

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

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**April 2, 2019 at 1:00 p.m.**

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1.	<a href="#">19-20300</a> -B-13	LORRIE MOORE JPJ-1                    Marc A. Caraska	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 2-28-19 [ <a href="#">15</a> ]
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**Tentative Ruling**

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 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. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$117.61, which represents approximately 1 plan payment. An additional payment of \$117.61 will be due by the time this matter is heard. 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).

Second, the Debtor does not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective December 1, 2017.

Third, the Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6). Debtor's plan and testimony at the first meeting of creditors indicate that the Debtor intends to surrender a 2015 Nissan Pathfinder to creditor Nissan Moto Acceptance. Schedule J, Line 17a, lists an expense of \$483.00 per month for the installment payment for the vehicle. Without this expense, Debtor's monthly net income increases from \$117.94 to \$600.94 per month. The Debtor's plan proposes \$117.61 and 0% dividend to the nonpriority unsecured creditors.

Fourth, it is not possible for the Trustee to pay the balance of the Debtor's attorneys fees and any other administrative expense through the plan with a monthly payment specified at \$0.00 for administrative fees.

Fifth, the Debtor has failed to amend the Statement of Financial Affairs and properly disclose her income of \$69,903.00 from "pension and annuities" and \$11,700.00 as shown on her 2017 tax return from the Internal Revenue Service.

The plan filed January 17, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial

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and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

2. [19-20500](#)-B-13 RENE DELGADO  
[JHW](#)-1 Mohammad M. Mokarram  
**Thru #3** OBJECTION TO CONFIRMATION OF  
PLAN BY TD AUTO FINANCE, LLC  
2-25-19 [[12](#)]

CASE CONVERTED: 03/26/2019

**Final Ruling**

The case was converted on March 26, 2019. Therefore, the objection is overruled as moot.

The court will enter a minute order.

3. [19-20500](#)-B-13 RENE DELGADO  
[JPJ](#)-1 Mohammad M. Mokarram  
OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-6-19 [[18](#)]

CASE CONVERTED: 03/26/2019

**Final Ruling**

The case was converted on March 26, 2019. Therefore, the objection is overruled as moot and motion is dismissed as moot.

The court will enter a minute order.

4. 19-20204-B-13 MARY SIMPSON  
JPJ-1 Matthew J. DeCaminada

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
2-28-19 [30]

### **Tentative Ruling**

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 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. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,370.00, which represents approximately 1 plan payment. An additional payment of \$1,370.00 will be due by the date of the hearing on this matter. 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).

Second, the Debtor failed to submit proof of her social security income at the first meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). The meeting of creditors was continued to March 28, 2018, and concluded.

Third, 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).

Fourth, the plan payment in the amount of \$1,370.00 for months 1 to 9 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. The plan does not comply with Section 5.2 of the mandatory form plan.

Fifth, the Debtor's plan, Rights and Responsibilities, and Form B2030 (Disclosure of Compensation of Attorney for Debtor) all state that the Debtor paid the attorney of record \$900.00 prior to the date of the petition. This is contrary to the Statement of Financial Affairs, Question 16, that states \$0.00 was received prior. The Debtor has failed to carry the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed January 28, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

5. 17-20405-B-13 EFREN/ELIZABETH MOTION TO AVOID LIEN OF  
DBJ-10 MEMORACION INVESTMENT RETRIEVERS, INC.  
Douglas B. Jacobs 1-30-19 [202]

**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 avoid judicial lien.

This is a request for an order avoiding the judicial lien of Investment Retrievers, Inc. ("Creditor") against the Debtors' three properties commonly known as: 901 Coit Tower Way, Chico, California ("Coit Tower"); 1156 Manzanita Avenue, Chico, California ("Manzanita"); and 2140 Ceres Avenue, Chico, California ("Ceres").

A judgment was entered against Debtors in favor of Creditor in the amount of \$16,087.08. An abstract of judgment was recorded with Butte County on February 26, 2016, which encumbers the three properties. All other liens recorded against the parties are noted below.

Coit Tower Property  
Fair market value: \$418,000  
Total of other liens against the property: \$461,320

Manzanita Property  
Fair market value: \$329,000  
Total of other liens against the property: \$338,970

Ceres Property  
Fair market value: \$329,000  
Total of other liens against the property: \$316,000

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$13,002.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

### **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 value the secured claim of Travis Credit Union at \$12,750.00.

Debtors' motion to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2014 Chrysler Town and Country ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$12,750.00 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).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3 filed by Travis Credit Union is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred in May 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$15,866.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$12,750.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

**Final 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.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

8. 18-23710-B-13 DAVID/EMILINDA VERA  
DWE-2 Julius J. Cherry

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
2-28-19 [94]

FREEDOM MORTGAGE CORPORATION  
VS.

WITHDRAWN BY M.P.

