

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

February 27, 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 8. 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 MARCH 27, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY MARCH 13, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MARCH 20, 2017. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 9 THROUGH 21 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 MARCH 6, 2017, AT 2:30 P.M.

February 27, 2017 at 1:30 p.m.

**Matters to be Called for Argument**

1. 16-28313-A-13 MARISA GONZALES OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
1-25-17 [13]

- Telephone Appearance
- Trustee Agrees with Ruling

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

First, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Schedule A/B fails to list the debtor's retirement account as an asset. 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).

Second, the debtor has failed to give the trustee copies of a real estate license. 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.

2. 16-28236-A-13 HOWARD THOMAS OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
2-9-17 [21]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The objection will be sustained and the case dismissed.

First, the debtor failed to either appear in person at the meeting of creditors or make arrangements to appear by other means, such as by telephone. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11

U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

Second, the debtor did not sign the petition. It was signed by an agent but the agent's authority has not been proven by a presentation of the power of attorney. See United States v. Spurlin, 664 F.3d 954, 959 (5th Cir. 2011); In re Ballard, Case No. I-87-00718, 1987 WL 191320 (Bankr. N.D. Cal. April 30, 1987).

Third, 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).

Fourth, 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.

Fifth, 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.

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

Seventh, 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, 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).

3. 16-28542-A-13 ASHLEY/ROY SCHROEDER OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
2-9-17 [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 will be 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 75 days, the case will be dismissed on the trustee's ex parte application.

4. 16-25647-A-13 JAMES ARNOLD OBJECTION TO  
JB-2 CLAIM  
VS. EMPLOYMENT DEVELOPMENT DEPARTMENT 1-4-17 [51]

- Telephone Appearance
- Trustee Agrees with Ruling

**Tentative Ruling:** The objection will be overruled without prejudice.

Briefly, the claim is for unpaid California payroll taxes (State Disability Insurance, State Personal Income Tax withholdings, unemployment insurance, and employment training taxes for quarters beginning October 1, 1997 through June 30, 2003. The claim is entitled to priority pursuant to 11 U.S.C. § 507(a) (8) (C) or (E) with the exception of penalties, interest, and a portion of the unemployment insurance and the employment training tax.

The debtor asserts that because the most recent of these taxes, due for the quarter of April 1, 2003 through June 30, 2003, all of the taxes were more than 10 years delinquent when this case was filed on August 26, 2016. Therefore, Cal. Unemploy. Ins. Code § 1852 bars the collection of these taxes.

The court has two concerns not addressed in the objection.

First, the claim seeks payment of more than just unemployment insurance. There is no authority that section 1852 applies to the other taxes being claimed.

Second, the evidence does not indicate whether the debtor filed returns for any of these taxes. Because taxes, at least in the first instance, are self assessed by filing returns, the failure to file a return generally tolls any limitations period. Cf. 26 U.S.C. § 6501(c)(3). This objection includes no evidence that returns were filed nor any authority for the proposition that the failure to file returns did not toll the applicable statute.

5. 14-30556-A-13 HARRY HERNANDEZ MOTION FOR  
MSK-2 RELIEF FROM AUTOMATIC STAY  
CHAMPION MORTGAGE COMPANY VS. 2-2-17 [63]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The movant is secured by a long term claim secured by a mortgage on the debtor's home. The confirmed plan provides for the cure of the arrears on the claim. According to the movant's proof of claim, the arrears consist of fees, costs, and advances for taxes and insurance. The plan does not provide for the maintenance of post-petition installment payments because the mortgage is a reverse mortgage. The debtor is required by the plan and the mortgage to maintain property tax payments. The motion asserts that the debtor has failed to pay a \$1,881.79 property tax installment. However, the opposition demonstrates that the installment was paid on February 7, five days after the motion was filed.

Inasmuch as there is no outstanding breach of the plan, at least insofar as the movant's claim is concerned, there is no cause to terminate the automatic stay.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

6. 16-28267-A-13 CARLOS/KELLY SMITH OBJECTION TO  
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
2-9-17 [33]

- 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, to pay the dividends required by the plan at the rate proposed by it will take 603 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Second, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$1,337 is less than the \$4,063 in dividends and expenses the plan requires the trustee to pay each month.

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, Schedules I and J omit a detailed statement of the debtor's business income and expenses and Form 122C-1 omits business income and unemployment income received by the debtor in the six months prior to bankruptcy. 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).

