UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 4, 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 6. 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 MAY 4, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY APRIL 17, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY APRIL 24, 2017. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 7 THROUGH 23 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 APRIL 10, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 17-20107-A-13 RENEE BOUTROS — MOTION TO CONFIRM PLAN 2-17-17 [12]
MET-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection sustained for the reasons explained in this ruling and in the ruling on the trustee's motion to dismiss the case.

The debtor proposed a plan that cannot be confirmed because it will not pay unsecured creditors the present value of what they would receive in a chapter 7 liquidation as required by 11 U.S.C. § 1325(a)(4). As noted by the trustee, the nonexempt net value of scheduled assets is $63,200 yet the plan proposed to pay less than $2,000 to unsecured creditors.

Apparently, at the meeting of creditors, the debtor asserted that her son is the "equitable owner" of her home and without the equity in her home included among her assets, the plan will pass muster under section 1325(a)(4). However, given the status of a chapter 7 trustee as a BFP under 11 U.S.C. § 544, an unrecorded interest in the debtor's home is likely to be avoided by a trustee. Consequently, the proceeds realized by the avoidance of the son's interest must be included in the liquidation analysis absent some evidence, not provided by the debtor, that section 544 would not be applicable.

An examination of the schedules I and J shows that the debtor has no income beyond family assistance and that assistance is insufficient to fund a plan that requires payment of a $63,200 dividend to unsecured creditors. This impacts both the plan's feasibility and the debtor's eligibility for chapter 13 relief. See 11 U.S.C. §§ 109(e), 1325(a)(6).

2. 17-20107-A-13 RENEE BOUTROS — MOTION TO CONVERT OR TO DISMISS CASE 2-23-17 [22]
JPJ-2

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case converted to one under chapter 7.

The debtor proposed a plan that cannot be confirmed because it will not pay unsecured creditors the present value of what they would receive in a chapter 7 liquidation as required by 11 U.S.C. § 1325(a)(4). As noted by the trustee, the nonexempt net value of scheduled assets is $63,200 yet the plan proposed to pay less than $2,000 to unsecured creditors.

Apparently, at the meeting of creditors, the debtor asserted that her son is the "equitable owner" of her home and without the equity in her home included among her assets, the plan will pass muster under section 1325(a)(4). However, given the status of a chapter 7 trustee as a BFP under 11 U.S.C. § 544, an unrecorded interest in the debtor's home is likely to be avoided by a trustee. The discussion in the additional brief filed by the debtor fails to address this point. The brief assumes that an asset impressed with a constructive

trust cannot be obtained by a trustee via section 544(a). This is incorrect. While the property may be impressed with a resulting trust, both outside and inside of bankruptcy, it nonetheless may be subject to claims of a BFP.

Further, the additional brief is not supported by evidence from the debtor's son to the effect that he paid the purchase price or that he has the ability and the inclination to make the mortgage payments and contribute the funds necessary to perform the plan to the debtor.

Consequently, the proceeds realized by the avoidance of the son's interest must be included in the liquidation analysis absent some evidence, not provided by the debtor, that section 544 would not be applicable.

Finally, the scheme described in the debtor's response is an admission that her son embarked on a scheme to defraud a home lender. He was not able to qualify for a mortgage and so he had his mother do it for him which necessitated that she take title. Now that he can afford to make the payments, he wishes to leave title in his mother's name so as to not trigger a due on sale clause, but prevent his mother's bankruptcy estate from capitalizing on the fact that record title is in her name, not his. The court will not abet this scheme.

An examination of the schedules I and J shows that the debtor has no income beyond family assistance and that assistance is insufficient to fund a plan that requires payment of a $63,200 dividend to unsecured creditors.

While family assistance may be considered income for purposes of eligibility under 11 U.S.C. § 109(e), here that support is de minimis, just $100. It seems more an artifice that reality. And, even if considered material, there is no proof from the son of his ability or inclination to contribute it to the debtor throughout the duration of the plan. Hence, the debtor has not carried the burden of proving feasibility. See 11 U.S.C. § 1325(a)(6).

The inability of the debtor to propose a confirmable plan is cause for dismissal or conversion of the case to one under chapter 7, whichever is in the interests of creditors. See 11 U.S.C. § 1307(c)(1) & (c)(5). As noted in the trustee's motion, there are nonexempt assets that may produce a return of approximately $63,200 for unsecured creditors. Given this return, conversion rather than dismissal is in the interest of creditors.

3. 17-21428-A-13 ROBERT/VALERIE KUSHNER — MOTION FOR RELIEF FROM AUTOMATIC STAY
MWM-1 — 3-20-17 [19]
MAGNUM AVIATION, INC. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

tentative ruling.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the premises leased to the debtor. No other relief is awarded.

