UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 1, 2016 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 15. 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 SEPTEMBER 6, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY AUGUST 22, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY AUGUST 29, 2016. 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 16 THROUGH 24 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 AUGUST 8, 2016, AT 2:30 P.M.

Matters to be Called for Argument

1. 16-23533-A-13 JEFFREY DAVOLT
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
7-14-16 [14]

- ☐ 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, the debtor has not established that the plan will pay all projected disposable income to unsecured creditors as required by 11 U.S.C. § 1325(b) because the debtor has erroneously deducted business expenses when calculating current monthly income. Gross business income, without expense deduction, is part of the debtor's current monthly income. Once total current monthly income is calculated, business expenses may be deducted as an expense when calculating current monthly income. Accord In re Weigand, 386 B.R. 238 (9th Cir. BAP 2008). The distinction is material here because, the debtor's current monthly income, without deducting business expenses, exceeds the state median income for a comparably sized household. As a result, the debtor must complete Form 22 in its entirety in order to calculate projected disposable income. The debtor has failed to complete the portion of Form 22 necessary to calculate projected disposable income. Without doing so, the debtor cannot prove compliance with 11 U.S.C. § 1325(b).

Second, with business expenses not deducted from current monthly income, the debtor is an over-median income debtor. Yet, the plan proposes a duration of 36 months. However, because the debtor is an over-median income debtor, the duration must be 60 months even though the debtor has no projected disposable income reported on Form 22. See Danielson v. Flores (In re Flores), 2013 WL 4566428 (Aug. 29, 2013). The plan does not comply with 11 U.S.C. § 1325(b)(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.

2. 16-23740-A-13 KIMBERLEE CALLAHAN
JPJ-1

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
7-14-16 [14]

- ☐ 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 will be dismissed.

First, the debtor failed to appear at the meeting of creditors. 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, 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 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.

Fifth, the debtor has failed to give the trustee financial records for a closely held business. 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).

Sixth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. The debtor failed to include a detailed statement of business and expenses with Schedules I and J. 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).

Seventh, 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.

Eighth, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $225 is less than the $1,631 in dividends and expenses the plan requires the trustee to pay each month.

Ninth, the debtor has not established that the plan will pay all projected disposable income to unsecured creditors as required by 11 U.S.C. § 1325(b) because the debtor has erroneously deducted business expenses when calculating current monthly income. Gross business income, without expense deduction, is part of the debtor's current monthly income. Once total current monthly income is calculated, business expenses may be deducted as an expense when calculating current monthly income. Accord In re Weigand, 386 B.R. 238 (9th Cir. BAP 2008). The distinction is material here because, the debtor's current monthly income, without deducting business expenses, exceeds the state median income for a comparably sized household. As a result, the debtor must complete Form 22 in its entirety in order to calculate projected disposable income. The debtor has failed to complete the portion of Form 22 necessary to calculate projected disposable income. Without doing so, the debtor cannot prove compliance with 11 U.S.C. § 1325(b).

Tenth, because the debtor's exemptions are likely to be disallowed in their entirety for the reasons argued by the trustee, at this point the unsecured creditors are not being paid what would be received in a chapter 7 liquidation. See 11 U.S.C. § 1325(a)(4). Without exemptions, unsecured creditors would receive an aggregate dividend of more than $13,500; the proposed plan pays them nothing.

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. 16-23740-A-13 KIMBERLEE CALLAHAN — OBJECTION TO CONFIRMATION OF PLAN
AP-1
DEUTSCHE BANK TRUST CO. AMERICAS VS. — 7-14-16 [18]

- ☐ 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.

The plan provides for two home mortgages in two Classes, Class 1 and Class 4. These classes are mutually exclusive. A claim belongs in one class but not both.

4. 16-23841-A-13 RANDY/STEPHANIE STANLEY — MOTION TO AVOID JUDICIAL LIEN
SNM-1
VS. CACH, L.L.C. — 6-29-16 [10]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The motion seeks to avoid a judicial lien on "all property" owned by the debtors and located in Solano County. Schedule A/B lists residential property in West Sacramento and $19,400 of personal property, none of which is related to a business. On Schedule C, no exemption was claimed as to the real property and all equity in the personal property was claimed exempt. Schedule D indicates the real property is over-encumbered by a voluntary lien.

The debtors assert that the respondent's judicial lien may be avoided under 11 U.S.C. § 522(f)(1).