**Final Ruling**

Since the motion was withdrawn by the moving party, the matter is removed from calendar.

The court will enter a minute order.



9. 18-24111-B-13 RICHARD HURT  
JPJ-2 Scott J. Sagaria

OBJECTION TO CLAIM OF  
WILLIAMSON AND BROWN LLC, CLAIM  
NUMBER 12  
2-8-19 [23]

### 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 (9 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. 12 of Williamson and Brown LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Williamson and Brown LLC ("Creditor"), Proof of Claim No. 12 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$978.93. 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 September 7, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed September 26, 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 objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

**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. The Debtors have 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.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

11. 19-20511-B-13 JON/HEATHER CARROLL  
JPJ-1 Gabriel E. Liberman

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-5-19 [14]

### **Tentative Ruling**

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 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. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The matter will be determined at the scheduled hearing.

The Chapter 13 Trustee objects to approval of Debtors' attorney's fees in the amount of \$6,000.00 and asserts that this is a non-business case with an attorney's fee limit of \$4,000.00.

Debtors filed a response asserting that this is a business case because Debtors were required to submit a business questionnaire and profit-loss statements, the Trustee required the "Your Responsibility as a Business Debtor" to be signed, and the Debtors submitted evidence of accounts receivable, a detail of business assets, and a business license. Debtors state that the additional work, time, and analysis in this case warrant the \$6,000.00 flat fee of a business case pursuant to Local Bankruptcy Rule 2016-1.

The Trustee filed a reply stating that while he initially identified the case as a business case, after receiving and reviewing the requested documents and examining the Debtors under oath at the first meeting of creditors, the Trustee determined that the case is not a business case as defined in 11 U.S.C. § 1304(a). The Trustee does not oppose confirmation of the plan provided that the order confirming shows that attorney's fees are approved at \$4,000.00, that \$1,500.00 was paid prior to the filing of the petition, and that \$2,500.00 shall be paid through the plan.

The objection as to receipt of payment advices or other evidence of income received from Debtor's corporation within the 60 day-period prior to the filing of the petition has already been resolved.

The matter will be determined at the scheduled hearing.

12. 15-25315-B-13 EDWARD/PAMELA DUNCKELMANN OBJECTION TO CLAIM OF WHEELS  
JPJ-3 Scott D. Hughes FINANCIAL GROUP /  
1-800LOANMART, CLAIM NUMBER 6  
2-8-19 [34]

### 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 (9 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. 6 of Wheels Financial Group/1-800LoanMart and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Wheels Financial Group/1-800Loanmart ("Creditor"), Proof of Claim No. 6 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$800.20. 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 November 4, 2015. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed August 17, 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 objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

13. 19-20715-B-13 DANIEL/MICHELE MILLS  
MJD-1 Matthew J. DeCaminada

OBJECTION TO CLAIM OF CAVALRY  
SPV I, LLC, CLAIM NUMBER 1  
2-11-19 [11]

### **Final 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 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 (9 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. 1-1 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Daniel Phillips and Michele Mills, the Chapter 13 Debtors (collectively "Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 1-1. The claim is asserted to be in the amount of \$574.95. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about July 18, 2011, which is more than four years prior to the filing of this case. Hence, when the case was filed on February 7, 2019, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

14. 18-24516-B-13 DEBRA CLARKE  
RDW-2 Julius J. Cherry

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-19-19 [28]

SAFE AMERICA CREDIT UNION  
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 for relief from stay.

Safe America Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2012 Ford Focus (the "Vehicle"). The moving party has provided the Declaration of Donald McDaniel to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The McDaniel Declaration provides testimony that Debtor has not made eight monthly payments from June 8, 2018, through February 8, 2019, at \$367.07 per month and late charges in the amount of \$18.36 each.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$17,733.83 while the value of the Vehicle is determined to be \$7,578.00 as stated in the McDaniel Declaration.

### **Discussion**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

In the absence of postpetition payments totaling at least \$2,569.49, and with a lack of equity, Creditor also is not adequately protected under 11 U.S.C. § 362(d)(1) which is an independent basis for relief from the automatic stay.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.



**Attorneys' Fees Requested**

Though requested in the motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this motion. Movant is not awarded any attorneys' fees.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

15. 19-21116-B-13 MARK ALFORD  
Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-15-19 [11]

TRADEMARK INVESTMENTS, LLC  
VS.

DEBTOR DISMISSED: 03/16/2019

**Final Ruling**

The case was dismissed on March 16, 2019. Therefore, the motion is dismissed as moot.  
The court will enter a minute order.

