UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 24, 2014 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 17. 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 ON DECEMBER 22, 2014 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 8, 2014, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 15, 2014. 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 18 THROUGH 25 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 DECEMBER 1, 2014, AT 2:30 P.M.

Matters to be Called for Argument

1. 14-26000-A-13 ROBIN SMITH — MOTION TO VALUE COLLATERAL 11-10-14 [32]
FF-2
VS. FRANCHISE TAX BOARD

- ☐ 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 without prejudice. The motion no specific mention of the property being valued. Apparently, the court is being asked to value all property of the debtor as scheduled. However, there is no basis in the record for the values asserted.

2. 14-27901-A-13 ALEJANDRO/JOANN REYES — ORDER TO SHOW CAUSE 11-4-14 [62]

- ☐ 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 $21 due on October 30 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

3. 14-30710-A-13 DEDRA RUSSELL — MOTION TO EXTEND AUTOMATIC STAY 11-10-14 [11]
PGM-1

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The motion will be granted.

This is the second chapter 13 case filed by the debtor. A prior case was dismissed within one year of the filing of this case

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 serious health condition that interrupted her ability to work. That condition has now been treated and the debtor is able to maintain her plan payments. It appears her gross and net incomes have increased. This is a sufficient change in circumstances rebut the presumption of bad faith.

4. 14-28915-A-13 ROBERT JONES — ORDER TO SHOW CAUSE 11-6-14 [33]

- ☐ 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 $74 due on November 3 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

5. 14-27232-A-13 SAC-1 SPENCER/VANESSA GRIMENSTEIN VS. SMALL BUSINESS ADMINISTRATION — MOTION TO VALUE COLLATERAL 8-26-14 [22]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: There is a material disputed fact, namely the value of the subject property. This will be a status conference to set an evidentiary hearing.

6. 14-27232-A-13 SPENCER/VANESSA GRIMENSTEIN
SAC-2
VS. ROBERT BUNBURY

MOTION TO VALUE COLLATERAL
8-26-14 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: There is a material disputed fact, namely the value of the subject property. This will be a status conference to set an evidentiary hearing.

7. 12-38133-A-13 CHRISTINE CLARKE
DJC-2

MOTION TO SELL
10-31-14 [37]

- ☐ 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 sell real property is granted on the condition that the sale proceeds are used to pay all liens of record in full and in a manner consistent with the plan. Insofar as surplus sale proceeds are available, they shall be paid over to the trustee to the extent required by the confirmed plan with such additional amounts as volunteered by the debtor.

8. 14-24958-A-13 JEOFFREY/ROSEMARIE BALDOVINO
HDR-1

MOTION TO VALUE COLLATERAL
8-8-14 [56]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The motion is supported by the debtor's declaration concerning the value of the property, which is the debtor's home in Vacaville. As the owner, the debtor was competent to offer a lay opinion as to its value. See Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980). The debtor, however, was not qualified as an expert and so he could not testify as to the types of information that an appraiser would reply upon to determine value. See Fed. R. Evid. 701, 702. "For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay, should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties, unless the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc." Barry Russell, Bankruptcy Evidence Manual, Vol. II,

§ 701.2, p. 784-85 (2012-13).

Therefore, while the court has considered the debtor's opinion that the property has a value of $250,000, it will not consider his statements regarding other comparable properties. Because only an expert qualified under Fed. R. Evid. 702 may rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject. . .", when an expert offers an opinion of value, the lay opinion of the debtor typically is found to be less credible. See Fed. R. Evid. 703. See e.g., In re Wilson, 378 B.R. 862 (Bankr. D. Mont. 2007).

And, while the court will consider the debtor's naked opinion of value, it appears it is based primarily if not entirely on reports from "zillow.com". This evidence was not admissible in its own right. It is hearsay. See Fed. R. Evid. 801.

And, while Fed. R. Evid. 803(17) excepts from the hearsay rule market compilations generally used and relied upon by the public, no foundation was laid establishing that the values reported by these Internet sites meet this criteria.

The court doubts that such a foundation could be laid. As courts have noted, zillow.com is "inherently unreliable." "Zillow is a participatory site almost like Wikipedia. Whereas Wikipedia allows anyone to input or change specific entries, Zillow allows homeowners to do so. A homeowner with no technical skill beyond the ability to surf the web can log in to Zillow and add or subtract data that will change the value of his property." See In re Darosa 442 B.R. 173, 177 (Bankr. D. Mass. 2010). See also In re Phillips, 491 B.R. 255, 260 (Bankr. D. Nev. 2013). For this reason, reports such as Zillow are not compilations made admissible by Fed. R. Evid. 803(17). Id.

Given that the debtor has relied on this suspect evidence, the court rejects his opinion and instead adopts the opinion of the respondent's expert. The property has a value of $295,000.