The requirements for lien avoidance under section 522(f) are as follows: (1) there must be an exemption to which the debtor "would have been entitled" under subsection (b) of section 522; (2) the property must be listed on the debtor's schedules and claimed as exempt; (3) the lien at issue must impair the claimed exemption; and (4) the lien must be either a judicial lien or another type of lien specified by the statute. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Section 522(f)(1)(A) permits the avoidance of judicial liens and section 522(f)(1)(B) permits the avoidance of nonpossessory, nonpurchase money security interests.

Debtors' rights to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. In re Chiu, 266 B.R. 743, 751 (B.A.P. 9th

Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000). This means that in the court's lien-avoidance analysis the value of the subject property is determined as of the date of the petition and not some time post-petition as the creditor suggests.

The motion will be denied. It claims no impairment of exemptions in any exempt real property. The debtor has not exempted the property.

Also, there is no evidence with the motion of a judicial lien created against personal property.

Cal. Civ. Proc. Code § 697.520 provides: "A judgment lien on personal property may be created pursuant to this article as an alternative or in addition to a lien created by levy under a writ of execution pursuant to Chapter 3 (commencing with Section 699.010) or by use of an enforcement procedure provided by Chapter 6 (commencing with Section 708.010)."

Cal. Civ. Proc. Code § 697.510(a) provides: "A judgment lien on personal property described in Section 697.530 is created by filing a notice of judgment lien in the office of the Secretary of State pursuant to this article."

The motion contains no evidence of a notice of judgment lien filed with the California Secretary of State. Specifically, the court has no evidence that a notice of judgment lien was filed with the California Secretary of State with respect to the debtor's scheduled personal property.

Further, the motion contains no evidence of a nonpossessory, nonpurchase money security interest in property.

5. 16-23841-A-13 RANDY/STEPHANIE STANLEY — MOTION TO AVOID JUDICIAL LIEN
SNM-2
VS. RESURGENCE CAPITAL, L.L.C. — 6-29-16 [15]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The motion seeks to avoid a judicial lien on "all property" owned by the debtors and located in Solano County. Schedule A/B lists residential property in West Sacramento and $19,400 of personal property, none of which is related to a business. On Schedule C, no exemption was claimed as to the real property and all equity in the personal property was claimed exempt. Schedule D indicates the real property is over-encumbered by a voluntary lien.

The debtors assert that the respondent's judicial lien may be avoided under 11 U.S.C. § 522(f)(1).

The requirements for lien avoidance under section 522(f) are as follows: (1) there must be an exemption to which the debtor "would have been entitled" under subsection (b) of section 522; (2) the property must be listed on the debtor's schedules and claimed as exempt; (3) the lien at issue must impair the claimed exemption; and (4) the lien must be either a judicial lien or another type of lien specified by the statute. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Section 522(f)(1)(A) permits the avoidance of judicial liens and section 522(f)(1)(B) permits the avoidance of nonpossessory, nonpurchase money security interests.

Debtors' rights to avoid a judicial lien on exemption-impairment grounds is determined as of the petition date. In re Chiu, 266 B.R. 743, 751 (B.A.P. 9th Cir. 2001) (citing In re Dodge, 138 B.R. 602, 607 (Bankr. E.D. Cal. 1992)); see also In re Kim, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000). This means that in the court's lien-avoidance analysis the value of the subject property is determined as of the date of the petition and not some time post-petition as the creditor suggests.

The motion will be denied. It claims no impairment of exemptions in any exempt real property. The debtor has not exempted the property.

Also, there is no evidence with the motion of a judicial lien created against personal property.

Cal. Civ. Proc. Code § 697.520 provides: "A judgment lien on personal property may be created pursuant to this article as an alternative or in addition to a lien created by levy under a writ of execution pursuant to Chapter 3 (commencing with Section 699.010) or by use of an enforcement procedure provided by Chapter 6 (commencing with Section 708.010)."

Cal. Civ. Proc. Code § 697.510(a) provides: "A judgment lien on personal property described in Section 697.530 is created by filing a notice of judgment lien in the office of the Secretary of State pursuant to this article."

The motion contains no evidence of a notice of judgment lien filed with the California Secretary of State. Specifically, the court has no evidence that a notice of judgment lien was filed with the California Secretary of State with respect to the debtor's scheduled personal property.

Further, the motion contains no evidence of a nonpossessory, nonpurchase money security interest in property.

