

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 15, 2016 at 1:30 p.m.

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

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 12. 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 19, 2016 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY SEPTEMBER 6, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY SEPTEMBER 13, 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 13 THROUGH 23 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 22, 2016, AT 2:30 P.M.

August 15, 2016 at 1:30 p.m.

Matters to be Called for Argument

1.	16-23906-A-13 TAMARA PETERS JPJ-1	OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE 7-28-16 [19]
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- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the motion to dismiss the case will be conditionally denied.

First, the debtor has failed to commence making plan payments and has not paid approximately \$175 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Golden One Credit Union in order to strip down or strip off its secured claim from its collateral. No such motion has been filed, served, and granted. Absent a successful motion the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

2. 16-23812-A-13 SANDRA HARRIS
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
7-28-16 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the motion to dismiss the case will be conditionally denied.

First, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of Nissan Motor Acceptance in order to strip down or strip off its secured claim from its collateral. No such motion has been filed, served, and granted. Absent a successful motion the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

Second, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$980 is less than the \$1,558 in dividends and expenses the plan requires the trustee to pay each month.

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

3. 16-23831-A-13 VANESSA/CRAIG ADAMS
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
7-28-16 [13]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be overruled and the motion to dismiss the case will be denied on the condition that the plan is modified in the confirmation order to provide a percentage dividend to Class 7 that will pay a minimum of \$3,204.72 of scheduled nonpriority unsecured claims with a

corresponding increase in the plan payment beginning in month 24 to fund such dividend. As modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

4. 16-24032-A-13 IGNACIO LAUDER AND WILMA OBJECTION TO
JPJ-1 FRONDA CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
7-28-16 [12]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the case will be dismissed.

First, the debtor failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

Second, the debtor has failed to commence making plan payments and has not paid approximately \$6,441 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Third, Local Bankruptcy Rule 3015-1(b)(6) provides: "Documents Required by Trustee. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

5. 16-23841-A-13 RANDY/STEPHANIE STANLEY OBJECTION TO
JPJ-1 CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
7-28-16 [29]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained and the motion to dismiss the case will be conditionally denied.

First, the debtor has failed to commence making plan payments and has not paid approximately \$200 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, the plan's feasibility depends on the debtor successfully prosecuting motions to value the collateral of Resurgence Capital and Cach in order to strip down or strip off their secured claims from their collateral. No such motions have been filed, served, and granted. Absent successful motions the debtor cannot establish that the plan will pay secured claims in full as required by 11 U.S.C. § 1325(a)(5)(B) or that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). Local Bankruptcy Rule 3015-1(j) provides: "If a proposed plan will reduce or eliminate a secured claim based on the value of its collateral or the avoidability of a lien pursuant to 11 U.S.C. § 522(f), the debtor must file, serve, and set for hearing a valuation motion and/or a lien avoidance motion. The hearing must be concluded before or in conjunction with the confirmation of the plan. If a motion is not filed, or it is unsuccessful, the Court may deny confirmation of the plan."

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.

6. 12-30951-A-13 ANTHONY/SHIRLEY ROMANO MOTION TO
WW-3 SELL
7-12-16 [53]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion to sell real property will be granted on the condition that the sale proceeds are used to pay all liens of record in full in a manner consistent with the plan. If the proceeds are not sufficient to pay

liens of record in full (including liens ostensibly "stripped off"), no sale may be completed without the consent of each lienholder not being paid in full.

7. 16-20673-A-13 GLENN GILKERSON AND MOTION TO
ADS-2 THEALISE WAGER CONFIRM PLAN
6-28-16 [68]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to make \$364.68 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).

8. 16-22474-A-13 EDITH MOSLEY ORDER TO
SHOW CAUSE
7-25-16 [15]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will remain pending but the court will modify the terms of its order permitting the debtor to pay the filing fee in installments.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the \$77 installment when due on July 18. While the delinquent installment was paid on August 1, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

9. 16-23077-A-13 ADRIAN/VICTORIA OLDHAM MOTION TO
MET-1 VALUE COLLATERAL
VS. UMPQUA BANK 6-9-16 [12]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

According to the debtors, their business inventory and business equipment have a value of \$21,745. However, this opinion is based on the liquidation value given to the debtors by West Auctions. There are two problems.

The debtors are simply repeating the opinion of another. This is hearsay and will not be considered by the court.

Second, the relevant valuation standard is not a liquidation value. Because the debtor is operating a business and selling the inventory at retail and suing the equipment, the cost of replacing that inventory and the cost of replacing the business equipment are the relevant valuation standards. See 11 U.S.C. § 506(a)(1).

