

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

Honorable Christopher D. Jaime  
Robert T. Matsui U.S. Courthouse  
501 I Street, Sixth Floor  
Sacramento, California

**PRE-HEARING DISPOSITIONS**

**DAY: TUESDAY**

**DATE: February 5, 2019**

**CALENDAR: 1:00 P.M. CHAPTER 13**

**PLEASE REVIEW CAREFULLY AS THE COURT'S ORDER PREPARATION AND SUBMISSION PROCEDURE IN CHAPTER 13 CASES HAS CHANGED EFFECTIVE SEPTEMBER 3, 2018.**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

February 5, 2019 at 1:00 p.m.

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1. [18-25604](#)-B-13 RHONDA SMITH MOTION TO CONFIRM PLAN  
[JAS-2](#) James A. Shepherd 12-31-18 [[35](#)]

**Final Ruling**

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rule 3015-1(d) (1), 9014-1(f) (1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (B) is considered to be the equivalent of a statement of nonopposition. *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 *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor Rhonda Smith has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

**COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.**

2. [18-27304](#)-B-13 WILLIAM SADLER  
[JPJ](#)-1 Jospeh M. Canning

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P JOHNSON  
1-9-19 [[19](#)]

### **Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. LBR 9014-1(f)(2)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, debtor William Sadler ("Debtor") did not appear at the meeting of creditors set for January 3, 2019, as required pursuant to 11 U.S.C. § 343.

Second, Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,840.00, which represents approximately 1 plan payment. Before this matter is heard, an additional plan payment in the amount of \$1,840.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtor did not utilize the mandatory form plan required pursuant to Local Bankruptcy Rule 3015-1(a) and General Order 18-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective November 9, 2018.

Fourth, the plan payment in the amount of \$1,840.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. Trustee calculates that the aggregate of these monthly amounts plus the trustee's fee is \$1,910.00. The plan fails to comply with Section 4.02 of the mandatory form plan.

Fifth, the Debtor has not provided the Trustee with a copy of the filed 2017 California income tax return. Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

The plan filed December 4, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

**Tentative Ruling**

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *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 *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.<sup>1</sup>

**COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.**

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<sup>1</sup>The court notes that, when compared to the First Amended Plan filed September 13, 2018, a Class 4 claim entitled "Hud [sic] Loan" was removed from the First Modified Plan. Compare dkt. 48, p. 4, and dkt. 74, p. 4. The only explanation given for removing this claim is in Debtor's declaration, which states "I have a HUD loan that does not mature until 2047 that I missed including when I filed." Dkt. 73, ¶ 14. Debtor's counsel may address this inconsistency at the hearing, and explain whether Debtor "missing" the loan requires that the claim be reclassified from Class 4 to Class 1 as a delinquent secured claim that matures after the plan commitment period.

4. [18-27407](#)-B-13 DONALD HANKS  
[JPJ](#)-1 Lucas B. Garcia

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON, CHAPTER  
13 TRUSTEE AND/OR MOTION TO  
DISMISS CASE  
1-9-19 [[15](#)]

**No Ruling**

### Final Ruling

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). 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 court's decision is to sustain the objection to Claim No. 11 of Bank of America N.A. and the claim is disallowed in its entirety.

### Discussion

Jan Johnson, the Chapter 13 Trustee ("Trustee"), requests that the court disallow the claim of Bank of America N.A. ("Creditor"), Proof of Claim No. 11 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$4,198.38. Trustee asserts that the Claim has not been timely filed. See FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was June 1, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 18. The Creditor's proof of claim was filed June 5, 2018.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." FED. R. BANKR. P. 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-33 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

*Id.* at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

6. [17-25411](#)-B-13 JAMES/LILLIE JOHNSON CONTINUED MOTION TO CONVERT  
[JPJ](#)-1 Mary Ellen Terranella CASE TO CHAPTER 7 AND/OR MOTION  
**Thru #7** TO DISMISS CASE  
8-29-18 [[42](#)]

**No Ruling**

7. [17-25411](#)-B-13 JAMES/LILLIE JOHNSON CONTINUED MOTION TO MODIFY PLAN  
[MET](#)-2 Mary Ellen Terranella 9-25-18 [[48](#)]

**No Ruling**



8. [18-27311](#)-B-13 KARLA ANTONETTE GAMA  
[JPJ](#)-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
1-9-19 [[14](#)]

### **Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. LBR 9014-1(f)(2)(C). A written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

### **Trustee's Objection to Confirmation**

Jan Johnson, the Chapter 13 trustee ("Trustee"), filed an objection to confirmation on January 9, 2019. Dkt. 14.

Debtor Karla Gama ("Debtor") is delinquent \$9,000.00, or approximately 1 plan payment. Trustee also notes that an additional plan payment in the amount of \$9,000.00 will also be due before the hearing. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Further, based on that delinquency, Trustee lacked sufficient funds to pay the post-petition contract installment to Lakeview Loan Servicing, LLC for December, which violates Section 3.07(b) of the proposed plan.

### **Debtor's Response**

Debtor filed a response on January 12, 2019. Dkt. 20.

Debtor asserts that she made a \$9,000.00 payment on January 9, 2019. Dkt. 21, p. 3.

### **Discussion**

Without evidence that Debtor is current on all payments, which Debtor may present at the hearing, the plan filed November 20, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

9. [18-27317](#)-B-13 CHRISTIE ZAKUTNEY  
[JPJ](#)-1 Gabriel E. Liberman

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
1-9-19 [[15](#)]

**No Ruling**

10. [18-25618](#)-B-13 BENJAMEN VERMA OBJECTION TO DEBTOR'S CLAIM OF  
[JPJ](#)-2 Peter G. Macaluso EXEMPTIONS  
**Thru #11** 1-4-19 [[59](#)]

### **Tentative Ruling**

The objection has been set for hearing on at least 28-days the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the objection at the hearing.

The court's decision is to overrule the objection as moot.

### **Trustee's Objection to Claim of Exemption**

Jan Johnson, the Chapter 13 trustee ("Trustee"), objects to certain claimed exemptions of debtor Benjamin Verma ("Debtor").

First, Debtor listed real property commonly known as 8776 Mannington Street, Elk Grove, California 95758 as his primary residence on the petition, filed September 5, 2018. Debtor testified at the first meeting of creditors that this was used as the residence for Debtor and his family. Debtor's Schedule A/B shows Debtor's interest in real property commonly known as 4414 Bantam Way, Elk Grove, California 95758, which Debtor testified was rental property. Trustee argues that Debtor is not entitled to claim his interest in 4414 Bantam Way as exempt under California Code of Civil Procedure § 704.730, as that real property is not Debtor's residence. *Cisneros v. Kim (In re Kim)*, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000).

Second, Debtor claimed a U.S. Bank checking account, with \$200.00 as fully exempt, and a second U.S. Bank checking account, with \$2,000.00 in value and \$1,500.00 as exempt, pursuant to California Code of Civil procedure § 704.070. Trustee argues that, because Debtor is listed as self-employed on Schedule I and the exemption only applies to wage income, Debtor cannot claim the funds in these two bank accounts as exempt.

### **Debtor's Reply**

Debtor filed a reply on January 21, 2019 (dkt. 88), and only notes that an amended Schedule C was filed on January 14, 2019. Dkt. 83.

### **Discussion**

The court's decision is to overrule the objection as moot, as Debtor filed the amended Schedule C on January 14, 2019.

### **THE COURT WILL PREPARE A MINUTE ORDER.**

11. [18-25618](#)-B-13 BENJAMEN VERMA MOTION TO CONFIRM TERMINATION  
[MWP](#)-2 Peter G. Macaluso OR ABSENCE OF STAY  
1-8-19 [[68](#)]

### **Final Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *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 *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion.

