UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

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

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 17. 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 OCTOBER 3, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 19, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 26, 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 18 THROUGH 28 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 SEPTEMBER 12, 2016, AT 2:30 P.M.

Matters to be Called for Argument

1. 16-21203-A-13 RAYMOND/CHRISTINE BELCHER — OBJECTION TO MORTGAGE PAYMENT CHANGE ETC
PGM-2 — 7-20-16 [70]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The creditor has withdrawn the notice of mortgage payment change to which the debtor objects. The objection is moot.

To the extent the withdrawal does not resolve the objection, the objection will be overruled. It complains that the notice is not supported by evidence and is one of several notices filed by the creditor.

The fact that several notices have been filed, by itself, means nothing other than the creditor asserts the payment has changed several times. And, the notices facially comply with the requirements of Fed. R. Bankr. P. 3002.1 and official form 410S1.

The parties shall bear their own fees.

2. 15-28204-A-13 REGINA PAGE — MOTION TO CONFIRM PLAN
PGM-1 — 7-27-16 [36]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The petition fails to list a prior bankruptcy case, Case No. 08-66097. 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).

3. 16-23904-A-13 JOHN/SANDRA BUTLER — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 8-15-16 [13]

- ☐ 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 debtor has failed to commence making plan payments and has not paid approximately $3,358 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, 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.

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the petition fails to list a prior bankruptcy case filed within the prior eight years. 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).

Fourth, the plan misclassifies a secured tax claim as a priority tax claim. While both types of claims must be paid in full, a secured claim is entitled to accrue interest and a secured tax claim is entitled to interest at the rate required by applicable nonbankruptcy law. See 11 U.S.C. §§ 511, 1322(a)(2), 1325(a)(5)(B). Therefore, the proposed plan cannot be confirmed because it fails to provide for interest on the tax claim.

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.

4. 16-25315-A-13 SHERI AVANTS — OBJECTION TO CERTIFICATION BY DEBTOR 8-29-16 [15]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained.

When this case was filed, the debtor filed a certification that she rented a residence from Winsted Apartments and that it had obtained a judgment against her for possession of the property. The debtor's certification goes on to state that state law allows her to remain in the property provided she pays the

delinquent rent.

When a state court unlawful detainer has been adjudicated in favor of the lessor and the lessor is awarded possession, 11 U.S.C. § 362(b)(22) provides that the automatic stay does not protect the debtor's possession of the property unless the debtor complies with 11 U.S.C. § 362(l).

However, in order for section 362(l) to be applicable in this case, California law must provide that notwithstanding a judgment for possession in favor of the lessor, the lessee may remain in possession by paying the delinquent rent. The court is unaware of any such California law. In fact, upon expiration of the 3-day notice to pay or quit that necessarily preceded the unlawful detainer action, the lessee's tenancy ends. See In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988).

Nevertheless, assuming California law permits a lessee to retain possession notwithstanding an adverse judgment in an unlawful detainer by tendering the delinquent rent, the debtor must comply with section 362(l). It requires two certifications. The first requires a deposit with the clerk of rent that will come due during the 30-day period following the filing of the bankruptcy petition. If this is done, the debtor may file a second certification that must be accompanied by all delinquent pre-bankruptcy rent.

In this case, the debtor's first certification was not accompanied by the rent for the first 30-days. And, the second certification has not been made. While it can be filed anytime prior to September 11, the debtor cannot meet the deadline because the case was dismissed on August 30.

5. 16-24416-A-13 ANTHONY REDES — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 8-15-16 [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 overruled and the motion to dismiss the case will be denied.

While the rights and responsibilities agreement required by Local Bankruptcy Rule 2016-1 was filed, it was missing a page. However, a complete copy of the agreement was filed on August 17.

Also, the debtor has provided proof of his social security number and the court has valued the collateral of Ditech.

6. 13-29025-A-13 FELIPE/AVELINA MIGUEL — MOTION TO MODIFY PLAN
PGM-2 — 7-29-16 [33]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $2,900 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, 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 Bayview. 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).

7. 16-24528-A-13 RICHARD/SALLY BROWN — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 8-17-16 [19]

- ☐ 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.

Absent evidence that one of the defenses permitted by 11 U.S.C. § 547(c) is applicable, the debtor has not carried the burden of proving that unsecured creditors will be paid through the plan the present value of what they would receive in a chapter 7 liquidation. See 11 U.S.C. § 1325(a)(4). The debtor's answer to question 6 of the statement of financial affairs identifies payments totaling $3,442 to two creditors holding unsecured claims that were made within 90 days of the filing of this case. These appear to be avoidable as preferences. Because a chapter 7 trustee would recover these payments for the benefit of unsecured creditors, the plan must provide for a dividend equal to these payments plus interest. The plan proposes to pay nothing to unsecured creditors.

