

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 3, 2018 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 12. 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 JANUARY 8, 2019 AT 1:00 P.M. IN COURTROOM 32 ON THE SIXTH FLOOR BEFORE JUDGE JAIME. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 21, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 28, 2018. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 13 THROUGH 23 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 DECEMBER 10, 2018, AT 2:30 P.M.

December 3, 2018 at 1:30 p.m.

Matters to be Called for Argument

1. 18-26001-A-13 JOHN CLARES OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
11-14-18 [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 motion to dismiss the case conditionally denied.

First, the debtor has failed to commence making plan payments and has not paid approximately \$155 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, the plan's feasibility depends on the debtor successfully prosecuting a motion to avoid the judicial lien of Citibank. 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 60 days, the case will be dismissed on the trustee's ex parte application.

2. 15-23913-A-13 RACHELLE SCHWAB MOTION TO
DJC-4 REFINANCE
11-19-18 [51]

- 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 is authorized refinance an existing mortgage and to borrow an additional sum provided the additional sum is sufficient to pay the remaining plan obligations. However, absent payment in full of all claims, the debtor shall continue to perform the plan as confirmed until it is modified.

3. 15-23928-A-13 SHAWN/JACQUELINE MOTION TO
EJS-4 CUNNINGHAM APPROVE LOAN MODIFICATION
11-19-18 [93]
- 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 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.

4. 17-28335-A-13 LISA KOPPLE MOTION TO
PSB-8 CONFIRM PLAN
10-22-18 [118]
- Telephone Appearance
 - Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor has not proven that she will be able to perform the plan as was her burden under 11 U.S.C. § 1325(a)(6). According to Schedule I, the debtor has no earned income of any kind. To fund the plan, Schedule I indicates the debtor is relying on her boyfriend's \$5,600 monthly contribution and her mother's monthly contribution of \$2,092. However, there is no proof of their ability or inclination to make these payments to the debtor with the motion. Instead, the motion is accompanied by a declaration from the debtor's adult son indicating he will contribute \$1,646 a month to the debtor. However, the son's

declaration makes no mention of his financial ability to make this contribution.

Further, even if the court were inclined to believe the son had the ability to make this contribution, there is no proof of the other contributions from the mother and boyfriend, contributions that are necessary to make the debtor's monthly budget cash flow.

There is no reason to address the remaining objections.

5. 18-23744-A-13 RYAN/CHRISTINE FINNECY MOTION TO
AB-2 RECONSIDER
11-13-18 [37]
- 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 court dismissed without prejudice a motion to confirm a plan because the certificate of service for the motion failed to attach a service list the certificate even though it indicated the list was "attached." However, the service listed was separately filed and it indicates the underlying motion was served on all parties in interest. Therefore, the order dismissing the motion to confirm the plan will be reconsidered and vacated.

The court also confirms the plan as it complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

Counsel for the debtor shall lodge two orders. The first shall be lodged directly with the court and it shall vacate the order dismissing the motion to confirm the plan. The second shall be lodged with the chapter 13 trustee and it shall provide for the confirmation of the plan.

In the future, a service list should always be appended to the certificate of service. However, when it is filed as a separate exhibit, the certificate should not refer to an "attached" service list.

6. 15-22850-A-13 DANIEL/JESSICA PUGLIA
SS-8

MOTION TO
INCUR DEBT
11-19-18 [107]

- 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 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.

7. 15-22850-A-13 DANIEL/JESSICA PUGLIA
SS-9

MOTION TO
INCUR DEBT
11-19-18 [112]

- 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 to borrow money from a retirement plan in order to fund the down payment of a new home will be granted. The motion establishes a need for the home and it does not appear that repayment of this loan or the new mortgage will unduly jeopardize the debtor's performance of the plan given that the debtor's performance of the plan is complete or nearly complete.