16. [18-25618](#)-B-13 BENJAMEN VERMA MOTION TO CONFIRM PLAN  
[PGM-2](#) Peter G. Macaluso 2-11-19 [[100](#)]  
**Thru #17**

**No Ruling**

17. [18-25618](#)-B-13 BENJAMEN VERMA MOTION FOR PRELIMINARY  
[19-2036](#) PGM-1 INJUNCTION AND/OR MOTION FOR  
VERMA V. UVAROV TEMPORARY RESTRAINING ORDER  
3-13-19 [[8](#)]

**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 value the secured claim of Santander Consumer USA at \$6,800.00.

Debtor's motion to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Nissan Rogue ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$6,800.00 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).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1 filed by Santander Consumer USA Inc. is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title secures a purchase-money refinance incurred on July 14, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$11,593.65. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$6,800.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

19. 18-27622-B-13 JAMES NGUYEN  
JPJ-1 Gabriel E. Liberman

OBJECTION TO CLAIM OF CAVALRY  
SPV I, LLC, CLAIM NUMBER 1  
1-17-19 [16]

### **Final 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 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 (9 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. 1-1 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 1-1. The claim is asserted to be in the amount of \$4,353.82. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about October 16, 2009, which is more than four years prior to the filing of this case. Hence, when the case was filed on December 7, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

20. 19-20124-B-13 CHERYL HANSEN OBJECTION TO CONFIRMATION OF  
JPJ-1 Scott D. Shumaker PLAN BY JAN P. JOHNSON  
Thru #21 2-28-19 [28]

**Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 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. Local Bankruptcy Rule 9014-1(f)(1)(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.

The Debtor has failed to provide the Trustee with requested business documents related to Debtor's ownership and operation of Cheryl's Learning and Play Preschool and Child Care, specifically proof of income from Beanstalk Inc., bank account statements for 60 days prior to the filing of the petition, a copy of a valid daycare license, and proof of her homeowner's insurance policy to the Trustee. Without these documents, it cannot be determined whether the business is solvent and necessary for reorganization. The Debtor has not complied with 11 U.S.C. § 521.

The plan filed January 22, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter a minute order.

21. 19-20124-B-13 CHERYL HANSEN OBJECTION TO CONFIRMATION OF  
TJS-1 Scott D. Shumaker PLAN BY SOLANO FIRST FEDERAL  
CREDIT UNION  
2-28-19 [34]

**No Ruling**

22. 18-27525-B-13 TERENCE CAMPOLIETI MOTION TO CONFIRM PLAN  
BLG-3 Chad M. Johnson 2-12-19 [32]  
Thru #24

### **Tentative Ruling**

The motion has been set for hearing on the 35-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). Opposition was filed. The court will address the merits of the motion at the hearing.

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

Feasibility depends on the granting of the motion to value collateral for First Investors Servicing Corporation. That matter is heard and granted at Item #24.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The objection is ORDERED OVERRULED and the motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

23. 18-27525-B-13 TERENCE CAMPOLIETI OBJECTION TO CLAIM OF LVNV  
BLG-4 Chad M. Johnson FUNDING, LLC, CLAIM NUMBER 5  
2-12-19 [36]

### **Final 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 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 (9 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. 5 of LVNV, LLC and the claim is disallowed in its entirety.

Terence Campolieti, the Chapter 13 Debtor ("Objector"), requests that the court disallow the claim of LVNV, LLC ("Creditor"), Claim No. 5. The claim is asserted to be in the amount of \$1,443.16. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about July 27, 2012, which

is more than four years prior to the filing of this case. Hence, when the case was filed on December 1, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

24. [18-27525-B-13](#) TERENCE CAMPOLIETI MOTION TO VALUE COLLATERAL OF  
[BLG-5](#) Chad M. Johnson FIRST INVESTORS SERVICING  
CORPORATION  
2-15-19 [47]

### **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 value the secured claim of First Investors Servicing Corporation at \$8,000.00.

Debtor's motion to value the secured claim of First Investors Servicing ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Kia Optima ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$8,000.00 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).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 4 filed by First Investors Servicing is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred in February 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$21,602.04. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$8,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.



25. 19-20126-B-13 BRENDA KIRN  
JPJ-1 Matthew J. DeCaminada  
Thru #26

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
2-28-19 [50]

### **Tentative Ruling**

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 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. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on March 19, 2019. The confirmation hearing for the amended plan is scheduled for April 30, 2019. The earlier plan filed January 17, 2019, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT and the motion is ORDERED DENIED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

26. 19-20126-B-13 BRENDA KIRN  
JPJ-2 Matthew J. DeCaminada

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
2-28-19 [47]

### **Final Ruling**

The objection has been set for hearing on 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to overrule the objection and the exemptions are allowed.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140(a)(2). California Code of Civil Procedure §703.140(a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal waiver was filed on March 19, 2019. The Trustee's objection is overruled and the claimed exemptions are allowed.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

27. [18-27327](#)-B-13 MEGAN ARNETT-LUCKEY  
[BLG-1](#) Chad M. Johnson

MOTION TO CONFIRM PLAN  
2-19-19 [[53](#)]

**No Ruling**

28. 18-27527-B-13 FRANCINE MITCHELL  
MET-2 Mary Ellen Terranella

MOTION TO CONFIRM PLAN  
2-25-19 [28]

**No Ruling**

29. [19-20527](#)-B-13 FONDA HINKLE MOTION TO AVOID LIEN OF THE  
[GEL-1](#) Gabriel E. Liberman NATIONAL COLLECTION AGENCY,  
Thru #30 INC.  
2-27-19 [[13](#)]

### 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 avoid judicial lien.

This is a request for an order avoiding the judicial lien of National Collection Agency, Inc. ("Creditor") against the Debtor's property commonly known as 7010 Roca Way, Sacramento, California ("Property").

