UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 3, 2017 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 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 JULY 31, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JULY 17, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 24, 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 12 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 JULY 13, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 16-28103-A-13 BERTA GALVEZ-SERRATO — MOTION TO CONFIRM PLAN
MB-2 — 5-22-17 [40]

□ Telephone Appearance
□ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the objection will be overruled on the condition the plan is modified in the confirmation order to require 56 (not 55) monthly payments of $2,724. As modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), and 1325(a).

2. 17-23732-A-13 GREGORY/CHRISTINE ALLEN — MOTION TO AVOID JUDICIAL LIEN
LBG-1 — 6-19-17 [14]
VS. WORDELL LAW GROUP C/O
GISELE BOULDERICE

□ 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 dismissed without prejudice.

This motion seeks to avoid a judicial lien on the debtor's home on the ground that it impairs an exemption in that property. However, the exemption impaired was not claimed until June 19, 2017 and there is nothing on the docket indicating that creditors or the trustee were served with the amended Schedule C or given notice of it.

Therefore, the motion will be denied. Parties in interest have 30 days from an exemption amendment to object to amended exemptions. Fed. R. Bankr. P. 4003(b)(1). Because the debtor has not afforded parties in interest such an opportunity, it is premature to conclude that the debtor has an exemption in the subject property. Without an exemption, the judicial lien cannot impair an exemption.

3. 13-21942-A-13 BARBARA TAXARA — MOTION TO CONVERT OR TO DISMISS CASE
JPJ-1 — 6-1-17 [22]

□ Telephone Appearance
□ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case converted to one under chapter 7.

The debtor has failed to make $1,600 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6). The failure to make the payments is a material plan default which is prejudicial to creditors and is cause for dismissal or conversion of the case to one under chapter 7, whichever is in the interests of creditors. See 11 U.S.C. § 1307(c)(1) & (c)(5).

Second, even if the plan payments were current, the plan could not be completed with the required five year duration because the debtor has under-estimated the IRS' priority claim (which must be paid in fully) by more than $35,000. She has also underestimated nonpriority claims by more than $100,000. The plan promises a 100% dividend on these latter claims. As a result, paying the required dividends will take approximately 20 years, much longer than the maximum five years permitted by 11 U.S.C. § 1322(d).

The plan's insolvency was apparent from the Notice of Filed Claims filed and served on October 16, 2013. The debtor, however, failed timely to reconcile the plan with these priority and nonpriority unsecured claims, either by filing and serving a motion to modify the plan to provide for the claims, or by objecting to the claims. This is required by the plan at section 2.13 of the plan ("2.13. Class 5 consists of unsecured claims entitled to priority pursuant to 11 U.S.C. § 507. These claims will be paid in full except to the extent the claim holder has agreed to accept less or 11 U.S.C. § 1322(a)(4) is applicable . . . The failure to provide the foregoing treatment for a priority claim is a breach of this plan.") and Local Bankruptcy Rule 3007-1, which provides:

"If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date."

See also In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004). The time period to reconcile the claims to the plan has expired and the debtor has failed to either object to the claims or to provide for their payment in full. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

As noted in the trustee's motion, there are nonexempt assets that may produce a return of approximately $53,000 for unsecured creditors. Given this return, conversion rather than dismissal is in the interest of creditors.

4. 16-25647-A-13 JAMES ARNOLD
JB-5
VS. CHARLES SYLVA AND SALLY PEABODY REVOCABLE TRUST

OBJECTION TO CLAIM
5-9-17 [88]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled.

The creditors filed a timely proof of claim on December 13, 2016. It demands a total $12,345.45, of which $676.86 is a priority claim pursuant to 11 U.S.C. § 507(a)(2), and the balance, $11,668.59, is a nonpriority unsecured claim.

The claim arises out a lease of real property by the creditors to the debtor. The lease ended on February 28, 2016 but the debtor did not vacate the property which is used as a pasture. The creditors commenced an unlawful detainer action to obtain possession of the property. A judgment was entered on May 25, 2016 awarding possession to the creditors. The debtor was evicted on June 8, 2016 but remaining behind on the land was the debtor's personal property (an ATV and fencing) and between 24 and 27 horses).

The debtor filed this bankruptcy case on August 26. Therefore, the creditors had to appear in this court to obtain relief from the automatic stay in order to remove the personal property and the horses from the property. They obtained an order from this court and the property and horses were removed on or about October 23, 2016.

The proof of claim demands the following:

Legal fees to prosecute the unlawful detainer to judgment, $750

Post judgment fees to enforce the judgment, $578 (attorney Link) and $3,753.50 (attorney Downey Brand)

Post judgment fees incurred in connection with the bankruptcy case (filing the motion for relief from the automatic stay and filing a proof of claim), $4,498.16

Holdover rent at the rate of $11.67 per day for the pre-petition period, February 28 to August 25, $2,088.93

Holdover rent at the rate of $11.67 per day for the post-petition period, August 26 to October 23, $676.86.