9.	14-24958-A-13 HDR-4	JEOFFREY/ROSEMARIE BALDOVINO	MOTION TO CONFIRM PLAN 8-8-14 [56]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

Because the court has valued the home of the debtor at $295,000, the objecting creditor's claim is secured in its entirety by the debtor's home. Based on this value and the amount owed to the senior lien, the respondent creditor's junior lien is not "out of the money" and therefore In re Nobelman prevents the application of 11 U.S.C. § 506(a) to its claim. Because the plan does not pay the claim in full as a secured claim, it cannot be confirmed consistent with 11 U.S.C. §§ 1322(b)(2) and 1325(a)(5)(B).

10. 14-27272-A-13 JUANITA MCKINLEY-LOPES — MOTION TO CONFIRM PLAN
DEF-1 — 10-10-14 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor intends to retain all property encumbered by the IRS's tax lien. However, one asset encumbered by that lien is a pension account. If it is ERISA qualified it is not property of the estate. In this event, the IRS holds a secured claim in this case of $8,867.38. Because the plan provides for a secured claim in this amount, it is confirmable but for one problem. The debtor has not proven the pension is ERISA qualified. If it is not, the plan is property of the estate and the tax lien grows to $21,587.70 which the plan will not pay as required by 11 U.S.C. § 1325(a)(5)(B).

11. 14-27272-A-13 JUANITA MCKINLEY-LOPES — MOTION TO VALUE COLLATERAL
DEF-2 — 10-21-14 [33]
VS. INTERNAL REVENUE SERVICE

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

The IRS holds a tax lien on the debtor's 2013 Honda. That vehicle is also encumbered by a prior consensual security interest in favor of ADP Credit Union and it collateralizes an obligation of $17,063.12. The vehicle has a replacement value of $22,459. The IRS has come forward with no other valuation. Consequently, there is $5,395.88 of equity remaining to secure the claim of the IRS. To that extent, it is a secured claim collateralized by the vehicle. See 11 U.S.C. § 506(a)(2).

To the extent the motion also seeks to strip off the IRS's tax lien pursuant to 11 U.S.C. § 522(f), the motion will be denied for the same reasons explained in the ruling on DEF-4.

12. 14-27272-A-13 JUANITA MCKINLEY-LOPES — MOTION TO VALUE COLLATERAL
DEF-3 — 10-21-14 [38]
VS. INTERNAL REVENUE SERVICE

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted in part.

This motion seeks to value all personal property of the debtor but excluding a 2013 Honda (which has been valued separate, DEF-2) and a pension plan. The remaining personal property has a value of $3,471.50. The court values that property in that amount.

Consequently, as a result of the rulings on DEF-2 and DEF-3, the IRS holds a secured claim of $8,867.38. If the pension plan is ERISA qualified, it does not constitute property of the estate and therefore has no impact on the character of its claim here. If it is not ERISA qualified, it is property of

the estate and because it is encumbered by the tax lien of the respondent, it would also be its security. Because the debtor has come forward with no evidence concerning the pension's qualification under ERISA, the court does not reach the issue.

To the extent the motion also seeks to strip off the IRS's tax lien pursuant to 11 U.S.C. § 522(f), the motion will be denied for the same reasons explained in the ruling on DEF-4.

13. 14-27272-A-13 JUANITA MCKINLEY-LOPES — MOTION TO AVOID JUDICIAL LIEN
DEF-4
VS. INTERNAL REVENUE SERVICE — 10-21-14 [42]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The IRS holds a tax lien. The motion seeks the avoidance of this tax lien pursuant to 11 U.S.C. § 522(f). Section 522(f) permits the avoidance of certain judicial liens and nonpossessory, nonpurchase money security interests. A federal tax lien is neither a judicial lien nor a consensual security interest of any kind. It is a statutory lien that cannot be avoided pursuant to section 522(f). See In re Khoe 255 B.R. 581, 588 (E.D. Cal. 2000) and In re Demarah, 62 F.3d 1248, 1251 (9th Cir. 1995).

14. 14-28972-A-13 TERRY/KATHALEEN SCOTT — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1
10-22-14 [32]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of $385 is less than the $458 in dividends and expenses the plan requires the trustee to pay each month.

Second, at its current funding level, to pay the dividends required by the plan will take 73 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

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. 14-28972-A-13 TERRY/KATHALEEN SCOTT — MOTION TO VALUE COLLATERAL
PGM-1
VS. ACURA FINANCIAL SERVICES — 10-13-14 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor has filed a valuation motion that accompanies a proposed chapter 13 plan. The valuation motion addresses the value of a 2009 Acura TSX that secures the respondent's Class 2 claim. While the debtor has opined that the vehicle has a value of $11,500 based on the vehicle's model year, 73,592 mileage, and condition, the opinion includes statements about the cost to repair the vehicle for which there is no foundation. The debtor can only express an opinion of value based on the fact of ownership, nothing more. The debtor has done more than this by stating an opinion about mechanical condition and the costs of repair.

The respondent counters that the value of the vehicle is $17,482 based on the "Fair Purchase Price" data base of the Kelley Blue Book. This index values vehicles based on "what other have recently paid for the same vehicle" considering normal wear and tear, age and mileage.

