

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

September 24, 2018 at 1:30 p.m.

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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 OCTOBER 22, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 8, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 15, 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 18 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 9, 2018, AT 2:30 P.M.

September 24, 2018 at 1:30 p.m.

**Matters to be Called for Argument**

1. 18-24402-A-13 CORTNEY CAMPBELL  
JPJ-1
- OBJECTION TO  
CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
9-5-18 [36]

- ☐ 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 is paying \$700 a month to his parents in order to repay them for his education. While laudable, this is not an expense related to the reasonable care and maintenance of the parents and it may not be deducted as such on Form 122C-2. The debtor has taken the deduction and thereby understated his projected disposable income by \$700 a month. With the deduction disallowed, the debtor will have enough projected disposable income to pay unsecured claims in full. The plan fails to do so and therefore does not comply with 11 U.S.C. § 1325(b).

Second, 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.

2. 18-21823-A-13 LETICIA COLLAZO  
TOG-2
- MOTION TO  
APPROVE COMPENSATION OF DEBTOR'S  
ATTORNEY  
8-8-18 [33]

- ☐ Telephone Appearance  
☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied without prejudice.

According to the amended chapter 13 plan (which is awaiting the confirmation order), counsel received \$2,000 from the debtor before the case was filed and is to receive a further \$2,000 after confirmation through the plan and after a

successful fee motion. Further, the amended plan requires a \$100 monthly dividend to pay the latter \$2,000.

According to this motion, however, counsel is asking the court to award him \$4,000 to be paid by the trustee through the plan. The motion indicates that the trustee is holding \$4,000 for the attorney and that sum will be paid upon approval of the fees.

Given the inconsistencies between the plan and the motion, the court declines to award any compensation at this time. The motion seeks more than the plan provides and requires an accelerated lump sum payment that is not consistent with the plan.

3. 18-24425-A-13 ARACELY RIVAS  
JPJ-1

OBJECTION TO  
CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
9-5-18 [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 \$200 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 value the collateral of Title Max 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."

Third, the debtor has not filed an income tax return for 2016. The return is delinquent.

Prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

becoming effective, the Bankruptcy Code did not require chapter 13 debtors to file delinquent tax returns. If a debtor did not file tax returns, the trustee might object to the plan on the grounds of lack of feasibility or that the plan was not proposed in good faith. See, e.g., Greatwood v. United States (In re Greatwood), 194 B.R. 637 (9th Cir. B.A.P. 1996), *affirmed*, 120 F.3d. 268 (9th Cir. 1997).

Since BAPCPA became effective, a chapter 13 debtor must file most pre-petition delinquent tax returns. See 11 U.S.C. § 1308. Section 1308(a) requires a chapter 13 debtor who has failed to file tax returns under applicable nonbankruptcy law to file all such returns if they were due for tax periods during the 4-year period ending on the date of the filing of the petition. The delinquent returns must be filed by the date of the meeting of creditors.

There are two consequences to a failure to comply with section 1308. The failure is cause for dismissal. See 11 U.S.C. § 1307(e). In this case, however, the trustee has not moved for dismissal. Also, 11 U.S.C. § 1325(a)(9) and an uncodified provision of BAPCPA found at section 1228(a) of the Act provide that the court cannot confirm a plan if delinquent returns have not been filed with the taxing agency and filed with the court. This has not been done and so the court cannot confirm any plan proposed by the debtor.

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.

4. 18-22731-A-13 THOMAS/BECKY BOYES MOTION TO  
LBG-3 CONFIRM PLAN  
8-6-18 [44]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to commence making plan payments and has not paid approximately \$3,200 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 value the collateral of 1-800LoanMart 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."

5. 17-26052-A-13 TANISHA MAVY  
TM-11

MOTION TO  
MODIFY PLAN  
9-5-18 [102]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied.

First, the certificate of service indicates the proposed plan and the motion to confirm it were served on September 24. If true, this is the date of the hearing which obviously would be insufficient notice of the hearing.

Second, assuming the certificate of service meant to state that service occurred on September 5, the date the plan and motion were filed, this means only 19 days' notice of the hearing was given. Fed. R. Bankr. P. 3015(h) requires 21 days notice of the hearing. Further, when written opposition is required (and Local Bankruptcy Rule 3015-1 requires written opposition) 21 days' notice of the deadline for written opposition and an additional 14 days' notice of the hearing date must be given. Hence, notice is deficient in this case.

Further, the certificate of service indicates that the FTB and the IRS were not served at any of the addresses required by Local Bankruptcy Rule 2002-1(b) and (c).

6. 18-24853-A-13 RAFAEL/MARSHA ESPINOSA

ORDER TO  
SHOW CAUSE  
9-5-18 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The case will remain pending but the court will modify the terms of its order permitting the debtor to pay the filing fee in installments.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the \$79 installment when due on August 31. While the delinquent installment was paid on September 13, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

7. 18-24869-A-13 SARAH COUFOS  
MRL-2

MOTION TO  
SELL  
9-3-18 [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 to sell real property will be granted on the condition that the sale proceeds are used to pay all liens of record in full in a manner consistent with the plan. If the proceeds are not sufficient to pay liens of record in full (including liens ostensibly "stripped off"), no sale may be completed without the consent of each lien holder not being paid in full.

