

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 10, 2014 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 20. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2) [eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON DECEMBER 8, 2014 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY NOVEMBER 24, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 1, 2014. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 21 THROUGH 36 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 NOVEMBER 17, 2014, AT 2:30 P.M.

November 10, 2014 at 1:30 p.m.

Matters to be Called for Argument

1. 10-22300-A-13 RICHARD/EVELYN ASHER ORDER TO
SHOW CAUSE
10-20-14 [59]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: On March 15, 2010, Access Capital filed a proof of claim. On October 6, 2014, Access Capital filed a transfer of this claim to Westamerica Bank. However, neither Access Capital nor Westamerica paid the \$25 transfer fee required by 28 U.S.C. § 1930(b). Therefore, the transfer and assignment of the claim will be disallowed and not recognized by the court until the fee is paid.

2. 14-28002-A-13 TOBY/EME MOUA OBJECTION TO
JPJ-3 EXEMPTIONS
10-8-14 [33]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

The objection concerning the bikes will be dismissed as moot. The debtor amended this exemption on October 28.

The remaining objection will be sustained. Using Cal. Civ. Pro. Code § 704.070, the debtor has exempted 100% of bank deposits totaling \$2,040 even though this statute permits a debtor to exempt 75% of deposits traceable to paid earnings. Therefore, the exemption is reduced by 25%.

3. 14-30206-A-13 STANLEY WOO MOTION TO
RJ-1 EXTEND AUTOMATIC STAY
10-14-14 [11]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor filed two prior chapter 13 cases. The first, Case No. 14-24896, was filed on May 9, 2014 and dismissed on August 8 because the debtor failed to appear at the meeting of creditors, failed to file a delinquent income tax return for 2013 as required by , and failed to provide the trustee records concerning the debtor's self employment income.

The second case, Case No. 14-28641, was filed on August 26, 2014 and was dismissed on September 29 because the debtor failed to timely file all schedules and statements.

This case was filed approximately two weeks later, on October 14. No schedules and statements have been filed.

When an individual debtor has filed 2 or more prior cases that were pending during the previous year, but were dismissed, the automatic stay never goes

into effect. See 11 U.S.C. § 362(c)(4).

A party in interest may request that the court impose the automatic stay despite the filing and dismissal of multiple prior petitions. See 11 U.S.C. § 362(c)(4)(B). Such a request must be made with notice and a hearing and must be made within 30 days of the filing of the petition. To obtain the automatic stay, the party in interest must demonstrate that the latest case has been filed in good faith. If shown, the court may impose conditions on the imposition of the automatic stay.

Section 362(c)(4)(D) invokes a presumption that the case was "filed not in good faith," if 2 or more previous cases were pending for the same individual debtor within the one-year period. A presumption of bad faith also arises if: an earlier case was dismissed because the debtor failed to file or amend the petition or other documents without substantial excuse or if there is no substantial change in the debtor's affairs. This presumption must be rebutted by clear and convincing evidence if the debtor seeks to impose the automatic stay during the first 30 days of the case.

The evidence falls well short of clearly and convincingly rebutting the presumption of bad faith. The debtor has not explained his failure to diligently prosecute the first two cases and still has not filed any schedules and statements explaining his current financial circumstances. While the motion is accompanied by the debtor's declaration says nothing specific or useful. He asserts that his income has "improved slightly" and that "a friend referred [him] to his friend" and this friend of a friend is will to lend him money to cure the default on his home mortgage.

4. 14-30206-A-13 STANLEY WOO MOTION TO
RJ-2 INCUR DEBT
10-27-14 [16]

Telephone Appearance
 Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor filed two prior chapter 13 cases. The first, Case No. 14-24896, was filed on May 9, 2014 and dismissed on August 8 because the debtor failed to appear at the meeting of creditors, failed to file a delinquent income tax return for 2013 as required by , and failed to provide the trustee records concerning the debtor's self employment income.

The second case, Case No. 14-28641, was filed on August 26, 2014 and was dismissed on September 29 because the debtor failed to timely file all schedules and statements.