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.

8. 16-22931-A-13 BRUCE/GAIL NELSON — MOTION TO CONFIRM PLAN
ET-1 — 7-15-16 [21]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $4,079 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, 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. 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).

9. 16-25232-A-13 GREGORY WALLACE — MOTION FOR SANCTIONS
BLG-1 — 8-16-16 [12]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

Preliminarily, the request for relief from the automatic stay made by the respondent in its opposition to the motion will be dismissed without prejudice because the filing fee for this relief was not paid.

Next, because the vehicle was repossessed before the case was filed, the repossession could not and did not violate the automatic stay of 11 U.S.C. § 362(a). However, because the respondent had not completed a sale of the vehicle to satisfy its claim when the case was filed, it is required to return the vehicle to the debtor. See 11 U.S.C. § 542(a); U.S. v. Whiting Pools, 462 U.S. 198 (1983). While the respondent could retain the car after the filing of the case if it also promptly moved for adequate protection and/or relief from the automatic, failed to do so separate and apart from opposing this motion and its counter-motion is defective because the respondent failed to pay the filing fee. Cf. Citizens Bank of Maryland v. Strumpf, 516 U.S. 16, 116 S.Ct. 286, 133 L.Ed.2d 258 (1995); Mwangi v. Wells Fargo Bank (In re Mwangi), 432 B.R. 812 (9th Cir BAP 2010).

Nonetheless, because the debtor had failed to insure the vehicle until August

29, the court does not fault the respondent for retaining the vehicle. No sanctions will be awarded for its retention of it to date. However, it shall now return the vehicle to the debtor. Beginning September 7, each day the respondent or its agents retain the vehicle it shall pay the debtor $250.

10. 16-23635-A-13 JAY KLIPP — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 8-15-16 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the case will be dismissed.

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

Second, the debtor has failed to commence making plan payments and has not paid approximately $240 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).

Third, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of States Recovery System in order to strip down or strip off its secured claim from its collateral. No such motion has been filed, served, and granted. Absent a successful motion the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Fourth, 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.

11. 16-25349-A-13 TERRY ARNOLD
SS-1

MOTION TO
EXTEND AUTOMATIC STAY
8-22-16 [11]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

While the debtor may have had just one prior case dismissed within the last year, that does not adequately describe the debtor's situation. This is the fourth chapter 13 case he has filed since 2013. Prior chapter 13 petitions were filed and dismissed as follows:

13-29372 Filed 07/15/13 Dismissed 10/08/14 Failure to make plan payments

14-32045 Filed 12/12/14 Dismissed 06/11/15 Failure to make plan payments

16-20587 Filed 02/02/16 Dismissed 08/04/16 Voluntarily dismissed

It deserves mention that in Case No. 16-20587, no plan was confirmed and before the debtor voluntarily dismissed the case, the trustee moved for dismissal because the debtor had not made plan payments. Additionally, a week after the case was filed, the debtor moved to extend the automatic stay pursuant to 11 U.S.C. § 362(c)(3) because Case No. 14-32045 had been dismissed within the prior year. In that motion, the debtor claimed his second case had not been successful because he had to spend $50,000 for attorneys and restitution to aid a son in connection with a criminal matter.

Now, the fourth case has been filed. The motion to extend the stay fails to mention that the third case was voluntarily dismissed but attributes the failure to make plan payments to a gambling addiction and gambling losses. The debtor's response to question 15 of the statement of financial affairs filed in the third case identifies no gambling losses while his answer to the same question in this case indicates he has sustained gambling losses of $45,000 over the prior 12 months, a period that includes the third case. His answers to the same question in the first two cases acknowledged gambling losses of $75,000.

This motion indicates the debtor is receiving counseling for his gambling addiction. However, given that three cases have been dismissed, apparently because of, or in part because of, gambling losses, and given that the immediately prior case was dismissed in August, the court cannot conclude that the debtor has established by clear and convincing evidence that this case is more likely to be successful than his last case.

12. 12-20765-A-13 EMANUEL/LENIECE JOHNSON — MOTION TO MODIFY PLAN
SJS-3 — 7-22-16 [63]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

To pay the dividends required by the plan at the rate proposed by it will take 67 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

13. 16-23869-A-13 ROBIN SWANSON — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 8-12-16 [35]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the case will be denied.

First, counsel for the debtor failed to appear at the meeting of creditors. Without counsel present the debtor could not be examined. No plan can be confirmed prior to the conclusion of the meeting.

Second, the debtor has failed to commence making plan payments and has not paid approximately $2,052 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).

Third, in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The withholding of this financial information from the trustee is a breach of the duties imposed upon the debtor by 11 U.S.C. § 521(a)(3) & (a)(4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

Fourth, 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.

