

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Sacramento, California

September 25, 2017 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 OCTOBER 16, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 2, 2017, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 9, 2017. 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 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 OCTOBER 2, 2017, AT 2:30 P.M.

September 25, 2017 at 1:30 p.m.

Matters to be Called for Argument

1.	17-25902-A-13 DEBORAH CANDATE	MOTION TO
	MET-1	EXTEND AUTOMATIC STAY
		9-9-17 [8]

- ☐ 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 chapter 13 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 was unable to maintain her plan payments and mortgage case in the first case due to receiving a lower wage at her employment. While this situation apparently has not changed, the debtor will receive financial assistance from family members while she looks for a part-time second job to supplement her income. Her employment field, security services, is amenable to such part-time employment. Also, a review of Schedule I/J suggests the debtor will have sufficient monthly net income to fund a plan without the second job or family assistance. This is a sufficient change in circumstances rebut the presumption of bad faith.

2. 17-25103-A-13 CRISTINO VIBAT

ORDER TO
SHOW CAUSE
9-6-17 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of \$79 due on September 1 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

3. 10-52608-A-13 RICHARD/JOANNE BUTTON
MOH-1
VS. LVNV FUNDING, L.L.C.

MOTION TO
AVOID JUDICIAL LIEN
9-11-17 [48]

- ☐ 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.

The subject real property had an approximate value of \$182,135 as of the petition date. The debtor owns the property. The unavoidable liens against the property totaled \$99,437 on that same date, consisting of a single mortgage in favor of Chase Mortgage. The debtor has claimed an exemption of \$100,000 in the property. There was no objection to that exemption and the motion independently establishes an entitlement to the exemption. Hence, there is no equity in the property after accounting for the mortgage and the exemption.

The respondent holds two judicial liens against the property. Their fixing to the property impairs the debtor's exemption.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The respondent holds judicial liens created by the recordation of abstracts of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial liens. Therefore, the fixing of these judicial liens impair the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

4. 13-26465-A-13 DARREN COCREHAM
PGM-4

MOTION TO
MODIFY PLAN
8-15-17 [108]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$3,310.96 is less than the \$3,434.96 in dividends and expenses the plan requires the trustee to pay each month.

Second, even if the plan payment equaled the distributions, the debtor has not proven the feasibility of the plan. The plan includes an lump sum payment in the 60th month but there is no evidence that the debtor has the ability to make this payment.

Third, the plan's feasibility depends on successfully objecting to the secured claim of Ocwen. No objection has been filed and the deadline set by Local Bankruptcy Rule 3007-1(d) for filing an objection has expired.

Fourth, the treatment of Ocwen's claim also refers to an additional provision which is not appended to the plan.

5. 17-25865-A-13 MATTHEW CHRISTOPHER
DJC-1

MOTION TO
EXTEND AUTOMATIC STAY
9-11-17 [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 chapter 13 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, the first case was filed without the assistance of an attorney. It was filed with assistance of a nonattorney, loan modification service who failed to assist the debtor once the case was filed. As a result, all schedules and statements and a plan were not filed and the case was dismissed. The debtor now has an attorney and all required documents have been filed. This is a sufficient change in circumstances rebut the presumption of bad faith.

6. 16-26169-A-13 KANIKA REED
TLA-2

MOTION TO
DISMISS CASE
7-27-17 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Through July 27, 2017, the debtor failed to make plan payments totaling \$1,133. 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 \$470 due on August 25, a total amount of \$1,603.

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.

Here, the debtor opted to contest the notice of default. When a debtor uses this option, the debtor is stating there was no default and trustee's notice was incorrect. However, based on what the debtor has filed, the debtor admits the plan payments were not current. The debtor promises to cure the default "before the date of the hearing."

This was not an option. If the debtor was admitting the plan payments were not current, the debtor had 30 days to cure the default and make the next monthly plan payment. This 30-day period expired on August 27.

Nonetheless, it appears the debtor cured the default and made the August payment by August 25. Provided the trustee confirms this, the case will remain pending.

7. 17-24185-A-13 WILLIAM ST CLAIR MOTION TO
MOH-2 SELL
9-1-17 [30]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor has not yet confirmed a plan. Until a plan is confirmed, no sale will be permitted. If the debtor wishes to sell the property, he can dismiss the case.

8. 17-24688-A-13 RONALD/VERONICA PEARSON OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
9-6-17 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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

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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 \$1,000 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 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).