This case was filed approximately two weeks later, on October 14. No schedules and statements have been filed. In the absence of financial information that permits the debtor to assess the ability of the debtor to propose, confirm, and consummate a plan, as well as repay the proposed new loan, the court will not authorize the debtor to borrow more money.

- Telephone Appearance
- Trustee Agrees with Ruling

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

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

The trustee objects to all of the debtor's Cal. Civ. Proc. Code § 703.140(b) exemptions claimed on Schedule C. The trustee argues that because the debtor is married and because the debtor's spouse has not joined in the chapter 13 petition, the debtor must file his spouse's waiver of right to claim exemptions. See Cal. Civ. Proc. Code § 703.140(a)(2). This was not done.

A debtor's exemptions are determined as of the date the bankruptcy petition is filed. Owen v. Owen, 500 U.S. 305, 314 (1991); see also In re Chappell, 373 B.R. 73, 77 (B.A.P. 9th Cir. 2007) (holding that "critical date for determining exemption rights is the petition date"). Thus, the court applies the facts and law existing on the date the case was commenced to determine the nature and extent of the debtor's exemptions.

11 U.S.C. § 522(b)(1) permits the states to opt out of the federal exemption statutory scheme set forth in section 522(d). In enacting Cal. Civ. Proc. Code § 703.130, the State of California opted out of the federal exemption scheme relegating a debtor to whatever exemptions are provided under state law. Thus, substantive issues regarding the allowance or disallowance of a claimed exemption are governed by state law in California.

California state law gives debtors filing for bankruptcy the right to choose (1) a set of state law exemptions similar but not identical to the Bankruptcy Code exemptions; or (2) California's regular non-bankruptcy exemptions. See Cal. Civ. Proc. Code §§ 703.130, 703.140. In the case of a married debtor, if either spouse files for bankruptcy individually, California's regular non-bankruptcy exemptions apply unless, while the bankruptcy case is pending, both spouses waive in writing the right to claim the regular non-bankruptcy state exemptions in any bankruptcy proceeding filed by the other spouse. See Cal. Civ. Proc. Code § 703.140(a)(2).

Here, the debtor is asserting the exemptions of Cal. Civ. Proc. Code § 703.140(b), which require a spousal waiver. That waiver was not filed with the petition. Therefore, when the court hears the objection to these exemptions it will be sustained. This means that the debtor's assets are nonexempt and that there is approximately \$888,000 of assets available to pay the claims of unsecured creditors if this case proceeds under chapter 7. Because the plan will pay the creditors less than \$5,000, it does not satisfy 11 U.S.C. §

- 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.

The trustee asserts the plan has not been proposed in good faith as required by 11 U.S.C. § 1325(a)(3) because the debtor proposes to pay a debt secured by boat used that is not necessary to the debtor's support, maintenance and livelihood. The Ninth Circuit rejected this very argument in In re Welsh, 711 F.3d 1120 (9th Cir. 2013). In Welsh, the debtor proposed to pay secured claims encumbering numerous vehicles including some used only for recreation. The Ninth Circuit, quoting the BAP's earlier opinion rejected the trustee's bad faith objection, holding:

"The BAP noted that amendments to the Bankruptcy Code in 1984 and 2005 had not changed the requirement that a plan be proposed in good faith. Nevertheless, Congress had enacted specific substantive requirements for plan confirmation that addressed considerations which previously had been encompassed by the good faith inquiry. Therefore, in the BAP's view, courts no longer needed to consider whether particular types of income were available to pay creditors and whether proposed payments to creditors were sufficient because Congress explicitly had defined "disposable income" FN16 and required that disposable income be used for the satisfaction of creditors. Therefore, according to the BAP:

"[T]aking advantage of a provision of the Code, such as calculating disposable income under the test explicitly set out in the Code, is not an indication of lack of good faith. Thus, we reject those cases that allow a court to take into consideration an above-median-income debtor's exclusion of income or deduction of expenses that are allowed by the means test formula in determining whether a debtor has proposed the plan in good faith."