Fourth, Counsel for the debtor has opted to receive fees pursuant to Local Bankruptcy Rule 2016-1 rather than by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. However, counsel has not complied with Rule 2016-1 by filing the rights and responsibilities agreement. The abbreviated procedure for approval of the fees permitted by Local Bankruptcy Rule 2016-1 is not applicable. Therefore, the provision in the proposed plan requiring the trustee to pay the fees without counsel first making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017, permits payment of fees without the required court approval. This violates sections 329 and 330. Also, the amount of fees received prior to the filing of this case as disclosed in counsel's Rule 2016 disclosure is different than the amount stated in the plan.

Fifth, because the debtor has claimed exemptions without limiting them to the statutory maximums permitted by the applicable exemption statutes, those exemptions will likely be disallowed and without those exemptions, the debtor cannot carry the burden of proving compliance with 11 U.S.C. § 1325(a)(4).

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.

7. 16-24178-A-13 GREGORY/KRISTY RAUZY MOTION TO  
JPJ-2 CONVERT OR TO DISMISS CASE  
1-27-17 [59]

- Telephone Appearance
- Trustee Agrees with Ruling

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

This case was filed on June 28, 2016. The debtor proposed a plan within the time required by Fed. R. Bankr. P. 3015(b) but was unable to confirm it. The court's order denying confirmation was filed on December 5. The debtor thereafter failed to promptly propose a modified plan and set it for a confirmation hearing.

Thus, there is cause to dismiss or convert the case to one under chapter 7, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(1) & (c)(5).

After a review of the schedules, the court concludes that conversion rather than dismissal is in the best interests of creditors because there is in excess of \$37,925 of equity in unencumbered, nonexempt assets that will benefit creditors if liquidated by a trustee.

Nonetheless, since the motion was filed, the debtor has proposed a modified plan that will be considered for confirmation at a hearing on March 13. If the debtor is unable to confirm a plan on March 13, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for conversion of the case to one under chapter 7. If the debtor has not confirmed by March 13, the case will be converted on the trustee's ex parte application.

8. 16-23697-A-13 DIANNA QUATRARO MOTION FOR  
DBD-1 RELIEF FROM AUTOMATIC STAY  
OPPORTUNITY FUND NORTHERN CA VS. 1-25-17 [43]

- Telephone Appearance
- Trustee Agrees with Ruling

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

The movant's claim, \$7494.40 as of the date the case was filed, is secured by a 2008 Ford Explorer. The movant asserts that it has received no payments, either pursuant to its contract with the debtor or pursuant to a plan, since the case was filed.

This case was filed on June 7, 2016. There is no confirmed plan but a modified plan has been proposed and is set for a confirmation hearing on March 27. It proposes a monthly payment to the movant of \$50 and reduces the interest rate on its claim to 3%. At this rate, it take more than 188 months to pay the claim. Such a plan would not comply with 11 U.S.C. § 1322(d) and the monthly payment likely would not adequately protect the movant as required by 11 U.S.C. § 1325(a)(5)(B)(iii)(II) or 1326(a)(1)(C). However, the plan also provides that the debtor will obtain a loan secured by her home the proceeds of which will be used to pay this claim in full. Her opposition to the motion indicates that this loan will be procured and funded by the end of March.

On the condition that the court confirms a plan, and approves the above loan, in time to pay the movant's claim in full (as modified by the plan) by April 30, the motion will be denied. If the claim is not paid in full by April 30, the stay will be terminated on the further ex parte application of the movant.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

**FINAL RULINGS BEGIN HERE**

9. 17-20506-A-13 THERESITA GODINEZ MOTION TO  
MRL-1 VALUE COLLATERAL  
VS. DEUTSCHE BANK NATIONAL TRUST COMPANY 1-27-17 [8]

**Final Ruling:** The motion has been voluntarily dismissed.

10. 16-20327-A-13 MARTIN MOCK MOTION TO  
RWF-1 MODIFY PLAN  
1-18-17 [20]

**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.

11. 16-25647-A-13 JAMES ARNOLD OBJECTION TO  
JB-3 CLAIM  
VS. SACRAMENTO COUNTY TAX COLLECTOR 1-4-17 [54]

**Final Ruling:** The court continues the hearing to March 20, 2017 at 1:30 p.m. to permit the debtor to supplement the record. While the debtor signed a declaration stating that he paid \$24,604.89 to the county for property taxes, the date of such payment(s) and documentary proof of the payment(s) is not provided. Evidence addressing these points shall be filed and served no later than March 13.