10. 16-23697-A-13 DIANNA QUATRARO
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN
7-28-16 [16]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objection will be sustained.

First, the plan is not feasible as required by 11 U.S.C. § 1325(a)(6) because the monthly plan payment of \$4,090 less than the \$4,171 in dividends and expenses the plan requires the trustee to pay each month.

Second, if requested by the U.S. Trustee or the chapter 13 trustee, a debtor must produce evidence of a social security number or a written statement that such documentation does not exist. See Fed. R. Bankr. P. 4002(b)(1)(B). In this case, the debtor has breached the foregoing duty by failing to provide evidence of the debtor's social security number. This is cause for dismissal and as long as such cause exists, no plan will be confirmed.

Third, the plan does not comply with 11 U.S.C. § 1322(a)(2) because it does not provide for the priority claims of Kelm, Waldron, and Sala.

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

11. 16-23797-A-13 BALTASAR MARTINEZ
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN AND MOTION TO
DISMISS CASE
7-28-16 [17]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because this hearing on an objection to the confirmation of the proposed chapter 13 plan and a motion to dismiss the case was set pursuant to the procedure required by Local Bankruptcy Rule 3015-1(c)(4), the debtor was

not required to file a written response. If no opposition is offered at the hearing, the court will take up the merits of the objection. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained and the case will be dismissed.

First, the debtor failed to appear at the meeting of creditors. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the trustee and any creditors who appear, the debtor is also failing to cooperate with the trustee. See 11 U.S.C. § 521(a)(3). Under these circumstances, attempting to confirm a plan is the epitome of bad faith. See 11 U.S.C. § 1325(a)(3). The failure to appear also is cause for the dismissal of the case. See 11 U.S.C. § 1307(c)(6).

Second, the debtor has failed to commence making plan payments and has not paid approximately \$2,879 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Third, 11 U.S.C. § 521(e)(2)(B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The failure to provide the return to the trustee justifies dismissal and denial of confirmation. In addition to the requirement of section 521(e)(2) that the petition be dismissed, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 found at section 1228(a) of BAPCPA provides that in chapter 11 and 13 cases the court shall not confirm a plan of an individual debtor unless requested tax documents have been turned over. This has not been done.

Fourth, the debtor has failed to give the trustee financial records for a closely held business. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Fifth, Local Bankruptcy Rule 3015-1(b)(6) provides: "Documents Required by Trustee. The debtor shall provide to the trustee, not later than the fourteen (14) days after the filing of the petition, Form EDC 3-088, *Domestic Support Obligation Checklist*, or other written notice of the name and address of each person to whom the debtor owes a domestic support obligation together with the name and address of the relevant state child support enforcement agency (see 42 U.S.C. §§ 464 & 466), Form EDC 3-086, *Class 1 Checklist*, for each Class 1 claim, and Form EDC 3-087, *Authorization to Release Information to Trustee Regarding Secured Claims Being Paid By The Trustee*." Because the plan includes a class 1 claim, the debtor was required to provide the trustee with a Class 1 checklist. The debtor failed to do so.

- ☐ 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 case was filed on July 14, 2016 without a verified master address list and all schedules and statements required by 11 U.S.C. § 521 and Fed. R. Bankr. P. 1007. Therefore, an order was issued on July 18 advising the debtor that the verified master address list had to be filed no later than and the schedules and statements had to be filed on or before July 21. The order further informed the debtor that if the documents were not filed timely, the court intended to dismiss the case unless, on or before the applicable deadline, the debtor obtained an extension or set a hearing to contest the court's intended dismissal of the case.

The July 18 order was served by mail on counsel for the debtor.

A review of the docket reveals that on or before July 21 the debtor did not file the master address list, seek and obtain an extension, or request a hearing in connection with the court's notice that it intended to dismiss the case. Thereafter, the case was dismissed on July 25.

The debtor then filed moved to vacate the dismissal. That motion represents that counsel the debtor neglected to calendar the deadline for filing the verified master address list and calendared only the 15-day deadline for the schedules. This is not excusable neglect. The master address list is due with the petition. See Fed. R. Bankr. P. 1007(a)(1). Rather than dismiss the case immediately upon its filing for the failure to file the list, the court granted the debtor a 7-day extension and gave notice of it. The failure to file with the petition and then read the order setting an extended deadline is not excusable neglect.

Further, because the list was not filed timely, it would be impossible to give due notice of the filing of the case with notice of the first meeting. Fed. R. Bankr. P. 2003(a) requires that the meeting take place not earlier than 21 days and not later than 50 days after the order for relief. And, Fed. R. Bankr. P. 2002(a)(1) requires that all parties in interest be given 21 days' notice of the date of the first meeting. The 50th day falls on September 2. Assuming this motion were granted and assuming notice of the meeting were mailed to all parties in interest on August 15, they would receive only 18 days' notice of the meeting.