The movant leased nonresidential real property to the debtor. Prior to the filing of the petition, the movant successfully prosecuted an unlawful detainer action in state court and was awarded possession of the subject property.

Given the filing of the unlawful detainer judgment and the notice to quit that necessarily preceded it, the debtor's right to possession has terminated and there is cause to terminate the automatic stay. In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989). The debtor no longer has an interest in the subject property which can be considered either property of the estate or an interest deserving of protection by section 362(a).

The stay is modified to permit the movant to seek possession of the property. No fees and costs are awarded. The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived.

4. 16-22958-A-13 KELLY TIMOTHY — MOTION FOR RELIEF FROM AUTOMATIC STAY
DWE-1
WELLS FARGO BANK, N.A. VS. — 3-6-17 [63]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The motion seeks relief from the automatic stay in order to permit the movant to foreclose on the debtor's home. The cause asserted for this relief is the debtor's failure to make the post-petition installment payments since February 2017.

However, the plan provides the movant's claim as a Class 1 secured claim. This means that the plan provides for the cure of the pre-petition arrearage owed to the movant as well as the maintenance of post-petition installments as required by the note and deed of trust. The plan requires the trustee, not the debtor, to make both payments to the movant. Hence, the assertion in the supporting declaration that the debtor has not made payments begs the question as to whether the trustee has failed to make payments. The declaration also fails to demonstrate that the debtor has failed to make plan payments to the trustee.

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

Unless the movant was not given notice of the plan (and the movant makes no such assertion), the movant may not argue that the debtor's confirmed plan fails to adequately protect its security interest. See Sun Howard Co. v. Howard (In re Howard), 972 F.2d 639 (5th Cir. 1992). This is because a debtor wishing to retain a creditor's collateral must propose a plan that provides for the secured creditor's retention of its lien and the payment of the present

value of its secured claim. See 11 U.S.C. § 1325(a)(5)(B). Such treatment adequately protects the creditor's interest in its collateral. See e.g., In re Barnes, 125 B.R. 484 (Bankr. E.D. Mich. 1991).

Confirmation of the debtor's plan, then, necessarily entailed a determination that it adequately protected the movant's security interest. The movant is bound by that determination and it may not collaterally attack the confirmation order by bringing a motion for relief from the automatic stay arguing that the plan does not protect its security interests. See 11 U.S.C. § 1327(a). The sole basis for granting relief must be a breach of the plan.

5. 17-20687-A-13 ANGEL/JOSHUA SCHEIDECKER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 3-14-17 [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 plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $745 is less than the $754 in dividends and expenses the plan requires the trustee to pay each month.

Second, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Les Schwab 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."

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. At the meeting of creditors, the debtor disclosed she has been re-employed and that as a result her income and expenses have materially changed. However, the debtor has not amended Schedules I and J to reflect those changes. 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.

6. 17-20687-A-13 ANGEL/JOSHUA SCHEIDECKER — OBJECTION TO CONFIRMATION OF PLAN
EXETER FINANCE CORP. VS. — 3-16-17 [26]

- ☐ 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 that the plan violates the "hanging paragraph" following 11 U.S.C. § 1325(a)(9) will be overruled.

The hanging paragraph provides that "section 506 shall not apply to a claim described in [section 1325(a)(5)] if the creditor has a purchase money security interest," the secured debt was incurred within 910 days of the filing of the petition, and the collateral is a motor vehicle acquired for the personal use of the debtor.

According to the objection, the creditor here holds a claim secured by a purchase money security interest in a vehicle acquired by the debtor for personal use less than 910 days prior to filing this case. Therefore, the debtor may not "strip down" the objecting creditor's claim to the value of the vehicle. The debtor may, however, modify the claim such as by curing the arrears, changing the interest rate, reamortizing the claim, etc.

A review of the plan indicates that the debtor is not attempting to strip down the claim to the value of the vehicle securing it. Indeed, there is no motion to value that vehicle. A valuation motion is a predicate to stripping down the claim. In the absence of a valuation motion, the plan provides at section 2.04 that the creditor's proof of claim will dictate the amount of the claim.

Also, the plan provides for the creditor's claim in Class 2A and specifically provides that the claim will not be reduced to the value of the vehicle.

FINAL RULINGS BEGIN HERE

7. 17-20729-A-13 ELIZABETH BART-PLANGE OPOKU — ORDER TO SHOW CAUSE 3-13-17 [19]

Final Ruling: The order to show cause will be discharged and the case shall remain pending.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $79 installment when due on March 8. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

8. 17-20742-A-13 CHARLES BARNARD JHW-2 — MOTION TO CONFIRM ABSENCE OF STAY 3-3-17 [20]

Final Ruling: This motion for relief concerning the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee 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 above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted and the court confirms the absence of the automatic stay.