Oleg Uvarov ("Movant") seeks an order confirming that the automatic stay is not in effect with respect to debtor Benjamin Verma ("Debtor") 30 days after the second petition was filed on September 5, 2018. See 11 U.S.C. § 362(c)(3)(A). This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on September 20, 2018, due to Debtor filing a blank plan, failure to provide the necessary tax returns, and not filing a Credit Counseling Certificate (case no. 18-24343, dkt. 32).

### Discussion

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 expires on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest (not just the debtor) to file a motion requesting the continuation of the stay.

On July 11, 2018, Debtor filed a Chapter 13 case (case no. 18-24343). That case was dismissed on September 20, 2018, pursuant to the Chapter 13 trustee's motion. The Debtor filed the instant case on September 5, 2018. Hence, the prior Chapter 13 case was pending within one year of the filing of this case.

The court has reviewed the docket for this case and no motion for seeking the continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) has been filed and granted. Therefore, by October 5, 2018, the automatic stay had expired as a matter of law. See 11 U.S.C. § 362(c)(3)(A); see also *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates in its entirety on the 30th day after the second petition date).

The court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on October 5, 2018, 30 days after the Debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

The Bankruptcy Appellate Panel continues to adhere to *Reswick*, recognizing that the stay terminates as to its entirety under § 362(c)(3)(A). See *Aguilar v. Ocwen Loan Servicing, LLC (In re Aguilar)*, 2014 WL 6981285, \*5 (B.A.P. 9th Cir. 2014); *Ortola v. Ortola (In re Ortola)*, 2011 WL 7145793 (B.A.P. 9th Cir. 2011). This court does not take the BAP's opinions lightly. See *State Compensation Ins. Fund v. Hoffmeier (In re Silverman)*, 616 F.3d 1001, 1005 (9th Cir. 2010) (Ninth Circuit "treat[s] the BAP's decisions as persuasive authority given its special expertise in bankruptcy issues and to promote uniformity of bankruptcy law throughout the Ninth Circuit").

*Reswick* is also followed by at least two district courts in the Ninth Circuit, including our own. *Vitalich v. Bank of New York Mellon*, 569 B.R. 502, 509-10 (N.D. Cal. 2016); *Vassallo v. Naiman*, 2012 WL 691783, \*2 (E.D. Cal. 2012).

Most bankruptcy courts within the Ninth Circuit also follow *Reswick* in determining that § 362(c)(3)(A) terminates the automatic stay in its entirety. See e.g., *In re Bishop*, 2017 WL 1788412, \*1 (Bankr. C.D. Cal. 2017); *In re Wilson*, 2016 WL 3751620, \*3 n.6 (Bankr. E.D. Wa. 2016); *In re Whitescorn*, 2013 WL 1121393, \*2 (Bankr. D. Ore. 2013); *In re Smith*, 481 B.R. 633, 636 n.4 (Bankr. D. Nev. 2012); *In re Jackola*, 2011 WL 2518930, \*3 (Bankr. D. Haw. 2011).

The court is aware of two bankruptcy courts within the Ninth Circuit that have declined

to follow *Reswick*. See *In re Rinard*, 451 B.R. 12 (Bankr. C.D. Cal. 2011); *In re Alvarez*, 432 B.R. 839, 842-843 (Bankr. S.D. Cal. 2010). Neither are persuasive. *Rinard* has not been cited favorably by any court in the Ninth Circuit. In fact, the district court for the Northern District of California recently rejected it. *Vitalich*, 569 B.R. at 507-8. And it also was not followed by a different judge from the very court from which it originated. See *Bishop*, 2017 WL 1788412 at \*1. *Alvarez* pre-dates *Reswick* and it, too, has not been cited by any other court in the Ninth Circuit.

In short, unless and until the Ninth Circuit says otherwise, this court adopts and will follow *Reswick*. And in that regard, the court holds that when the automatic stay terminates under § 362(c)(3)(A) it terminates in its entirety.

Therefore, the motion to confirm termination of stay is granted.

**COUNSEL FOR THE MOVANT SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

### **Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. LBR 9014-1(f)(2)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, debtor Nicole Mosby ("Debtor") is delinquent to the Chapter 13 Trustee in the amount of \$1,900.00, which represents approximately 1 partial plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6). Further, based on Debtor's delinquent payment, Trustee was unable to pay the post-petition monthly installment payment to Class 1 claimant Rushmore Mortgage for December, which violates Section 3.07(b) of the proposed plan.

Second, the Debtor has not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. Debtor has not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

Third, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Fourth, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Fifth, Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankruptcy Rule 3015-1(b)(6).

Sixth, after reviewing Schedules A/B and C, Trustee estimates there is \$308,365.99 of non-exempt equity. Because Debtor's proposed plan provides for \$0.00 to be paid to general unsecured creditors, Trustee argues the plan does not comply with the liquidation analysis pursuant to 11 U.S.C. § 1325(a)(4).

The plan filed November 28, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

13. [18-21424](#)-B-13 BRIAN/STEPHANIE PACE  
[EJS](#)-2 Eric John Schwab

CONTINUED MOTION TO MODIFY PLAN  
12-17-18 [[35](#)]

**No Ruling**

### **Tentative Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to deny without prejudice the motion to extend automatic stay.

### **Debtor's Motion to Extend Automatic Stay**

Debtor Cheryl Hansen ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on June 6, 2018, due to delinquency in plan payments (case no. 17-25486, dkt. 117 Notice of Entry of Dismissal). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end 30 days after filing of the petition.

Debtor asserts that the prior case failed due to her being unable to afford the payments, based on the mortgage arrears on her residence and her business not operating at full capacity. Since the last case, Debtor has cured the arrears and her business is at or near full capacity. Debtor also notes a loan modification that is in a trial period, which if successful will result in a \$200.00 per month plan payment reduction. Dkt. 11, p. 2.

### **Creditor's Opposition**

Creditor Solano First Federal Credit Union, formerly known as CMT Federal Credit Union, its successors and/or assignees ("Creditor"), filed an untimely opposition on January 30, 2019. Dkt. 19; LBR 9014-1(f)(1)(B).

Creditor notes this is Debtor's third consecutive bankruptcy, and argues that Debtor has not presented sufficient evidence to demonstrate that the plan has a reasonable probability of success due to fluctuating business income and understated business expenses on Schedules I and J. Creditor also notes that "[i]t has not received payments in a very long time," and that Creditor made a significant advance to cure the arrears on the first lienholder, and Creditor has been prejudiced by the filing of this petition. Dkt. 19, p. 5.

### **Discussion**

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The court notes that this is Debtor's fourth bankruptcy in the past three years, with three filed in the past two years. The three prior cases were disposed of as follows:



Case No.	Petition Filing Date	Dismissal Date	Reason	Docket Citations
17-25486	August 18, 2017	June 6, 2018	Delinquent plan payments.	1, 115
17-24252	June 28, 2017	August 8, 2017	Failure to file documents after extension.	1, 62
16-24976	July 29, 2016	April 3, 2017	Delinquent plan payments.	1, 61

In light of these unproductive bankruptcy cases, and the evidence presented, the Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith for the court to extend the automatic stay. The motion is denied without prejudice.

**COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

**Final Ruling**

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *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 *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor Rachel Williams has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

**COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.**

16. [18-27327](#)-B-13 MEGAN ARNETT-LUCKEY OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Chad M. Johnson PLAN BY JAN P JOHNSON  
**Thru #17** 1-9-19 [[25](#)]

**Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 3015-1(c) (4) & (d) (1) and 9014-1(f) (2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. LBR 9014-1(f) (2) (C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

**Trustee's Objection to Confirmation**

Jan Johnson, the Chapter 13 trustee ("Trustee"), filed an objection to confirmation on December 28, 2018. Dkt. 54.