The lease includes an attorney's fee provision:

"Should any litigation be commenced between the parties to this Lease for the enforcement of any rights of either party against the other pursuant to the provisions of this Lease, or by reason of any alleged breach of any of the provisions of this Lease, the party prevailing in the litigation shall be entitled to receive from the unsuccessful party all costs incurred in connection with the litigation, including reasonable allowance for attorneys' fees and expenses incurred by the prevailing party."

The objection maintains that only the fees incurred to obtain the unlawful detainer judgment, $750, and Mr. Links's fees to enforce the judgment and obtain possession for the creditors, $578, a total of $1,328, comes within this

lease provision. The other fees incurred in connection with the effort to remove the debtor's property and horses from the property, both before and after the bankruptcy, do not.

The debtor also challenges the demand for holdover rent, both for the pre-petition and post-petition periods because there is no proof of the fair rental value of the property included in the proof of claim.

The objection to the holdover rent will be overruled.

First, there was no requirement that the proof of claim include evidence of the land's fair market rental value. The proof of claim includes everything required by Fed. R. Bankr. P. 3001 and is prima facie valid. 11 U.S.C. § 502(a).

"*Inasmuch as Rule 3001(f) and section 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they prima facie establish the claim. Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the ultimate burden of persuasion is always on the claimant. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere formal objection without more.*"

Wright v. Holm (In re Holm), 931 F.2d 620, 623 (9th Cir. 1991) (quoting 3 L. King, Collier on Bankruptcy § 502.02, at 502-22 (15th ed. 1991)).

The debtor has come forward with nothing to suggest that the amount demanded for holdover rent is inappropriate for any reason. And, despite the failure of the debtor to do so, the creditors have produced evidence that rent at the lease rate (which is the rate in the proof of claim) is, if anything, below the market.

The objection to the attorney's fees will likewise be overruled.

First, the attorney's fee provision is broad enough to include not just those fees directly incurred in connection with the unlawful detainer, but the post-judgment fees incurred to obtain possession and to remove the debtor's property from the leased premises. This includes the fees incurred before the case was filed as well as the fees incurred in obtaining relief from the automatic stay even though this is a issue peculiar to bankruptcy. Because the bankruptcy issues had to be litigated in order to enforce the judgment, the fees for bankruptcy legal work are within the ambit of the contract.

In Travelers Casualty & Surety Co. Of America v. Pacific Gas & Electric Co., 127 S.Ct. 1199 (2007), Travelers issued a surety bond on behalf of PG&E guaranteeing its payment of workers' compensation benefits. It filed a proof of claim in the chapter 11 case seeking payment in the event PG&E defaulted on future benefits. It then sought an award of the attorney's fees it incurred negotiating language in PG&E's reorganization plan that protected its right of subrogation and indemnity. The Supreme Court held that creditor was not precluded from filing unsecured claim for contractual attorney's fees even though the fees sought had been incurred litigating issues of federal

bankruptcy law.

To the extent the reasonableness of the fees is challenged, once again the court notes that the objection says nothing more than the conclusion that they are unreasonable and are not supported by invoices. The creditors have responded by producing the invoices and the court's review of them does not suggest the fees are unreasonable or excessive.

In addition to what is demanded in the proof of claim, the creditors now seek a additional amounts incurred in removing the debtor's fencing because it was encroaching on adjoining land owned by a neighbor. However, because the proof of claim has not been amended to include these damages and because the debtor has not specifically objected to these damages, it is premature to address them.

5. 17-20973-A-13 JESSE FARLEY — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1 — 6-2-17 [27]
CHAMPION MORTGAGE COMPANY VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The movant is secured by a reverse mortgage encumbering the debtor's home. Because the claim is based on a reverse mortgage, the debtor has no ongoing post-petition obligation. Even though the debtor was not required to make principal and interest payment, because the debtor failed to pay pre-bankruptcy insurance and property taxes, a pre-petition arrearage accumulated prior to bankruptcy. The confirmed plan provides for a cure of this arrearage through the plan beginning in July 2017.

The motion asserts that because the debtor failed to procure insurance, the creditor purchased it. The movant maintains that the debtor's failure to purchase insurance is cause to terminate the stay. However, the motion fails to state whether the debtor failed to purchase the insurance before or after the case was filed. If it is the former, the confirmed plan will reimburse the movant for the forced placed insurance. If it is the latter, the debtor has breached his contract with the movant since the case was filed. Because the plan does not modify the debtor's post-bankruptcy obligations to the movant, this would be cause to terminate the automatic stay.

