UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 23, 2018 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 8. 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 21, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 7, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 14, 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 9 THROUGH 19 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 MAY 14, 2018, AT 2:30 P.M.

Matters to be Called for Argument

1. 18-21211-A-13 EDEN ELMIDO — MOTION TO EXTEND AUTOMATIC STAY 3-24-18 [23]
TRN-2

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

This case was filed on March 1, 2018. Because the debtor filed an earlier chapter 13 case that was dismissed within the prior year to March 1, the automatic stay arising in this case had a duration of 30 days unless extended by the court. See 11 U.S.C. § 362(c)(3). The debtor filed this motion in order to extend the stay beyond the 30th day. While the motion was filed before the 30 days expired, the debtor set it for hearing well after the 30-day period.

Because this motion was filed within the 30-day period but set for hearing outside of the 30-day period, the automatic stay expired and it is too late to extend or impose it in this case. See 11 U.S.C. § 362(c)(3)(B).

2. 18-22143-A-13 MARK BRADY — MOTION TO IMPOSE AUTOMATIC STAY O.S.T. 4-13-18 [10]
PGM-1

- ☐ 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 denied.

The motion will be denied.

This motion is brought pursuant to 11 U.S.C. § 362(c)(3). It is brought to extend the automatic stay beyond the 30th day after the case was filed.

A review of the court's electronic case files, however, reveals that this is the debtor's third case since 2017. The two prior cases were dismissed without completing a plan. The debtor's prior cases are summarized in the table below.

Case No.	Filed	Dismissed	Reason Dismissed
2018-22143	4/10/2018		Pending
2017-24205	6/26/2017	3/26/18	Failure to propose modified plan
2017-20245	1/16/2017	6/5/2017	Failure to make plan payments

Because the two cases filed immediately prior to this case were dismissed within one year of the most recent petition, 11 U.S.C. § 362(c)(4), not section 362(c)(3) is applicable.

When a individual debtor has filed two prior cases that were dismissed with a year of the most recent case, there is no automatic stay unless one is imposed by the court. There is no automatic stay for the first 30 days of the case as this debtor assumes.

The debtor's financial situation has not changed for the better since the last case was dismissed. In fact, it has worsened. The arrears on a home mortgage have increased by approximately $3,5000 and unlike the prior two cases, the debtor now owes in excess of $5,500 in priority debt. The debtor had no such debt in the prior cases. Finally, while the debtor's monthly net income has increased by approximately $100 since the last case, this is not a material difference particularly considering the larger mortgage arrears and the new priority debt.

Based on this record, the court is unconvinced that the debtor's financial situation has changed appreciably. The court cannot conclude that this case is more apt to succeed that the prior cases.

3. 17-22250-A-13 DANDRE/KAREN THOMAS — OBJECTION TO CLAIM
MMM-1
VS. ECMC — 2-12-18 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The objection complains that there is no promissory note attached to the claim. By itself, this is not a basis for disallowing the claim.

When a debtor objects to a creditor's proof of claim that does not conform with Fed. R. Bankr. P. 3001(c) by including copies of the documentation on which it is based, the bankruptcy court must resolve the dispute by reference to the burdens of proof associated with claims litigation.

In In re Heath, 331 B.R. 424, 436 (9th Cir. BAP 2005) and In re Campbell, 336 B.R. 430, 436 (9th Cir. BAP 2005), creditors filed proofs of claim that failed to provide adequate summaries or attach the documentation as required by Fed. R. Bankr. P. 3001. The debtors in these cases objected to the proofs of claim but came forward with no evidence that the claims were not owed. Therefore, the BAP concluded that even though the failure to include the summaries and/or documentation required by Rule 3001 deprived the proofs of claim of their prima facie validity, this was not a basis for disallowing the claims in the absence of evidence the claims were not owed.

Here, then, the mere fact that a promissory note was not attached to the proof of claim, is not enough to disallow the claim absent some evidence that the debtor is not owed by the debtor.

The objection indicates that the claim also is time barred under Cal. Civ. Pro. Code § 337. The loan originated sometime in the 1980's and the last payment was made to the claimant or its predecessor in August 2007.

However, the debtor has made no showing that California law applies to this student loan. Student loans are frequently guaranteed by the federal government. In the event of default, such loans generally have no statute of limitations. See e.g., U.S. v. Phillips, 20 F.3d 1005 (9th Cir. 1994); U.S. v. Sullivan, 68 Fed. Appx. (9th Cir. 2003); U.S. v. Falcon, 805 F.3d 873 (9th Cir. 2015); 20 U.S.C. § 1091a(a).