11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has expired or has not gone into effect by virtue of 11 U.S.C. § 362(c)(3) & (c)(4). See also 11 U.S.C. § 362(c)(4)(A)(ii).

Before filing this case on February 6, 2017, the debtor filed two earlier cases, Case Nos. 15-29196 and 16-23626, which were dismissed on May 18, 2016 and January 26, 2017, respectively. Both cases were dismissed within one year of the filing of the current case. Hence, section 362(c)(4) is applicable which provides that no automatic stay is created by the filing of a petition by an individual debtor when that debtor has filed two earlier cases that were dismissed within the prior year. And, while the debtor could have filed a motion to request that the stay be imposed, the debtor filed no such motion and the 30-day deadline to file such a motion has expired. See 11 U.S.C. § 362(c)(4)(B).

9. 12-36156-A-13 JAMES/MARILYN CHAPMAN PGM-1 — MOTION TO MODIFY PLAN 2-21-17 [38]

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.

10. 14-27056-A-13 BRADLEY/VALERIE LIGGATT — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
MWB-3 — 3-2-17 [52]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the 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 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 above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion seeks approval of $742.50 in additional fees incurred principally in connection with assisting the debtor in obtaining a refinance that would complete the plan. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and Local Bankruptcy Rule 2016-1, if applicable.

11. 13-29565-A-13 FLOYD CHRISTENSEN — MOTION TO MODIFY PLAN
PGM-3 — 2-23-17 [43]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. The court will not materially alter the relief requested and the issue raised by the trustee can be resolved by a nonmaterial modification to the plan. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be granted on the condition that the plan is further modified in the confirmation order to account for all prior payments made by the debtor under the terms of the prior plan, and to provide for a plan payment of $490 beginning March 25, 2017. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

12. 17-20465-A-13 ELIEZER/EVANGELINE DELMENDO — MOTION TO VALUE COLLATERAL
JMC-2 — 2-28-17 [30]
VS. AMERICAN HONDA FINANCE CORPORATION

Final Ruling: The motion will be dismissed as moot. The case was dismissed on March 1.

13. 17-20465-A-13 ELIEZER/EVANGELINE DELMENDO — MOTION TO VALUE COLLATERAL
JMC-3
VS. AMERICAN HONDA FINANCE CORPORATION — 2-28-17 [35]

Final Ruling: The motion will be dismissed as moot. The case was dismissed on March 1.

14. 14-20375-A-13 GARY COBURN — MOTION TO APPROVE LOAN MODIFICATION
PGM-1 — 3-7-17 [30]

Final Ruling: This motion to modify a home loan 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 will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

15. 16-20477-A-13 ROBIN DIMICELI — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1
MERCEDES-BENZ FINANCIAL SVCS USA, L.L.C. VS. — 3-3-17 [64]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee 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 above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess and to obtain possession of its personal property security, and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has proposed a plan that does not provide for the payment of the movant's claim. Further, the debtor has not paid the claim under the terms of the contract with the movant. Because the debtor has not paid the movant's claim, and will not pay it in connection with the chapter 13 case, there is cause to terminate the automatic stay.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

16. 16-27478-A-13 RAYMOND WOLFE — MOTION TO CONFIRM PLAN 2-21-17 [30]
PLG-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 motion and the proposed plan were not served on the IRS at the second and third addresses listed above.

17. 17-20378-A-13 ENOCH ELISHA MARSH — MOTION TO CONFIRM PLAN 2-17-17 [22]
DEF-2

Final Ruling: The motion will be dismissed as moot. The case was dismissed on March 21.

18. 17-20378-A-13 ENOCH ELISHA MARSH — MOTION TO VALUE COLLATERAL 2-17-17 [27]
DEF-3
VS. NEWPORT BEACH HOLDINGS CORPORATION

Final Ruling: The motion will be dismissed as moot. The case was dismissed on March 21.

19. 17-20378-A-13 ENOCH ELISHA MARSH — MOTION TO VALUE COLLATERAL 2-17-17 [32]
DEF-4
VS. PAUL MANKA

Final Ruling: The motion will be dismissed as moot. The case was dismissed on March 21.

20. 15-22187-A-13 RENEE JUFIAR — MOTION TO MODIFY PLAN 2-21-17 [60]
PGM-4

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.

21. 15-29587-A-13 MICHAEL/CYNTHIA ORTIZ
PGM-6

MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
3-7-17 [115]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the 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 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 above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion seeks approval of $1,200 in additional fees incurred principally in connection with motions to approve a loan modification and a plan modification. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and Local Bankruptcy Rule 2016-1, if applicable.

22. 12-41090-A-13 CHARLES THOMAS
SDB-1

MOTION TO MODIFY PLAN
2-23-17 [28]

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.

23. 15-28096-A-13 LA KEISHA MATLOCK
RK-1

MOTION TO MODIFY PLAN
2-23-17 [81]

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.