A renewed judgment was entered against Debtor in favor of Creditor in the amount of \$19,920.00. An abstract of judgment was recorded with Sacramento County on January 9, 2017, which encumbers the Property. All other liens recorded against the Property total \$187,754.00.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$348,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 740.730 in the amount of \$175,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

30. [19-20527](#)-B-13 FONDA HINKLE OBJECTION TO CONFIRMATION OF  
[JPJ-1](#) Gabriel E. Liberman PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-5-19 [[21](#)]

### Tentative Ruling

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 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. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection and deny the motion to dismiss.

Feasibility depends on the granting of a motion to avoid lien of National Collection Agency, Inc. That matter was heard at Item #29 and granted.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed January 29, 2019, is confirmed.

The objection is ORDERED OVERRULED and the motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

31. 19-20627-B-13 MARILYN/LAVALLE GARY  
TGM-1 Peter G. Macaluso

AMENDED OBJECTION TO  
CONFIRMATION OF PLAN BY U.S.  
BANK NATIONAL ASSOCIATION  
2-13-19 [12]

**Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 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. Local Bankruptcy Rule 9014-1(f)(1)(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.

U.S. Bank National Association objects to plan confirmation on grounds that the Debtors' proposed post-petition monthly payment of \$520.00 is insufficient to pay the ongoing mortgage payment in the amount of \$775.10. The creditor filed Claim No. 3-1 on March 15, 2019. Failure to pay the ongoing contractual monthly mortgage payment is an impermissible modification under § 1322(b)(2) which renders the plan dead on arrival.

Debtors respond stating that they will file, set, and serve an amended plan to change classifications of the creditor to a Class 4 claim paid outside of the plan in the amount of \$775.10 by the Debtors.

The plan filed February 1, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

32. 17-26529-B-13 JOSE/MAGDALENA CARMONA  
AP-1 Mikalah R. Liviakis

JOINT MOTION FOR CONSENT TO  
ENTER INTO LOAN MODIFICATION  
AGREEMENT  
2-13-19 [59]

### **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 permit the loan modification requested.

U.S. Bank NA, successor trustee to Bank of America, NA, successor in interest to LaSalle Bank NA, as trustee, on behalf of the holders of the Washington Mutual Mortgage Pass-Through Certificates, WMALT Series 2006-7 ("Creditor") seeks court approval to enter into a loan modification agreement with Debtors with respect to the first deed of trust on the real property located at 8241 Mariposa Avenue, Citrus Heights, California. Creditor has agreed to a loan modification that will provide for a lower interest rate from 5.00% to 2.00%, the capitalization of arrears into the principal balance of the loan, and a lower payment amount from \$1,869.11 to \$1,517.69.

The motion is supported by the Declaration of Magdalena Carmona. The Declaration affirms the Debtors' desire to obtain the post-petition financing. Although the Declaration does not state the Debtors' ability to pay this claim on the modified terms, the court finds that the Debtors will be able to pay this claim since it is a reduction from the Debtors' current monthly mortgage payments.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtors' ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.



33. 18-22029-B-13 GARY VALDEZ  
JPJ-3 Gabriel E. Liberman  
Thru #35

OBJECTION TO CLAIM OF NATIONAL  
CONSTRUCTION RENTALS, CLAIM  
NUMBER 33  
2-8-19 [57]

### 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 (9 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. 33 of National Construction Rentals and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of National Construction Rentals ("Creditor"), Proof of Claim No. 33 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$712.80. 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 June 13, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed January 14, 2019.

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 objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

34. 18-22029-B-13 GARY VALDEZ OBJECTION TO CLAIM OF SMUD,  
JPJ-4 Gabriel E. Liberman CLAIM NUMBER 32  
2-8-19 [61]

### 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 (9 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. 32 of SMUD and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of SMUD ("Creditor"), Proof of Claim No. 32 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$5,546.09. 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 June 13, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed November 26, 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 objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

35. 18-22029-B-13 GARY VALDEZ OBJECTION TO CLAIM OF TITAN  
JPJ-5 Gabriel E. Liberman RECEIVABLES INC, CLAIM NUMBER  
31  
2-8-19 [65]

### **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 (9 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. 31 of Titan Receivables Inc and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee (“Objector”), requests that the court disallow the claim of Titan Receivables Inc (“Creditor”), Proof of Claim No. 31 (“Claim”), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$5,546.09. 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 June 13, 2018. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor’s proof of claim was filed July 1, 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 objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

36. 18-22031-B-13 CHARLES/SANDRA INDARA  
JPJ-2 Gabriel E. Liberman

MOTION TO CONVERT CASE FROM TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
3-1-19 [48]

DEBTOR DISMISSED:  
03/14/2019

JOINT DEBTOR DISMISSED:  
03/14/2019

**Final Ruling**

The case was dismissed on March 14, 2019. Therefore, the motion is dismissed as moot.