Welsh, at 1124-25.

The Ninth Circuit agreed.

"Section 1325 states that disposable income is current monthly income "less amounts reasonably necessary to be expended - . . . for the maintenance or support of the debtor or a dependent of a debtor." 11 U.S.C. § 1325(b)(2) (2006). [Footnote omitted.] Section 1325 further provides that "[a]mounts reasonably necessary to be expended under paragraph (2) . . . shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2)." 11 U.S.C. § 1325(b)(3) (emphasis added). For its part, section 707(b)(2)

provides that current monthly income shall be reduced by "[t]he debtor's average monthly payments on account of secured debts," 11 U.S.C. § 707(b)(2)(A)(iii); that section, however, does not include any qualification or limitation on the kind of secured debt that is deducted from current monthly income. [Footnote omitted.] As we recognized in Maney v. Kagenveama (In re Kagenveama), 541 F.3d 868, 873 n. 2 (9th Cir. 2008), overruled on other grounds by Hamilton v. Lanning, 560 U.S. 505, 130 S.Ct. 2464, 2475, 177 L.Ed.2d 23 (2010), prior to the BAPCPA, [d]etermining what was "reasonably necessary" for the maintenance or support of the debtor was dependent on each debtor's individual facts and circumstances. This amorphous standard produced determinations of a debtor's "disposable income" that varied widely among debtors in similar circumstances. BAPCPA replaced the old definition of what was "reasonably necessary" with a formulaic approach for above-median debtors. 11 U.S.C. § 1325(b)(3).

"Again, in the BAPCPA, Congress chose to remove from the bankruptcy court's discretion the determination of what is or is not "reasonably necessary." [Footnote omitted.] It substituted a calculation that allows debtors to deduct payments on secured debts in determining disposable income. That policy choice may seem unpalatable either to some judges or to unsecured creditors. Nevertheless, that is the explicit choice that Congress has made. We are not at liberty to overrule that choice."

Welsh, at 1133-34.

9. 14-28816-A-13 KEVIN/AMELIA GOLDING OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-7-14 [48]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The plan does not comply with 11 U.S.C. § 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 \$13,912.70 but Form 22 shows that the debtor will have \$29,237.40 over the next five years.

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

10. 14-28924-A-13 THOMAS/SHANNON SHUMATE OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-22-14 [30]

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

Second, amended Form 22 under-reports current monthly income because it reports income on a bi-monthly rather than a bi-weekly basis. This results in understating current monthly income by approximately \$370. With this correction, undersecured creditors would be entitled to projected disposable income of \$19,357.20. The plan pays only \$14,963.53 and so it does not comply with 11 U.S.C. § 1325(b).

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.

11. 11-48744-A-13 STEVEN SCHULE MOTION TO
EJS-1 INCUR DEBT O.S.T.
11-3-14 [34]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: 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.

12. 14-29144-A-13 LARRY KING OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-22-14 [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.

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Ford Motor Credit 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."

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

13. 14-28647-A-13 MARVIN WILCHER COUNTER MOTION TO
DJC-1 DISMISS CASE
10-24-14 [31]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The counter motion will be granted and the case will be dismissed.

First, 11 U.S.C. § 521(e)(2)(B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The failure to provide the return to the trustee justifies dismissal and denial of confirmation. In addition to the requirement of section 521(e)(2) that the petition be dismissed, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 found at section 1228(a) of BAPCPA provides that in chapter 11 and 13 cases the court shall not confirm a plan of an individual debtor unless requested tax documents have been turned over. This has not been done.

Second, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$6,300 is less than the \$9,696 in dividends and expenses the plan requires the trustee to pay each month.

Third, Local Bankruptcy Rule 3015-1(b)(6) provides: "Documents Required by Trustee. The debtor shall provide to the trustee, not later than the fourteen

(14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee.*" Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

14. 14-29053-A-13 TANESHIA WRAY OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-23-14 [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.

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Heritage Community Credit Union 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."

