UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 25, 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 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 AUGUST 29, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 17, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 22, 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 12 THROUGH 20 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 AUGUST 1, 2016, AT 2:30 P.M.

Matters to be Called for Argument

1. 16-23304-A-13 LA WANDA LOWE — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 7-7-16 [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 motion to dismiss the case will be dismissed.

First, the debtor has failed to commence making plan payments and has not paid approximately $250 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, even if the payments were current, the plan would not be feasible because the monthly plan payment of $250 is less than the $16,491 in dividends and expenses the plan requires the trustee to pay each month.

Third, to pay the dividends required by the plan at the rate proposed by it will take 601 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Fourth, numerous secured claims have been misclassified. The claim of Santander is listed in both Class 1 and Class 2. These classes are mutually exclusive. The claim belongs in one class not two. Also, Fed Loan Servicing, Navient and SCL have their claims lists in Class 5 which is reserved for claims entitled to priority under 11 U.S.C. § 507. There is no apparent basis for considering these claims to be priority claims.

2. 16-23209-A-13 MICHAEL RAPPORT — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 7-6-16 [16]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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.

First, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $17,875 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay nothing to unsecured creditors.

Second, even though the debtor has new employment, the debtor has failed to amend Schedules I and J to reflect the additional income. This was requested by the trustee. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). 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).

3. 16-23209-A-13 MICHAEL RAPPORT — OBJECTION TO CONFIRMATION OF PLAN 7-7-16 [19]
MWP-1
THE LEONARD W. DAHLBECK AND RITA L. DAHLBECK REVOCABLE TRUST 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 sustained in part.

The objecting creditor holds a debt secured by real property that is not owned by the debtor. It is owned by a corporate entity which in turn is owned by the debtor. Even though the debtor does not own the property, the debtor proposes to pay the claim as a secured claim. As to the debtor, the claim is not secured and treating it as such is an unfair discrimination in violation of 11 U.S.C. § 1322(b)(1).

There is no need to reach the interest rate objection.

4. 16-21037-A-13 THEODORE POMPA — OBJECTION TO CLAIM 5-17-16 [138]
RHM-12
VS. NDS, L.L.C.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The debtor asserts in this objection that he does not know who the claimant is and to his knowledge he owes it no money.

This claim began as a credit card debt owed to First USA, an entity owned by Chase Manhattan Bank. Unifund CCR Partners purchased this account and eventually sued the debtor in state court on the account. It obtained a state court judgment against the debtor in 2008. The judgment was assigned to NDS, the claimant, in April 2012 and the claimant renewed its judgment against the

debtor in March 2015.

Essentially, this objection is a collateral attack on the judgment in favor of Unifund and its assignment of the judgment to the claimant. A federal trial court is barred by the Rooker-Feldman doctrine from reversing or modifying a state court judgment. Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Ct. App. v. Feldman, 460 U.S. 462 (1983).

The assertion that the debtor was not properly served with the underlying state court suit and therefore the state court did not have personal jurisdiction over him, is not borne out by the record. There is nothing in the record indicating how, when, and where the debtor was served with the original summons and complaint. This is despite the continuance of the hearing to give the debtor the opportunity to produce such evidence. While the renewal of judgment may have been served by mail at a former address of the debtor, this in no way invalidates the original judgment assigned to the claimant.

That said, nothing herein shall prejudice the debtor from returning to state court to attack the judgment in that forum.

5. 16-24341-A-13 PAMELA AMUNDSEN — MOTION TO EXTEND AUTOMATIC STAY
RWH-1 — 7-6-16 [8]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This is the second chapter 13 case filed by the debtor. A prior case was dismissed within one year of the most recent petition.

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."

Here, it appears that the debtor and her spouse divorced during the earlier case and were unable to continue with the case separately. They have each

commenced separate cases to address their debts. This is a sufficient change in circumstances rebut the presumption of bad faith.

However, as to the IRS the motion will be denied. 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. Because the IRS was not served at the third address, the automatic stay will not be extended as to the IRS.

6. 16-23253-A-13 LISA ALLEN-COOPER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 7-6-16 [13]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled and the motion to dismiss the case will be denied on the condition that monthly dividend payable on administrative claims is reduced to $700 and the treatment of Toyota Motor Credit's secured claim is moved to Class 2A in the confirmation order.

