**UNITED STATES BANKRUPTCY COURT**
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**August 22, 2016 at 1:30 p.m.**

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

**THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 18. 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 26, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 12, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 19, 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 32 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 29, 2016, AT 2:30 P.M.**

***Matters to be Called for Argument***

1. 15-27138-A-13 DWIGHT/GWENDOLYN HAMILTON — MOTION TO MODIFY PLAN
RJ-4 — 7-7-16 [59]

- ☐ 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).

2. 12-28147-A-13 JUAN/LETICIA LUJAN — MOTION TO MODIFY PLAN
PGM-3 — 7-14-16 [87]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The plan has not been proposed in good faith as required by 11 U.S.C. § 1325(a)(3) because the debtor seeks to reduce the monthly plan payment from $3,101 to $150. There is no evidence of a change in circumstances warranting such a change other than the modification of a home loan. With that modification the debtor will pay the home loan directly rather than the plan. After deducting the mortgage payment, as modified, from the debtor's income as reported in the last filed Schedule I, the debtor should have monthly net income of $1,079.76 to contribute to the plan yet the debtor proposes a payment of only $150. There is no justification for such a reduction.

3. 16-25150-A-13 ELVIA VALLEJO — MOTION TO EXTEND AUTOMATIC STAY
MMM-1 — 8-8-16 [10]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

This is the second chapter 13 case filed by the debtor. A prior case was dismissed within one year of the 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 unable to maintain her plan payments in the first case due to a death in the extended family that required her to contribute to funeral expenses and miss work. Since the dismissal of the first case in September 2015, the debtor's financial situation has stabilized and she has approximately the same monthly net income with which to fund a plan. This is a sufficient change in circumstances rebut the presumption of bad faith.

4. 16-23255-A-13 RICHARD HOPE — OBJECTION TO CONFIRMATION OF PLAN
JPJ-01 — 7-6-16 [36]

- ☐ 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 in part.

The debtor has the burden of proving that the plan will pay unsecured creditors the present value of what would be received in a chapter 7 liquidation. See 11

U.S.C. § 1325(a)(4). Because the debtor's motion to avoid a judicial lien raises issues regarding the debtor's interest in a home and its value, the court concludes that the debtor has not satisfied this burden.

5. 16-23255-A-13 RICHARD HOPE — MOTION TO AVOID JUDICIAL LIEN
SNM-1
VS. AHERN RENTALS, INC. — 5-24-16 [8]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

Schedule A lists real property in Vacaville as having a value of $300,800. Schedule A states that the debtor alone owns this property.

Schedule D indicates that the property is encumbered by two liens, a judicial lien held by Ahern Rentals and securing a debt of $15,847, and a consensual lien held by Bank of America securing a claim of $13,493.

On Schedule C, the debtor claimed $149,131.22 of the equity in the Vacaville property as exempt pursuant to Cal. Civil Pro. Code § 704.730. No party in interest has objected to that exemption.

Based on the information in the schedules, application of the statutory formula in 11 U.S.C. § 522(f)(2)(A) would result in the denial of the motion. That is, because the sum of the judicial lien, the consensual lien, and the exemption, $15,847 + $13,493 + $149,131.22 = $178,471.22, do not exceed the $300,800 value of the property, the judicial lien does not impair the debtor's exemption.

However, the motion adds one additional fact. The property is encumbered by a second consensual lien owed to Bank of America securing a debt of $138,175.78. According to the response to the trustee's objection, this consensual lien is in first priority position and "is not included as a debt in debtor's petition and plan" because it "is in [the debtor's] wife's name only." She is not a debtor in this case.

This raises a number of issues that are not addressed in the motion.

First, is the interest in the property listed on Schedule A the entire fee interest or is the property jointly owned with the spouse? Is the value the value of the entire fee interest or just the debtor's interest?

Second, if the spouse is not on title, and if the senior Bank of America lien was incurred only by the spouse, how was the spouse able to encumber property she did not own?

Third, if the senior Bank of America lien encumbers the debtor's interest in the property, it is a claim in this case, whether or not he incurred the debt and granted the security interest. 11 U.S.C. § 101(5); Johnson v. Home State Bank, 111 S.Ct. 2150 (1991); In re Baker, 736 F.2d 481, 482 (8th Cir. 1984). Therefore, it should be scheduled and Bank of America given an opportunity to participate in this case and this motion in connection with this claim.

Fourth, if both spouses incurred the debt, the non-debtor spouse should be listed as a co-debtor on Schedule H.

Finally, the court is not satisfied with the evidence of the value of the property. The debtor's declaration states an opinion of value but it is based on his review of comparable sales, and discussions with realtors and brokers.