9. 17-24788-A-13 TROY FINLEY
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
9-5-17 [20]

- ☐ 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 is not eligible for chapter 13 relief. 11 U.S.C. § 109(h) prohibits an individual from being a debtor under any chapter unless that individual received a credit counseling briefing from an approved non-profit budget and credit counseling agency during the 180-day period immediately preceding the filing of the petition. In this case, the debtor has not filed a certificate evidencing that briefing was completed during the 180-day period prior to the filing of the petition. Hence, the debtor was not eligible for bankruptcy relief when this petition was filed.

Second, the debtor has failed to commence making plan payments and has not paid approximately \$16 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 debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. In this case, the debtor failed to list four prior bankruptcy cases filed in the eight year period prior to the filing of this case. This concealment 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).

It is unnecessary to address the remaining objections.

FINAL RULINGS BEGIN HERE

10. 17-25600-A-13 REBECCA ROBINSON ORDER TO
SHOW CAUSE
9-6-17 [10]

Final Ruling: The order to show cause will be discharged and the case will remain pending.

The debtor did not pay the petition filing fee of \$310, as required by Fed. R. Bankr. P. 1006(a), when the petition was filed. Nor did the debtor request permission to pay the fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The failure to pay the filing fee or to arrange for its payment in installments is cause for dismissal. See 11 U.S.C. § 1307(c)(2). However, after the issuance of the order to show cause, the delinquent fee was paid in full. No prejudice was caused by the late payment.

11. 15-28905-A-13 RUTH MANLEY MOTION FOR
KWS-1 SANCTIONS
8-24-17 [37]

Final Ruling: The movant has advised the court of a settlement that is being documented by the parties. The court continues the hearing to October 16, 2017 at 1:30 p.m. to give the parties the opportunity to finalize their settlement. If finalized, they should lodge a dismissal order prior to the continued hearing date.

12. 17-21115-A-13 AARON BUSHEY MOTION TO
JSO-3 CONFIRM PLAN
8-8-17 [33]

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. 16-20735-A-13 LUIS MONTANO MOTION TO
SLH-1 BORROW
8-10-17 [19]

Final Ruling: This motion to incur new credit 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

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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 to incur a purchase money loan in order to purchase a new home will be granted. The motion establishes a need for the home and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of the plan given that the debtor's performance of the plan is complete or nearly complete.

14. 14-27356-A-13 JOHN BALDWIN MOTION TO
PGM-1 SUBSTITUTE PARTY
8-23-17 [30]

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. Chazali 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 in three respects.

First, the debtor's daughter, Kelley Moore, is appointed as his guardian ad litem in this case to represent his interests in the case. See Fed. R. Bankr. P. 1004.1. Ms. Moore holds the debtor's power of attorney and the record establishes the debtor's mental incapacity to represent his own interests.

Second, despite the debtor's incapacity, the case may continue inasmuch as the schedules previously filed indicate a financial ability to complete the plan and the appointment of the representative insures the diligent prosecution of the case. See Fed. R. Bankr. P. 1016.

Third, given the debtor's incapacity, the requirement that he complete a course on financial management will be waived. See See 11 U.S.C. §§ 110, 111, 1328(g)(1) and Fed. R. Bankr. P. 1007(c).

15. 17-24689-A-13 KENNY HOLLOWAY OBJECTION TO
AP-1 CONFIRMATION OF PLAN
WELLS FARGO BANK, N.A. VS. 8-10-17 [17]

Final Ruling: The objection will be dismissed as moot. The case was dismissed on August 20.

16. 17-23390-A-13 PEDRO/MEGAN ANGUIANO MOTION TO
GW-3 APPROVE COMPENSATION OF DEBTORS'
ATTORNEY
8-23-17 [40]

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 granted.

The motion seeks approval of \$7,185 in attorney's fees incurred while filing this case and obtaining confirmation of a plan. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. After deducting amounts paid to counsel before the case was filed, the balance, \$5,060 shall be paid through the plan.

17. 15-29493-A-13 RICHARD VAGTS AND MARY MOTION TO
DBJ-2 MCCOURT SPLIT CASE
8-24-17 [31]

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 granted.

Given the pending divorce of the debtors, their cases will be split and administered separately.

18. 16-28493-A-13 MARINA MASALOV MOTION TO
MS-1 MODIFY PLAN
8-20-17 [25]

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.