

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

**December 26, 2017 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 6. 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 22, 2018 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JANUARY 9, 2018, AND ANY REPLY MUST BE FILED AND SERVED BY JANUARY 16, 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 7 THROUGH 18 IN THE SECOND PART OF THE CALENDAR. INSTEAD, THESE ITEMS HAVE BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON JANUARY 2, 2018, AT 2:30 P.M.

December 26, 2017 at 1:30 p.m.

**Matters to be Called for Argument**

1. 17-26753-A-13 STEFAN ROSAURO AND APRIL OBJECTION TO  
JPJ-1 CRUZ CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
11-22-17 [15]

- ☐ Telephone Appearance  
☐ Trustee Agrees with Ruling

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

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

Second, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtors have transposed their respective incomes on Schedule I and have failed to disclose gambling losses incurred in 2015 through 2017. This error and nondisclosure are a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

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.

2. 17-27062-A-13 DARIN WOODFILL OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
12-5-17 [13]

- ☐ Telephone Appearance  
☐ Trustee Agrees with Ruling

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

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

The plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$170 is less than the \$258.24 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.

3. 17-25865-A-13 MATTHEW CHRISTOPHER MOTION TO  
DJC-2 CONFIRM PLAN  
11-8-17 [37]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

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 has agreed to a home loan modification. Absent that agreement, and there is no proof of an 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).

4. 17-27879-A-13 EILEEN CHAVEZ MOTION TO  
MOH-1 EXTEND AUTOMATIC STAY  
12-8-17 [12]

- ☐ 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 chapter 13 case was dismissed within one year of the most recent petition.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 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 the prior case was dismissed because the debtor failed to pay the last filing fee installment payment to the court. The debtor, however, transmitted it to her attorney and her attorney thought it was her plan payment. As a result, when the installment was not paid timely, the case was dismissed. In this case, the filing fee has been paid in full. This is a sufficient change in circumstances rebut the presumption of bad faith.

5. 17-27290-A-13 SHARI FRAZIER

ORDER TO  
SHOW CAUSE  
12-7-17 [14]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of \$79 due on December 4 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

6. 17-26896-A-13 AARON MCCONVILLE  
JPJ-1

OBJECTION TO  
CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
12-5-17 [22]

- ☐ 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 failed to utilize the court's mandatory form plan as required by Local Bankruptcy Rule 3015-1(a) (effective on and after May 1, 2012, in all cases regardless when filed).

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

Third, 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.

Fourth, the debtor has failed to commence making plan payments and has not paid approximately \$400 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).

Fifth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor failed to use the current official forms effective December 1, 2015 and has failed to disclose a prior case on the petition. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

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.

**FINAL RULINGS BEGIN HERE**

7. 16-25916-A-13 MICHELLE CAMPAU OBJECTION TO  
JPJ-1 CLAIM  
VS. ANN E. HANSSEN 11-3-17 [32]

**Final Ruling:** This objection to the proof of claim of Ann Hanssen 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 January 4, 2017. The proof of claim was filed on October 14, 2017. 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).

8. 17-20930-A-13 ROBERTO/ROWENA LOLENG OBJECTION TO  
JPJ-1 CLAIM  
VS. CAVALRY SPV I, L.L.C. 10-23-17 [33]

**Final Ruling:** This objection to the proof of claim of Cavalry SPV I 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.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on September 10, 2012. Therefore, using this date as the date of breach, when the case was filed on February 14, 2017, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

OBJECTION TO  
CLAIM  
10-23-17 [37]

The objection will be sustained and the claim disallowed.

10. 17-20930-A-13 ROBERTO/ROWENA LOLENG  
JPJ-3  
VS. CAVALRY SPV I, L.L.C.

OBJECTION TO  
CLAIM  
10-23-17 [41]

The objection will be sustained and the claim disallowed.

**December 26, 2017 at 1:30 p.m.**  
**- Page 7 -**

11. 17-20930-A-13 ROBERTO/ROWENA LOLENG                      OBJECTION TO  
JPJ-4     CLAIM  
VS. CAVALRY SPV I, L.L.C.     10-23-17 [45]

**Final Ruling:** This objection to the proof of claim of Cavalry SPV I 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.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on December 23, 2010. Therefore, using this date as the date of breach, when the case was filed on February 14, 2017, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

12. 17-20930-A-13 ROBERTO/ROWENA LOLENG                      OBJECTION TO  
JPJ-5     CLAIM  
VS. CAVALRY SPV I, L.L.C.     10-23-17 [49]

**Final Ruling:** This objection to the proof of claim of Cavalry SPV I 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.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on December 2, 2010. Therefore, using this date as the date of breach, when the case was filed on February 14, 2017, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).



13. 17-20930-A-13 ROBERTO/ROWENA LOLENG                      OBJECTION TO  
JPJ-6     CLAIM  
VS. CAVALRY SPV I, L.L.C.     10-23-17 [53]

**Final Ruling:** This objection to the proof of claim of Cavalry SPV I 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.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. The proof of claim indicates the last payment was on November 27, 2010. Therefore, using this date as the date of breach, when the case was filed on February 14, 2017, more than 4 years had passed. Therefore, when the bankruptcy was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

14. 15-27138-A-13 DWIGHT/GWENDOLYN HAMILTON                      MOTION TO  
RJ-6     MODIFY PLAN  
   11-16-17 [89]

**Final Ruling:** This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (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 modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

15. 17-25640-A-13 VYACHESLAV/IRYNA                                      MOTION FOR  
JHW-1     NESTERCHUK     RELIEF FROM AUTOMATIC STAY  
CAB WEST, L.L.C. VS.     11-21-17 [20]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 repossess and to obtain possession of its personal property security, and to dispose of it in accordance with applicable nonbankruptcy law. The movant is secured by a vehicle. The debtor has proposed a plan that does not provide for the payment of the movant's secured claim. Further, the debtor has not paid the claim under the terms of the contract with the movant. Because the debtor has not paid the movant's claim, and will not pay it in connection with the chapter 13 case, there 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.

16. 17-21158-A-13 CAMILLE GARRETT  
FF-3  
OBJECTION TO  
NOTICE OF POSTPETITION MORTGAGE  
FEES, EXPENSES, AND CHARGES  
11-27-17 [38]

**Final Ruling:** The objection will be dismissed without prejudice.

The objection concerns the Notice of Fees, Expenses and Charges filed August 16, 2017 by secured creditor Ocwen/U.S. Bank, etc., as permitted by Fed. R. Bankr. P. 3002.1(c). Its proof of claim was filed on July 8, 2017. The Notice is a supplement to that proof of claim. See Fed. R. Bankr. P. 3002.1(d).

The debtor objects to the Notice. However, the hearing on the objection was set on just 29 notice to the creditor. Consistent with Fed. R. Bankr. P. 3007(a), Local Bankruptcy Rule 3007-1 requires a minimum of 30 days' notice of the hearing on the objection and, if the notice requires the creditor to file written opposition to the objection, 44 days' notice of the hearing. Because only 29 days' notice was given in this case, and because the notice of hearing requires a written response to the objection, notice was insufficient.

17. 14-25364-A-13 GREGORY MCKINNEY MOTION TO  
RAC-2 MODIFY PLAN  
11-12-17 [27]

**Final Ruling:** This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (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 modified plan complies with 11 U.S.C. §§

1322(a) & (b), 1323(c), 1325(a), and 1329.

18. 16-28167-A-13 MICHAEL/KAREN LEAL  
SLH-2

MOTION TO  
MODIFY PLAN  
11-14-17 [33]

**Final Ruling:** This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (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 modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.