Therefore, because of the neglect the rights of other parties in interest have been adversely impacted.

FINAL RULINGS BEGIN HERE

13. 15-28905-A-13 RUTH MANLEY MOTION TO
SJS-1 MODIFY PLAN
7-8-16 [29]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

14. 16-20820-A-13 DIANNE/ALAN DREVER MOTION FOR
RDW-2 RELIEF FROM AUTOMATIC STAY
PATELCO CREDIT UNION VS. 7-14-16 [55]

Final Ruling: The motion will be dismissed because it is moot. The case was dismissed on July 18. As a result, the automatic stay has expired as a matter of law. See 11 U.S.C. § 362(c)(1) & (c)(2).

15. 16-21037-A-13 THEODORE POMPA OBJECTION TO
RHM-12 CLAIM
VS. NDS, L.L.C. 5-17-16 [138]

Final Ruling: The objection has been resolved by stipulation.

16. 12-28147-A-13 JUAN/LETICIA LUJAN MOTION TO
PGM-2 APPROVE LOAN MODIFICATION
7-14-16 [82]

Final Ruling: This motion to modify a home loan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The debtor is authorized but not required to enter into the proposed modification. To the extent the modification is inconsistent with the confirmed plan, the debtor shall continue to perform the plan as confirmed until it is modified.

17. 15-29648-A-13 TERI TAYLOR
TAG-5

MOTION TO
CONFIRM PLAN
6-28-16 [88]

Final Ruling: The motion will be dismissed as moot. The case was dismissed on July 18.

18. 12-30951-A-13 ANTHONY/SHIRLEY ROMANO
WW-4

MOTION TO
MODIFY PLAN
7-12-16 [47]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the debtor, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the trustee, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

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

19. 16-24457-A-13 DAWN BARKLEY
SJS-1
VS. TOYOTA MOTOR CREDIT CORPORATION

MOTION TO
VALUE COLLATERAL
7-14-16 [11]

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 \$16,000 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, \$16,000 of the respondent's claim is an allowed secured claim. When the respondent is paid \$16,000 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

20. 12-27078-A-13 DWAYNE COOKS
PGM-2

MOTION TO
MODIFY PLAN
7-6-16 [38]

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

The motion will be granted on the condition that the plan is further modified in the confirmation order to require a duration of 60 months. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

21. 16-22082-A-13 GARY DELFINO AND
MB-1 JAQUILINE NERUTSA

MOTION TO
CONFIRM PLAN
6-30-16 [35]

Final Ruling: The motion will be dismissed 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 claim was not served at the first address listed above. While it was served on the IRS at a Philadelphia address, it was at the wrong box, 21126, rather than the correct box, 7346

22. 16-24090-A-13 ALEX ENGLISH
JPJ-1

OBJECTION TO
CONFIRMATION OF PLAN
7-28-16 [16]

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 objection will be overruled.

The trustee will object to all of the debtor's Cal. Civ. Proc. Code § 703.140(b) exemptions claimed on Schedule C. The trustee argues that because the debtor is married and because the debtor's spouse has not joined in the chapter 13 petition, the debtor must file his spouse's waiver of right to claim exemptions. See Cal. Civ. Proc. Code § 703.140(a)(2). This was not done with the petition.

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

11 U.S.C. § 522(b)(1) permits the states to opt out of the federal exemption statutory scheme set forth in section 522(d). In enacting Cal. Civ. Proc. Code

§ 703.130, the State of California opted out of the federal exemption scheme relegating a debtor to whatever exemptions are provided under state law. Thus, substantive issues regarding the allowance or disallowance of a claimed exemption are governed by state law in California.

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

Here, the debtor is asserting the exemptions of Cal. Civ. Proc. Code § 703.140(b), which require a spousal waiver. That waiver was not filed with the petition. If not remedied, the debtor has no allowable exemptions. Without exemptions, the debtor's nonexempt assets total more than \$200,000. Because the plan does not provide for payment in full of unsecured creditors but only \$1,046.97, the plan does not comply with 11 U.S.C. § 1325(a)(4).

However, after the objection was filed, the exemption waiver was filed. The objection is moot.

23. 15-27896-A-13 EILEEN NOVOA
FF-4

MOTION TO
MODIFY PLAN
7-8-16 [40]

Amended Final Ruling: The motion will be granted on two conditions. The outstanding payment default of less than \$62 must be paid no later than August 25 with the August plan payment and the confirmation order must provide that the secured claim of Springleaf has been paid in full. With this performance and as further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.