

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

September 21, 2015 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 14. 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 OCTOBER 19, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 5, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 13, 2015. 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 15 THROUGH 24 IN THE SECOND PART OF THE CALENDAR. INSTEAD, THESE ITEMS HAVE BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON SEPTEMBER 28, 2015, AT 2:30 P.M.

September 21, 2015 at 1:30 p.m.

Matters to be Called for Argument

1. 14-31000-A-13 DAVID SHEDD MOTION TO
JPJ-3 CONVERT OR TO DISMISS CASE
8-5-15 [57]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The debtor has failed to pay to the trustee approximately \$3,020 as required by the confirmed plan. The foregoing has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause for dismissal or conversion to chapter 7, whichever is in the best interests of creditors. See 11 U.S.C. § 1307(c)(1). An examination of the schedules reveals that there is non-exempt equity in assets that can be realized by a chapter 7 trustee for the benefit of unsecured creditors. Therefore, the case will be converted to chapter 7.

2. 14-30206-A-13 STANLEY WOO MOTION TO
RJ-6 MODIFY PLAN
8-5-15 [97]

- ☐ 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 \$2,420 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).

3. 15-25312-A-13 LA KEISHA MATLOCK ORDER TO
SHOW CAUSE
9-4-15 [32]

- ☐ 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 \$76 due on August 31 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

4. 15-25319-A-13 KENNETH HARPER MOTION TO
RJ-3 CONFIRM PLAN
7-29-15 [26]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

sustained.

First, the debtor is not eligible for chapter 13 relief because Schedules D, E, and F show that the debtor owes \$403,236.60 in noncontingent, liquidated unsecured debt. This exceeds the \$383,175 maximum permitted by 11 U.S.C. § 109(e).

Second, the debtor failed to appear at the continued 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).

Third, the plan's feasibility depends on the debtor successfully prosecuting a motion to value the collateral of the IRS 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."

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor failed to include a detailed statement of business income and expenses with Schedules I and J, failed to accurately and completely state income received immediately prior to the chapter 13 petition at questions 1 and 2 of the Statement of Financial Affairs, failed to list a bank account on Schedule B, and failed to provide the trustee with bank account statements for the omitted account. These nondisclosures are a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

5. 15-25319-A-13 KENNETH HARPER MOTION TO
JPJ-1 CONVERT OR TO DISMISS CASE
8-28-15 [34]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor, the creditors, 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 and the case will be converted to one under chapter 7.

The court incorporates by reference its ruling on the debtor's motion to confirm a plan (RJ-3). Given the debtor's lack of eligibility for chapter 13, his failure to completely and accurately complete the schedules and statements, his failure to cooperate with the trustee, his failure to attend the meeting of creditors, and his inability to confirm a plan, there is cause to dismiss or convert this case, whichever is in the best interests of creditors. Because the schedules suggest there are assets that can be liquidated for the benefit of unsecured creditors, the case will be converted to chapter 7.

6. 12-25140-A-13 KENNETH/CRYSTAL MENEELY MOTION TO
GW-3 MODIFY PLAN
8-13-15 [55]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

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

The objections concerning feasibility are overruled. The proposed plan is current and the debtor has filed a motion to fund the lump sum payment. And, the existing schedules support the assertion that the debtor can afford to make the reduced monthly plan payment as well as repay the loan.

However, the plan does not have a definite duration and the court cannot conclude the plan will be completed within the maximum duration permitted by 11 U.S.C. § 1322(d), five years. The plan requires the debtor to continue making \$1,000 plan payments from October 25, 2015 until all attorney's and trustee's fees are paid in full. Will this take 1 month or 100 months?

7. 12-25140-A-13 KENNETH/CRYSTAL MENEELY MOTION TO
GW-4 INCUR DEBT
8-13-15 [51]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Subject to the approval of the proposed modified plan, the motion will be granted. The new credit will be used to fund the plan and to complete payment of the dividends due to unsecured creditors. Existing Schedules I and J show that the debtor will be able to make the modified monthly plan payment and the monthly installment payment on the new loan.

8. 15-25047-A-13 LONEY DANIELS ORDER TO
SHOW CAUSE
8-28-15 [28]

- ☐ 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 \$77 due on August 24 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c) (2).

9. 15-26657-C-13 ROBERT/LEE-ANN MAHAN MOTION TO
MRL-1 EXTEND AUTOMATIC STAY
8-31-15 [11]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor is not eligible for chapter 13 relief because debtor owes more than \$450,000 in noncontingent, liquidated unsecured debt. A review of Schedules D, E, and F reveals that the debtor has under-collateralized secured debt of \$286,970 (not including the under-secured portion of the first priority home mortgage), priority debt of \$59,002, and nonpriority unsecured debt of \$104,343. This totals \$450,375 and because it exceeds \$383,175, maximum permitted by 11 U.S.C. § 109(e) for chapter 13 eligibility, the debtor is not eligible for chapter 13 relief.

This is not a surprise to the debtor. The court declined to confirm and a plan and dismissed an earlier case, Case No. 15-21424, for this reason, among others. Therefore, the court concludes that this case has not been filed in good faith and it must be dismissed.