4. 17-22250-A-13 DANDRE/KAREN THOMAS — OBJECTION TO CLAIM
MMM-2
VS. ECMC — 2-12-18 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The objection complains that there is no promissory note attached to the claim. By itself, this is not a basis for disallowing the claim.

When a debtor objects to a creditor's proof of claim that does not conform with Fed. R. Bankr. P. 3001(c) by including copies of the documentation on which it is based, the bankruptcy court must resolve the dispute by reference to the burdens of proof associated with claims litigation.

In In re Heath, 331 B.R. 424, 436 (9th Cir. BAP 2005) and In re Campbell, 336 B.R. 430, 436 (9th Cir. BAP 2005), creditors filed proofs of claim that failed to provide adequate summaries or attach the documentation as required by Fed. R. Bankr. P. 3001. The debtors in these cases objected to the proofs of claim but came forward with no evidence that the claims were not owed. Therefore, the BAP concluded that even though the failure to include the summaries and/or documentation required by Rule 3001 deprived the proofs of claim of their prima facie validity, this was not a basis for disallowing the claims in the absence of evidence the claims were not owed.

Here, then, the mere fact that a promissory note was not attached to the proof of claim, is not enough to disallow the claim absent some evidence that the debtor is not owed by the debtor.

The objection indicates that the claim is based on a student loan. The debtor's son received the loan and used it to attend a culinary arts school. The debtor asserts that the school was somehow fraudulent. It closed without providing the promised education. However, unless the lender was the school, the acts of the school would not be a defense to the payment of a loan made by the claimant or its predecessor.

5. 17-27670-A-13 DONNETTE DESANTIS — MOTION TO CONFIRM PLAN
RJ-2 — 3-12-18 [39]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $500 of the payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, to pay the dividends required by the plan at the rate proposed by it will take 65 months which exceeds both the maximum duration permitted by 11 U.S.C. § 1322(d) and the proposed plan duration of 54 months. Thus, as it is proposed, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

6. 18-21884-A-13 ERIC/ADINA HENDERSON — MOTION TO EXTEND AUTOMATIC STAY 4-9-18 [10]
BDL-1

- ☐ 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 denied.

This motion is brought pursuant to 11 U.S.C. § 362(c)(3). It is brought to extend the automatic stay beyond the 30th day after the case was filed. This is necessary, according to the motion, because the debtor filed a prior case that was dismissed in the year before the most recent case was filed.

A review of the court's electronic case files, however, reveals that this is the debtor's fourth case since 2015. The three prior cases were all dismissed without completing a plan. The debtor's prior cases are summarized in the table below.

Case No.	Filed	Dismissed	Reason Dismissed
2018-21884	3/30/18	Pending	Pending
2017-26645	10/5/17	2/26/18	Failure to file modified plan
2016-21359	3/4/16	8/17/17	Failure to make plan payments
2015-20290	1/15/15	12/9/15	Failure to make plan payments

Because the two cases filed immediately prior to this case were dismissed within one year of the most recent petition, 11 U.S.C. § 362(c)(4), not section 362(c)(3) is applicable.

When a individual debtor has filed two prior cases that were dismissed with a year of the most recent case, there is no automatic stay unless one is imposed by the court. There is no automatic stay for the first 30 days of the case as this debtor assumes.

The debtor's motion makes no mention of Case No. 16-21359 and does not explain the debtor's inability to make plan payments. The debtor has stated only that Case No. 17-26645 failed because there was a difficulty filing tax returns for 2016. The exact nature of the difficulty is not explained nor why it prevented the debtor from proposing a modified plan.

A review of the debtor's schedules in this case and the last two cases reveals that the debtor's financial situation has deteriorated. The debtor's priority claims have climbed from $0 to more than $20,000 and no headway has been made in reducing the approximate $30,000 arrearage on the debtor's home mortgage.

Based on this record, the court is unconvinced that the debtor's financial situation has changed appreciably. The court cannot conclude that this case is more apt to succeed that the prior cases.

7. 17-23793-A-13 RANJIT SINGH — MOTION TO CONFIRM PLAN
PLC-4 — 3-2-18 [77]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan does not provide for the ongoing installment due on an home mortgage nor for the cure of the pre-petition arrears. The plan does not comply with 11 U.S.C. §§ 1322(b)(2) & (b)(5) and 1325(a)(5)(B).

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive approximately $63,712 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay nothing to unsecured creditors.

Third, the plan proposes a duration of 15 months. However, because the debtor is an over-median income debtor, the duration must be 60 months even though the debtor has no projected disposable income reported on Form 122C. See Danielson v. Flores (In re Flores), 2013 WL 4566428 (Aug. 29, 2013). The plan does not comply with 11 U.S.C. § 1325(b)(4).