The court will enter a minute order.

37. 16-20037-B-13 JACK/STACEY MARTINEZ  
WSS-5 W. Steven Shumway

MOTION TO MODIFY PLAN  
2-7-19 [107]

**No Ruling**

38. 19-20237-B-13 STARR ROBINSON  
JPJ-1 Julius J. Cherry

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
2-28-19 [21]

DEBTOR DISMISSED:  
03/20/2019

**Final Ruling**

The case was dismissed on March 20, 2019. Therefore, the objection is overruled as moot and the motion is dismissed as moot.

The court will enter a minute order.

**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. The Debtors have 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.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.



40. 19-20938-B-13 REUBEN MOHAMMED  
DPB-2 Douglas P. Broomell  
Thru 41

MOTION TO VALUE COLLATERAL OF  
FRANCHISE TAX BOARD  
3-2-19 [20]

### 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 value the secured claim of Franchise Tax Board at \$0.00.

Debtor's motion to value the secured claim of Franchise Tax Board ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7588 Walnut Drive, Citrus Heights, California ("Property"). Debtor seeks to value the Property at a fair market value of \$350,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some 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).

The valuation of property that secures a claim is the first step, not the end result, of this motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

### Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3 filed by Franchise Tax Board is the claim which may be the subject of the present motion.

**Discussion**

The first deed of trust secures a claim with a balance of approximately \$442,937.63. Creditor’s second deed of trust secures a claim with a balance of approximately \$39,494.11 based on Claim No. 3. Therefore, Creditor’s claim secured by a junior deed of trust is completely under-collateralized. Creditor’s secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. The court will enter a minute order.

41. 19-20938-B-13 REUBEN MOHAMMED MOTION TO VALUE COLLATERAL OF  
DPB-3 Douglas P. Broomell LOANME INC.  
3-3-19 [24]

**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 value the secured claim of Loanme Inc. at \$0.00.

Debtor’s motion to value the secured claim of Loanme Inc. (“Creditor”) is accompanied by the Debtor’s declaration. Debtor is the owner of the subject real property commonly known as 7588 Walnut Drive, Citrus Heights, California (“Property”). Debtor seeks to value the Property at a fair market value of \$350,000.00 as of the petition filing date. As the owner, Debtor’s opinion of value is some 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).

The valuation of property that secures a claim is the first step, not the end result, of this motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor’s secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such

creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

#### **No Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

#### **Discussion**

The first deed of trust secures a claim with a balance of approximately \$442,937.63. The Federal Tax Board's second deed of trust secures a claim with a balance of approximately \$39,494.11. Creditor's third deed of trust secures a claim with a balance of approximately \$5,266.74. Therefore, Creditor's claim secured by a third deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

42. 19-20643-B-13 NED/EDNA SMITH  
MET-3 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF  
PERITUS PORTFOLIO SERVICES  
3-17-19 [29]

### **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 value the secured claim of Peritus Portfolio Services at \$3,675.00.

Debtors' motion to value the secured claim of Peritus Portfolio Services ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2005 Lexus ES300 ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$3,675.00 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).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2 filed by Peritus Portfolio Services II/NCEP is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred in September 2008, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$7,154.77. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$3,675.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

### **Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 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. Local Bankruptcy Rule 9014-1(f)(1)(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.

TD Auto Finance LLC ("Creditor") holds a security interest against a 2014 Toyota Sienna. Debtors had entered into the retail installment sale contract with Creditor on March 11, 2017. Creditor objects to confirmation of the plan on grounds that the plan does not provide Creditor with an appropriate interest rate. Creditor states that the appropriate interest rate is 2% above the national prime interest rate of 5.50% due to two factors that demonstrate Debtors' potential for default: (1) Debtors are on a stringent budget and therefore Debtors are at high risk of default under the plan, and (2) the vehicle is a depreciating asset that loses value with continued use and time.

### **Discussion**

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., March 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 0% 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%.

The court finds that the appropriate interest rate should be about 2.0% above the current prime rate given the nature of the security and the risk of default. Accordingly, a rate of 7.50% is appropriate. The court sustains the objection as to increasing the interest rate to 7.50%.