6. 16-23543-A-13 KENNETH/BARBARA ENDICOTT — OBJECTION TO CONFIRMATION OF PLAN
LHL-1
BANK OF AMERICA N.A. VS. — 7-14-16 [15]

- ☐ 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.

The debtor currently has in place a trial modification of a home loan. The proposed plan assumes that the trial modification will become permanent but makes no provision for the possibility that it will not. In that event, the debtor has two options: maintain the regular contract installment while curing

the arrearage, or surrendering the home to the lender. See 11 U.S.C. §§ 1322(b)(2), (b)(5), 1325(a)(5). The plan does not provide for one of these alternatives in the event the creditor declines to make the modification permanent. Therefore, the plan may not be confirmed.

7. 16-22552-A-13 BOWEN/NADINE RIDEOUT — MOTION TO CONFIRM PLAN
ET-1 — 6-16-16 [29]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None. The objection indicates that the objecting creditor wishes to examine the debtor regarding possible unscheduled assets. The hearing will be continued to accommodate an examination.

8. 15-20968-A-13 MICHAEL/ARLENE MUNOZ — MOTION TO MODIFY PLAN
BLG-2 — 6-17-16 [30]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

Even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the post-petition arrears owed to the Class 1 home loan. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

9. 16-21471-A-13 TYLER/KIMBERLY WELCH — MOTION TO CONFIRM PLAN
ULC-2 — 5-27-16 [30]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $3,515 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, even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the post-petition arrears owed to Vitek Mortgage on its Class 1 home loan. By failing to provide for a cure, the debtor is, in effect,

impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

10. 15-26281-A-13 STEPHEN TRUMAN — OBJECTION TO CLAIM OF EXEMPTION 3-9-16 [52]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained in part.

Creditor MGM Grand Hotel, L.L.C., objects to the debtor's Cal. Civ. Pro. Code § 703.140(b)(10)(E) exemption in a $186,000 self-directed IRA that holds sports gambling tickets now in the possession of MGM. MGM also objects to the debtor's wild card exemptions under Cal. Civ. Pro. Code § 703.140(b)(5), contending they exceed the allowed statutory maximum amount.

On April 11, 2016, the debtor filed opposition to the objection. Docket 79. On April 17, 2016, the debtor amended his Schedule C, continuing to rely on Cal. Civ. Pro. Code § 703.140(b)(10)(E) but also adding 11 U.S.C. § 522(b)(3)(C) as an additional exemption basis. Docket 82.

The court held a hearing on the objection on April 25, issuing a tentative decision sustaining the objection because the debtor had not met his evidentiary burden. The opposition was devoid of evidence. Docket 79.

To give the debtor further opportunity to present evidence on the exemption, the court continued the hearing on the objection to June 6, 2016, giving the debtor until May 24 to file further opposition to the motion and giving MGM until May 31 to file a reply. Docket 85.

The debtor did not file further opposition to the objection by the May 24 deadline. In light of this, MGM filed additional papers in support of the objection on May 27. Dockets 113, 114, 116. Only then did the debtor file further opposition. It was filed seven days after the May 24 deadline, on May 31. Dockets 117-127.

At the June 6 hearing, the court once again continued the hearing on the objection, to July 11, 2016, in order to consider the debtor's late-filed further opposition and give MGM the opportunity to file a reply to that opposition. MGM filed its reply to the further opposition on June 27. Docket 156.

At the July 11 hearing, the court had to continue the hearing on the objection once again, to August 1, in order first to consider the debtor's motion to dismiss the chapter 13 case. Docket 175.

The debtor formed a self-directed IRA on March 31, 2015. Docket 121. On or about April 27, 2015, the debtor also formed Saaz, L.L.C. and his IRA became 100% owner of that LLC. Docket 114 at 80 & 86. The debtor and his wife became managing members of the LLC. Docket 114 at 80. The LLC operating agreement provided that the IRA, as equity member, was to fund the LLC with $300,000. Docket 114 at 64.

On May 4, 2016, the debtor transferred an unknown amount of rollover funds into

the IRA. Dockets 118 at 2 & 123.

Soon after forming the LLC, the debtor opened a bank account in the name of the LLC and the IRA appears to have transferred an unknown amount of funds into that account. Docket 114 at 92.

On May 26, 2015, the debtor withdrew $120,000 from the LLC's account at Wells Fargo Bank. Docket 114 at 92. On the same day, May 26, the debtor walked into the Bellagio Hotel and Casino in Las Vegas, Nevada to gamble at least $200,000. Docket 114 at 20-21. He presented the Bellagio with a $200,000 cashier check and also used "other funds" to gamble on sports wagers. Id. These bets resulted in $169,000 of winning sports betting tickets, which the debtor did not redeem before leaving the Bellagio on May 27. Id.