First, Trustee asserts that debtor Megan Arnett-Luckey ("Debtor") did not appear at the meeting of creditors set for January 3, 2019 as required pursuant to 11 U.S.C. § 343.

Second, Trustee argues the Debtor does not utilize the mandatory form plan required pursuant to Local Bankruptcy Rule 3015-1(a) and General Order 18-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective November 9, 2018.

Third, Trustee asserts the Debtor has claimed an interest in a vehicle, household furnishings, and clothes as exempt under California Code of Civil Procedure § 703.140(b). However, the Debtor is married and has not filed a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a) (2). Without the spousal waiver, the Debtor may not claim exemptions under § 703.140(b).

Fourth, the Trustee states that the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e) (2) (A) (1).

Fifth, the Trustee asserts this plan does not comply with 11 U.S.C. § 1325(a) (4) because the unsecured creditors would receive a higher distribution in a chapter 7 proceeding. Trustee filed an objection to claim of exemption, set for hearing on February 12, 2019. If Trustee's objection is sustained, Trustee estimates that there will be \$5,730.00 of non-exempt equity, rather than the \$0.00 proposed in the plan.

The plan filed December 13, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

17. [18-27327](#)-B-13 MEGAN ARNETT-LUCKEY OBJECTION TO CONFIRMATION OF  
[RTD](#)-2 Chad M. Johnson PLAN BY SCHOOLS FINANCIAL  
CREDIT UNION  
1-10-19 [[28](#)]

**Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 3015-1(c) (4) & (d) (1) and 9014-1(f) (2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a

written reply to any written opposition. LBR 9014-1(f)(2)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

### **Creditor's Objection to Confirmation**

Schools Financial Credit Union ("Creditor") filed an objection to confirmation on January 10, 2019. Dkt. 28.

First, Creditor argues that the proposed plan dated December 13, 2018 does not provide Creditor with the appropriate interest rate, nor with the proper monthly dividend. The court takes judicial notice of the prime rate of interest as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., January 30, 2019, [http://online.wsj.com/mdc/public/page/mdc\\_bonds.html](http://online.wsj.com/mdc/public/page/mdc_bonds.html). The current prime rate is 5.50%. Here, the plan proposes a 4.5% interest rate.

The Supreme Court decided in *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. *Cf. Farm Credit Bank v. Fowler (In re Fowler)*, 903 F.2d 694, 697 (9th Cir. 1990); *In re Camino Real Landscape Main. Contrs., Inc.*, 818 F.2d 1503 (9th Cir. 1987).

To set the appropriate rate, the court is required to conduct an "objective inquiry" into the appropriate rate. However, a debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

As surveyed by the Supreme Court in *Till*, courts using the formula approach typically have adjusted the interest rate 1% to 3%.

In light of the court sustaining the objection filed by Jan Johnson, the Chapter 13 Trustee, at line item #16, the court sustains the objection as to increasing the interest rate in any plans proposed, but overrules the objection as to setting the interest rate at 7.00%.

Second, Creditor argues that the Plan is not feasible because it requires monthly payments of \$347.84 per month for 60 months, which would need to be increased to \$405.00 to pay Creditor's claim in full. Also, Creditor contends that there is insufficient evidence to show Debtor will be able to make the plan payments because her expenses are unrealistic and her income is dependent on her son giving her a monthly contribution of \$2,000.00; there was no evidence submitted that Debtor's son is able and willing to continue these plan payments through the 60 months proposed in the plan. Thus, Creditor argues that Debtor has not carried her burden of showing the plan is feasible under 11 U.S.C. § 1325(a)(6). See *In re Deutsch*, 529 B.R. 308 (Bankr. C.D. Cal. 2015).

Third, the Creditor contends that the plan was not filed in good faith as required by 11 U.S.C. § 1325(a)(3), for the information listed in the documents filed with the court are inaccurate. Specifically, Creditor points to the following:

1. Debtor filed her petition with a P.O. box number, did not disclose a residence address, did not disclose other addresses in her prior bankruptcy, and did not list Virginia addresses which she provided to Creditor and listed on her Virginia insurance policy;
2. Debtor stated she was married on Schedule I, and listed Creditor as community debt on Schedule D, but stated she was divorced on her insurance policy;
3. Debtor has not disclosed where the vehicle is located, outside of

stating it was in California with Debtor's daughter, and has not provided proof of insurance or proof of registration for the vehicle;

4. Debtor and Debtor's attorney did not appear at the January 3, 2019 meeting of creditors, and requested it to be continued to February 7, 2019;

5. Debtor drove the vehicle 40,000 miles while making only 5 of 22 payments, and is proposing a plan with below-prime and below-contract interest rates;

6. Debtor listed a security deposit on Schedule B, question 22, and listed a rental expense of \$919.99, but did not list an executory contract on Schedule G.

Creditor argues these facts provide evidence that the plan was not filed in good faith, as required by § 1325(a)(3).

The court's decision is to sustain the objection and deny confirmation of the plan.

The plan filed December 13, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

**COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

18. [18-27527](#)-B-13 FRANCINE MITCHELL OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Mary Ellen Terranella PLAN BY JAN P. JOHNSON  
**Thru #19** 1-9-19 [[19](#)]

**Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 3015-1(c) (4) & (d) (1) and 9014-1(f) (2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. LBR 9014-1(f) (2) (C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, after reviewing Schedules A/B and C, the Chapter 13 Trustee estimates there is \$16,250.00 of non-exempt equity. Because the plan proposed by debtor Francine Mitchell ("Debtor") provides for \$0.00 to be paid to general unsecured creditors, Trustee argues the plan does not comply with the liquidation analysis pursuant to 11 U.S.C. § 1325(a) (4).

Second, Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e) (2) (A) (1).

The plan filed December 2, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

19. [18-27527](#)-B-13 FRANCINE MITCHELL CONTINUED MOTION TO EXTEND  
[MET](#)-1 Mary Ellen Terranella AUTOMATIC STAY  
12-4-18 [[8](#)]

**Tentative Ruling**

Because less than 28-days notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f) (2). Consequently, parties in interest were not required to file a written response or opposition. 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.

The court's decision is to deny without prejudice the motion to extend the automatic stay.

**Debtor's Motion to Extend the Stay**

Debtor Francine Mitchell ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) (3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on September 7, 2018, due to delinquent plan payments. Case no. 17-26547, dkt. 40 Notice of Entry of Dismissal. Therefore, pursuant to 11 U.S.C. § 362(c) (3) (A), the provisions of the automatic stay end 30 days after filing of the petition.

Debtor asserts that she contacted a lender for a reverse mortgage on her home loan. She thought that she would obtain a loan for a sufficient amount to pay off her Chapter

13 plan, and in anticipation of receiving the reverse mortgage "I stopped making my Chapter 13 plan payments. Although in hindsight I realize I should not have done that, I had gotten assurances that the reverse mortgage would, in fact, go through." Dkt. 10, at 2:9-12. The reverse mortgage offered did not provide enough to pay off the Chapter 13 plan, and at that point Jan Johnson, the Chapter 13 Trustee ("Trustee"), had already filed a Notice of Default and Application to Dismiss Case. Debtor states she was too far behind to cure the defaults, and the case was dismissed. *Id.* at ln. 12-16. Debtor claims that she refiled to "protect [her] home," which is "very affordable for [her]." *Id.* at lns. 17-18. Debtor also points out that she has had the same employer for three years, which provides "steady and stable income." *Id.* at lns. 19-20.

### **December 18, 2018 Hearing**

The court conditionally granted the motion through the continued hearing, and scheduled this matter to be heard in conjunction with the objection to confirmation, line item #19 above. Dkt. 16.