The debtor is not an expert entitled to render an opinion of value under Fed. R. Evid. 702 as an expert witness. As an owner of the property, the debtor may merely give an opinion based on his personal familiarity with the property, but he is not allowed to testify concerning his research and what others have told him concerning the value of comparable properties. See Barry Russell, BANKRUPTCY EVIDENCE MANUAL § 701:2 (West 2013-2014 ed.). Hence, the debtor cannot give an opinion of value based on anything other than the fact that he owns the property. See Fed. R. Evid. 701(c) (prohibiting lay witnesses from testifying in the form of an opinion based on "scientific, technical, or other specialized knowledge"). From what the debtor states in his declaration, the court concludes that he either is repeating what others have told him or he attempting to give an expert opinion without laying a foundation of his expertise.

6. 16-21359-A-13 ERIC/ADINA HENDERSON — MOTION TO CONFIRM PLAN 7-11-16 [38]
DBL-3

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the motion gives inadequate notice of the plan the debtor wishes to confirm. The title of the motion refers to a modified plan filed May 20, the introductory paragraph in the motion refers to one filed March 18, and a plan filed July 11 is included with the motion as an exhibit.

Second, and assuming that it is the July 11 plan up for confirmation, it fails to provide for the priority claim of the FTB as required by 11 U.S.C. § 1322(a)(2), and the debtor has failed to make $2700 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).

7. 16-21764-A-13 STANLEY BERMAN — MOTION TO CONFIRM PLAN 7-9-16 [37]
SPB-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** The motion will be denied and the objections sustained in part.

First, when section 1.03 of the plan and the additional provisions are considered together, the plan's duration will be 64 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

Second, the debtor has not carried the burden of proving the plan's feasibility as required by 11 U.S.C. § 1325(a)(6). A significant portion of the plan payment will come from contributions to the debtor by family members. However, there is nothing in the record from these family members attesting to their

willingness and ability to make the contributions.

Third, the feasibility of the plan is called further into doubt by the failure of the debtor to make any plan payments.

Fourth, 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 HSBC. 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).

Fifth, the plan is incomplete. Section 5.01 does not indicate whether or not property of the estate will revest in the debtor upon confirmation.

Sixth, the plan fails to provide for payment in full of the priority (not secured) claim of DCSS for domestic support.

Seventh, since this case has been filed, the debtor has failed to make ongoing support payments. If he is unable to maintain those payments, there is little hope a plan will succeed.

8. 16-25082-A-13 SONJA WILSON — MOTION TO EXTEND AUTOMATIC STAY
MMM-1 — 8-3-16 [8]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be denied.

This is the second chapter 13 case filed by the debtor. A prior case was dismissed within one year of the filing of the current case. The prior case was dismissed within two weeks of its filing because the debtor failed to file all schedules and statements.

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, the debtor argues that this case was been filed in good faith because she has filed all statements and schedules. The problem precipitating the dismissal of the first case will not be repeated. But, why did the debtor fail to appear in the proper prosecution of the first case? This is unexplained. Until the court knows why the debtor failed to prosecute the first case, it can come to no conclusion about the likelihood the second case will diligently prosecuted. While filing schedules and statements is a good start, more will be required for the this case to be successful. On this limited record, the court cannot conclude that this case is more apt to succeed.

9. 16-24588-A-13 GREGORY MONACO — MOTION FOR RELIEF FROM AUTOMATIC STAY
RWD-1 — 8-1-16 [14]
EDWARD HEALY VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, 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.

The movant leased residential real property to the debtor. Prior to the filing of the petition, the lease term expired and the debtor's tenancy became month-to-month. The debtor then defaulted in the payment of rent and was served with a three-day notice to pay or quit. The debtor did neither, and the movant filed and served an unlawful detainer complaint. Then, this case was filed.

Given the service of the three-day notice and its expiration with payment, the

debtor's right to possession has terminated and there is cause to terminate the automatic stay. In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989). The debtor no longer has an interest in the subject property which can be considered either property of the estate or an interest deserving of protection by section 362(a).

The stay is modified to permit the movant to seek possession of the property. No fees and costs are awarded. The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived.

10. 16-20891-A-13 HILARIO HERNANDEZ — MOTION TO CONFIRM PLAN 7-11-16 [60]
RJ-3

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the debtor has failed to make $70 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 debtor has caused considerable confusion concerning a secured claim held by Bank of America.

Bank of America's claim is secured by residential property on Morell Court in Sacramento. The debtor listed this property as an asset on Schedule A and he listed Bank of America's claim as a secured claim on Schedule D. These schedules were filed on February 18, 2016 and have not been amended.

Bank of America filed a proof of claim on May 19, 2016. Appended to it are copies of loan documents including the deed of trust encumbering the Sacramento property. The borrower and owner of the Sacramento property as identified in the documents is the debtor.