8. 18-23653-A-13 ALICIA ROJO MOTION TO
TAG-2 CONFIRM PLAN
10-15-18 [30]

- Telephone Appearance
- Trustee Agrees with Ruling

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

Section 1.02 indicates that additional provisions are appended to the plan. However, none are actually attached. An incomplete plan and been filed and served.

9. 18-23677-A-13 MICHAEL MCELREATH MOTION TO
EGS-1 CONFIRM TERMINATION OR ABSENCE OF
STAY
11-2-18 [50]

- Telephone Appearance
- Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c) (3) or (4). See also 11 U.S.C. § 362(c) (4) (A) (ii).

This case was filed on June 12. The debtor filed an earlier chapter 13 case that was dismissed on May 8, 2018. Hence, absent an extension of the automatic stay pursuant to section 362(c) (3), the automatic stay expired on July 12. A review of the docket reveals that no motion pursuant to section 362(c) (3) extending the automatic stay has been granted.

Thus, the court confirms that there has been no automatic stay since July 12.

The parties should note that this confirmation is not license for the creditor to foreclose on its collateral. If a plan is confirmed, its terms are binding on the creditor irrespective of the absence of the automatic stay. See 11 U.S.C. § 1327(a) (providing that "the provisions of a confirmed plan bind the debtor and each creditor. . . ."); In re Hileman, 451 B.R. 522 (Bankr. C.D. Cal. 2011).

10. 17-27879-A-13 EILEEN CHAVEZ MOTION TO
MOH-3 MODIFY PLAN
10-24-18 [51]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The original confirmed plan provided for a secured claim in Class 2. Pursuant to this provision, the trustee paid a portion of the claim.

The proposed plan includes no provision for the claim. The motion to confirm the modified plan indicates the cosigner will pay the secured claim.

the monthly plan payment of \$2,730 is less than the \$2,902.20 in dividends and expenses the plan requires the trustee to pay each month.

Fifth, the debtor has not proven the plan is feasible as required by 11 U.S.C. § 1325(a)(6). The plan assumes that a home lender, Nationstar, has agreed to a home loan modification. Absent that agreement, the claim cannot be modified. See 11 U.S.C. § 1322(b)(2). Instead, the debtor is limited to curing any pre-petition default while maintaining the regular monthly mortgage installment. See 11 U.S.C. § 1322(b)(5).

13. 18-25789-A-13 BRENDA RUSS
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
11-14-18 [18]

- 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 conditionally denied.

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.

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 60 days, the case will be dismissed on the trustee's ex parte application.

FINAL RULINGS BEGIN HERE

14. 18-25003-A-13 DEVISTEEN CONLEY MOTION TO
BLG-1 CONFIRM PLAN
10-15-18 [18]

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.

15. 18-23030-A-13 REILLY COOK MOTION TO
JPJ-2 CONVERT OR TO DISMISS CASE
10-30-18 [47]

Final Ruling: The motion will be dismissed as moot. The case was dismissed on November 20.

16. 18-23747-A-13 BOBBY CABESAS MOTION TO
BLG-1 CONFIRM PLAN
10-12-18 [30]

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

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

17. 18-25450-A-13 JERRY DOWNING MOTION FOR
AMM-1 RELIEF FROM AUTOMATIC STAY
THE BANK OF NEW YORK MELLON VS. 11-2-18 [30]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran,

46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following sale. The movant is secured by a deed of trust encumbering the debtor's real property. The debtor has proposed a plan that does not provide for the movant's secured claim. Thus, two things clear: the movant's claim will not be paid under the plan and the real property securing its claim is not necessary to the debtor's personal financial reorganization. This is cause to terminate the automatic stay.

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

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

18. 18-26956-A-13 SAMANTHA SHAFFNER MOTION TO
MRL-1 VALUE COLLATERAL
VS. GENERAL MOTORS, L.L.C. 11-4-18 [8]

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The debtor is the owner of the subject property. The debtor's evidence indicates that the replacement value of the subject property is \$8,000 as of the effective date of the plan. Given the absence of contrary evidence, the debtor's evidence of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, \$8,000 of the respondent's claim is an allowed secured claim. When the respondent is paid \$8,000 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.