### **Discussion**

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

Debtor stated, under penalty of perjury, that she unilaterally terminated her payments under the confirmed Chapter 13 plan. Further, a review of the docket from the prior case shows that no modified plan was proposed to cure the delinquency after the Chapter 13 Trustee filed a Notice of Default on July 27, 2018, despite the request for dismissal not being filed until 41 days later on September 6, 2018. Case no. 17-26547, dkt. 33, 38.

At the December 18, 2018 hearing, the court conditionally extended the § 362(a) automatic stay for all purposes and as to all parties in interest through the plan confirmation hearing date of February 5, 2019. Dkt. 16. Based on the court's decision on line item #18, Debtor has not demonstrated that the plan is confirmable. Thus, the motion will be denied and the automatic stay will not be extended.

**THE COURT WILL PREPARE A MINUTE ORDER.**

20. [18-27529](#)-B-13 YESENIA GONZALEZ  
[RAS](#)-1 Muoi Chea

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK NATIONAL  
ASSOCIATION  
1-10-19 [[18](#)]

### **Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 3015-1(c)(4) & (d)(1) *and* 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. LBR 9014-1(f)(2)(C). A written reply has been filed to the objection.

The court's decision is to overrule the objection and confirm the plan.

### **Creditor's Objection to Confirmation**

U.S. Bank National Association, as Trustee for the C-Bass Mortgage Loan Asset-Backed Certificates, Series 2005-CB5, through its loan servicing agent Ocwen Loan Servicing, LLC ("Creditor"), objects to confirmation because the plan proposes to cure pre-petition arrearages of \$6,100.00. However, Creditor filed Proof of Claim No. 4 asserting pre-petition arrearages of \$6,683.49. Thus, Creditor argues the plan does not comply with 11 U.S.C. §§ 1322(b)(5) and 1325(a)(1).

### **Debtor's Response**

Debtor Yesenia Gonzalez ("Debtor") filed a response on January 22, 2019, and consents to increasing plan payments by \$11.00 per month starting in February 2019. Otherwise, Debtor will file a modified plan to cure the deficiency in pre-petition arrearages.

### **Discussion**

Based on Debtor's consent to increase plan payments by \$11.00 per month, the objection of Creditor has been resolved and is overruled. The plan complies with 11 U.S.C. §§ 1322 and 1325 and is confirmed with the changes proposed by the parties.

**COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER OVERRULING THE OBJECTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.**



21. [17-24431](#)-B-13 MARY PITMAN  
[TAG-1](#) Aubrey L. Jacobsen

MOTION TO MODIFY PLAN  
12-21-18 [[31](#)]

**Tentative Ruling**

The motion has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to deny as moot the motion to modify plan.

Subsequent to the filing of an opposition by Jan Johnson, the Chapter 13 trustee, debtor Mary Pitman filed a new modified plan on January 25, 2019. Dkt. 44. The confirmation hearing for the modified plan is scheduled for March 12, 2019. Dkt. 41. The earlier plan filed December 26, 2019, is not confirmed.

**THE COURT WILL PREPARE A MINUTE ORDER.**

### **Tentative Ruling**

The objection has been set for hearing on at least 44-days notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to overrule the objection to Claim No. 12 of Wilmington Savings Fund Society, FSB.

### **Debtor's Objection to Claim**

Debtor Pranee Arend ("Debtor") requests that the court disallow the claim of Wilmington Savings Fund Society, FSB dba Cristiana Trust, not in its individual capacity but solely as trustee for the Brougham Fund I Trust ("Creditor"), Claim No. 12. The claim is asserted to be secured in the amount of \$324,587.34. Debtor asserts, after entering into a loan modification with Creditor, Debtor contacted Keep Your Home California to make two payments of \$21,224.88 on January 20, 2015, and \$78,200.00 on August 24, 2015. These two payments, totaling \$99,424.88, were not applied to the account, and Debtor objects to the amount of the claim and the interest charged based on Creditor's failure to apply those two payments. Thus, Debtor argues that the claim should be reduced by \$104,757.58.

### **Creditor's Response**

Creditor filed a response on November 26, 2018. Dkt. 94.

Creditor argues that the two payments were applied, but are not shown on the history submitted with Proof of Claim No. 12 because the history only covers from the first default.

### **December 11, 2018 Hearing**

The court continued this matter to allow for a more detailed payment history to be submitted. Creditor was to file the supplemental history by January 9, 2019, and Debtor was allowed to respond by January 23, 2019.

### **Creditor's Supplemental Declaration and Payment History**

Creditor filed the declaration of Raymond Vanderama Jr., an Assistant Vice President of BSI Financial Services, Inc., the servicing agent for Creditor. Dkt. 107. Attached as an exhibit is a payment history summary from January 23, 2015 (the first Keep Your Home California payment) through March 1, 2017. On January 23, 2015, 18 entries of \$1,179.16 were applied to the account, which totals \$21,224.88 (the first Keep Your Home California Payment). On August 28, 2015, 4 entries of \$1,179.16 were applied, 1 entry of \$71,608.78, 1 entry of \$1,000.00, 1 entry of \$143.25, 1 entry of \$673.83, and 1 entry of \$57.50 were applied for a total of \$78,200.00 (the second Keep Your Home California payment). Dkt. 107, p. 3.

### **Discussion**

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to

overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." LBR 3007-1(a).

Based on the supplemental evidence provided by Creditor, Debtor has not presented a substantial and factual basis to overcome the prima facie validity of the proof of claim. Creditor's supplemental payment history provides a factual basis to demonstrate that the two payments were applied and the amount claimed in Proof of Claim No. 12 is correct.

**COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

23. [17-21139](#)-B-13 ELIZABETH EIDE  
[PSB-3](#) Pauldeep Bains

MOTION TO MODIFY PLAN  
12-17-18 [[73](#)]

### **Tentative Ruling**

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to deny without prejudice the motion to modify plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtor Elizabeth Eide ("Debtor") has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. However, the modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and cannot be confirmed. *See United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367, 1380-1 (2010) (explaining that bankruptcy courts have an obligation to review a chapter 13 plan to ensure that it complies with all applicable provisions of the Bankruptcy Code).

The court's review of the claims registry shows priority claims of \$16,019.62 filed by the Internal Revenue Service (POC 3-1) and \$1,340.24 filed by the Franchise Tax Board (POC 9-2). Because the plan only proposes payment of \$16,019.62 of priority unsecured claims, the plan does not provide for the full payment of all claims entitled to priority. Thus, the plan does not comply with 11 U.S.C. § 1322(a)(2) and cannot be confirmed.

**THE COURT WILL PREPARE A MINUTE ORDER.**

24. [18-23639](#)-B-13 JUANITO COPERO  
AF-5 Arasto Farsad  
**Thru #26**

MOTION TO CONVERT CASE FROM  
CHAPTER 13 TO CHAPTER 11  
1-7-19 [[82](#)]

**No Ruling**

25. [18-23639](#)-B-13 JUANITO COPERO  
[JPJ](#)-1 Arasto Farsad

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
1-3-19 [[76](#)]

**No Ruling**

26. [18-23639](#)-B-13 JUANITO COPERO  
[RAS](#)-1 Arasto Farsad

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
1-2-19 [[70](#)]

U.S. BANK, N.A. VS.

**No Ruling**

27. [18-27339](#)-B-13 KENT DOUGHERTY OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 David Foyil PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
1-9-19 [[31](#)]

**No Ruling**

28. [18-21640](#)-B-13 DZMITRY/NATALLIA UHLIK OBJECTION TO CLAIM OF CONSUMER  
[JPJ](#)-1 Eric John Schwab PORTFOLIO SERVICE, CLAIM NUMBER  
11  
12-14-18 [[52](#)]

**Final Ruling**

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). 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 court's decision is to sustain the objection to Claim No. 11 of Consumer Portfolio Services, Inc and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Consumer Portfolio Services, Inc ("Creditor"), Proof of Claim No. 11 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$5,344.86. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was March 29, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 17. The Creditor's proof of claim was filed June 8, 2018.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them.

Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

*Id.* at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): “[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is ‘rigid’ and the bankruptcy court lacks equitable power to extend this deadline after the fact.”

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor’s claim is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

### **Tentative Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to continue this matter to February 26, 2019, at 1:00 p.m.

### **Debtors' Motion to Value**

Debtors Raul and Martha Soto ("Debtors") filed a motion to value the secured claim of Travis Credit Union ("Creditor"), which is accompanied by Debtor Raul Soto's declaration. Debtors own a 2015 Ford F150 ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$16,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor Raul's declaration states that Debtors valued the Vehicle based on the 50,000 miles, the need for new tires and alignment, replacement brakes, a "ticking sound" from the engine, and the need for general maintenance. Dkt. 21, ¶¶ 5, 6.

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2 filed by Travis Credit Union is the claim which may be the subject of the present motion.

### **Creditor's Opposition**

Creditor filed an opposition on January 4, 2019. Dkt. 24.

Creditor argues that the balance owed is \$27,064.24, and, primarily relying on a Kelley Blue Book Vehicle Valuation Report, that the Vehicle has a replacement value of \$30,905.00.<sup>1</sup>

### **Debtors' Reply**

Debtors filed a reply on January 29, 2019. Dkt. 33.

First, Debtors object because the declarant for Creditor, Deborah Miller, bases the valuation for Creditor on a commercial publication rather than an "actual appraisal." Dkt. 33, p. 1. Debtors state that the parties have "arranged for the creditor to inspect the vehicle" and request a continuance for this purpose.

Second, Debtors submitted a Supplemental Declaration with the reply. Dkt. 35. Debtor Raul provides the following information in further support of their valuation of the Vehicle:

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<sup>1</sup>Creditor did not specify "whether the responding party consents to the Court's resolution of disputed material factual issues pursuant to Fed. R. Civ. P. 43(c) as made applicable by Fed. R. Bankr. P. 9017." LBR 9014-1(f)(1)(B). The failure to file a separate statement "shall be construed as consent to resolution of the motion and all disputed material factual issues."



1. Debtors believe the Vehicle needs new tires and alignment due to a weak front axle;
2. The brakes, including the brake drums, need to be replaced based the noises the brakes make when applied;
3. The engine turbo was replaced two years ago by the dealer after it made the same "ticking" sound, noted above; and
4. The vehicle needs "general maintenance" and the engine light "comes on and off."

Dkt. 35, ¶¶ 1-4.

Third, Debtors filed a separate statement that the material disputed fact is valuation for the Vehicle, as required by Local Bankruptcy Rule 9014-1(f)(1)(C). Dkt. 34.

**Discussion**

Based on the Debtors' representations that both parties have arranged for an in-person valuation, the Court's decision is to continue this matter to February 26, 2019, at 1:00 p.m.<sup>1</sup> If this matter is resolved prior to the continued hearing, the parties shall file a stipulation and the court will remove this item from the calendar. Otherwise, the matter will be set for an evidentiary hearing.

**THE COURT WILL PREPARE A MINUTE ORDER.**

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<sup>1</sup>The court notes that Debtors requested the matter be continued (dkt. 35, p. 2, lns. 1-3), the "objection be denied and the motion granted" (*id.* at lns. 20-21), or that the court set this matter for an evidentiary hearing (*id.* at lns. 22-23).

30. [18-27246](#)-B-13 WANDA MOORE  
[EAT](#)-1 Peter G. Macaluso  
**Thru #31**

OBJECTION TO CONFIRMATION OF  
PLAN BY WILMINGTON TRUST, N.A.  
1-2-19 [[20](#)]

**Final Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. LBR 9014-1(f)(2)(C). No written reply has been filed to the objection.

The court's decision is to continue this matter to February 12, 2019, at 1:00 p.m.

Creditor Wilmington Trust, National Association, not in its Individual Capacity, but solely as Trustee for MFRA Trust 2016-1 ("Creditor") filed an objection to confirmation on the following grounds.

First, Creditor advised debtor Wanda Moore ("Debtor") before filing its proof of claim that the approximate prepetition arrears totals \$22,105.04 while the plan proposes to cure \$22,620.00 of prepetition arrears. A review of the court's claims registry shows that Creditor filed Proof of Claim No. 6 asserting \$22,098.08 in prepetition arrears.

Second, Debtor listed monthly income totaling \$4,121.09, with \$600.00 per month of contributions from Debtor's children. However, there is no statement from the Debtor's children assuring that the funds will be available through the duration of the plan. Thus, Creditor argues that Debtor has not met her burden of demonstrating that the plan is feasible as required by 11 U.S.C. § 1325(a)(6). See *In re Deutsch*, 529 B.R. 308 (Bankr. C.D. Cal. 2015). The court agrees.

The objection regarding the minor discrepancy will be resolved at the continued hearing. The Debtor shall file and serve Creditor (by email or facsimile) with declarations of any person funding the plan by 5:00 p.m. on Friday, February 8, 2019. If the Debtor does not timely file and serve declarations, the plan filed December 3, 2018, will not comply with 11 U.S.C. §§ 1322 and 1325(a), the objection will be sustained on feasibility grounds, and the plan not confirmed.

**THE COURT WILL PREPARE A MINUTE ORDER**

31. [18-27246](#)-B-13 WANDA MOORE  
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
1-9-19 [[33](#)]

**Final Ruling**

Continued to February 12, 2019, at 1:00 p.m. to be heard in conjunction with motion to value the collateral of Americredit Financial Services, Inc., and the objection at Item #30.

**THE COURT WILL PREPARE A MINUTE ORDER.**

32. [18-27348](#)-B-13 APRIL TURNBULL  
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
1-9-19 [[32](#)]

**No Ruling**

33. [18-27251](#)-B-13 DEREK RUDD  
[JPJ](#)-1 Thomas O. Gillis

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
1-9-19 [[16](#)]

### **Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. LBR 9014-1(f)(2)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, debtor Derek Rudd ("Debtor") did not appear at the meeting of creditors set for January 3, 2019, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$845.00, which represents approximately 1 plan payment. Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed December 3, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

34. [18-27652](#)-B-13 ANNA CLELAND  
[JPJ](#)-1 Julius J. Cherry

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
1-16-19 [[14](#)]

**No Ruling**

35. [18-27555](#)-B-13 MATTHEW SLAGLE MOTION TO SELL  
[MRL](#)-2 Mikalah R. Liviakis 1-14-19 [[16](#)]  
**Thru #36**

**Tentative Ruling**

Because less than 28-days notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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.

The court's decision is to deny the motion to sell.

After filing the motion to sell, on January 28, 2018, debtor Matthew Slagle ("Debtor") filed an ex parte motion for voluntary dismissal under 11 U.S.C. § 1307(b). Dkt. 33. Because the Debtor filed that motion to dismiss after Jan Johnson, the Chapter 13 trustee ("Trustee"), questioned the Debtor's truthful disclosure (or more accurately non-disclosure) of potentially valuable assets (dkt. 27) and objected to a number of the Debtor's claimed exemptions as improper (dkt. 30) consistent with *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. 2008), the court denied the motion to dismiss and ordered the Debtor to set any subsequent motion to dismiss for a hearing. Dkt. 34.

Given the court's concern regarding the extent and disclosure of the Debtor's assets and claimed exemptions, it is not appropriate to allow the Debtor to deplete the estate of assets until those concerns are resolved either through the confirmation and exemption objection process or in the context of a hearing on a motion to dismiss in which the court can determine whether conversion rather than dismissal is in the best interest of creditors.