In the debtor's initial plan filed on February 18, 2016 made provision for Bank of America's secured claim in the additional provisions. Basically, the debtor intended to negotiate a home loan modification and pending an agreement with Bank of America, it would receive an "adequate protection" payment. In the event no modification was agreed to by the parties, the debtor would propose a modified plan. If he failed to do so, or if the adequate protection payment was not paid, Bank of America could seek relief from the automatic stay to foreclose on the Sacramento property.

On April 14, the court denied confirmation of the plan. Despite this, prior to the denial of confirmation, and consistent with the terms of the plan, the trustee paid the adequate protection payments to Bank of America.

On May 17, a modified plan was proposed. This plan made no provision for Bank of America's secured claim. This plan was denied confirmation on June 30, 2016.

On July 11, a second modified plan was proposed. This plan mentions Bank of America's claim in the additional provisions but only to ratify the adequate protection payments previously made by the trustee to the bank pursuant to the

terms of the original plan. Otherwise the plan provides, somewhat nonsensically, that it does not provide for the banks secured claim because the debtor does not own the Sacramento property.

This treatment is problematic. First, it is contradicted by Schedule A which indicates the debtor does own the Sacramento property. Second, it is contradicted by the original plan which indicates that the debtor was negotiating with the bank to modify the loan. Third, it is contradicted by the loan documentation which indicates the debtor owns the property. Fourth, if the debtor does not own the property, why did the debtor require the trustee to make adequate protection payments on a claim that is not secured by the debtor's property? This is a dissipation of property of the estate.

In short, the debtor is not proceeding in good faith. When it suits him, he owns the property and then he doesn't own it. Which is it?

11. 16-24192-A-13 ANTHONY/LORI ANDERSON — ORDER TO SHOW CAUSE 8-3-16 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $79 due on July 29 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

12. 15-26281-A-13 STEPHEN TRUMAN — OBJECTION TO EXEMPTIONS 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.

13. 15-26281-A-13 STEPHEN TRUMAN
MRL-4

MOTION TO DISMISS CASE
7-1-16 [169]

- ☐ 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, the debtor believes that 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 come 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.

14. 15-26281-A-13 STEPHEN TRUMAN
HSM-5

MOTION TO APPROVE COMPENSATION FOR TRUSTEE'S ATTORNEY
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.

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

- ☐ 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.

16. 15-26281-A-13 STEPHEN TRUMAN — CONTINUED STATUS CONFERENCE 5-5-16 [30]
15-2216
MGM GRAND HOTEL, L.L.C. V. TRUMAN

**Tentative Ruling:** None.

17. 15-26281-A-13 STEPHEN TRUMAN — CONTINUED STATUS CONFERENCE 4-18-16 [20]
16-2004
PARTNERS FEDERAL CREDIT UNION V. TRUMAN

**Tentative Ruling:** None.

18. 16-25232-A-13 GREGORY WALLACE — MOTION FOR SANCTIONS O.S.T. 8-16-16 [12]
BLG-1

**Tentative Ruling:** None.

***FINAL RULINGS BEGIN HERE***

19. 16-23304-A-13 LA WANDA LOWE — MOTION TO CONFIRM PLAN 7-15-16 [28]

**Final Ruling:** The motion will be dismissed as moot. The case was dismissed on July 29.

20. 16-23906-A-13 TAMARA PETERS — MOTION TO VALUE COLLATERAL 7-22-16 [14]
PGM-1
VS. THE GOLDEN 1 CREDIT UNION

**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 property. In the debtor's opinion, the subject property had a value of $3,500 as of 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). Therefore, $3,500 of the respondent's claim is an allowed secured claim. When the respondent is paid $3,500 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.

21. 16-23209-A-13 MICHAEL RAPPORT — MOTION FOR RELIEF FROM AUTOMATIC STAY 7-15-16 [23]
JHW-1
CAB WEST, 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 movant leased a vehicle to the debtor. While the unconfirmed plan provides for the assumption of the lease, before the case was filed, the vehicle was damaged in an accident. In breach of the lease, the debtor failed to insure the vehicle and has stopped making payments to the movant.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess the vehicle, to dispose of it pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that it holds an over-secured 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) is ordered waived.

22. 16-22113-A-13 ARMAR/MARICELA WALKER — MOTION TO CONFIRM PLAN
DBL-2 — 7-11-16 [31]

**Final Ruling:** This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

23. 16-20120-A-13 RAQUEL RIOS — MOTION FOR RELIEF FROM AUTOMATIC STAY
ETW-1 — 7-22-16 [56]
BROWNPENNY, L.L.C. VS.