In order to establish cause pursuant to 11 U.S.C. § 362(d)(1) for relief from the automatic stay, it must be shown that the debtor has failed to abide by the terms of the confirmed plan. That is, the debtor must have defaulted under the terms of the plan to the detriment of the movant. See Anaheim Sav. & Loan Ass'n v. Evans, 30 B.R. 530, 531 (B.A.P. 9th Cir. 1983). Because the movant has failed to demonstrate that the debtor has defaulted after the filing of the case, there is no cause to terminate the stay.

6. 17-21188-A-13 TANISHA MAVY
TLM-2

MOTION TO CONFIRM PLAN
5-19-17 [47]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $156 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. 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 UAC 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 a state income tax return of 2015. 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.

In this case, the meeting of creditors was held and concluded. While it is possible for the deadline to file the delinquent returns to be extended, to receive an extension the trustee hold the meeting of creditors open. See 11 U.S.C. § 1308(b). The trustee did not hold the meeting open. Hence, the deadline for filing the delinquent returns has expired and it is impossible for the debtor to comply with section 1308.

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.

Fourth, according to the certificate of service, no creditors were served with the motion to confirm the plan as required by Fed. R. Bankr. P. 2002(b).

7. 17-23793-A-13 RANJIT SINGH — MOTION TO EXTEND AUTOMATIC STAY O.S.T. 6-19-17 [13]
PLC-1

- ☐ 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 bankruptcy case filed by the debtor. A prior chapter 7 case, Case No. 12-23041, was dismissed on May 22, 2017 because the debtor failed to file all schedules and statements. Also, although not the reason the case was dismissed, the debtor failed to obtain credit counseling prior to filing and he did not sign the petition.

Hence, the debtor's earlier 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 30th 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 30th 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 not eligible to file the prior case, did not sign the petition and failed to file all necessary schedules and statements. It appears the foregoing was the result of inexperienced legal counsel. These problems have been rectified and this is a sufficient change in circumstances rebut the presumption of bad faith.

8. 17-22996-A-13 ANGELINA ROBINSON — OBJECTION TO CONFIRMATION OF PLAN
JPJ-1 — 6-15-17 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan 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.

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, 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.

Third, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor has not disclosed rental income received over the prior three years on the statement of Financial Affairs. 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, the trustee will object 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, as admitted in the Statement of Financial Affairs, and because the debtor's spouse has not joined in the chapter 13 petition, the debtor must file his spouse's waiver of right to claim exemptions. See Cal.

Civ. Proc. Code § 703.140(a)(2). This was not done.

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

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

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

Here, the debtor is asserting the exemptions of Cal. Civ. Proc. Code § 703.140(b), which require a spousal waiver. That waiver was not filed with the petition. As a result, the debtor has no allowable exemptions.

FINAL RULINGS BEGIN HERE

9. 17-22346-A-13 CONCING WOODWARD — OBJECTION TO EXEMPTIONS
JPJ-2 — 5-25-17 [18]

Final Ruling: This objection to the debtor's exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor 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 (9th 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 (9th Cir. 2006). Therefore, the debtor's default is entered and the matter will be resolved without oral argument.

The objection will be sustained and the exemption reduced from a total of $6,000 to $4,500.

The debtor has exempted all of two bank accounts with balances totaling $6,000 pursuant to Cal. Civ. Pro. Code § 704.070. However, that statute permits the debtor to exempt only 75% of the balance, $4,500. See Cal. Civ. Pro. Code § 704.070(b)(2).

10. 13-29565-A-13 FLOYD CHRISTENSEN — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
PGM-4 — 5-31-17 [66]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The motion seeks approval of $1,500 in additional fees incurred principally in connection with twice modifying the plan and assisting the debtor with a loan modification. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and Local Bankruptcy Rule 2016-1, if applicable.

11. 13-22074-A-13 DAVID/CATHERINE CHERRY
MET-4

MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
6-3-17 [53]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The motion seeks approval of $3,240 in additional fees incurred principally in connection with a plan modification, a motion to borrow, a motion to dismiss the case, and a motion to permit the case to proceed despite the death of one of the debtors. The foregoing represents reasonable compensation for actual, necessary, and beneficial services rendered to the debtor. Any retainer may be drawn upon and the balance of the approved compensation is to be paid through the plan in a manner consistent with the plan and Local Bankruptcy Rule 2016-1, if applicable.

12. 13-20087-A-13 JOSEFINA/JOSE LORICO
NLG-1
SETERUS, INC. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-31-17 [125]

Amended Final Ruling: While it appears the motion is moot inasmuch as the court confirmed a plan on May 22, 2013, that plan places the movant’s claim in Class 4 and provides:

“Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.”

the parties have agreed to a continuance to July 31, 2017 at 1:30 p.m. Even though the court sees no issue for it to adjudicate, the hearing will be continued per the agreement of the parties.