10. 15-26657-C-13 ROBERT/LEE-ANN MAHAN MOTION TO
MRL-2 AVOID JUDICIAL LIEN
VS. NORTHERN CALIFORNIA 8-31-15 [14]
COLLECTION SERVICE, INC.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed without prejudice. Because the debtor is not eligible for chapter 13 relief, no purpose would be served by reaching the merits of the motion. It has been filed in connection with a motion to confirm a chapter 13 plan. That plan cannot be confirmed because the debtor is not eligible for chapter 13 relief.

11. 15-26657-C-13 ROBERT/LEE-ANN MAHAN MOTION TO
MRL-3 VALUE COLLATERAL
VS. ALLIANT CREDIT UNION 8-31-15 [18]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed without prejudice. Because the debtor is not eligible for chapter 13 relief, no purpose would be served by reaching the merits of the motion. It has been filed in connection with a motion to confirm a chapter 13 plan. That plan cannot be confirmed because the debtor is not eligible for chapter 13 relief.

12. 15-25360-A-13 SIERA CALLOWAY
JPJ-2

OBJECTION TO
EXEMPTIONS
8-20-15 [23]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained.

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

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

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

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

Here, the debtor is asserting the exemptions of Cal. Civ. Proc. Code § 703.140(b), which require a spousal waiver. That waiver was not filed with the petition and it has not been filed since the case was commenced.

13. 11-43877-B-13 VINCENT/SHELLY CAPERELLO
DF-6

MOTION TO
COMPEL DISCOVERY RESPONSES, ETC.
7-13-15 [77]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

Bank of America filed a proof of claim on November 22, 2011. On or about April 23, 2015, Bank of America served notice on the debtor that Caliber Home Loans, Inc., would be servicing the loan. On June 4, 2015 Bank of America transferred its claim to US Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust. The servicing agent of US Bank is Caliber Home Loans, Inc.

On May 20, 2015, shortly before the transfer of the claim, the debtor objected to the proof of claim filed by Bank of America. The next day, counsel for the debtor served interrogatories and a request for the production of documents on Bank of America by mailing it to Caliber's attorney. Bank of America did not respond to this discovery. This motion seeks to compel a response and seeks attorney's fees.

There are three problems with the discovery.

First, it is that it is not directed to a party. While Bank of America was a party, its claim has been transferred. Interrogatories and requests for the production of documents must be directed to parties. Fed. R. Civ. Pro. 33 and 34.

Second, it was not served on Bank of America but on Caliber's attorney.

Third, the objection revolves around an alleged loan modification entered into between the debtor and Bank of America in 2009. To the extent the debtor expects Caliber to answer questions and provide documents concerning the modification, the discovery is misdirected.

All this said, the court will issue a subpoena compelling Bank of America to appear for a deposition and to produce its records. While the discovery is pending, the court will continue the hearing on the objection to the claim.

14. 11-43877-B-13 VINCENT/SHELLY CAPERELLO MOTION TO
DF-9 COMPEL DISCOVERY RESPONSES, ETC.
8-24-15 [105]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied for the same reasons the court has denied DF-6, the earlier version of this motion.

THE FINAL RULINGS BEGIN HERE

15. 14-31012-A-13 KIMBERLY SMITH MOTION TO
SJS-1 MODIFY PLAN
8-13-15 [33]

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

16. 10-49214-A-13 GREGORY/OLGA PETERSEN MOTION TO
PGM-2 APPROVE LOAN MODIFICATION
8-18-15 [74]

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. 15-24518-A-13 TERRI TAYLOR OBJECTION TO
JPJ-2 EXEMPTIONS
8-6-15 [30]

Final Ruling: The objection will be dismissed as moot. The case was dismissed on September 2.

18. 15-23724-A-13 MONTE/ALONNA MONTGOMERY MOTION TO
CAH-1 CONFIRM PLAN
8-4-15 [32]

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.

19. 12-26546-A-13 PAMELA/DEVERAUEX MINOR MOTION TO
PGM-3 MODIFY PLAN
8-11-15 [57]

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

20. 15-21656-A-13 JAMES/MARIAN JOHNSON MOTION TO
SDB-1 MODIFY PLAN
8-13-15 [27]

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

21. 15-21762-A-13 PAUL/SHERI D'ANGELO MOTION TO
MWB-2 APPROVE LOAN MODIFICATION
8-17-15 [44]

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.

22.	15-24764-A-13	SOPHIA CHAVEZ	OBJECTION TO
	JPJ-2		EXEMPTIONS
			8-6-15 [33]

Final Ruling: The objecting party has voluntarily dismissed the objection.

23.	15-25268-A-13	ARTHUR MAYTORENA	OBJECTION TO
	JPJ-2		EXEMPTIONS
			8-20-15 [19]

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

The objection will be sustained.

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

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

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

California state law gives debtors filing for bankruptcy the right to choose

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

Here, the debtor is asserting the exemptions of Cal. Civ. Proc. Code § 703.140(b), which require a spousal waiver. That waiver was not filed with the petition and it has not been filed since the case was commenced.

24. 14-25485-A-13 MARK/MELANIE GARLAND MOTION TO
FF-1 MODIFY PLAN
8-5-15 [36]

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