On May 27, the day he left the Bellagio, the debtor deposited $138,000 into the LLC's Wells Fargo Bank account. Docket 114 at 95.

Fed. R. Bankr. P. 4003(c) provides that:

"In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections." See also Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999); Tyner v. Nicholson (In re Nicholson), 435 B.R. 622, 630 (B.A.P. 9th Cir. 2010); Hopkins v. Cerchione (In re Cerchione), 414 B.R. 540, 548-49 (B.A.P. 9th Cir. 2009); Kelley v. Locke (In re Kelley), 300 B.R. 11, 16-17 (B.A.P. 9th Cir. 2003).

Despite Rule 4003(c), it is state law that governs the burden of proof to establish the claim of exemption. Diaz v. Kosmala (In re Diaz), Case No. CC-15-1219-GDKi, 2016 WL 937701, at *5-6 (B.A.P. 9th Cir. Mar. 11, 2016); In re Barnes, 275 B.R. 889, 899 (Bankr. E.D. Cal. 2002) (concluding that the burden of proof is determined by state law in light of Supreme Court's decision in Raleigh v. lllinois Department of Revenue, 530 U.S. 15 (2000), which held that the burden of proof on a claim is a substantive element of the claim); see also In re Pashenee, 531 B.R. 834, 836-37 (Bankr. E.D. Cal. 2015) (also concluding that state law governs the burden of proof on the establishment of exemptions, in light of the Raleigh decision).

Cal. Civ. Pro. Code § 703.580(b) prescribes that "[a]t a hearing under this section, the exemption claimant [*i.e.*, the debtor] has the burden of proof" on the exemption claim.

The Ninth Circuit case cited by the debtor, Carter v. Anderson (In re Carter), 182 F.3d 1027, 1029 n.3 (9th Cir. 1999), is a case decided prior to the Supreme Court's Raleigh decision.

More, in this case, the court cannot force MGM to prove a false negative. It cannot prove that the debtor's IRA does not qualify under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

The court will strike **Partners Federal Credit Union's "joinders" (Dockets 81 & 115) in the objection and the reply to the opposition (Docket 164). The civil and bankruptcy rules do not allow joinders in motions, objections or replies. Also, the joinders to the objection were filed late, on April 12, 2016 and May 31, 2016, whereas the objection was filed on March 9, 2016.**

Second, the debtor's Amended Schedule C caps the exemptions under Cal. Civ.

Pro. Code § 703.140(b)(5) to the statutory maximum of $26,925, when considered in conjunction with the allowed exemptions under Cal. Civ. Pro. Code § 703.140(b)(1). The cap of 703.140(b)(1) and (b)(5) pre-April 1, 2016 totals $26,925 and not $25,340. Docket 52 at 3. This part of the objection will be dismissed as moot. See Dockets 82 & 156.

Third, MGM's objection in the reply to the debtor's tax refund under 15 U.S.C. § 1673 will be dismissed without prejudice because it was not brought up in the original objection. See Dockets 52, 82, 113. It is untimely and even if timely the court will not allow MGM to sandbag the debtor by inserting a new objection in a reply and depriving the debtor of the opportunity of responding to the new objection.

Fourth, the court rejects the debtor's invocation of Cal. Civ. Proc. Code § 704.115(b) as an additional exemption for the IRA. Docket 117. The debtor has not claimed an exemption in the IRA under this statute in Amended Schedule C. Docket 82.

Fifth, the debtor has not met his burden of proof on the exemption claim.

Section 703.140(b)(10)(E) provides for the exemption of:

"*The debtor's right to receive . . . (E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:*

"*(i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.*

"*(ii) The payment is on account of age or length of service.*

"*(iii) That plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.*"

The requirements of Cal. Civ. Pro. Code § 703.140(b)(10)(E) mirror the language of the exemption in 11 U.S.C. § 522(d)(10)(E).

The debtor readily satisfies subsections 703.140(b)(10)(E)(i) and (ii), in that he established the IRA himself and his right to receive payments under the IRA is directly tied to his age.

As to subsection (iii) of Cal. Civ. Pro. Code § 703.140(b)(10)(E), the question is whether the IRA qualifies under Section 401(a), 403(a), 403(b), 408, or 408A of the Internal Revenue Code of 1986.