The plan filed January 30, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

### 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 deny the motion to value.

Debtor's motion to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Honda Civic LX ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$2,289.00 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).

However, the court finds issue with the Debtor's valuation. The declaration states that the valuation of the Vehicle is based on Edmunds True Market Value but this is a third party industry source and, therefore, Debtor's opinion of value is based on hearsay. *Fed R. Evid. 801-803.*

In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See 11 U.S.C. § 506(a)(2).*

The Debtor has not persuaded the court regarding his position for the value of the Vehicle. The valuation motion pursuant to *Fed. R. Civ. P. 3012* and *11 U.S.C. § 506(a)* is denied without prejudice.

The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

45. 18-27246-B-13 WANDA MOORE  
PGM-2 Peter G. Macaluso

MOTION TO CONFIRM PLAN  
2-18-19 [68]

**No Ruling**

46. 19-20246-B-13 FRANK/ELENA ESTRADA  
JJC-1 Julius J. Cherry  
Thru #47

MOTION TO VALUE COLLATERAL OF  
ALLY BANK  
3-1-19 [23]

### 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 continue the matter to April 16, 2019, at 1:00 p.m.

Debtors have filed a motion to value the collateral of Ally Bank. Dkt. 23. Ally Bank is an insured depository institution which means, absent exceptions not applicable here, it must be served "by certified mail addressed to an officer of the institution[.]" Fed. R. Bankr. P. 7004(h). The certificate of service that corresponds with the motion reflects that Ally Bank was served at the appropriate address listed under Claim No. 1 where notices to the creditor should be sent. However, service was not by certified mail nor solely to an officer.

Service on Ally Bank in the manner above fails to comply with Bankruptcy Rule 7004(h). Bankruptcy Rule 7004(h) requires service solely to the attention of an officer of an insured depository institution. Nothing in Bankruptcy Rule 7004(h) or its legislative history suggests that Congress intended the term "officer" to include anything other than an officer of the respondent creditor. *See Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor).

This court has previously dismissed matters without prejudice as non-compliant with Bankruptcy Rule 7004(h) where service was not solely to the attention of an officer of an insured depository institution. *See In re Chaney*, No. 16-24101 (Bankr. E.D. Cal. 2016) (Dkts. 24, 26). Other judges in this district have as well. *See In re Easley*, No. 16-27435 (Bankr. E.D. Cal. 2016) (McManus, J.) (Dkts. 62, 64). This court has also continued matters where service was not solely to an officer of an insured depository institution and provided the moving party with an opportunity to re-serve in compliance with Bankruptcy Rule 7004(h). *See In re Petty*, No. 12-24999 (E.D. Cal. 2012). In this case, for reasons of judicial economy and to permit the motion to be heard before the plan confirmation hearing date, the court will do the latter.

Therefore, for the foregoing reasons, it is ordered that in lieu of a dismissal without prejudice the hearing on the Debtors' motion to value the collateral of Ally Bank, dkt. 23, which is currently set for April 2, 2019, at 1:00 p.m. is continued to April 16, 2019, at 1:00 p.m. The Debtors shall re-serve Synchrony Bank in the manner required by Bankruptcy Rule 7004(h) to the attention of an officer of the respective institution (and only to an officer of the institution) and by certified mail so that the motion may be heard consistent with Local Bankr. R. 9014-1(f)(2).

The court will enter a minute order.



47. 19-20246-B-13 FRANK/ELENA ESTRADA  
JPJ-1 Julius J. Cherry

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
2-28-19 [20]

**Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 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. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as moot and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on March 14, 2019. The confirmation hearing for the amended plan is scheduled for May 7, 2019. The earlier plan filed January 15, 2019, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT and the motion is ORDERED DENIED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

48. 18-27747-B-13 VIRGINIA HUNT  
SLE-1 Steele Lanphier

MOTION TO CONFIRM PLAN  
2-6-19 [16]

**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 grant the motion to impose automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(4)(B) imposed in this case. This is the Debtor's third bankruptcy petition pending in the past 12 months. The Debtor's first bankruptcy case was dismissed on December 7, 2018, after pro se Debtor failed to timely file documents (case no. 18-27267, dkt. 11). The Debtor's second bankruptcy case was dismissed on February 21, 2019, after pro se Debtor failed to take measures to prosecute a bankruptcy proceeding (case no. 18-27824, dkt. 25).

### **Discussion**

Section 362(c)(4)(A) provides that if a case is filed by an individual debtor, and if two or more cases of the debtor were pending within the previous year but were dismissed, other than a case refiled after dismissal of a case under § 707(b), the automatic stay does not go into effect upon the filing of the new case. However, § 362(c)(4)(B) provides that on request made within 30 days after the filing of the new case, the court may order the stay to take effect if the moving party demonstrates that the filing of the new case is in good faith as to the creditors to be stayed.

