UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 6, 2016 at 1:30 p.m.

THIS CALENDAR IS DIVIDED INTO TWO PARTS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN BOTH PARTS OF THE CALENDAR. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 9. 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 JULY 11, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 27, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 5, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 10 THROUGH 14 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 JUNE 13, 2016, AT 2:30 P.M.

Matters to be Called for Argument

1. 16-20002-A-13 DEMETRIUS BELLAMY — MOTION TO CONFIRM PLAN
RWH-2 — 4-1-16 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $4,280 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

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

Third, the plan fails to provide for the cure of the arrears owed to Ditech on its Class 1 claim in equal monthly installments as required by 11 U.S.C. § 1325(a)(5)(B)(iii)(I).

2. 16-22113-A-13 ARMAR/MARICELA WALKER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 5-17-16 [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 will be conditionally denied.

To pay the dividends required by the plan at the rate proposed by it will take 69 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

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.

3. 16-21327-A-13 JENNIFER SALAZAR — ORDER TO SHOW CAUSE 5-9-16 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $76 due on May 2 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

4. 16-21932-A-13 PAUL LOWE
JPJ-1 — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 5-17-16 [24]

- ☐ 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 case will be dismissed.

First, the debtor failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

Second, to pay the dividends required by the plan at the rate proposed by it will take 194 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

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

Fourth, because the plan fails to specify how debtor's counsel's fees will be approved, either pursuant to Local Bankruptcy Rule 2016-1 or by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017, but nonetheless requires the trustee to pay counsel a monthly dividend on account of such fees, in effect the plan requires payment of fees even though the court has not approved them. This violates sections 329 and 330.

Fifth, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $5,000 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay nothing to unsecured creditors.

5. 16-21932-A-13 PAUL LOWE — OBJECTION TO CONFIRMATION OF PLAN
APN-1
SANTANDER CONSUMER USA INC. VS. — 4-22-16 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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).

6. 16-21835-A-13 CAROLYN HADIN
DEF-2

COUNTER MOTION TO DISMISS CASE
5-19-16 [51]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The counter motion will be conditionally denied.

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

7. 16-22354-A-13 OSCAR DIAZ

ORDER TO SHOW CAUSE
5-19-16 [20]

- ☐ 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 $79 installment when due on May 16. While the delinquent installment was paid on May 26, 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.

8. 16-22067-A-13 JONATHAN MCNABB
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
5-17-16 [16]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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

To pay the dividends required by the plan at the rate proposed by it will take 116 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

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. 15-26281-A-13 STEPHEN TRUMAN — OBJECTION TO EXEMPTIONS 3-9-16 [52]

Tentative Ruling: The objection will be sustained.

Creditor MGM Grand Hotel, L.L.C., objects to the debtor's Cal. Civ. Pro. Code § 703.140(b)(10)(E) exemption in a $186,000 self-directed IRA that holds sports gambling tickets in the possession of MGM at present. MGM also objects to the debtor's wild card exemptions under Cal. Civ. Pro. Code § 703.140(b)(5) as they exceed the allowed statutory maximum amount.

The debtor amended Schedule C after this objection was filed and after the debtor filed its opposition to the objection. Docket 82. This Amended Schedule C continues to rely on Cal. Civ. Pro. Code § 703.140(b)(10)(E), but it also adds 11 U.S.C. § 522(b)(3)(C) as a basis for the exemption.

Amended Schedule C also caps the exemptions under Cal. Civ. Pro. Code § 703.140(b)(5) to the statutory maximum of $26,925, when considered in conjunction with the allowed exemptions under Cal. Civ. Pro. Code § 703.140(b)(1).

As Amended Schedule C caps the exemptions under Cal. Civ. Pro. Code § 703.140(b)(5) to the statutory maximum, this part of the objection will be dismissed as moot.

Turning to the merits of Cal. Civ. Pro. Code § 703.140(b)(10)(E), it provides for the exemption of:

"*The debtor's right to receive . . . (E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:*

"*(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.*

"*(ii) The payment is on account of age or length of service.*

"*(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.*"

The requirements of Cal. Civ. Pro. Code § 703.140(b)(10)(E) mirror the language of the exemption in 11 U.S.C. § 522(d)(10)(E).

MGM asserts that the exception of subsections (i) through (iii) of Cal. Civ. Pro. Code § 703.140(b)(10)(E) applies.

The debtor readily satisfies subsections 703.140(b)(10)(E)(i) and (ii), in that he established the IRA himself and his right to receive payments under the IRA is directly tied to his age.