The vehicle must be valued at its replacement value. In the chapter 13 context, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). The index offered by the creditor appears to meet this standard assuming the vehicle is showing ordinary wear and tear. This has not been shown but it is not the respondents burden to do so.

To the extent the debtor maintains that the vehicle is showing more than ordinary wear and tear, the debtor has failed to introduce competent evidence of such. Therefore, the court denies the valuation motion.

16. 14-28972-A-13 TERRY/KATHALEEN SCOTT — OBJECTION TO CONFIRMATION OF PLAN
VVF-1
AMERICAN HONDA FINANCE CORP. VS. — 10-9-14 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained.

Because the valuation motion concerning the objecting creditor's collateral has not been granted, the debtor is unable to "strip down" the objecting creditor's secured claim to $11,500. Therefore, the plan cannot be confirmed because it either violates 11 U.S.C. § 1325(a)(5)(B) because it will not pay the creditor's secured claim in full, or, if it will pay what the creditor has demanded, the plan payments to be made will not be sufficient to pay all dividends required by the plan. In the event of the latter, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6).

17. 13-36092-A-13 WOODROW POYNTER
GW-3

MOTION TO
MODIFY PLAN
10-17-14 [47]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: None. The court will set an evidentiary hearing given the numerous factual disputes on the issue of good faith and satisfaction of the best interests test.

FINAL RULINGS BEGIN HERE

18. 14-26000-A-13 ROBIN SMITH — MOTION TO CONFIRM PLAN 10-13-14 [23]
FF-1

Final Ruling: The motion will be denied without prejudice.

Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 7346, Philadelphia, PA 19101-7346; (2) United States Attorney, for the IRS, 501 I Street, Suite 10-100, Sacramento, CA 95814; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

Service in this case is deficient because the IRS was not served at the second and third addresses listed above.

19. 14-28904-A-13 JAMES HINSON — ORDER TO SHOW CAUSE 11-5-14 [40]

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

The debtor filed amended schedules. This triggered a $30 filing fee pursuant to 28 U.S.C. § 1930(b). It was not paid with the amendment but it was later paid. Despite the late payment, no prejudice resulted. Therefore, the petition shall remain pending.

20. 10-35214-A-13 ELEANOR HALL — MOTION TO MODIFY PLAN 10-23-14 [137]
EJS-7

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 granted on the condition that the plan is further modified to accurately account for all prior distributions made by the trustee pursuant to the confirmed plan. This may be done by including the language requested by the trustee in the order confirming the modified plan. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

21. 14-21214-A-13 KEVIN/SUSAN BENNETT — MOTION TO MODIFY PLAN 10-10-14 [32]
DEF-1

Final Ruling: The motion will be denied without prejudice.

Local Bankruptcy Rule 2002-1(c) provides that notices in adversary proceedings and contested matters that are served on the IRS shall be mailed to three entities at three different addresses: (1) IRS, P.O. Box 7346, Philadelphia, PA 19101-7346; (2) United States Attorney, for the IRS, 501 I Street, Suite 10-100, Sacramento, CA 95814; and (3) United States Department of Justice, Civil Trial Section, Western Region, Box 683, Franklin Station, Washington, D.C. 20044.

Service in this case is deficient because the Philadelphia address used was incorrect.

22. 10-42326-A-13 MICHAEL/MARCIA BUELL — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
CAH-3 — 10-24-14 [52]

Final Ruling: The motion will be dismissed without prejudice. According to the certificate of service, the debtor was not served with the motion as required by Fed. R. Bankr. P. 2002(a)(6).

23. 14-28538-A-13 MICHAEL/TERRY MAXWELL — OBJECTION TO EXEMPTIONS
JPJ-2 — 10-22-14 [20]

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 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 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 debtor's exemption of life insurance is reduced from $25,267 to $12,200. The latter amount is the maximum exemption permitted by Cal. Civ. Pro. Code § 704.100.

24. 14-22184-A-13 LAWRENCE/JANET BROWN — MOTION TO SELL
PGM-2 — 10-24-14 [44]

Final Ruling: This motion to sell property 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 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 to sell real property is granted on the condition that the sale proceeds are used to pay all liens of record in full and in a manner consistent with the plan. Insofar as surplus sale proceeds are available, they shall be paid over to the trustee to the extent required by the confirmed plan with such additional amounts as volunteered by the debtor.

Absent either payment in full (i.e., a 100% dividend) of all filed proofs of claim or the approval of a modified plan that permits the plan to be completed without payment in full, the plan shall not be deemed completed by payment of

the sale proceeds to the trustee.

25. 14-28396-A-13 TONI HOLOYOHOY — OBJECTION TO CLAIM
VS. LAW OFFICES OF KENOSIAN AND MIELE — 10-10-14 [20]

Final Ruling: This objection to the proof of claim of Kenosian and Miele/Cash Call 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 objection will be sustained but the claim allowed as a general unsecured claim. The claim was reduced to judgment and an abstract of the judgment was recorded. If the debtor owed real property in the county in which the abstract was recorded, the judgment would be secured by that property. However, the debtor owned no real property in that county or any other county.