19. 18-24869-A-13 SARAH COUFOS MOTION TO
MRL-4 PAY
11-4-18 [30]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the 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 moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

There is a confirmed plan in this case. That plan requires the debtor to make 60 monthly payments of \$985. These payments will be made from the debtor's future earnings.

During this case, the debtor sold an undivided interest in real property. There are both exempt and nonexempt sales proceeds. The trustee holds those proceeds. The debtor asks that the proceeds, both exempt and nonexempt be turned over to her. The trustee raises no objection.

Inasmuch as the plan does not require payment of any of the sales proceeds to creditors, and because those proceeds are not disposable income for purposes of this case, the motion will be granted. See Burgie v. McDonald (In re Burgie), 239 B.R. 406, 409-410 (B.A.P. 9th Cir. 1999) ("The proceeds of the sale of a debtor's real estate in a chapter 13 case never become disposable income for the purposes of chapter 13. This result applies in a chapter 13 case whether or not the property is exempt from execution. . . . Postpetition disposable income does not include prepetition property or its proceeds.").

20. 18-23677-A-13 MICHAEL MCELREATH MOTION TO
RS-2 CONFIRM PLAN
10-17-18 [41]

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.

21. 18-25985-A-13 WILLIAM NADO OBJECTION TO
EDNA NADO VS. CONFIRMATION OF PLAN
10-25-18 [14]

Final Ruling: The objection will be dismissed without prejudice.

First, the notice of hearing informs the debtor that written opposition must be filed and served 14 days prior to the hearing if the debtor wishes to oppose the objection to the plan. This is contrary to Local Bankruptcy Rule 3015-1(c)(4) which provides:

attorney, and the trustee that no written response to the objection is necessary. Absent a timely objection and a properly noticed hearing on it, the Court may confirm the chapter 13 plan without a hearing."

Here, the notice of hearing gives contradictory instructions to the debtor - it provides that no written response is required and that a written response must be filed.

Second, the hearing has not been set for hearing "on the confirmation hearing date and time designated in the Notice of Chapter 13 Bankruptcy Case." That date was November 26. The hearing was set after the deadline for considering confirmation and objections.

Third, no docket control number is on the objection as required by Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(c). An objection placed on the calendar by the objecting party for hearing must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c). The purpose of the docket control number is to insure that all documents filed in support and in opposition to the objection are linked on the docket. This linkage insures that the court, as well as any party reviewing the docket, will be aware of everything filed in connection with the objection.

This objection has no docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the objection that have not been brought to the attention of the court. The court will not permit the objecting creditor to profit from possible confusion caused by this breach of the court's local rules.

23. 12-31689-A-13 DAWN HASKINS MOTION TO
MWB-4 AVOID JUDICIAL LIEN
VS. CITIBANK, N.A. 10-24-18 [105]

Final Ruling: The motion will be dismissed without prejudice.

First, a motion is a contested matter and it must be served like a summons and a complaint. See Fed. R. Bankr. P. 9014 incorporating by reference Fed. R. Bankr. P. 7004. Service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3) and 9014(b). The motion must be served to the attention of an officer, a managing or general agent, or other agent authorized by appointment or law to receive service of process for the respondent creditor. According to the certificate of service, this motion was simply sent to the corporation. Cf. ECMC v. Repp (In re Repp), 307 B.R. 144 (B.A.P. 9th Cir. 2004) (service in accordance with Fed. R. Bankr. P. 2002(b) does not satisfy the service requirements of Fed. R. Bankr. P. 7004(b)). Service, then, is deficient.

Second, Fed. R. Bankr. P. 7004(h) requires that service of contested matters and adversary proceedings on insured depository institutions be accomplished by certified mailed addressed to an officer of the institution unless the institution has previously appeared in the case through an attorney. A review of the docket reveals that the respondent has not previously appeared through an attorney. Service here was not by certified mail.