The crux of the dispute is centered over subsection (iii) of Cal. Civ. Pro. Code § 703.140(b)(10)(E), *i.e.*, whether the IRA qualifies under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

On this point, the issue is an evidentiary one. The court disagrees with the debtor that the objecting party has the burden of persuasion that the exemption has been properly claimed. The Ninth Circuit case cited by the debtor, Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999), is a case decided prior to the Supreme Court's Raleigh decision.

Fed. R. Bankr. P. 4003(c) provides that:

"In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections." See also Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999); Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (B.A.P. 9th Cir. 2010); Hopkins v. Cerchione (In re Cerchione), 414 B.R. 540, 548-49 (B.A.P. 9th Cir. 2009); Kelley v. Locke (In re Kelley), 300 B.R. 11, 16-17 (B.A.P. 9th Cir. 2003).

Despite Rule 4003(c), it is state law that governs the burden of proof to establish the claim of exemption. Diaz v. Kosmala (In re Diaz), Case No. CC-15-1219-GDKi, 2016 WL 937701, at *5-6 (B.A.P. 9th Cir. Mar. 11, 2016); In re Barnes, 275 B.R. 889, 899 (Bankr. E.D. Cal. 2002) (concluding that the burden of proof is determined by state law in light of Supreme Court's decision in Raleigh v. lllinois Department of Revenue, 530 U.S. 15 (2000), which held that the burden of proof on a claim is a substantive element of the claim); see also In re Pashenee, 531 B.R. 834, 836-37 (Bankr. E.D. Cal. 2015) (also concluding that state law governs the burden of proof on the establishment of exemptions, in light of the Raleigh decision).

Cal. Civ. Pro. Code § 703.580(b) prescribes that "[a]t a hearing under this section, the exemption claimant [*i.e.*, the debtor] has the burden of proof" on the exemption claim.

Further, the court cannot force MGM to prove a false negative. It cannot prove that the debtor's IRA does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

The debtor here has presented no evidence on whether he is entitled to the Cal. Civ. Pro. Code § 703.140(b)(10)(E) exemption. There is no evidence that the debtor's self-directed IRA qualifies under sections 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986. As such, the court will sustain the objection as to the exemption claimed under Cal. Civ. Pro. Code § 703.140(b)(10)(E).

The more recently claimed exemption under 11 U.S.C. § 522(b)(3)(C) presents the same issue for the debtor. That is, the debtor has not established that his IRA qualifies under sections 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

The objection will be sustained.

THE FINAL RULINGS BEGIN HERE

10. 11-47635-A-13 TERRY/DENISE GEDATUS — MOTION TO MODIFY PLAN
ELG-1 — 4-29-16 [37]

Final Ruling: The motion will be dismissed without prejudice.

A review of the certificate of service reveals that no creditors were served with the motion and the proposed plan. All creditors should have been served. See Fed. R. Bankr. P. 3015(g).

11. 16-21835-A-13 CAROLYN HADIN — OBJECTION TO CONFIRMATION OF PLAN
WESTCORE DELTA, LLC VS. — 5-10-16 [41]

Final Ruling: The objection will be dismissed without prejudice.

First, if this objection actually is opposition to the debtor's motion to confirm a plan, it should have been filed with docket control no. DEF-2, the docket control number for the debtor's motion.

Second, to the extent this is not opposition to the debtor's motion, it should have had its own docket control number. An objection placed on the calendar by the objecting party for hearing must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c). The purpose of the docket control number is to insure that all documents filed in support and in opposition to a motion or an objection are linked on the docket. This linkage insures that the court as well as any party reviewing the docket will be aware of everything filed in connection with the objection. This objection was filed without a docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the objection that have not been brought to the attention of the court. The court will not permit the objecting party to profit from possible confusion caused by this breach of the court's local rules.

Third, the debtor was served at an incorrect address. Her address is #155, not #144.

Fourth, the notice of the hearing indicates that written opposition must be filed "on or before" the hearing date. This is not what the local rules require. Written opposition must be filed 14 days prior to the hearing if 28 days or more of notice was given of the hearing. If less notice was given, written opposition is not required. See Local Bankruptcy Rule 9014-1(f)(1) & (f)(2). The notice of the hearing should have instructed the debtor which procedure was applicable but it did not. See Local Bankruptcy Rule 9014-1(d)(2) & (d)(3).

12. 16-21835-A-13 CAROLYN HADIN — MOTION TO CONFIRM PLAN
DEF-2 — 4-21-16 [24]

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 third address listed above.

13. 14-21238-A-13 ANTHONY HOLLOWAY — MOTION TO MODIFY PLAN
SJS-2 — 4-29-16 [39]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

14. 15-21667-A-13 KENNETH BEALL — MOTION TO MODIFY PLAN
MC-2 — 4-28-16 [58]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.