15. 17-26678-A-13 JOHN SHAFER — OBJECTION TO CONFIRMATION OF PLAN
JHW-1
THE CREDIT UNION LOAN SOURCE, L.L.C. VS. — 11-27-17 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

The creditor objects to the interest rate, 4.50%, proposed in the plan. The creditor demands 7.25%.

The Supreme Court decided in Till v. SCS Credit Corp., 124 S.Ct. 1951 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. Cf. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987).

To set the appropriate rate, the court is required to conduct an "objective inquiry" into the appropriate rate. However, the debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

The prime rate is currently 4.25%. As surveyed by the Supreme Court in Till, courts using the formula approach typically have adjusted the interest rate 1% to 3%. The debtor's proposed rate of 4.5% gives a .25% adjustment. Because the debtor has very little margin for error in his budget, because the plan extends the amortization of the creditor's loan by 42 months, and because the security for the claim is a seven year old car, the court concludes that a .25% increase over prime is not sufficient for purposes of section 1325(a)(5)(ii).

The court concludes that the interest rate must be increased to 7.25% to comply with Till.

16. 17-26685-A-13 SUKANYA TOURVILLE — OBJECTION TO CONFIRMATION OF PLAN
RPZ-1
U.S. BANK, N.A. VS. — 11-27-17 [17]

- ☐ 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 overruled.

The objection asserts that because the plan does not provide for the objecting creditor's secured claim, it may not be confirmed.

11 U.S.C. § 1322(a) is the section of the Bankruptcy Code that specifies the mandatory provisions of a plan. It requires only that the debtor adequately fund the plan with future earnings or other future income that is paid over to the trustee (section 1322(a)(1)), provide for payment in full of priority claims (section 1322(a)(2) & (4)), and provide the same treatment for each claim in a particular class (section 1322(a)(3)). But, nothing in section 1322(a) compels a debtor to propose a plan that provides for a secured claim.

11 U.S.C. § 1322(b) specifies the provisions that a plan may, at the option of the debtor, include. With reference to secured claims, the debtor may not modify a home loan but may modify other secured claims (section 1322(b)(2)), cure any default on a secured claim, including a home loan (section 1322(b)(3)), and maintain ongoing contract installment payments while curing a pre-petition default (section 1322(b)(5)).

If a debtor elects to provide for a secured claim, 11 U.S.C. § 1325(a)(5) gives the debtor three options: (1) provide a treatment that the debtor and secured creditor agree to (section 1325(a)(5)(A)), provide for payment in full of the entire claim if the claim is modified or will mature by its terms during the term of the plan (section 1325(a)(5)(B)), or surrender the collateral for the claim to the secured creditor (section 1325(a)(C). However, these three possibilities are relevant only if the plan provides for the secured claim.

When a plan does not provide for a secured claim, the remedy is not denial of confirmation. Instead, the claim holder may seek the termination of the automatic stay so that it may repossess or foreclose upon its collateral. The absence of a plan provision is good evidence that the collateral for the claim is not necessary for the debtor's reorganization and that the claim will not be paid. This is cause for relief from the automatic stay. See 11 U.S.C. § 362(d)(1).

17. 17-26693-A-13 MARGO JACKSON
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN
11-22-17 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Mechanic's Bank 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."

18. 17-21994-A-13 IMOGENE ESPINOZA
PLC-4

MOTION TO
VACATE DISMISSAL OF CASE
10-6-17 [40]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor filed this case on March 27, 2017. A proposed plan accompanied the petition. The plan was not confirmed as a result of objections filed by the trustee. The court's ruling on the trustee's objection and related motion to dismiss the case concluded that the debtor had failed to provide him with a tax return as required by 11 U.S.C. § 521(e)(2)(B) & (C), failed to provide him with the Class 1 checklist, failed to complete in good faith the schedules and statements, and further concluded that the plan was unconfirmable because it failed to pay unsecured creditors the present value of what they would receive in a chapter 7 case as required by 11 U.S.C. § 1325(a)(4), it would take more than 5 years to complete the plan in violation of 11 U.S.C. § 1322(d), failed to provide for payment in full of the arrears on a Class 1 home loan as required by 11 U.S.C. § 1325(a)(5)(B), and was not accompanied by the valuation motion necessary to strip off the junior home loan held by Portfolio Recovery Associates.

Despite the deficiencies in the original plan, the court did not dismiss the case. Instead, it permitted the case to remain pending on condition that the

debtor confirmed a modified plan within 75 days of the June 26, 2017 entry of the order sustaining the trustee's objection and conditionally denying his motion to dismiss the case. If not timely modified, the order permitted the trustee to make an ex parte application to dismiss the case.