Fifth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor failed to file a detailed statement of income and expenses attributable to the rental of property or the operation of a business even though Schedule I indicates the debtor receives $2,500 a month from the rental of property or the operation of a business. 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).

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

Seventh, 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 nothing even though Form 22 shows that the debtor will have more than $68,000 of projected disposable income over the next five years.

14. 16-24273-A-13 RACHEL LUNDE — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 8-15-16 [14]

- ☐ 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's feasibility depends on the debtor successfully prosecuting motions to value the collateral of CitiMortgage and Washington Mutual in order to strip down or strip off their secured claims from their collateral. No such motions have been filed, served, and granted. Absent successful motions the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a

proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Second, the plan's feasibility depends on the debtor successfully prosecuting a motion to avoid the judicial lien of American Express Bank in order to strip down or strip off its claim from the property encumbered by the lien. No such motion has been filed, served, and granted. Absent a successful motion the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The petition fails to give the name used by the debtor on her tax returns in 2013, 2014 and 2015. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all relevant 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).

Fourth, 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 22 in its entirety in order to calculate projected disposable income. The debtor has failed to complete the portion of Form 22 necessary to calculate projected disposable income. Without doing so, the debtor cannot prove compliance with 11 U.S.C. § 1325(b).

Also, because with the debtor's gross business income included as part of the debtor's current monthly income, the debtor is an over median income debtor. Therefore, the plan's duration must be 60 months. See Danielson v. Flores (In re Flores), 2013 WL 4566428 (Aug. 29, 2013). The plan has a term of 36 months and therefore 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.

15. 16-20883-A-13 WALTER FLETSCHER — OBJECTION TO
DBJ-2 — CLAIM
VS. MELISSA FLETSCHER — 7-26-16 [96]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The court abstains.

The claimant has filed three proofs of claim for amounts due her pursuant to a divorce decree awarding support and nonsupport payments to her and from the debtor. The debtor's objection goes to whether amount are due by virtue of the claimants alleged failure to cooperate in the sale of assets and the debtor's inability to sell assets for amounts contemplated by the divorce judgment. There also is a dispute as to the amount of support remaining due to the claimant. Inasmuch as the state court retains jurisdiction over its judgment between the parties, the debtor shall proceed in that forum if he wishes to dispute the amounts due to the claimant under the divorce decree.

16. 16-20883-A-13 WALTER FLETSCHER — OBJECTION TO
DBJ-3 — CLAIM
VS. MELISSA FLETSCHER — 7-26-16 [101]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The court abstains.

The claimant has filed three proofs of claim for amounts due her pursuant to a divorce decree awarding support and nonsupport payments to her and from the debtor. The debtor's objection goes to whether amount are due by virtue of the claimants alleged failure to cooperate in the sale of assets and the debtor's inability to sell assets for amounts contemplated by the divorce judgment. There also is a dispute as to the amount of support remaining due to the claimant. Inasmuch as the state court retains jurisdiction over its judgment between the parties, the debtor shall proceed in that forum if he wishes to dispute the amounts due to the claimant under the divorce decree.

17. 16-20883-A-13 WALTER FLETSCHER — OBJECTION TO
DBJ-4 — CLAIM
VS. MELISSA FLETSCHER — 7-26-16 [106]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The court abstains.

The claimant has filed three proofs of claim for amounts due her pursuant to a divorce decree awarding support and nonsupport payments to her and from the debtor. The debtor's objection goes to whether amount are due by virtue of the claimants alleged failure to cooperate in the sale of assets and the debtor's inability to sell assets for amounts contemplated by the divorce judgment. There also is a dispute as to the amount of support remaining due to the claimant. Inasmuch as the state court retains jurisdiction over its judgment between the parties, the debtor shall proceed in that forum if he wishes to dispute the amounts due to the claimant under the divorce decree.

FINAL RULINGS BEGIN HERE

18. 16-21203-A-13 RAYMOND/CHRISTINE BELCHER — MOTION TO CONFIRM PLAN
PGM-3 — 7-26-16 [75]

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. 13-27119-A-13 GUILLERMO/LETICIA CARRASCO — MOTION TO MODIFY PLAN
MET-2 — 7-28-16 [54]

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.

20. 16-24135-A-13 JAMES OLIVER — MOTION TO VALUE COLLATERAL
PGM-1
VS. AFS ACCEPTANCE, L.L.C. — 8-8-16 [25]

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 motion will be granted.

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $6,771 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $6,771 of the respondent's claim is an allowed secured claim. When the respondent is paid $6,771 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.

21. 16-23841-A-13 RANDY/STEPHANIE STANLEY — MOTION TO VALUE COLLATERAL
SNM-4 — 8-15-16 [47]
VS. CACH, L.L.C.