12. 16-22552-A-13 BOWEN/NADINE RIDEOUT MOTION TO  
ET-1 CONFIRM PLAN  
6-16-16 [29]

**Final Ruling:** The parties have agreed to a continuance to April 17, 2017 at 1:30 PM.

13. 16-22552-A-13 BOWEN/NADINE RIDEOUT OBJECTION TO  
ET-3 CLAIM  
VS. DEBORAH GARDINER 9-8-16 [78]

**Final Ruling:** The parties have agreed to a continuance to April 17, 2017 at 1:30 PM.

14. 16-22552-A-13 BOWEN/NADINE RIDEOUT OBJECTION TO  
ET-4 CLAIM  
VS. WILLIAM GARDINER 9-8-16 [83]

**Final Ruling:** The parties have agreed to a continuance to April 17, 2017 at

**February 27, 2017 at 1:30 p.m.**

1:30 PM.

15. 11-35662-A-13 PETER/JILL LASSEN MOTION TO  
THS-12 WAIVE DEBT EDUCATION REQUIREMENT  
ETC  
2-9-17 [203]

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

The notice of hearing informs potential respondents that written opposition must be filed and served within 14 days prior to the hearing if they wish to oppose the motion. Because less than 28 days of notice of the hearing was given (18 days' notice was given), Local Bankruptcy Rule 9014-1(f)(2) specifies that written opposition is unnecessary. Instead, potential respondents may appear at the hearing and orally contest the motion. If necessary, the court may thereafter require the submission of written evidence and briefs. By erroneously informing potential respondents that written opposition was required and was a condition to contesting the motion, the moving party may have deterred a respondent from appearing. Therefore, notice was materially deficient.

16. 13-29565-A-13 FLOYD CHRISTENSEN MOTION TO  
PGM-2 APPROVE LOAN MODIFICATION  
1-26-17 [36]

**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 the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

17. 16-27967-A-13 D. JEANNE PETERSON OBJECTION TO  
JPJ-2 EXEMPTIONS  
1-26-17 [22]

**Final Ruling:** The objection will be dismissed because it is moot. The debtor voluntarily dismissed the case on February 18.

18. 16-25168-A-13 TERI TAYLOR MOTION TO  
TAG-4 MODIFY PLAN  
1-9-17 [58]

**Final Ruling:** The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006).

The objection will be overruled and the motion will be granted.

The objection observes that the debtor has not signed the plan. A review of the filed copy, however, reveals that the debtor's inked signature appears, albeit faintly. The response to the objection, which includes the debtor's declaration, states that the filed copy of the plan includes the debtor's signature. Hence, the objection will be overruled.

Therefore, the motion to confirm the modified plan will be granted. It complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

19. 16-28169-A-13 CHARLETTE BRADFORD MOTION TO  
MJD-1 VALUE COLLATERAL  
VS. JPMORGAN CHASE BANK, N.A. 1-26-17 [22]

**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 (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 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 \$3,610 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 (9<sup>th</sup> Cir. 2004). Therefore, \$3,610 of the respondent's claim is an allowed secured claim. When the respondent is paid \$3,610 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.

20. 16-28383-A-13 THEODORE/ROBERTA KLINE OBJECTION TO  
THE BANK OF NEW YORK MELLON VS. CONFIRMATION OF PLAN AND MOTION TO  
DISMISS CASE  
2-6-17 [21]

**Final Ruling:** The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006).

The objection and motion will be dismissed.

First, the objection and motion are untimely. The December 29 notice of the commencement of case included a notice of the hearing on confirmation. Parties in interest were directed to file objections to confirmation no later than January 26. This objection was filed on February 6.

Second, and while there is no deadline for filing motions to dismiss the case,

the motion does not include a docket control number. A motion placed on the calendar by the moving 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 a motion 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 motion.

This motion was filed without a docket control number. Therefore, it is possible that documents have been filed in support or in opposition to the motion that have not been brought to the attention of the court. The court will not permit the movant to profit from possible confusion caused by this breach of the court's local rules.

Third, the basis of the objection concerns the valuation of the creditor's collateral. However, the creditor stipulated with the debtor that the collateral has no value. Consequently, the objection to confirmation has no merit.

21. 16-27995-A-13 THOMAS FOX  
JPJ-2

OBJECTION TO  
EXEMPTIONS  
1-26-17 [26]

**Final Ruling:** The court concludes that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, an actual hearing is unnecessary and this matter is removed from calendar for resolution without oral argument. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006).

The objection will be overruled.

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 when the exemptions were claimed.

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. However, it was filed after the objection was filed. Therefore, the objection will be overruled as moot.