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. 14-29156-A-13 STEVEN/JANINE SEXTON
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-22-14 [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 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 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 \$27,391.64 but Form 22 shows that the debtor will have \$79,485.60 over the next five years.

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.

16. 14-27961-A-13 GASOLO TAWAKE
GDG-4

MOTION TO
CONFIRM PLAN
9-28-14 [35]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Cash Call 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."

17. 10-46568-A-13 JAMES/TERRY BALDWIN MOTION TO
JPJ-4 DISMISS CASE
8-27-14 [242]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The objection to the notice of default will be overruled.

There is a confirmed plan in this case. On August 27, 2014, the trustee filed and served a notice of default and application to dismiss the case because the debtor had failed to make plan payments totaling \$37,785.59 as required by the plan. This procedure, as authorized by Local Bankruptcy Rule 3015-1(g), which provides:

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

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

(3) Alternatively, the debtor may acknowledge that the plan payment(s) has(have) not been made and, within thirty (30) days of the mailing of the notice of default, either (A) make the delinquent plan payment(s) and all subsequent plan payments that have fallen due, or (B) file a modified plan and a motion to confirm the modified plan. If the debtor's financial condition has materially changed, amended Schedules I and J shall be filed and served with the motion to modify the chapter 13 plan.

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

Thus, a debtor receiving a Notice of Default has three alternatives. (1) Cure the default within 30 days of the notice of default as well as 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.

The debtor filed opposition to the notice of default. However, the opposition to the notice of default was unnecessary because on September 24, (which was within 30 days of the Notice of Default) the debtor a proposed modified that it is set for hearing on November 10. The case will remain pending unless the court does not confirm the modified plan on November 10.

18. 10-46568-A-13 JAMES/TERRY BALDWIN MOTION TO
LLL-16 MODIFY PLAN
9-24-14 [244]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, to pay the dividends required by the plan and the rate proposed by it will take 124 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Second, in the prior confirmed plan, the debtor agreed to pay over to the trustee for distribution to creditors future tax refunds received during the term of the plan. The debtor agreed to this to resolve the trustee's complaint that the debtor had failed to turnover employment bonuses that were not reported to the trustee. The modified plan omits this provision. In the absence of the turnover of an amount equivalent to the unreported bonuses the court will not permit the debtor to evade the debtor's agreement to pay future tax refunds to creditors.

19. 14-29074-A-13 TIMOTHY OTTONE OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-22-14 [16]

- Telephone Appearance
- Trustee Agrees with Ruling

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

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

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$2,723 is less than the \$3,034 in dividends and expenses the plan requires the trustee to pay each month.

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause

for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

20. 11-37191-A-13 GUY/LISA HERNANDEZ MOTION TO
CA-2 VALUE COLLATERAL
VS. ONEWEST BANK, F.S.B. 10-20-14 [53]

- 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 debtor seeks to value the debtor's residence at a fair market value of \$367,800 as of the date the petition was filed. It is encumbered by a first deed of trust held by OneWest Bank. The first deed of trust secures a loan with a balance of approximately \$592,000 as of the petition date. Therefore, OneWest Bank's other 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 \$367,800. 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).

THE FINAL RULINGS BEGIN HERE

21. 13-23600-A-13 RANDALL HILL MOTION TO
PGM-5 MODIFY PLAN
10-3-14 [66]

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.

22. 10-33901-A-13 RUTH GAY MOTION TO
CA-5 MODIFY PLAN
9-25-14 [111]

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.

23. 14-28816-A-13 KEVIN/AMELIA GOLDING MOTION TO
CJY-4 VALUE COLLATERAL
VS. SMUD 10-3-14 [40]

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 debtor's response indicates that the debtor will propose a modified plan to pay the claim of SMUD in full. The court considers this to be a voluntary dismissal of the valuation motion. The motion will be dismissed.

24. 14-28816-A-13 KEVIN/AMELIA GOLDING OBJECTION TO
DL-1 CONFIRMATION OF PLAN O.S.T.
SMUD VS. 10-15-14 [52]

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 debtor's response to the objection concedes its merit and the debtor intends to propose a modified plan. The objection will be sustained.

