UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 18, 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 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 16, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 2, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 9, 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 10 THROUGH 18 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 25, 2018, AT 2:30 P.M.

Matters to be Called for Argument

1. 18-22006-A-13 ELI/KELSEY MARCHUS — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 5-17-18 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, if requested by the U.S. Trustee or the chapter 13 trustee, a debtor must produce evidence of identity and a social security number or a written statement that such documentation does not exist. See Fed. R. Bankr. P. 4002(b)(1)(A) and (B). In this case, the debtor has breached the foregoing duty by failing to provide evidence of the debtor's social security number. This is cause for dismissal.

Second, the debtor has not established that the plan will pay all projected disposable income to unsecured creditors as required by 11 U.S.C. § 1325(b) because the debtor has erroneously deducted business expenses when calculating current monthly income. Gross business income, without expense deduction, is part of the debtor's current monthly income. Once total current monthly income is calculated, business expenses may be deducted as an expense when calculating current monthly income. Accord In re Weigand, 386 B.R. 238 (9th Cir. BAP 2008). The distinction is material here because with gross business income a part of the debtor's current monthly, the debtor's current monthly income exceeds the state median income for a comparably sized household. As a result, the debtor must complete Form 122 in its entirety in order to calculate projected disposable income. The debtor has failed to complete the portion of Form 122 necessary to calculate projected disposable income. Without doing so, the debtor cannot prove compliance with 11 U.S.C. § 1325(b) or that the plan will be the required duration.

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. 18-20117-A-13 CARSON BATES — MOTION TO CONFIRM PLAN
RS-1 — 5-7-18 [41]

- ☐ 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 $3,203 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, even if the plan payments were current, the plan would not be feasible because the monthly plan payment of $1,625 is less than the $4,626.24 in dividends and expenses the plan requires the trustee to pay in the fourth plan month, and is less than the $1,683.89 the trustee is required to pay in months 12 through 60 of the plan.

Third, to pay the dividends required by the plan at the rate proposed by it will take 80 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Fourth, even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the post-petition arrears owed to Wells Fargo on its Class 1 home loan claim. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

3. 13-34630-A-13 MATTHEW/LISA TEDESCHE — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
GW-2 — 5-10-18 [41]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

While the court concludes the requested compensation is both reasonable and necessary, the motion comes too late. The debtor has completed all plan payments and it is no longer possible to pay additional compensation through the plan as requested by counsel.

4. 18-23178-A-13 KATHLEEN HILL — MOTION TO EXTEND AUTOMATIC STAY
PGM-1 — 6-4-18 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

This is the second chapter 13 case filed by the debtor. A prior case, Case No. 17-25491, was dismissed on March 26, 2018 because the debtor failed to pay the installment filing fee as ordered by the court. Further, a review of the docket of the prior case reveals that the debtor failed to confirm a plan and was unable to make the payments required by her proposed plan.

Hence, the debtor's earlier chapter 13 case was dismissed within one year of the most recent petition.

According to the schedules filed in the first case, the debtor estimated she would have monthly net income of $1,191 with which to fund a plan. Her secured debt totaled $122,500 and unsecured debt was %$5,126.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case.

Section 362(c)(3)(B) allows a debtor to file a motion requesting the continuation of the stay. A review of the docket reveals that the debtor has filed this motion to extend the automatic stay before the 30th day after the filing of the petition. The motion will be adjudicated before the 30-day period expires.

In order to extend the automatic stay, the party seeking the relief must demonstrate that the filing of the new case was in good faith as to the creditors to be stayed. For example, in In re Whitaker, 341 B.R. 336, 345 (Bankr. S.D. Ga. 2006), the court held: "[T]he chief means of rebutting the presumption of bad faith requires the movant to establish 'a substantial change in the financial or personal affairs of the debtor . . . or any other reason to conclude' that the instant case will be successful. If the instant case is one under chapter 7, a discharge must now be permissible. If it is a case under chapters 11 or 13, there must be some substantial change."

In this case, the debtor's income and debt situation is largely unchanged. Her monthly net income is $1145 and her secured debt totals $123,000 and her unsecured debt is $5,126.

There have been some financial improvements. Extended family now resides with the debtor and is sharing expenses and the debtor has been approved for $1,900 social security disability benefit. This is a sufficient change of circumstance to suggest this case is more likely to be successful.