This is also the question under 11 U.S.C. § 522(b)(3)(C), which allows "an individual debtor [to] exempt from property of the estate . . . (3) . . . (C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986."

The debtor has asserted that his IRA is exemptible as it is qualified under 11 U.S.C. §§ 408 and 408A, which treats Roth IRAs in the same manner as IRAs under section 408. docket 117 at 5; 26 U.S.C. § 408A(a).

26 U.S.C. § 408(e) provides that:

"*(e)* ***Tax treatment of accounts and annuities.****--*

"*(1) Exemption from tax.--Any individual retirement account is exempt from taxation under this subtitle unless such account has ceased to be an individual retirement account by reason of paragraph (2) or (3). Notwithstanding the preceding sentence, any such account is subject to the taxes imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc. organizations).*

"*(2) Loss of exemption of account where employee engages in prohibited transaction.--*

"*(A) In general.--If, during any taxable year of the individual for whose benefit any individual retirement account is established, that individual or his beneficiary engages in any transaction prohibited by section 4975 with respect to such account, such account ceases to be an individual retirement account as of the first day of such taxable year. For purposes of this paragraph--*

"*(i) the individual for whose benefit any account was established is treated as the creator of such account, and*

"*(ii) the separate account for any individual within an individual retirement account maintained by an employer or association of employees is treated as a separate individual retirement account.*"

Under 26 U.S.C. § 4975(c)(1), prohibited transactions include:

"*(A) sale or exchange, or leasing, of any property between a plan and a disqualified person;*

"*(B) lending of money or other extension of credit between a plan and a disqualified person;*

"*(C) furnishing of goods, services, or facilities between a plan and a disqualified person;*

"*(D) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a plan;*

"*(E) act by a disqualified person who is a fiduciary whereby he deals with the income or assets of a plan in his own interest or for his own account; or*

"*(F) receipt of any consideration for his own personal account by any disqualified person who is a fiduciary from any party dealing with the plan in connection with a transaction involving the income or assets of the plan.*"

For purposes of section 4975, "*the term 'disqualified person' means a person who is--*

"*(A) a fiduciary;*

"*(B) a person providing services to the plan;*

"*(C) an employer any of whose employees are covered by the plan;*

"*(D) an employee organization any of whose members are covered by the plan;*

"*(E) an owner, direct or indirect, of 50 percent or more of--(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation,(ii) the capital interest or the profits interest of a partnership, or(iii) the beneficial interest of a trust or unincorporated enterprise, which is an employer or an employee organization described in subparagraph (C) or (D);*

"*(F) a member of the family (as defined in paragraph (6)) of any individual described in subparagraph (A), (B), (C), or (E);*

"*(G) a corporation, partnership, or trust or estate of which (or in which) 50 percent or more of--(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation,(ii) the capital interest or profits interest of such partnership, or(iii) the beneficial interest of such trust or estate,is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D), or (E);*

"*(H) an officer, director (or an individual having powers or responsibilities similar to those of officers or directors), a 10 percent or more shareholder, or a highly compensated employee (earning 10 percent or more of the yearly wages of an employer) of a person described in subparagraph (C), (D), (E), or (G); or*

"*(I) a 10 percent or more (in capital or profits) partner or joint venturer of a person described in subparagraph (C), (D), (E), or (G).*

"*The Secretary, after consultation and coordination with the Secretary of Labor or his delegate, may by regulation prescribe a percentage lower than 50 percent for subparagraphs (E) and (G) and lower than 10 percent for subparagraphs (H) and (I).*

"*(3) **Fiduciary**.--For purposes of this section, the term 'fiduciary' means any person who--*

"*(A) exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,*

"*(B) renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or*

"*(C) has any discretionary authority or discretionary responsibility in the administration of such plan.*

"*Such term includes any person designated under section 405(c)(1)(B) of the Employee Retirement Income Security Act of 1974.*"

26 U.S.C.A. § 4975(e)(2) & (3).

In MGM's objection filed on March 9, 2016, MGM specifically asserted that

debtor "also used personal funds to gamble," in connection with the winning sports bets. Docket 52 at 3.

Given the debtor's burden of proof on the exemption and having already noted that the court cannot force MGM to prove a false negative, the debtor was expected to provide evidence on the source of funds he used to gamble and win the sports wagering tickets he is now seeking to claim as exempt under Cal. Civ. Pro. Code § 703.140(b)(10)(E) and 11 U.S.C. § 522(b)(3)(C).