**THE COURT WILL PREPARE A MINUTE ORDER.**

36. [18-27555](#)-B-13 MATTHEW SLAGLE MOTION TO EMPLOY COLDWELL  
[MRL](#)-3 Mikalah R. Liviakis BANKER AS REALTOR(S)  
1-16-19 [[22](#)]

**Tentative Ruling**

Because less than 28-days notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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.

The court's decision is to deny as moot the motion to employ the realtor for the reasons stated in the ruling at Item #35.

**THE COURT WILL PREPARE A MINUTE ORDER.**

37. [18-21957](#)-B-13 WILLIAM AMARAL  
[PGM-8](#) Peter G. Macaluso

OBJECTION TO CLAIM OF  
NISSAN-INFINITI LT, CLAIM  
NUMBER 1  
12-17-18 [[166](#)]

### **Tentative Ruling**

The objection has been set for hearing on at least 44-days notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). No opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is to overrule without prejudice the objection to Claim No. 1 of Nissan-Infiniti LT.

### **Debtor's Objection to Claim**

Debtor William Amaral ("Debtor") requests that the court disallow the claim of Nissan-Infiniti LT ("Creditor"), Claim No. 1. The claim is asserted to be secured in the amount of \$1,281.51. Debtor objects to the balance owed because "[t]he leased vehicle was returned to deal [sic] on August 11, 2018 [sic] with no outstanding balance due." Dkt. 169, ¶ 3.

Debtor also asserts that, under Federal Rule of Bankruptcy Procedure 3002.1(d), "this type of Notice does not constitute prima facie evidence of validity under Rule 3001(f), and the creditor has not presented sufficient evidence to support its [sic] claim." Dkt. 166, p. 2.

### **Discussion**

As an initial matter, the court notes that Federal Rule of Bankruptcy Procedure 3002.1 does not apply. Rule 3002.1(a) states:

**This rule applies in a chapter 13 case to claims (1) that are secured by a security interest in the debtor's principal residence, and (2) for which the plan provides that either the trustee or the debtor will make contractual installment payments. Unless the court orders otherwise, the notice requirements of this rule cease to apply when an order terminating or annulling the automatic stay becomes effective with respect to the residence that secures the claim.**

Because this claim relates to a vehicle, Rule 3002.1 is inapplicable.

The starting place is Federal Rule of Bankruptcy Procedure 3001(f), which states that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." FED. R. BANKR. P. 3001(f). This rule creates an evidentiary presumption of validity for a **properly filed** proof of claim. *Garner v. Shier (In re Garner)*, 246 B.R. 617, 620 (B.A.P. 9th Cir. 2000).

When a proof of claim is properly filed and presumptively valid, the party objecting to the proof of claim has the burden of presenting a substantial factual basis to overcome the prima facie validity of the proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Under that standard, the Debtor's objection (particularly in light of the minimal evidence submitted by Debtor) will be overruled because "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." LBR 3007-1(a).

The court finds that Debtor has not presented substantial and factual basis to overcome the prima facie validity of the proof of claim. Debtor merely asserts that no balance was due when the vehicle was returned on August 11, 2018. This is insufficient to overcome the presumptive validity of the claim. FED. R. BANKR. P. 3007(f); LBR 3007-1(a).

**THE COURT WILL PREPARE A MINUTE ORDER.**



### Final Ruling

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). 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 court's decision is to sustain the objection to Claim No. 7 of the Internal Revenue Service and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of the Internal Revenue Service ("Creditor"), Proof of Claim No. 7 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be a priority unsecured debt in the amount of \$650.34. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case for a government unit was September 25, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed September 27, 2018.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

*Id.* at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason

that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

39. [18-27365](#)-B-13 YVONNE JOHNSON  
[JPJ](#)-1 Stacie L. Power

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
1-9-19 [[18](#)]

**No Ruling**

**Tentative Ruling**

Because less than 28-days notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f) (2). Consequently, parties in interest were not required to file a written response or opposition. 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.

The court’s decision is to deny the motion to extend automatic stay under § 362(c) (3) (A), construe the motion as one to impose the stay under § 362(c) (4) (B), and grant the motion.

Debtor Melanie Monterrosa (“Debtor”) seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) (3) extended beyond 30 days in this case.

This is the Debtor’s third bankruptcy petition pending in the past 1 year. The Debtor’s prior bankruptcy cases were dismissed for the following reasons:

Case Number	Petition Filing Date	Dismissal Date and Reason	Docket Citation
17-23780	June 5, 2017	June 13, 2018 Debtor’s ex parte request for dismissal.	1, 144, 146
18-24999	August 9, 2018	November 14, 2018 Trustee’s motion to dismiss based on Debtor’s delinquent plan payments.	1, 34, 36

Pursuant to 11 U.S.C. § 362(c) (4) (A) (i) the provisions of the automatic stay did not go into effect upon the filing of the petition in this case. Nevertheless, the court will construe the motion according to the substance of the relief requested and not how the motion is captioned. *U.S. v. 1982 Sanger 24' Spectra Boat*, 738 F.2d 1043, 1046 (9th Cir. 1984) (“The moving party's label for its motion is not controlling. Rather, the court will construe it, however styled, to be the type proper for relief requested.”); *In re Tallerico*, 532 B.R. 774, 778 (Bankr. E.D. Cal. 2015) (“the court must construe motions so as to provide just, speedy, and inexpensive determination of every case and proceeding” and may re-designate as necessary). Therefore, the court construes the motion as one to impose rather than extend the automatic stay of § 362(a).

**Discussion**

Upon motion of a party in interest and after notice and hearing, the court may order the provisions imposed if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c) (3) (4) (B). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c) (4) (D).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c) (3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor asserts that case no. 17-23780 was dismissed because her husband "got injured on his job and was off work on disability, which was significantly lower than [sic] his regular pay. Also, [Debtor] was not working outside the home during that case." Dkt. 10, ¶ 3. For case no. 18-24999, Debtor claims that her husband was diagnosed with kidney cancer in early October, shortly after filing the case, and did not have sick leave to cover the plan payments. *Id.* Debtor's husband has undergone surgery on January 8, 2019, and will be released to work on February 12, 2019. *Id.*

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to impose the automatic stay.

The motion is granted and the automatic stay is immediately imposed for all purposes and parties.

**COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

### Final Ruling

The objection to proof of claim has been set for hearing on at least 44-days notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). 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 court's decision is to sustain the objection to Claim No. 10 of Franchise Tax Board and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Franchise Tax Board ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$3,598.65. Objector asserts that the Claim has not been timely filed. See FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case for a government unit was October 3, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's proof of claim was filed November 29, 2018.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

*Id.* at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason

that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

42. [18-27371](#)-B-13 CHESTER/CLAUDIA PEDIGO  
[JPJ](#)-1 Matthew J. Gilbert

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
1-9-19 [[15](#)]

**No Ruling**



43. [18-27472](#)-B-13 STEVEN/SUSAN SPEHLING  
[JPJ](#)-1 Thomas B. Hjerpe

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P JOHNSON AND/OR  
MOTION TO DISMISS CASE  
1-16-19 [[22](#)]

**No Ruling**

### **Tentative Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

The court's decision is to deny the motion for compensation.

### **Applicant's Request for Additional Compensation**

As part of confirmation of the Chapter 13 plan proposed by debtors Thomas and Delyse Gannaway ("Debtors"), Mikalah Liviakis ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$4,000.00 which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 23. Applicant also prosecuted a modified plan in May 12, 2014, that requested \$4,000.00 in fees. Dkt. 23. Applicant now seeks additional compensation in the amount of \$2,378.50 in fees.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkts. 61, 62.