7. 16-23255-A-13 RICHARD HOPE — MOTION TO AVOID JUDICIAL LIEN
SNM-1 — 5-24-16 [8]
VS. AHERN RENTALS, INC.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice.

Schedule A lists real property in Vacaville as having a value of $300,800. Schedule A states that the debtor alone owns this property.

Schedule D indicates that the property is encumbered by two liens, a judicial lien held by Ahern Rentals and securing a debt of $15,847, and a consensual lien held by Bank of America securing a claim of $13,493.

On Schedule C, the debtor claimed $149,131.22 of the equity in the Vacaville property as exempt pursuant to Cal. Civil Pro. Code § 704.730. No party in interest has objected to that exemption.

Based on the information in the schedules, application of the statutory formula in 11 U.S.C. § 522(f)(2)(A) would result in the denial of the motion. That is, because the sum of the judicial lien, the consensual lien, and the exemption, $15,847 + $13,493 + $149,131.22 = $178,471.22, do not exceed the $300,800 value of the property, the judicial lien does not impair the debtor's exemption.

However, the motion adds one additional fact. The property is encumbered by a second consensual lien owed to Bank of America securing a debt of $138,175.78. According to the response to the trustee's objection, this consensual lien is in first priority position and "is not included as a debt in debtor's petition and plan" because it "is in [the debtor's] wife's name only." She is not a

debtor in this case.

This raises a number of issues that are not addressed in the motion.

First, is the interest in the property listed on Schedule A the entire fee interest or is the property jointly owned with the spouse? Is the value the value of the entire fee interest or just the debtor's interest?

Second, if the spouse is not on title, and if the senior Bank of America lien was incurred only by the spouse, how was the spouse able to encumber property she did not own?

Third, if the senior Bank of America lien encumbers the debtor's interest in the property, it is a claim in this case, whether or not he incurred the debt and granted the security interest. 11 U.S.C. § 101(5); Johnson v. Home State Bank, 111 S.Ct. 2150 (1991); In re Baker, 736 F.2d 481, 482 (8th Cir. 1984). Therefore, it should be scheduled and Bank of America given an opportunity to participate in this case and this motion in connection with this claim.

Fourth, if both spouses incurred the debt, the non-debtor spouse should be listed as a co-debtor on Schedule H.

Finally, the court is not satisfied with the evidence of the value of the property. The debtor's declaration states an opinion of value but it is based on his review of comparable sales, and discussions with realtors and brokers.

The debtor is not an expert entitled to render an opinion of value under Fed. R. Evid. 702 as an expert witness. As an owner of the property, the debtor may merely give an opinion based on his personal familiarity with the property, but he is not allowed to testify concerning his research and what others have told him concerning the value of comparable properties. See Barry Russell, BANKRUPTCY EVIDENCE MANUAL § 701:2 (West 2013-2014 ed.). Hence, the debtor cannot give an opinion of value based on anything other than the fact that he owns the property. See Fed. R. Evid. 701(c) (prohibiting lay witnesses from testifying in the form of an opinion based on "scientific, technical, or other specialized knowledge"). From what the debtor states in his declaration, the court concludes that he either is repeating what others have told him or he attempting to give an expert opinion without laying a foundation of his expertise.

8. 16-23255-A-13 RICHARD HOPE — OBJECTION TO CONFIRMATION OF PLAN
JPJ-01 — 7-6-16 [36]

- ☐ 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 in part.

The debtor has the burden of proving that the plan will pay unsecured creditors the present value of what would be received in a chapter 7 liquidation. See 11 U.S.C. § 1325(a)(4). Because the debtor's motion to avoid a judicial lien raises issues regarding the debtor's interest in a home and its value, the court concludes that the debtor has not satisfied this burden.

9. 16-23255-A-13 RICHARD HOPE — OBJECTION TO CONFIRMATION OF PLAN
PPR-1
THE BANK OF NEW YORK MELLON VS. — 6-17-16 [27]

- ☐ 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 overruled.

First, because the claim of the objecting creditor requires the debtor to pay taxes and insurance, and because the proposed plan does not modify this requirement, there is no need for the plan to require the debtor to pay taxes and insurance.