The subsequently filed case is presumed to be filed in bad faith if: (I) 2 or more previous bankruptcy cases were pending within the 1-year period; (II) a previous case was dismissed after the debtor failed to file or amend the petition or other documents as required without substantial excuse, failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next previous case. *Id.* at § 362(c)(4)(D). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.*

The Debtor states that she filed bankruptcy in an effort to save her home from foreclosure. Debtor's prior bankruptcies did not succeed due to the fact that she filed the cases pro se and had been medically ill, which caused her to miss paperwork filing deadlines. Since her prior case was dismissed, Debtor asserts that her circumstances have changed because her medical condition has stabilized and the treatment is advancing her health. Debtor is also now represented by counsel. Debtor is retired and receives Social Security income in the amount of \$1,800.00 per month. She also receives retirement income in the amount of \$55.00 per month as well as assistance from her son in the amount of \$400.00 month. Debtor has a net monthly income of \$2,255.00 total. Debtor asserts she has the ability to fund the plan and obtain a discharge.

The Debtor has offered sufficient explanation from which the court can conclude that her financial or personal circumstances have substantially changed, and that the present case will be concluded with a confirmed plan that will be fully performed. The Debtor has shown by clear and convincing evidence that this case has been filed in good faith within the meaning of § 362(c)(4)(D).

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

50. 19-20050-B-13 RONALD BROWN  
JJC-1 Julius J. Cherry  
Thru #52

CONTINUED MOTION TO VALUE  
COLLATERAL OF ALLY BANK  
2-25-19 [17]

### **Tentative Ruling**

This matter was continued from March 12, 2019, to allow the Debtor to properly serve Ally Bank by certified mail addressed to an officer of the institution pursuant to Fed. R. Bankr. P. 7004(h). The motion was originally 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 value the secured claim of Ally Bank at \$34,000.00.

Debtor's motion to value the secured claim of Ally Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Ford F-150 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$34,000.00 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).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3-1 filed by Ally Bank is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred in May 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$40,660.82. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$34,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

51. 19-20050-B-13 RONALD BROWN  
JJC-2 Julius J. Cherry

CONTINUED MOTION TO VALUE  
COLLATERAL OF HARLEY-DAVIDSON  
CREDIT CORP/EAGLEMARK SAVINGS  
BANK  
2-25-19 [22]

### **Tentative Ruling**

This matter was continued from March 12, 2019, to allow the Debtor to properly serve Harley-Davidson Credit Corp/Eaglemark Savings Bank by certified mail addressed to an officer of the institution pursuant to Fed. R. Bankr. P. 7004(h). The motion was originally 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 value the secured claim of Harley-Davidson Credit Corp/EagleMark Savings Bank at \$16,500.00.

Debtor's motion to value the secured claim of Harley-Davidson Credit Corp/EagleMark Savings Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Harley Davidson ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$16,500.00 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).

#### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 13-1 filed by Harley-Davidson Credit Corp is the claim which may be the subject of the present motion.

#### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred in November 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$17,675.65. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$16,500.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

52. [19-20050-B-13](#) RONALD BROWN CONTINUED OBJECTION TO  
[JPJ-1](#) Julius J. Cherry CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
2-13-19 [[14](#)]

#### **Tentative Ruling**

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 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. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

The Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) shows that the Debtor's monthly disposable income is \$1,912.44 and the Debtor must pay no less than \$114,746.40 to unsecured non-priority creditors. The plan will pay \$0.00 to unsecured non-priority creditors.

The issue regarding feasibility of the plan depending on the granting of motions to value collateral for Ally Bank and Harley-Davidson Credit Corp. has been resolved. Both motions were granted at Items #50 and #51.

Due to payments not being made to unsecured creditors, the plan filed January 5, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter a minute order.

53. [19-20354-B-13](#) ERIC BENSON AND KARRI O'DONNELL  
AP-1  
**Thru #55** Stephen M. Reynolds  
OBJECTION TO CONFIRMATION OF  
PLAN BY THE BANK OF NEW YORK  
MELLON  
2-27-19 [[31](#)]

**Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 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. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

Subsequent to the filing of Bank of New York Mellon's objection, the Debtors filed an amended plan on March 27, 2019. The confirmation hearing for the amended plan is scheduled for May 14, 2019. The earlier plan filed January 20, 2019, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

54. [19-20354-B-13](#) ERIC BENSON AND KARRI O'DONNELL  
[JPJ-1](#)  
Stephen M. Reynolds  
OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
2-28-19 [[34](#)]

**Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 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. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

Subsequent to the filing of the Chapter 13 Trustee's objection, the Debtors filed an amended plan on March 27, 2019. The confirmation hearing for the amended plan is scheduled for May 14, 2019. The earlier plan filed January 20, 2019, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

55. [19-20354-B-13](#) ERIC BENSON AND KARRI O'DONNELL  
[VVF-1](#)  
Stephen M. Reynolds  
AMENDED OBJECTION TO  
CONFIRMATION OF PLAN BY  
AMERICAN HONDA FINANCE  
CORPORATION  
2-15-19 [[20](#)]

**Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 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. Local Bankruptcy Rule 9014-1(f) (1) (C).

