UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 9, 2014 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 11. 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 ON JULY 7, 2014 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 23, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 30, 2014. 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 THE ITEMS IN THE SECOND PART OF THE CALENDAR, ITEMS 12 THROUGH 21. INSTEAD, EACH OF THESE ITEMS HAS 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 16, 2014, AT 2:30 P.M.

Matters to be Called for Argument

1. 14-23102-A-13 ANGELA SKELLENGER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 5-22-14 [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 motion to dismiss the case will be conditionally denied.

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $1,859 is less than the $1,991.61 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.

2. 14-23405-A-13 MARIA ANDRICHUK — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 5-22-14 [27]

- ☐ 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, 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.

Second, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor omitted reference to an earlier bankruptcy petition filed in 2012 on this petition. The debtor failed to complete all of Form 22. The debtor also failed to list all business/rental expenses in the detail required by Schedule J. And, the debtor either failed schedule real property scheduled in the prior case or disclose its transfer in the statement of financial affairs. These nondisclosures 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).

Third, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $100 is less than the $3,661.94 in dividends and expenses the plan requires the trustee to pay each month.

Fourth, as written, to pay the dividends required by the plan and the rate proposed by it will take 602 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Fifth, the debtor's ability to complete the plan has not been proven as required by 11 U.S.C. § 1325(a)(6) because there is no proof that the support from a person unknown will be paid. Further, the debtor has under-estimated the arrearage on a secured claim that further affects feasibility.

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. 14-23405-A-13 MARIA ANDRICHUK — OBJECTION TO CONFIRMATION OF PLAN
PD-1
BANK OF AMERICA, N.A. VS. — 5-22-14 [23]

- ☐ 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 to the extent the court has sustained the

trustee's objection to the confirmation of the plan (JPJ-1). That ruling is incorporated by reference.

4. 13-33309-A-13 ERROL/THEANA BARKER — MOTION TO AVOID JUDICIAL LIEN
PGM-4 — 5-6-14 [45]
VS. MONTE BELLO APARTMENTS

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice.

The motion concerns real property that was not exempted by the debtor in the debtor's original schedules. Without an exemption, it is not possible for a judicial lien to impair an exemption. And, while the schedules were amended on May 1, 2014 to include an exemption of the real property, the amended schedule C was not served on any party in interest. Hence, the time period to object to the amended exemption has not yet begun to run.

5. 14-23636-A-13 MARIA ROJO — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 5-22-14 [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 plan does not comply with 11 U.S.C. § 1322(a)(2) because it fails to provide for a priority tax claim in excess of $49,000.

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. 14-23461-A-13 BERNADETTE ROLFS — OBJECTION TO CONFIRMATION OF PLAN
JHW-1 — 5-2-14 [16]
FORD MOTOR CREDIT COMPANY, LLC VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

According to the objecting creditor's proof of claim, it is owed $10,806.34 and it is secured by a Ford vehicle. The debtor concedes that the creditor is over-secured, the vehicle having a value of $13,975. The creditor has come forward with no evidence of a different value. The plan proposes to maintain the contract installment payment due to the creditor and the contract rate of interest, 1.9% will be maintained. This means the claim will be paid in full in approximately the first 20 months of the plan.

The creditor asserts that is entitled to a higher rate of interest under Till v. SCS Credit Corp., 124 S.Ct. 1951 (2004). In Till the Supreme Court held that the appropriate interest rate on impaired secured claims must be determined by a "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 may be required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This 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).

The only change to the contractual relationship between the debtor and the creditor is that the trustee will be paying the creditor. The court does not regard this as a material impairment of the claim. Because the claim is unimpaired, the creditor cannot complain about its treatment. It is being paid as it bargained to be paid.

To the extent the court is incorrect in this conclusion, the 1.9% interest rate passes muster under Till for several reasons. First, the creditor is over-secured. Second, its claim will be paid in full within 20 months. Third, the plan reduces the risk of default by requiring the trustee to pay the claim rather than the debtor. And, fourth, the claim was not in default when the case was filed, suggesting the debtor is a good credit risk. In this circumstance, 1.9% represents an appropriate rate of interest even though it is a discount of 1.35% of the current prime rate.

7. 12-23663-A-13 JOE/YVETTE MARCH — MOTION TO MODIFY PLAN
PGM-11 — 3-27-14 [130]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None.

8. 13-25164-A-13 JOSE LOPEZ — MOTION TO MODIFY PLAN
PGM-3 — 5-5-14 [50]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $2,175 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 owes a domestic support obligation. Local Bankruptcy Rule 3015-1(b)(6) provides:

"The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist,* or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*."

The debtor failed to deliver to the trustee the Domestic Support Obligation Checklist. This checklist is designed to assist the trustee in giving the notices required by 11 U.S.C. § 1302(d).

The trustee must provide a written notice both to the holder of a claim for a domestic support obligation and to the state child support enforcement agency. See 11 U.S.C. §§ 1302(d)(1)(A) & (B). The state child support enforcement agency is the agency established under sections 464 and 466 of the Social Security Act. See 42 U.S.C. §§ 664 & 666. Section 1302(d)(1)(C) requires a third, post-discharge notice to both the claim holder and the state child support enforcement agency.

The trustee's notice to the claimant must: (a) advise the holder that he or she is owed a domestic support obligation; (b) advise the holder of the right to use the services of the state child support enforcement agency for assistance in collecting such claim; and (c) include the address and telephone number of the state child support enforcement agency.

The trustee's notice to the State child support enforcement agency required by section 1302(d)(1)(B) must: (a) advise the agency of such claim; and (b) advise the agency of the name, address and telephone number of the holder of such claim.