**Final Ruling:** Because the case was converted to one under chapter 7 on August 9, the hearing will be continued to September 12, 2016 at 10:00 a.m. The moving party file an amended notice of hearing and shall serve amended notice of hearing with all papers supporting the motion on the chapter 7 trustee and give notice of the continued hearing to the debtor and her attorney. A certificate of service shall be filed on or before August 22. Because the continuance means that the motion will not be adjudicated within 30 days of its filing, the movant must waive the time restrictions of 11 U.S.C. § 362(e) and consent to the continuance. The court will deem the filing of the notice of continued hearing and the certificate of service by the movant to be such consent. Alternatively, if it will not consent, the motion will be dismissed without prejudice for the failure to serve the chapter 7 trustee. If the movant will not consent, it shall lodge an order dismissing the motion consistent with this ruling.

24. 15-25326-A-13 GLORIA WULFERT — OBJECTION TO CLAIM
JPJ-1 — 7-7-16 [47]
VS. STATES RECOVERY SYSTEMS, INC.

**Final Ruling:** This objection to the proof of claim of States Recovery Systems has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf.

Ghazali v. Moran, 46 F.3d 52, 53 (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 claimant's default is entered and the objection will be resolved without oral argument.

The last date to file a timely proof of claim was November 4, 2015. The proof of claim was filed on May 26, 2016. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

25. 15-28133-A-13 PETER LADD — OBJECTION TO CLAIM
JPJ-2
VS. THE BEST SERVICE COMPANY — 7-7-16 [32]

**Final Ruling:** This objection to the proof of claim of The Best Service Company has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 claimant's default is entered and the objection will be resolved without oral argument.

The last date to file a timely proof of claim was February 27, 2016. The proof of claim was filed on March 17, 2016. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

26. 15-28433-A-13 JUSTIN WESTCOTT — OBJECTION TO CLAIM
JPJ-3
VS. ONEMAIN FINANCIAL GROUP — 7-7-16 [54]

**Final Ruling:** The objection will be dismissed because it is moot. The case was dismissed on August 5.

27. 15-28433-A-13 JUSTIN WESTCOTT — OBJECTION TO CLAIM
JPJ-4
VS. TITAN RECEIVABLES, INC./ ALADDIN BAIL BONDS — 7-7-16 [50]

**Final Ruling:** The objection will be dismissed because it is moot. The case was dismissed on August 5.

28. 13-29670-A-13 IRVING/TSEY DONG — OBJECTION TO CLAIM
JPJ-1
VS. ALLY BANK — 7-7-16 [26]

**Final Ruling:** This objection to the proof of claim of Ally Bank has been set

for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 claimant's default is entered and the objection will be resolved without oral argument.

The last date to file a timely proof of claim was November 27, 2013. The proof of claim was filed on June 2, 2016. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

29. 15-23683-A-13 EDNA BACA — OBJECTION TO CLAIM
JPJ-1
VS. BALANCE CREDIT — 7-7-16 [22]

**Final Ruling:** This objection to the proof of claim of Balance Credit has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 claimant's default is entered and the objection will be resolved without oral argument.

The last date to file a timely proof of claim was September 2, 2015. The proof of claim was filed on June 24, 2016. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

30. 12-39289-A-13 JOHN O'NEILL — OBJECTION TO CLAIM
JPJ-2
VS. NAVIENT SOLUTIONS, INC. — 7-7-16 [116]

**Final Ruling:** This objection to the proof of claim of Navient Solutions has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 claimant's default is entered and the objection will be resolved without oral argument.

The last date to file a timely proof of claim was March 6, 2013. The proof of

claim was filed on May 24, 2016. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

31. 13-36092-A-13 WOODROW POYNTER — OBJECTION TO CLAIM
JPJ-1
VS. WELLS FARGO OPERATIONS CENTER — 7-7-16 [153]

**Final Ruling:** This objection to the proof of claim of Wells Fargo Operations Center has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (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 claimant's default is entered and the objection will be resolved without oral argument.

The last date to file a timely proof of claim was April 30, 2014. The proof of claim was filed on June 15, 2016. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9th Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9th Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9th Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9th Cir. 1990).

32. 16-24192-A-13 ANTHONY/LORI ANDERSON — OBJECTION TO CONFIRMATION
DEUTSCHE BANK NATIONAL TRUST COMPANY VS. — 7-19-16 [14]

**Final Ruling:** The notice of the commencement of the case directed all parties in interest to file written objections to confirmation of the proposed plan no later than August 11 and to set any objection for hearing on August 29, 2016 at 1:30 p.m. This objection was set for hearing prematurely. The court continues the hearing to August 29 and the objecting creditor is to give notice of the continued hearing no later than August 22.