25. 14-28647-A-13 MARVIN WILCHER MOTION TO
DJC-1 CONFIRM PLAN
9-29-14 [27]

Final Ruling: The motion will be dismissed without prejudice.

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.

Service in this case is deficient because the IRS was not served at the second and third addresses listed above.

26. 12-21254-A-13 BERNARD/CAROLYN GOODBY MOTION TO
JLB-6 APPROVE LOAN MODIFICATION
9-23-14 [96]

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

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

27. 12-21254-A-13 BERNARD/CAROLYN GOODBY MOTION TO
JLB-7 MODIFY PLAN
9-23-14 [90]

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.

28. 12-31664-A-13 JOHN/JESSICA FRIEDLANDER MOTION FOR
APN-1 RELIEF FROM AUTOMATIC STAY
SANTANDER CONSUMER USA, INC. VS. 10-8-14 [41]

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

The motion will be dismissed because it is moot.

Both the original and modified plans confirmed by the court provided for the movant's secured claim in Class 4. Class 4 secured claims are long-term claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or by a third party. The plan includes the following provision at section 2.11:

"Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Because the plan has been confirmed and because the case remains pending under chapter 13, the automatic stay has already been modified to permit the movant to proceed against its collateral.

29. 14-28972-A-13 TERRY/KATHALEEN SCOTT MOTION TO
PGM-1 VALUE COLLATERAL
VS. ACURA FINANCIAL SERVICES 10-13-14 [25]
AND AMERICAN HONDA FINANCE CORP.

Final Ruling: The debtor continued this hearing to November 24, 2014 at 1:30 p.m.

30. 14-28972-A-13 TERRY/KATHALEEN SCOTT OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-22-14 [32]

Final Ruling: Given the continuance of the related valuation motion to November 24, 2014 at 1:30 p.m., the hearing on this objection is likewise continued by the court.

31. 14-27284-A-13 ANDREW/ROWENA CHAMP MOTION TO
DJC-4 CONFIRM PLAN
9-23-14 [33]

Final Ruling: The motion will be dismissed without prejudice.

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.

Service in this case is deficient because the IRS was not served at the second and third addresses listed above,

32. 11-43485-A-13 AIDA ANCHETA MOTION TO
SDB-6 APPROVE LOAN MODIFICATION
10-7-14 [69]

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

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

33. 14-25389-A-13 FRANK NAVARRETTE MOTION TO
PGM-3 CONFIRM PLAN
9-23-14 [45]

Final Ruling: The hearing was continued to December 1, 2014 at 1:30 p.m. to be heard with related motions.

34. 14-28894-A-13 ARMANDO SERRANO OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
10-23-14 [34]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. The debtor has admitted at least implicitly the merit of some or all of the objections because he has abandoned his original plan and filed an amended plan which will be considered for confirmation on December 22. Accordingly, this objection is removed from calendar for resolution without oral argument.

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

The 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).

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.

35. 14-28894-A-13 ARMANDO SERRANO OBJECTION TO
PD-1 CONFIRMATION OF PLAN
JPMORGAN CHASE BANK, N.A. VS. 10-15-14 [28]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. The debtor has admitted at least implicitly the merit of some or all of the objections because he has abandoned his original plan and filed an amended plan which will be considered for confirmation on December 22. Accordingly, this objection is removed from calendar for resolution without oral argument.

The objection will be sustained.

The plan assumes the arrears on the objecting creditor's Class 1 secured claim are approximately \$70,000. The creditor indicates that the arrears are more than \$83,000. At this higher level, the plan either is not feasible or it will not pay the objecting secured claim in full. The plan fails to comply with 11 U.S.C. §§ 1325(a)(5)(B) & (a)(6).

36. 14-27897-A-13 PATRICIA FIORENTINO MOTION TO
DAO-1 CONFIRM PLAN
9-29-14 [20]

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.