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing informs potential respondents that written opposition must be filed and served within 14 days prior to the hearing if they wish to oppose the motion. Because 22 days of notice of the hearing was given, Local Bankruptcy Rule 9014-1(f)(2) specifies that written opposition is unnecessary. Instead, potential respondents may appear at the hearing and orally contest the motion. If necessary, the court may thereafter require the submission of written evidence and briefs. By erroneously informing potential respondents that written opposition was required and was a condition to contesting the motion, the moving party may have deterred a respondent from appearing. Therefore, notice was materially deficient.

22. 16-23841-A-13 RANDY/STEPHANIE STANLEY — MOTION TO VALUE COLLATERAL
SNM-5 — 8-15-16 [52]
RESURGENCE CAPITAL, L.L.C.

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing informs potential respondents that written opposition must be filed and served within 14 days prior to the hearing if they wish to oppose the motion. Because 22 days of notice of the hearing was given, Local Bankruptcy Rule 9014-1(f)(2) specifies that written opposition is unnecessary. Instead, potential respondents may appear at the hearing and orally contest the motion. If necessary, the court may thereafter require the submission of written evidence and briefs. By erroneously informing potential respondents that written opposition was required and was a condition to contesting the motion, the moving party may have deterred a respondent from appearing. Therefore, notice was materially deficient.

23. 16-24764-A-13 ANGELO/BRENDA WILLIAMS — MOTION TO EXTEND AUTOMATIC STAY
HLG-1 — 8-9-16 [20]

Final Ruling: The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).

The motion will be denied.

First, this case was filed on July 21, 2016. This motion seeks to extend the automatic stay beyond 30 days after the July 21 filing date pursuant to 11 U.S.C. § 362(c)(3).

The motion asserts that because the debtors filed an earlier chapter 13 case, Case No. 11-47159 that was dismissed on June 2, 2016, the automatic stay expires 30 days after the order for relief unless the debtor files a motion requesting an extension of the stay. While this correctly states the legal effect of section 362(c)(3), a motion to extend the automatic stay under that section must be filed and heard before the 30th day. A review of the docket reveals that while this motion was filed within the 30-day period, the debtor set it for hearing outside of the 30-day period. Hence, the automatic stay has expired and it is too late to extend or impose it in this case.

Second, this motion is unnecessary as to Mrs. Williams. The motion incorrectly identifies the first case as Case No. 11-47159. It was Case No. 16-20697, filed on February 8, 2016 and dismissed on June 2, 2016. However, this prior case was filed by Mr Williams alone. Mrs. Williams was not a debtor in the prior case. Hence, while the automatic stay has expired as to Mr. Williams because this motion was not set for hearing within 30-days of the petition, the automatic stay has not expired as to Mrs. Williams because she was not a debtor in the earlier case.

24. 15-26169-A-13 JOANN WARDLAW — MOTION TO MODIFY PLAN
SDB-3 — 7-26-16 [51]

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.

25. 16-23869-A-13 ROBIN SWANSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
DBJ-1 — 7-28-16 [24]
TROY CRUSE VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered

and the matter will be resolved without oral argument.

The movant's claim is secured by a commercial building owned by the debtor. The debtor stopped making monthly installment payments in June 2015 and the building sustained significant damage in a July 2016 fire. At present, the movant is owed approximately $66,470.90 while his collateral, the building and its fixtures and equipment, have an "unknown" value according to the debtor's schedules.

While the unconfirmed plan proposes pay the movant's claim in full as a Class 2 claim, the trustee has objected to the plan's confirmation due to the debtor's failure to make plan payments. Further, the debtor has come forward with no evidence that the damaged and currently unusable building is necessary to a reorganization that is in prospect.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale of the real property together with other actions and proceeding as are necessary to take possession of the collateral, both real and personal, and to sell personal property collateral in a commercially reasonable manner.

Because the movant has not established that it holds an over-secured claim, the court awards no fees and costs. 11 U.S.C. § 506(b). The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

26. 16-24671-A-13 KIMBERLY LAWSON — MOTION TO VALUE COLLATERAL
CAH-1
VS. JPMORGAN CHASE BANK, N.A. — 8-8-16 [14]

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 motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $102,255 as of the date the petition was filed. It is encumbered by a first deed of trust held by Select Portfolio Servicing. The first deed of trust secures a loan with a balance of approximately $141,071 as of the petition date. Therefore, JPMorgan Chase Bank's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840

(B.A.P. 1st Cir. 2000).

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).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(I).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of $102,255. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).

27. 13-21683-A-13 ARIEL/EDNA SIAPNO
PPR-1

MOTION TO
APPROVE LOAN MODIFICATION
8-4-16 [61]

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 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 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.

28. 16-21694-A-13 ALICE PEREZ
PGM-3

MOTION TO
CONFIRM PLAN
7-19-16 [93]

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.