He has claimed that the IRA is qualified under 26 U.S.C. §§ 408 and 408A and was expected to substantiate the arguments that his IRA did not engage in prohibited transactions, specifically focusing on the transactions pertaining to his winning of the sports wagering tickets.

But, the debtor has not produced such evidence, much less admissible or probative evidence, on the source of funds for gambling and winning the sports tickets. The totality of the evidence proffered by the debtor is that:

- he obtained the services and advice of a law firm to form his limited liability company and the self-directed IRA that owns the LLC;

- the LLC is 100% owned by the IRA;

- the debtor is the manager of the LLC under its operating agreement;

- the LLC operating agreement prohibits him from receiving any compensation, personally benefitting, or entering into outlined prohibited transactions;

- he consulted with the law firm before he began investing in wagering tickets;

- the law firm advised him that investing in wagering tickets is not a prohibited transaction under the Internal Revenue Code's prohibited transaction rules;

- eventually he received an opinion letter from the law firm pertaining to his investment in wagering tickets;

- he is not aware of any favorable or unfavorable IRS or court determinations of his IRA;

- he disputes receiving any compensation, personally benefitting, or entering into prohibited transactions as manager of the LLC;

- the current balance in the IRA is approximately $190,000 and he needs that sum for retirement, as his only other source of retirement income is social security.

Docket 118.

Besides conclusory statements that he has not caused the IRA to engage in prohibited transactions, the debtor offers nothing probative to substantiate the source of funds for the gambling and winning of the tickets.

The debtor refers to a letter the law firm that helped him form the IRA and LLC wrote on October 1, 2015. In advising him about the propriety of investment in gambling, the letter states, "[o]n May 27, 2015, IRA funds sitting in the IRA LLC bank account were used to place sports bets at the Bellagio casino in Las

Vegas, Nevada." Docket 125 at 3.

However, the attorney who prepared the letter, Kevin Kennedy, unequivocally states that the letter is based on "representations made by [the debtor]." Docket 125 at 3. Mr. Kennedy's opinion is qualified as "[b]ased on these facts and representations." Id.

In other words, the letter is not based on Mr. Kennedy's investigation of the facts but on what the debtor has represented to him to be the facts. Hence, Mr. Kennedy's factual statements, including his statement about the source of the funds the debtor used to gamble and win the sports tickets, are at best inadmissible hearsay. Fed. R. Evid. 801(a)-(c) & 802.

The verbal assurances of the absence of a prohibited transaction by Mr. Kennedy's law firm are hearsay as well. See Docket 118 at 3.

The debtor has not shown that his IRA is indeed qualified under 26 U.S.C. § 408 or 408A, as claimed, and thus exemptible under Cal. Civ. Pro. Code § 703.140(b)(10)(E) and 11 U.S.C. § 522(d)(10)(E). This alone is basis for sustaining the objection.

Finally, the record contains sufficient evidence to establish that the debtor did not use LLC funds to gamble and win the sports wagering tickets.

Jacqueline Zwerner, an employee of the Bellagio, has executed a declaration under the penalty of perjury, stating that the debtor presented a $200,000 cashier check along with "other funds," to gamble and win the sports tickets on May 26 and 27. Dockets 116 & 114 at 20-21.

But, prior to walking into the Bellagio to gamble on May 26, the debtor withdrew only $120,000 from the LLC account. Docket 114 at 92. Although the withdrawal statement does not indicate whether the debtor was given a cashier check for the $120,00, the debtor presented a single cashier check for $200,000 — "a cashier check" — to the Bellagio on May 26. Docket 114 at 20 & 116. And the debtor has not disputed withdrawing only $120,000 from the LLC account prior to gambling at the Bellagio.

The debtor has failed to refute any of the foregoing. He has not even produced bank statements from the LLC account.

Even if the debtor used the $120,000, or some part of it, to gamble at the Bellagio, there is at least $80,000 unaccounted for by him. Given the lack of evidence and candor from the debtor, the court is not convinced of the veracity of his statements.

From the above, the court infers that the funds the debtor used to gamble at the Bellagio did not come from the LLC bank account. They came from elsewhere. The $169,000 in winnings were not the product of an investment the debtor made on behalf of the LLC. This is not surprising because the debtor was known to gamble at other establishments in Las Vegas. The record reflects that the debtor gambled also at the MGM and Ceaser's Palace. Docket 114 at 20-21 & 116.