Fourth, the debtor has not satisfied the burden of proving the proposed plan's feasibility. There is no convincing proof that the Fiji property can be sold for the amount necessary to fund the plan.

8. 17-23793-A-13 RANJIT SINGH — MOTION TO CONVERT OR TO DISMISS CASE
JPJ-2 — 10-31-17 [44]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

This case was filed on June 5, 2017. The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing. This fact suggests to the court that the debtor either does not intend to confirm a plan or does not have the ability to do so. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1) & (c)(5).

Also, the debtor has failed to pay to the trustee approximately $1,563 as required by the last proposed plan. The inability of the debtor to confirm and a plan and make plan payments is prejudicial to creditors and suggests that no

plan will be feasible. This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

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 $63,000 of equity in unencumbered, nonexempt assets that will benefit creditors if liquidated by a trustee.

FINAL RULINGS BEGIN HERE

9. 16-25215-A-13 MEREDITH LAWLER — MOTION FOR RELIEF FROM AUTOMATIC STAY
EAT-1 — 3-20-18 [19]
WELLS FARGO BANK, N.A. VS.

Final Ruling: The motion has been voluntarily dismissed.

10. 17-23722-A-13 KELLY JONES — MOTION TO MODIFY PLAN
TLA-2 — 3-17-18 [20]

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.

11. 17-25640-A-13 VYACHESLAV/IRYNA NESTERCHUK — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 3-20-18 [32]
CAB WEST, L.L.C. VS.

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 the vehicle it leased to the debtor, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The plan assumes the vehicle lease with the movant and provides for direct payment of the lease by the debtor. The debtor, however, has failed to maintain those lease payments. Three monthly payments have not been made by the debtor. This breach of the plan is cause to terminate the automatic stay.

Because the movant has not established that it holds an over-secured 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.

12. 18-20250-A-13 ANDRES FLORES — OBJECTION TO EXEMPTIONS
JPJ-2 — 3-22-18 [27]

Final Ruling: This objection to the debtor's exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor 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 objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the debtor's default is entered and the matter will be resolved without oral argument.

The objection will be sustained.

The debtor has claimed exemptions aggregating $45,154.21 pursuant to Cal. Civ. Pro. Code § 703.140(b)(1) & (5). However, this statute limits the aggregate amount to $28,225. Therefore, all such exemptions are disallowed without prejudice to claiming amended exemptions aggregating $28,225.

13. 17-28152-A-13 MICHAEL/DOLORES RENDON — MOTION TO CONFIRM PLAN
PGM-1 — 3-12-18 [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.

14. 14-22555-A-13 MELANIO/ELLEN VALDELLON — OBJECTION TO CLAIM
MJD-2
VS. AIS SERVICES, L.L.C. — 3-9-18 [77]

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

The objection will be sustained and the claim disallowed.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on April 11, 1995. Therefore, using this date as the date of breach, when the case was filed on May 13, 2014, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

15. 14-22555-A-13 MELANIO/ELLEN VALDELLON — OBJECTION TO CLAIM
MJD-3
VS. JEFFERSON CAPITAL SYSTEMS, L.L.C. — 3-9-18 [81]

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

The objection will be sustained and the claim disallowed.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on July 30, 1995. Therefore, using this date as the date of breach, when the case was filed on May 13, 2014, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

16. 17-28161-A-13 MICHAEL MCELREATH — MOTION TO CONFIRM PLAN
RS-1 — 3-12-18 [37]

Final Ruling: The motion will be dismissed.

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.

17. 18-21270-A-13 KHAULA NIXON
SMR-1
OAKMONT PROPERTIES ESPLANADE I, L.P. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
3-26-18 [11]

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.

The movant leased residential real property to the debtor. In March 2018, the debtor defaulted in the payment of rent. The default has not been cured. The plan does not propose to assume the lease and cure any default as a condition to assumption. This is cause to terminate the automatic stay as well as any codebtor stay under 11 U.S.C. § 1301.

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) will be waived.

18. 18-21084-A-13 ELIZABETH GOMEZ

ORDER TO
SHOW CAUSE
4-3-18 [33]

Final Ruling: The order to show cause will be discharged as moot. The case was dismissed on April 10.

19. 13-36092-A-13 WOODROW POYNTER
GW-8

MOTION TO
APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
3-20-18 [178]

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 will be granted.

The motion seeks approval of $3,240 in additional fees incurred principally in connection the sale of the debtor's home to 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.