5. 17-20287-A-13 BRANDI DECHAINE — MOTION TO MODIFY PLAN
RS-4 — 4-30-18 [62]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

Even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit

the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the post=petition arrears owed to Ocwen on a Class 1 home loan. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

6. 15-23395-A-13 LISA XIONG — MOTION TO SET ASIDE DISMISSAL OF CASE 6-2-18 [25]
MS-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 trustee served a notice of default on March 30, 2018. It recited that the debtor had failed to pay $1,000 through March 2018 and that a further $500 would become due on April 25. If this default was not cured, the trustee asked that the case be dismissed.

This dismissal procedure is authorized by Local Bankruptcy Rule 3015-1(g) which provides:

(1) If the debtor fails to make a payment pursuant to a confirmed plan, including a direct payment to a creditor, the trustee may mail to the debtor and the debtor's attorney written notice of the default.

(2) If the debtor believes that the default noticed by the trustee does not exist, the debtor shall set a hearing within twenty-eight (28) days of the mailing of the notice of default and give at least fourteen (14) days' notice of the hearing to the trustee pursuant to LBR 9014-1(f)(2). At the hearing, if the trustee demonstrates that the debtor has failed to make a payment required by the confirmed plan, and if the debtor fails to rebut the trustee's evidence, the case shall be dismissed at the hearing.

(3) Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with

the motion to modify the chapter 13 plan.

(4) If the debtor fails to set a hearing on the trustee's notice, or cure the default by payment, or file a proposed modified chapter 13 plan and motion, or perform the modified chapter 13 plan pending its approval, or obtain approval of the modified chapter 13 plan, all within the time constraints set out above, the case shall be dismissed without a hearing on the trustee's application.

Thus, a debtor receiving a Notice of Default has three alternatives. (1) Cure the default within 30 days of the notice of default as well as pay the additional payment that would come due during the 30-day period to cure the default. (2) Within 30 days of the notice of default, file a motion to confirm a modified plan and a modified plan in order to cure/suspend the default stated in the notice of default. (3) Contest the notice of default by setting a hearing within 28 days of the notice of default on 14 days of notice to the trustee.

Here, on May 21, the trustee reported that the debtor had not availed herself of any of these alternatives and he requested that the case be dismissed. A dismissal order was entered on May 22.

On June 2, the debtor filed this motion to vacate the dismissal. The motion asserts that the debtor was hospitalized from March 12 to April 3 and during that period was unable to contact her attorney. On April 3 she paid $500 to the trustee and on May 2 she paid a further $500.

However according to the notice of default, the debtor had until April 30 to cure the default and to make her April plan payment. She was not hospitalized from April 4 and beyond. The fact that she made partial payments on April 3 and May 2 shows that she was aware of the notice of default and the impending deadline.

Based on this sequence of events, the court concludes that the debtor received the notice of default, appreciated the impending deadline, had sufficient time to cure the default or to exercise another alternative, but failed to act timely. It deserves further note that the trustee waited well beyond the April 30 deadline to request dismissal. There is no excusable neglect or mistake. There was cause for dismissal. See 11 U.S.C. § 1307(c)(6).

7. 17-23129-A-13 TIMOTHY NEHER
TLN-36
VS. MARC NOBLE

MOTION TO DETERMINE SECURE STATUS OF CLAIMS AND TO AVOID LIEN
5-21-18 [297]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

The motion seeks four forms of relief and it concerns proof of claim #26. First, the court is asked to determine consistent with an earlier motion filed in connection with another creditor, that the subject real property has a value of $470,000. Second, because there is a senior unavoidable lien held by Lendinghome of $470,000, the debtor seeks a determination that the ostensible secured claim of Mr. Noble is in fact unsecured. Third, the debtor asks that Mr. Noble's lien be avoided. Finally, the debtor seeks to disallow Mr. Noble's

secured claim because it is based on a "false" and stale mechanic's lien and also disallow the priority portion of the claim.

As to the last request for relief, the motion will be dismissed without prejudice. This relief amounts to an objection to the proof of claim filed by Mr. Noble on October 17, 2017. When the party objecting to a proof of claim requires a written response to the objection, 44 days' notice must be given. Local Bankruptcy Rule 3007-1(b)(1). Here, only 30 days of notice of the hearing was given. Notice is deficient.