This leaves only one other source for the funds with which the debtor won the sports tickets — the debtor himself.

The debtor has not accounted for his use of the $120,000 he withdrew on May 26 from the LLC account. The next day, May 27, he deposited $138,700 back into

the LLC account. Also, he stated in a state court litigation with MGM that the $120,000 generated "a profit of $187,700," a different figure from the $169,000 sports tickets. Docket 114 at 51, 92, 94. This begs the question of why the debtor did not deposit all $187,700 of the winnings into the LLC account?

The debtor is a fiduciary for purposes of 26 U.S.C.A. § 4975(e)(2)(A) because, by being a manager of the LLC, which is owned by the IRA and administering assets of the IRA, he exercises authority or control respecting management or disposition of the IRA's assets. 26 U.S.C.A. § 4975(e)(3)(A). This makes the debtor a disqualified person under section 4975(e)(2)(A) for purposes of 26 U.S.C. § 4975(c)(1).

As a disqualified person, the debtor is prohibited from transferring to himself or using IRA income or assets. 26 U.S.C. § 4975(c)(1)(D). Yet, by keeping the balance of the $187,700 in profits generated by the $120,000 he withdrew from the LLC account, the debtor has transferred to himself or used IRA assets.

As a disqualified fiduciary person, the debtor is also prohibited from dealing with the income or assets of a plan in his own interest or for his own account. 26 U.S.C. § 4975(c)(1)(E).

However, by retaining part of the $187,700 in winnings and by placing the sports tickets in the IRA, when MGM sought to satisfy the debt it is owed with the tickets, the debtor engaged in self-dealing. Dockets 114 at 20-21 & 116. Such transactions are prohibited and disqualifying for the debtor's IRA. The IRA then cannot be exempted under Cal. Civ. Pro. Code § 703.140(b)(10)(E) or 11 U.S.C. § 522(b)(3)(C). The objection will be sustained in part.

11. 15-26281-A-13 STEPHEN TRUMAN — MOTION TO DISMISS CASE 7-1-16 [169]
MRL-4

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

This case was originally commenced under chapter 7. The debtor converted it to one under chapter 13 on April 25, 2016. However, the debtor has been unable to confirm a chapter 13 plan, primarily because even though the debtor earns a very high income, the plan will not pay unsecured creditors in full nor will it devote all projected disposable income to the payment of their claims as required by 11 U.S.C. § 1325(b).

So now the debtor wants the case dismissed, not reconverted to chapter 7. He argues that because of his high income, a chapter 7 discharge would be a substantial abuse under 11 U.S.C. § 707(b).

In other words, section 1325(b) as interpreted by the Supreme Court in Hamilton v. Lanning prevents the debtor from proceeding under both chapter 7 and chapter 13.

The short answer to this is that any dismissal under 11 U.S.C. § 707(b) would comme only at the request of the U.S. Trustee or a creditor. See 11 U.S.C. § 707(b). If no one asks for dismissal, the case will proceed under chapter 7. And, given the potential for a substantial dividend, a dismissal motion seems unlikely.

Because this case was originally filed under chapter 7, the debtor lost the ability to unilaterally dismiss it. See 11 U.S.C. § 1307(b). Instead, a dismissal must be pursuant to 11 U.S.C. § 1307(c) which permits the court, on the request of a party in interest, to dismiss or convert the case to one under chapter 7, whichever is in the bests interests of creditors.

Despite the debtor's high income, given the prospects for a substantial dividend due to the debtor's nonexempt assets (see the court's disposition of the objection, Docket #59 to the exemption of an IRA), a creditor is unlikely to seek dismissal of a chapter 7 case.

12. 15-26281-A-13 STEPHEN TRUMAN — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
HSM-5 — 6-13-16 [134]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

Hefner, Stark & Marois, attorney for the former chapter 7 trustee, has filed its motion for approval of compensation. The requested compensation consists of $39,051 in fees and $147,50 in expenses, for a total of $39,198.50. This motion covers the period from September 4, 2015 through June 10, 2016. The court approved the movant's employment as the trustee's attorney on September 25, 2915.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services primarily involved assisting the trustee with conducting an investigation concerning the debtor's assets, primarily a substantial IRA.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

13. 15-26281-A-13 STEPHEN TRUMAN — MOTION TO APPROVE COMPENSATION FOR TRUSTEE
HSM-6 — 6-13-16 [139]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Given the court's announced decision to reconvert the case to chapter 7, and assuming the former chapter 7 trustee will be reappointed, the motion is premature. The motion will be dismissed without prejudice.