Second, according to the debtor, the subject property securing this claim has a value of approximately $300,800. The property is encumber by a senior lien of approximately $150,000 and the objecting creditor's junior secured claim is less than $14,000. Hence, there is a 54% equity cushion. Given this cushion and the fact that the security is real estate, the court concludes that a 4% interest rate on the claim is sufficient. This is .5% improvement on the prime rate and the claim is fully amortized in the plan over 5 years. This satisfies 11 U.S.C. § 1325(a)(5)(B) and Till v. SCS Credit Corp., 541 U.S. 465, 478-480 (2004).

10. 11-48790-A-13 WALTER/SHERRI BRINKERHOFF — MOTION TO MODIFY PLAN
SJS-3 — 6-14-16 [67]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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).

11. 16-23290-A-13 RICARDO VEGA
JPJ-01

OBJECTION TO
CONFIRMATION OF PLAN
7-6-16 [24]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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.

First, the debtor has failed to give the trustee financial records for a closely held business. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). 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).

Second, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor failed to list an unexpired lease on Schedule G. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Third, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive $15,000 in a chapter 7 liquidation as of the effective date of the plan. This plan will pay nothing to unsecured creditors.

THE FINAL RULINGS BEGIN HERE

12. 16-20233-A-13 YIMEN MENDEZ — MOTION TO CONFIRM PLAN
MB-3 — 6-8-16 [43]

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.

13. 11-46348-A-13 BOBBYE SYKES-PERKINS — MOTION TO VACATE DISMISSAL OF CASE
SCG-3 — 6-27-16 [53]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be conditionally granted.

This case was dismissed on June 8, 2016. Through April 27, 2016, the debtor failed to make plan payments totaling $1,340. This prompted the trustee to issue a notice of default pursuant to Local Bankruptcy Rule 3015-1(g). It noted this default and also demanded the additional $670 due on May 25, a total amount of $2,010.

This notice of default procedure, as authorized by Local Bankruptcy Rule 3015-1(g), 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 paying 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.

Because the debtor in this case exercised none of these alternatives by the May 28 deadline, the trustee requested dismissal on June 8 and the court dismissed the case that day.

However, as explained in this motion, prior to the dismissal, the debtor had paid two-thirds of the amount due and tendered the remainder four days after the dismissal. The motion to vacate the dismissal followed shortly thereafter.

As explained in the motion, both the default and the failure to cure the default were the result of a significant medical problem. Therefore, the motion will be granted. However, if the June and July payments are not paid within 7 days of the entry of an order on this motion, or if there is any future payment default, the case will be dismissed on the trustee's ex parte application.

14. 15-22548-A-13 MARGARET CLARK — MOTION TO MODIFY PLAN
JPJ-3 — 6-16-16 [70]

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.

15. 12-32154-A-13 WILLIAM/GINA BAYLESS — MOTION TO MODIFY PLAN
JPJ-3 — 5-23-16 [81]

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

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

16. 16-20556-A-13 JOSEPH/LISA TARANGO — MOTION TO CONFIRM PLAN
CJY-3 — 5-31-16 [38]

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.

17. 15-26281-A-13 STEPHEN TRUMAN — OBJECTION TO CONFIRMATION OF PLAN
HSM-7 — 6-22-16 [144]
KIMBERLY HUSTED VS.

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 objection will be dismissed without prejudice. In the debtor's motion to dismiss the case (docket #169) the debtor concedes that the proposed plan cannot be confirmed over the trustee's objection under 11 U.S.C. § 1325(b) (docket #150). Given this admission, it is unnecessary to address other objections.

18. 15-26281-A-13 STEPHEN TRUMAN
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN 6-23-16 [150]

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 objection will be sustained in part. In the debtor's motion to dismiss the case (docket #169) the debtor concedes that the proposed plan cannot be confirmed over the trustee's objection under 11 U.S.C. § 1325(b). Given this admission, the objection is sustained. It is unnecessary to address other objections.

19. 15-26281-A-13 STEPHEN TRUMAN
YV-1
PARTNERS FEDERAL CREDIT UNION VS.

OBJECTION TO CONFIRMATION OF PLAN 6-22-16 [149]

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 objection will be dismissed without prejudice. In the debtor's motion to dismiss the case (docket #169) the debtor concedes that the proposed plan cannot be confirmed over the trustee's objection under 11 U.S.C. § 1325(b) (docket #150). Given this admission, it is unnecessary to address other objections.

20. 16-20883-A-13 WALTER FLETSCHER
APN-1
SANTANDER CONSUMER USA, INC. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY 6-23-16 [87]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

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

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

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