The motion to value the subject property at $470,000 will be granted. It is encumbered by a first deed of trust held by Lendinghome. The first deed of trust secures a loan with a balance of approximately $470,000 as of the petition date. Therefore, Mr. Noble's claim secured by a lien is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is $0, because the value of the respondent's collateral is $0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

To the extent the debtor seeks the "avoidance" of Mr. Noble's lien, the motion will be dismissed without prejudice. There are two problems. This request is premature. Mr. Noble's lien will remain of record until the plan is completed unless his claim is disallowed on other grounds. This is required by 11 U.S.C. § 1325(a)(5)(B)(i). Only when the plan is completed, will the court will entertain an adversary proceeding to nullify the lien. See also 11 U.S.C. § 1325(a)(5)(B)(I).

8. 17-23129-A-13 TIMOTHY NEHER
TLN-38
VS. MARC NOBLE

MOTION TO
DETERMINE SECURE STATUS OF CLAIMS
AND TO AVOID LIEN
5-21-18 [305]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice. The motion identifies the respondent as Marc Noble but the motion was served Winn Law Group, A.P.C. If the debtor wishes to object to the proof of claim of Winn or value its collateral, he must start anew. Serving a motion directed to another creditor is insufficient process. Also, service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant." The debtor served the motion on Winn Law Group, A.P.C., without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process."

The court notes further that Winn Law Group is not the claimant. It is agent for Payment Solutions. Sending Winn Law Group an objection which identifies the respondent as Mr. Noble and does not identify its client, Payment Solutions, is misleading and is insufficient notice and service.

9. 17-23129-A-13 TIMOTHY NEHER
TLN-35

MOTION TO CONFIRM PLAN
5-14-18 [293]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None. Appearances required.

FINAL RULINGS BEGIN HERE

10. 15-28900-A-13 RONNA FLAIG — MOTION TO MODIFY PLAN
KWS-1 — 5-10-18 [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 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. 16-24200-A-13 LESLIE LEWIS — MOTION TO MODIFY PLAN
MC-2 — 5-7-18 [52]

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.

12. 17-23129-A-13 TIMOTHY NEHER — MOTION TO VALUE COLLATERAL
TLN-37
VS. SAFE CREDIT UNION — 5-21-18 [301]

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor 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 trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The

debtor's evidence indicates that the replacement value of the subject property is $11,500 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $11,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $11,500 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

13. 18-23140-A-13 TROY FINLEY — ORDER TO SHOW CAUSE 6-1-18 [15]

Final Ruling: The order to show cause will be discharged as moot. The case was dismissed on June 5.

14. 17-27350-A-13 RICCY/TESSIE LABITORIA — MOTION TO CONFIRM PLAN 5-3-18 [72]
TAG-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.

15. 18-20861-A-13 CHRISTOPHER/NEVA FULLER — MOTION TO CONFIRM PLAN 5-9-18 [48]
DBL-2

Final Ruling: The motion will be dismissed because it is moot. The case was dismissed on May 22.

16. 18-20571-A-13 MARK ENOS — MOTION TO CONVERT OR TO DISMISS CASE 4-30-18 [61]
JPJ-2

Final Ruling: This motion to convert the case to one under chapter 7 or to dismiss it 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 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 trustee and the respondent creditor

are entered and the matter will be resolved without oral argument.

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

The debtor has failed to pay to the trustee approximately $6,200 as required by the proposed plan. As noted in the motion, this is not the first time the debtor has failed to make timely plan payments. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal or conversion, whichever is in the best interests of creditors. 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 $30,000 of equity in unencumbered, nonexempt assets that will benefit creditors if liquidated by a trustee.

17. 17-20691-A-13 RAYMOND/KRISTY O'DELL — MOTION TO CONVERT OR TO DISMISS CASE 5-17-18 [19]
JPJ-1

Final Ruling: The motion will be dismissed because it is moot. The case was dismissed on June 1, 2018.

18. 18-20493-A-13 SHELLY MILERA — MOTION TO CONFIRM PLAN 4-28-18 [23]
JB-1

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.