14. 16-23390-A-13 JOE/VICTORIA RODRIGUEZ — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 7-14-16 [17]

- ☐ 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.

The debtor has failed to commence making plan payments and has not paid approximately $115 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).

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.

15. 13-34996-A-13 CHRISTINE GORDON — MOTION TO INCUR DEBT
CA-3 — 7-18-16 [35]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion to incur a purchase money loan in order to purchase a new home will be granted. The motion establishes a need for the home and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of the plan.

THE FINAL RULINGS BEGIN HERE

16. 16-22825-A-13 THOMAS/JULIE MCGINNIS — OBJECTION TO CONFIRMATION OF PLAN
STERLING JEWELERS, INC. VS. — 6-30-16 [17]

Final Ruling: The objection will be dismissed without prejudice.

The notice of the commencement of the case was served on the objecting creditor on May 28. In addition to advising all creditors that the case had been filed, it also gave notice that a plan had been proposed by the debtor and that objections to it were to be filed and served no later than June 23 and set for hearing on July 18. The objecting creditor also was served with a copy of the proposed plan.

Despite this notice, the creditor filed its objection on June 30, seven days late, and set it for hearing on August 1, fourteen days late.

Also, an objection placed on the calendar by the objecting party for hearing must be given a unique docket control number as required by Local Bankruptcy Rule 9014-1(c). The purpose of the docket control number is to insure that all documents filed in support and in opposition to the objection are linked on the docket. This linkage insures that the court, as well as any party reviewing the docket, will be aware of everything filed in connection with the objection.

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

Therefore, the objection will be dismissed.

17. 16-22928-A-13 NICOLE DOW — OBJECTION TO EXEMPTIONS
JPJ-2 — 6-22-16 [33]

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.

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 her 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.

18. 16-23841-A-13 RANDY/STEPHANIE STANLEY — MOTION TO VALUE COLLATERAL
SNM-3
VS. FRANCHISE TAX BOARD — 6-29-16 [21]

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

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject personal property. In the debtor's opinion, the subject property had a value of $19,400 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Also, the subject personal property is encumbered by a senior statutory lien held by the IRS and securing a tax claim of $10,000. Therefore, $9,400 of the respondent's claim is an allowed secured claim. When the respondent is paid $9,400 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.

Nothing herein determines whether the respondent holds a lien on real property owned by the debtor, and the extent of such lien.

19. 16-22552-A-13 BOWEN/NADINE RIDEOUT — MOTION FOR RELIEF FROM AUTOMATIC STAY
JCW-1 — 6-30-16 [39]
NATIONSTAR MORTGAGE, L.L.C. VS.

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

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

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

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

20. 12-35461-A-13 WILHELM/LINDA SCHNEIDER — MOTION TO APPROVE LOAN MODIFICATION
CYB-4 — 6-23-16 [53]

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 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The 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.

21. 12-35461-A-13 WILHELM/LINDA SCHNEIDER — MOTION TO MODIFY PLAN
CYB-5 — 6-23-16 [58]

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 (9th 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 (9th 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.

22. 16-23767-A-13 CHELSEY JONES — ORDER TO SHOW CAUSE
7-15-16 [29]

Final Ruling: The order to show cause will be discharged and the case will remain pending.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $79 installment when due on July 11. However, after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.

23. 13-20777-A-13 GEORGE/CHALANDOS MALOTT — MOTION FOR SUBSTITUTION
RAC-2 — 6-30-16 [39]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be granted in part. There is no need to substitute a party for a deceased debtor because death does not necessarily cause the dismissal of the case. See Fed. R. Bankr. P. 1016. Nonetheless, given the evidence with the motion, the court concludes that further administration of the case is possible given the willingness of the joint debtor to make the plan payments. Upon plan completion, and upon compliance with Local Bankruptcy Rule 5009-1 by the surviving debtor, the court will waive compliance with that Local Rule upon as to the deceased debtor, and the debtors shall both receive a discharge.

24. 16-21378-A-13 LYDIA MONTEJANO — ORDER TO SHOW CAUSE
7-11-16 [25]

Final Ruling: The order to show cause will be discharged and the case will remain pending.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $77 installment when due on July 5. However,

after the issuance of the order to show cause, the delinquent installment was paid. No prejudice was caused by the late payment.