### **Trustee's Opposition**

Jan Johnson, the Chapter 13 trustee ("Trustee"), filed an opposition on January 17, 2019. Dkt. 64.

First, Trustee argues that approval of the additional compensation will result in the plan taking 71 months to complete, which exceeds the maximum 60-month period required by 11 U.S.C. §§ 1322(d) and 1325 (b)(4).

Second, Trustee argues that drafting a motion to avoid lien and order granting the motion is not a substantial and unanticipated post-confirmation service. Also, Trustee notes that the proof of claim for Greater California Financial Services showed that the lien was entered November 27, 2012, and the abstract was recorded February 13, 2013. Based on what Debtors and Applicant knew or should have known, this motion to avoid lien was not unanticipated and should have been completed pre-confirmation, and potentially been done prior to filing the petition on May 12, 2014. The court agrees. Moreover, even if the work for which counsel seeks compensation was substantial it could not have been unanticipated because it is required of counsel by Local Bankruptcy Rule 2017-1(a)(1).

### **Discussion**

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Applicant does not address the foregoing standard. Instead, the Applicant merely

states that total fees of \$2,378.50 have accrued in the case, and that Applicant seeks approval of compensation for all amounts incurred beyond the initial \$4,000.00 "no-look" fee. Accordingly, the motion for compensation is denied without prejudice.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

45. [18-25684](#)-B-13 KIRK BUCKHALTER  
[JMM](#)-2 Richard Kwun

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION TO  
CONFIRM TERMINATION OR ABSENCE  
OF STAY  
1-22-19 [[21](#)]

SANDI KOHLMILLER VS.

### **Tentative Ruling**

Because less than 28-days notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. 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.

The court's decision is to grant the motion confirming the absence of stay, but to deny without prejudice the motion for relief from stay.

### **Motion for Relief from Stay or Confirmation of Termination of Stay**

Sandi Kohlmiller ("Movant") seeks relief from the automatic stay in order to prosecute Sacramento County Superior Court case no. 18FL00478, a divorce case ("State Court Litigation"), to "pursue her state court remedies to for [sic] legal divorce from her marriage with Debtor and to recover her interest in certain real property located at 4919 Jurgenson Way, Elk Grove, CA 95757." The moving party has provided the Declaration of Sandi Kohlmiller to introduce evidence to authenticate the documents upon which Movant bases the claim and the obligation owed by the debtor Kirk Buckhalter ("Debtor").

The Kohlmiller Declaration asserts the following:

1. Debtor did not disclose his joint interest in 4919 Jurgenson Way, Elk Grove, California 95757 ("Property"), and that the Property is subject to a pending divorce proceeding at the time of filing;
2. Movant was "unfamiliar" with Chapter 13 bankruptcy cases and plan, and did not know of the need to review a Chapter 13 plan and object to confirmation;
3. Debtor has caused significant delay in the State Court Litigation, despite the marriage only lasting one year;
4. The Property is the "only asset" that the parties need to resolve to reach an agreement in the State Court Litigation;
5. Debtor misrepresented his legal marital status and assets in the bankruptcy case, and also "falsely filed a marital settlement agreement in the Divorce Proceeding" that Movant is attempting to set aside;
6. Waiting until the completion of a confirmed bankruptcy plan would be a "significant hardship" because Movant "want[s] to finalize my divorce with Debtor, obtain an appropriate order in the Divorce Proceeding concerning my interest in the Property, and move on with my life as soon as reasonably possible."
7. The Property is "not necessary for Debtor's reorganization."

Dkt. 23, ¶¶ 3-11.

### **Debtor's Petition and Schedules**

Debtor listed 4919 Jurgenson Way, Elk Grove, California 95757 as his primary residence on his petition and Schedule A/B. Dkt. 1, pp. 2, 11. Debtor listed the Property as held solely by Debtor, and no one else. *Id.* at p. 11 ("Debtor 1 only" has an interest in the property on Schedule A/B). Further, Debtor listed the debt held by Arvest Central mortgage Company as owed only by Debtor. *Id.* at p. 20. Debtor listed a

contingent, disputed, unsecured claim of Sandi Kohlmiller-Buckhalter on Schedule E/F for \$47,000.00. *Id.* at p. 24. The State Court Litigation was listed on Debtor's Statement of Financial Affairs as "Concluded." *Id.* at p. 36.

Movant was mailed notice of the bankruptcy proceeding on September 6, 2018 as follows: "Sandi Kohlmiller-Buckhalter, 400 Munroe St Apt 6, Sacramento, CA 95825." *Id.* at p. 58.

#### **Confirmed Chapter 13 Plan**

The court notes that the Chapter 13 plan was confirmed on November 2, 2018. Dkt. 16. The plan provides for payment of a Class 4 secured claim, which is secured by 4919 Jurgenson Way, Elk Grove, California 95757 as his "Primary Residence." Dkt. 3, p. 4. The plan proposed a 100% dividend to general unsecured creditors. *Id.* at p. 5.

#### **Movant's Proof of Claim**

Creditor filed Proof of Claim No. 7 on November 19, 2018. Movant asserts a \$50,000.00 secured claim based on being a "joint owner of debtor's property." POC 7, p. 2. The court notes that the deadline for a non-government entity to file a proof of claim was November 19, 2018. Dkt. 13.

#### **Discussion**

To the extent that the State Court Litigation only seeks to dissolve the marriage, the court will enter an order confirming that filing of the petition did not operate as a stay as provided under 11 U.S.C. § 362(b)(2)(A)(iv), which allows for the "commencement or continuation of a civil action or proceeding- . . . for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate."

However, the court finds that the nature of the State Court Litigation, in relation to the ownership interest in the Property, does not warrant relief from stay for cause. Movant had notice of the bankruptcy case since September 6, 2018, and failed to object to the Chapter 13 plan, which was confirmed on November 2, 2018. Debtor listed his interest in the Property, and the nature of the State Court Litigation, on his petition and schedules. The provisions of the confirmed plan "bind the debtor and each creditor, whether or not the claim of such creditor is provided for by the plan, and whether or not such creditor has objected to, has accepted, or has rejected the plan." 11 U.S.C. § 1327(a). Creditor has not demonstrated "cause" under § 362(d)(1), and Creditor's accusations do not support the request for relief under § 362(d)(4).

No other or additional relief is granted by the court.

**COUNSEL FOR THE MOVANT SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

46. [17-22885](#)-B-13 JANINE KING  
[JPJ](#)-2 Scott J. Sagaria

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
1-3-19 [[100](#)]

**Final Ruling**

The court's decision is to deny as moot the motion to convert and the motion to dismiss, as the court entered an order dismissing this case on January 29, 2019. Dkt. 113.

**THE COURT WILL PREPARE A MINUTE ORDER.**

47. [18-24985](#)-B-13 JOSEPH BOTSCH  
[MEV](#)-4 Marc Voisenat

MOTION TO CONFIRM PLAN  
12-14-18 [[44](#)]

**No Ruling**

**Final Ruling**

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *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 *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion and confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Debtors Vincent and Wendy Chalk provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

**COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.**



49. [18-27288](#)-B-13 ROBERT/ALLISON KING  
[JPJ](#)-1 Thomas L. Amberg

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
1-9-19 [[18](#)]

**No Ruling**

50. [18-24489](#)-B-13 MATTHEW/ARIANA VICKERS  
[JPJ](#)-2 W. Steven Shumway

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
1-4-19 [[83](#)]

**Final Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to grant the motion to convert this case to Chapter 7, and deny as moot the motion to dismiss.

Jan Johnson, the Chapter 13 trustee ("Trustee"), requests that this case be converted to Chapter 7 or, in the alternative, the case be dismissed.