8. 18-25574-A-13 KAY MILLER  
MET-1

MOTION TO  
EXTEND AUTOMATIC STAY  
9-7-18 [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 case was dismissed within one year of the filing of the current case because the debtor to maintain her plan payments.

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 30<sup>th</sup> 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 30<sup>th</sup> 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 in the first case due to a loss of employment. She now has a new job and is able to maintain her plan payments. This is a sufficient change in circumstances rebut the presumption of bad faith.

9. 18-23478-A-13 TAMMY JACKSON MOTION TO  
PGM-1 CONFIRM PLAN  
8-20-18 [28]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be granted and the objection overruled on the condition that the plan payments were current as of September 11 and provided the plan is modified in the confirmation order to require payment of a further \$3,700 in fees to the debtor's attorney. With the \$300 paid directly by the debtor, \$3,700 in additional fees is compliant with Local Bankruptcy Rule 2016-1.

10. 18-25589-A-13 ROCHELLE WARD MOTION TO  
NSV-1 EXTEND AUTOMATIC STAY O.S.T.  
9-14-18 [10]

- ☐ 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 case was dismissed within one year of the filing of the current case because the debtor to maintain her plan payments.

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 30<sup>th</sup> 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 30<sup>th</sup> 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 in the first case a loss of financial contributions from an adult child. While that income has not been replaced or resumed, the debtor has been able to eliminate one secured claim. This means that a plan payment in this case will be approximately \$2,000 a month as opposed to the \$3,600 plan payment required in the last plan proposed in the dismissed case. The debtor's monthly net income is sufficient to fund a plan payment in the amount of approximately \$2,000. This is a sufficient change in circumstances rebut the presumption of bad faith.

11. 17-24490-A-13 RAYMOND/ELIZABETH MOTION TO  
LBG-1 CAMPBELL SELL O.S.T.  
9-7-18 [81]

- ☐ 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 sell real property will be granted on the condition that the sale proceeds are used to pay all liens of record in full in a manner consistent with the plan. If the proceeds are not sufficient to pay liens of record in full (including liens ostensibly "stripped off"), no sale may be completed without the consent of each lien holder not being paid in full.

12. 17-25404-A-13 MARIA AZTIAZARAIN OBJECTION TO  
MAA-1 CLAIM  
VS. OCWEN LOAN SERVICING, L.L.C. 6-22-18 [89]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be overruled.



The claimant filed a timely proof of claim for a home loan. That proof of claim demands a total of \$177,229.07 including a prebankruptcy arrearage of \$37,972.25.

The objection asserts that a prebankruptcy loan modification agreement somehow satisfied the arrears. A copy of the agreement is appended to the objection. Nevertheless, the debtor has not rebutted the presumptive validity of the proof of claim.

First, the loan modification is not signed by the claimant. Its signature by the claimant was a condition to its effectiveness. Section 2, part C provides: "I understand that the Loan Documents will not be modified unless and until (i) I receive from the Lender a copy of this Agreement signed by the Lender. . . ."

Second, the agreement does not "satisfy" the arrears. Rather, it provides for their inclusion in the principal balance and the reamortization of the loan. See section 3, part B of Agreement. As a result of the capitalization of the arrears and the reamortization, when the loan matures on November 1, 2035, the debtor will owe a balloon payment of approximately \$111,564.10 (assuming that the modification became effective).

**FINAL RULINGS BEGIN HERE**

13. 18-23422-A-13 JESSE/TRISTA MCCOARD MOTION TO  
GEL-1 CONFIRM PLAN  
8-20-18 [19]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

14. 16-20037-A-13 JACK/STACEY MARTINEZ MOTION TO  
WSS-3 INCUR DEBT  
8-21-18 [90]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 to purchase a vehicle will be granted. The motion establishes a need for the vehicle and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of the plan.

15. 18-24437-A-13 MATTHEW JUHL-DARLINGTON MOTION TO  
MOH-1 CONFIRM PLAN  
8-13-18 [19]

**Final Ruling:** The motion will be dismissed as moot. The case was dismissed on August 15, 2018.

16. 18-22156-A-13 ROBERT/DEANNA HAMMAN MOTION TO  
HLG-2 APPROVE LOAN MODIFICATION  
8-24-18 [50]

**Final Ruling:** This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee,

creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> 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 (9<sup>th</sup> 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 a confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

17.	17-27979-A-13	JERRY MILLER	OBJECTION TO
	JPJ-1		CLAIM
	VS. NETCREDIT		8-9-18 [18]

**Final Ruling:** This objection to the proof of claim of Netcredit has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained and the claim disallowed.

The last date to file a timely proof of claim was February 15, 2018. The proof of claim was filed on July 12, 2018. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

18.	15-29587-A-13	MICHAEL/CYNTHIA ORTIZ	MOTION TO
	PGM-7		REFINANCE
			8-21-18 [131]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion to incur a loan in order to refinance an existing home loan will be granted. The motion establishes that the new loan will like enhance the

ability of the debtor to complete the plan.