By failing to provide the checklist to the trustee, the debtor has disregarded the rule that it be provided, has breached the duty to cooperate with the trustee imposed by 11 U.S.C. § 521(a)(3) & (a)(4). This is cause for dismissal. See 11 U.S.C. § 1307(c)(1).

Third, 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.

The creditor's objection, however, is overruled. The fact that the court has granted relief from the automatic stay does not preclude the debtor from

modifying the plan to cure the default that prompted the motion to modify the stay. And, nothing in chapter 13 precludes a debtor from curing a post-petition default in the making on ongoing payments on a home loan. Accord In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995).

And, the feasibility objection fails to account for the fact that schedules I and J include the monthly mortgage payment as an expense. With the claim now being paid in Class 1, the expense will no longer be the debtor's to pay – it will be paid through the plan. Hence, this amount must be added to the debtor's monthly net income.

9. 14-23586-A-13 TEDDIE/SHARION BROWN
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
5-22-14 [17]

- ☐ 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 does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay unsecured creditors $2,000 but Form 22 shows that the debtor will have $30,322.80 over the next five years.

Second, the debtor has not calculated accurate monthly net income on Form 22. The debtor has deducted an expense for a vehicle that is not being paid by the debtor – it is an expense being paid through the plan. Therefore, it should not be deducted from income on Schedule J. Given this inaccuracy, the debtor has not proven that monthly net income has been accurately disclosed and scheduled. To attempt to confirm a plan while providing inaccurate financial information 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.

10. 14-23689-A-13 JEFFRY LATHROP — MOTION TO VACATE O.S.T. 5-29-14 [21]
JPJ-2

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Given the timely objection to confirmation by Ocwen, the confirmation should not have been lodged and the court entered it improvidently. Accordingly, this motion will be granted and the confirmation order will be revoked.

11. 14-23689-A-13 JEFFRY LATHROP — OBJECTION TO CONFIRMATION OF PLAN 5-22-14 [15]
BHT-1
OCWEN LOAN SERVICING, LLC VS.

- ☐ 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 conditionally overruled. Provided the plan is modified in the confirmation order to provide for the additional and approximate $1,800 arrearage claimed by the objecting creditor, the plan will be confirmed. This will necessitate an increase in plan payment the debtor must make in order to provide for the higher arrears and the additional trustee compensation. As modified, the plan will satisfy 11 U.S.C. §§ 1322(b)(2) and 1325(a)(5)(B).

FINAL RULINGS BEGIN HERE

12. 14-23400-A-13 JPJ-1 — MARIO VALADEZ AND TERRI MALDONADO — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 5-22-14 [21]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. The debtor's written response to the objection concedes its merit. Accordingly, it is removed from calendar for resolution without oral argument.

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

The plan proposes a duration of 36 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 22. 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).

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. 14-23811-A-13 — KA WAI SHUN — ORDER TO SHOW CAUSE 5-19-14 [21]

Final Ruling: The order to shwo cause will be discharged because it is moot. The case was dismissed on May 21, 2014.

14. 11-46915-A-13 WW-1 — JOSEPH ST. ANGELO — MOTION TO MODIFY PLAN 4-28-14 [41]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be denied given the debtor's concession that the objection has merit. The debtor has 30 days from the date of the hearing on this motion to file a modified plan and a motion to confirm it.

15. 13-35522-A-13 BLG-1 — ARLENE/MICHAEL MUNOZ — MOTION TO MODIFY PLAN 4-25-14 [23]

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.

16. 10-42534-A-13 CECILIA PEREZ — MOTION TO APPROVE LOAN MODIFICATION
PGM-3 — 5-6-14 [39]

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 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 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.

17. 12-30941-A-13 RICHARD BOTTOMS AND DAGMAR NITSCHKE-BOTTOMS — MOTION TO MODIFY PLAN
CYB-4 — 4-25-14 [47]

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.

18. 14-22555-A-13 MELANIO/ELLEN VALDELLON — MOTION TO CONFIRM PLAN
SJS-1 — 4-24-14 [31]

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.

19. 10-22986-A-13 TERRI/TONY BREY
APN-1
TOYOTA MOTOR CREDIT CORP. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
5-8-14 [62]

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 in part.

To the extent the motion is based on the fact that the original purchase money loan has matured, the objection will be overruled. The plan provides for payment in full of the secured claim through the plan. The original contract terms are irrelevant and there is no evidence with the motion that the plan is in default except in another respect.

However, the plan does require the debtor to maintain the liability and hazard insurance required by the original contract and state law. The debtor has failed to do so. This is cause to terminate the automatic stay. 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.

No fees and costs are awarded. The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived.

20. 13-35888-A-13 ROSA NARANJO
CAH-1

MOTION TO
CONFIRM PLAN
4-22-14 [35]

Final Ruling: The debtor has voluntarily dismissed the motion.

21. 14-22790-A-13 AMANDA SHRINER
SNM-1
EILEEN GALLOWAY VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-17-14 [29]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. The debtor has filed a non-opposition to the motion. Accordingly, it is removed from calendar for

resolution without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1).

The movant leased residential property to the debtor. Prior to the filing of the case, the debtor defaulted in the payment of rent. Since the filing of the case, the debtor has failed to pay one month's rent and has not assumed the lease. The proposed plan, by omitting reference to the lease in section 3.02, will reject the lease on the confirmation of the plan. The failure to pay rent and the failure to assume the lease is a clear indication that the property is unnecessary to the debtor's reorganization and that the movant's delinquent rent will not be paid. This is cause to terminate the automatic stay.

The 14-day period specified in Fed. R. Bankr. P. 4001(a)(3) will be waived.

Because the movant is not an over-secured creditor,, the court awards no fees and costs. 11 U.S.C. § 506(b).