Debtors Matthew and Ariana Vickers ("Debtors") are delinquent \$2,730.00, or approximately 1 plan payment. In conjunction with their failure to prosecute a confirmed plan since the motion to confirm first amended plan was withdrawn, this is unreasonable delay that is prejudicial the creditors under 11 U.S.C. § 1302(c)(1).

After reviewing Debtors' Schedules A/B and C, Trustee estimates there is \$206,159.00 of non-exempt equity. Thus, Trustee argues that conversion is in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1303(c). The court agrees.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

51. [18-26289](#)-B-13 SURJIT KUMAR AND POONAM OBJECTION TO DEBTOR'S CLAIM OF  
[JPJ](#)-3 KAUSHAL EXEMPTIONS  
Peter G. Macaluso 1-8-19 [[33](#)]

### **Tentative Ruling**

The objection has been set for hearing on at least 28-days the notice required by Local Bankruptcy Rule 9014-1(f) (1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (B) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the objection at the hearing.

The court's decision is to sustain the objection and the exemptions are disallowed in their entirety.

### **Trustee's Objection to Claim of Exemptions**

Jan Johnson, the Chapter 13 trustee ("Trustee"), objects to debtors Surjit Kumar and Poonam Kaushal ("Debtors") claiming certain property as exempt under California Code of Civil Procedure § 704. First, the Bank of America bank account, with value of \$6,000.00 and \$4,500.00 claimed exempt under § 704.070, and the Schools Financial Credit Union bank accounts, with values of \$12,600.00, \$10.00, and \$7.50, also claimed either fully exempt or up to \$9,450.00 under § 704.070, have not been traced to wages earned as required. Also, Debtors are self-employed, as shown on their filed Schedule I and Statement of Financial Affairs, question #10. Trustee asserts Debtors are only entitled to claim \$2,262.74 as exempt.

### **Debtors' Reply**

Debtors filed a reply on January 22, 2019. Dkt. 39. Debtors promise to file amended schedules on or before the hearing.

### **Discussion**

The court's review of the docket shows that the amended Schedule C has not been filed. Based on Debtors' failure to oppose the objection, and on the evidence submitted by Trustee, the Trustee's objection is sustained and the claimed exemptions are disallowed.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

52. [18-27489](#)-B-13 SHAWN GODFREY  
[ASW](#)-1 Mohammad M. Mokkarram

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK TRUST  
NATIONAL ASSOCIATION  
1-10-19 [[21](#)]

### **Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 3015-1(c)(4) & (d)(1) *and* 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. LBR 9014-1(f)(2)(C). No written reply has been filed to the objection.

The court's decision is to continue this matter to March 12, 2019, at 1:00 p.m.

### **Creditor's Objection to Confirmation**

First, creditor U.S. Bank Trust National Association ("Creditor") asserts that, because the plan proposes to pay \$0.00 on its claim, the plan is not confirmable. Creditor claims it is "in the process of filing a motion to vacate the Order Granting Motion to Value Collateral of Citimortgage, Inc." based on defective service of the motion. Dkt. 21, p. 3. Creditor offers no explanation for how service was defective. A review of the docket shows that no motion for relief from the valuation order has been filed. In addition, Creditor offers a value for the real property that it claims secures its interest,<sup>1</sup> and argues that this value exceeds the amount of the senior lien that was the basis of the prior motion to value.

Second, the Schedule J filed by debtor Shawn Godfrey ("Debtor") indicates disposable income of \$220.00, but adding Creditor's claim will require an additional \$42.74 per month. Creditor asserts that Debtor has not carried the burden of showing that the plan is feasible as required by 11 U.S.C. § 1325(a)(6).

### **Discussion**

Based on the representations of Creditor that service may have been defective for the motion to value, DCN MMM-1, the court may not have had jurisdiction to enter the order valuing the real property at \$150,000.00. In the interests of judicial economy, the hearing on this objection to confirmation will be continued to March 12, 2019, at 1:00 p.m. to allow Creditor to file a motion to vacate that order by February 12, 2019.

**THE COURT WILL PREPARE A MINUTE ORDER.**

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<sup>1</sup>Creditor attached Exhibit 4 to its objection to assert a value for the real property, but no legal authority was presented to admit these hearsay statements. FED. R. EVID. 801-803.

53. [17-25090](#)-B-13 MARTHA RAMIREZ  
[JPJ](#)-3 Peter G. Macaluso

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
12-27-18 [[144](#)]

**No Ruling**

54. [18-27392](#)-B-13 JASON GUPTILL  
[JPJ](#)-1 Aubrey L. Jacobsen

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
1-9-19 [[19](#)]

**No Ruling**

55. [18-27397](#)-B-13 GENE/JANICE GEIGER  
[JPJ](#)-1 Bruce Charles Dwiggins

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
1-16-19 [[16](#)]

### **Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. LBR 9014-1(f)(2)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, debtors Gene and Janice Geiger ("Debtors") did not appear at the meeting of creditors set for January 10, 2019, as required pursuant to 11 U.S.C. § 343.

Second, the Debtors are delinquent to Jan Johnson, the Chapter 13 trustee ("Trustee"), in the amount of \$3,600.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, Debtors have not provided the Trustee with a copy of their 2017 California income tax return. Debtors have not complied with 11 U.S.C. § 521(a)(3).

Fourth, Debtors have not filed a detailed statement of gross receipts and ordinary and necessary expenses despite listing \$4,050.00 of rental property and/or business income on Schedule I.

Fifth, Debtors have not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtors have not complied with 11 U.S.C. § 521(a)(3) and Local Bankruptcy Rule 3015-1(b)(6).

Sixth, based on Debtors' delinquency in plan payments, Trustee did not have sufficient funds to pay the Class 1 claimant Rabobank for the month of December, which violates Section 3.07(b) of the mandatory form plan.

The plan filed December 11, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

56. [17-21398](#)-B-13 MARK LUNA  
[JPJ](#)-2 Michael Benavides

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
1-3-19 [[41](#)]

**No Ruling**



### Final Ruling

The objection to proof of claim has been set for hearing on at least 44-days notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). 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 court's decision is to sustain the objection to Claim No. 9 of Bank of Stockton and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 trustee ("Objector"), requests that the court disallow the claim of Bank of Stockton ("Creditor"), Proof of Claim No. 9 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$5,954.30. Objector asserts that the Claim has not been timely filed. See FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was July 30, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed October 12, 2018.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

*Id.* at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason

that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.**

58. [18-25080](#)-B-13 MEGAN WILLIAMS  
Michael O'Dowd Hays

CONTINUED ORDER TO SHOW CAUSE -  
FAILURE TO PAY FEES  
12-17-18 [[31](#)]

**Tentative Ruling**

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to debtor Megan Williams's failure to pay \$73.00 due December 11, 2018. The court continued this matter from January 29, 2019, based on Debtor's representation that she mailed the payment in prior to the hearing. The court's docket reflects that the default still has not been cured.

**THE COURT WILL PREPARE A MINUTE ORDER.**

59. [18-24188](#)-B-13 VINCENT/WENDY CHALK  
[JPJ](#)-2 Jeffrey S. Ogilvie  
**See Also #48**

CONTINUED MOTION TO DISMISS  
CASE  
12-7-18 [[52](#)]

**Final Ruling**

Jan Johnson, the Chapter 13 trustee ("Trustee"), filed a motion to dismiss because debtors Vincent and Wendy Chalk ("Debtors") had not prosecuted a new plan since the objection to confirmation was heard and sustained on September 17, 2018. Dkt. 52. The court continued this matter from January 29, 2019, to be heard with line item #48. Based on the motion to confirm the First Amended Plan being granted, the court's decision is to deny as moot Trustee's motion to dismiss.

**THE COURT WILL PREPARE A MINUTE ORDER.**