A review of the docket reveals that the 75-day period expired without a modified plan being proposed, much less confirmed. Therefore, on October 3, 99 days after the entry of the order, the trustee applied for the dismissal of the case. A dismissal order was issued the same day.

This motion to vacate the dismissal was filed October 6. It asserts that because counsel had prepared on May 10 a modified plan, amended schedules, and a motion to confirm the modified plan but thereafter, these documents "fell through the cracks and were never filed."

However, inasmuch as the hearing on the trustee's objection and motion to dismiss the case was not until May 30, and as the order was not entered and served until June 26, counsel for the debtor received two indications after May 10 that the case was in jeopardy.

Second, while a mistake may have been made, to qualify for relief under Fed. R. Bankr. P. 60(b)(1) as incorporated by Fed. R. Bankr. P. 9024 the neglect must be excusable. The record is bereft of details concerning the error committed. There is no information explaining the failure to attend the May 30 hearing, or the failure to diary the deadline set in the June 26 order.

Third, this case has some history. The table below identifies all of the debtor's prior cases:

17-21994 filed 3/27/2017 dismissed 10/3/2017 [failure to propose modified plan within deadline set by court; original plan denied confirmation due to failure to provide tax return to trustee, failure to provide Class 1 Checklist to trustee]

16-21429 filed 3/8/2016 dismissed 5/19/2016 [failure to commence plan payments, failure to appear at meeting of creditors, failure to provide tax return to trustee]

15-24879 filed 6/17/2015 dismissed 11/9/2016 [failure to propose modified plan within deadline set by court; original plan denied confirmation due to failure to provide tax return to trustee, failure to commence plan payments, failure to provide Class 1 Checklist to trustee]

14-31248 filed 11/14/2014 dismissed 4/27/2015 [failure to propose modified plan within deadline set by court; original plan denied confirmation due to failure to provide payment advices to trustee, failure to make plan payments, failure to provide Class 1 Checklist to trustee, failure to provide proof of social security number]

11-45014 filed 10/20/2011 dismissed 5/7/2014 [plan confirmed but case dismissed due to failure to make plan payments]

Given these prior cases, particularly all of the case filed since 2014, it is abundantly clear that the debtor is filing successive cases without the intention or ability to confirm a plan. She is playing a delay game. Given this history the court concludes that even if it were to vacate the dismissal there is no likelihood that a plan would be confirmed.

19. 17-21994-A-13 IMOGENE ESPINOZA
PLC-1
VS. PORTFOLIO RECOVERY ASSOC., L.L.C.

MOTION TO VALUE COLLATERAL
10-20-17 [54]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Given the dismissal of the case, the motion will be dismissed as moot.

20. 17-21994-A-13 IMOGENE ESPINOZA
PLC-3

MOTION TO CONFIRM PLAN
10-20-17 [49]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Given the dismissal of the case, the motion will be dismissed as moot.

FINAL RULINGS BEGIN HERE

21. 17-26701-A-13 ROSE RODRIGUEZ — OBJECTION TO CONFIRMATION OF PLAN 11-22-17 [27]
JPJ-2

Final Ruling: The objection will be dismissed because it is moot. The case has been dismissed.

22. 17-25109-A-13 RACHEL EKINDESONE — MOTION TO CONFIRM PLAN 10-30-17 [43]
DRE-1

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 listed above.

23. 17-25109-A-13 RACHEL EKINDESONE — OBJECTION TO CONFIRMATION OF PLAN 11-10-17 [52]
RDW-1
CAM XVIII VS.

Final Ruling: This objection should have been filed as opposition to the debtor motion to confirm a modified plan (DRE-1) rather than as a separate contested matter. The objection will be dismissed without prejudice. Further, even if viewed as such opposition, the objection is moot. The debtor motion has been dismissed for a service defect.

24. 17-23129-A-13 TIMOTHY NEHER — MOTION TO CONFIRM PLAN 10-11-17 [129]
TLN-15

Final Ruling: The motion will be dismissed without prejudice. A review of the docket reveals that the debtor filed a further modified plan on November 28 together with a motion to confirm that plan. The motion has been set for a hearing on January 29, 2018 at 1:30 p.m. Given this newer plan, the court assumes the debtor does not wish to confirm the earlier plan that is the subject of TLN-15.

25. 17-25167-A-13 DONNA HARRISON — MOTION TO CONFIRM PLAN 10-26-17 [23]
MJD-1

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.