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

Subsequent to the filing of American Honda Finance Corporation's objection, the Debtors filed an amended plan on March 27, 2019. The confirmation hearing for the amended plan is scheduled for May 14, 2019. The earlier plan filed January 20, 2019, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

56. 10-32656-B-13 MICHAEL/CHERYL CARTER  
17-2219 WW-5  
CARTER, JR. ET AL V. OCWEN  
LOAN SERVICING, LLC ET AL

AMENDED MOTION TO EXTEND TIME,  
AMENDED MOTION TO AMEND  
2-26-19 [86]

**No Ruling**

57. 19-21258-B-13 TROY EMRY  
PSB-1 Pauldeep Bains

MOTION TO VALUE COLLATERAL OF  
INTERNAL REVENUE SERVICE  
3-4-19 [10]

### **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 deny the motion to value.

Debtor seeks to value the secured claim of Internal Revenue Service ("Creditor"). However, Debtor fails to state in his motion and supporting declaration what exactly he seeks to value. It is unclear whether the Debtor is valuing real property, a vehicle, or some other personal property. Therefore, the motion is denied without prejudice.

The court will enter a minute order.

58. 18-20559-B-13 DANIEL/GUILLERMINA  
JPJ-2 CASTANEDA  
Brian A. Barboza

MOTION TO CONVERT CASE FROM TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
3-1-19 [57]

**No Ruling**

59. 17-28364-B-13 STEPHANIE MUZZI  
TAG-5 Aubrey L. Jacobsen

MOTION TO MODIFY PLAN  
2-5-19 [86]

**No Ruling**

60. 18-23364-B-13 BARRY RAASS  
JPJ-2 Seth L. Hanson

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
3-1-19 [36]

**Final Ruling**

The Chapter 13 Trustee having filed a notice of withdrawal of its motion to convert, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The motion is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

61. 19-20476-B-13 JEFFERY/ANNA SISK  
JPJ-1 Dale A. Orthner

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
2-28-19 [31]

**Tentative Ruling**

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 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. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

The plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Debtors' amended Calculation of Disposable Income (Forms 122C-1 and 122C-2) shows that the Debtors' monthly disposable income is \$293.59 and the Debtors must pay no less than \$17,615.40 to unsecured non-priority creditors. The Debtors' plan proposes to pay 0% dividend to nonpriority unsecured creditors.

Feasibility of the plan also depends on the granting of motions to value collateral for BH Financial, Golden 1, and Serrano HOA. Those motions to value were heard and granted on March 5, 2019.

Due to the issue of Debtors not making payments to unsecured creditors, the plan filed January 26, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

62. 19-20280-B-13 AHMAD FORMOLI AND SUZANNE OBJECTION TO CONFIRMATION OF  
DJD-1 RICCI PLAN BY HARLEY-DAVIDSON CREDIT  
Thru #63 Jason Borg CORP.  
3-13-19 [17]

**Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 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. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

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

Harley Davidson Credit Corp. ("Creditor") objects to confirmation on grounds that the plan fails to provide for its claim.

Debtors filed a response stating that Creditor's objection was untimely and must be denied. The Notice of Chapter 13 Bankruptcy Case established the deadline to file an objection to confirmation and that deadline was February 28, 2019. Creditor's objection was untimely filed on March 13, 2019.

Debtors also state that the Creditor's claim is not secured because the motorcycle that was the collateral was stolen in May 2018. The theft was reported and the Debtors' insurance company was dealing with the loss. Since there is no security for the loan, Creditor's claim is unsecured.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed January 17, 2019, is confirmed.

The objection is OVERRULED for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

63. 19-20280-B-13 AHMAD FORMOLI AND SUZANNE OBJECTION TO CONFIRMATION OF  
JPJ-1 RICCI PLAN BY JAN P. JOHNSON AND/OR  
Jason Borg MOTION TO DISMISS CASE  
2-28-19 [14]

WITHDRAWN BY M.P.

**Final Ruling**

The Chapter 13 Trustee having filed a notice of withdrawal of its objection and motion, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed January 17, 2019, will be confirmed.

The objection and motion are ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtors shall



prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

**Final 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.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

65. 19-20483-B-13 FRANCIS ESQUIVEL  
JPJ-1 Eric W. Vandermey

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-5-19 [16]

**Tentative Ruling**

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 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. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as moot and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on March 24, 2019. The confirmation hearing for the amended plan is scheduled for May 14, 2019. The earlier plan filed January 27, 2019, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT and the motion is ORDERED DENIED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

66. 18-26289-B-13 SURJIT KUMAR AND POONAM MOTION TO CONFIRM PLAN  
PGM-1 KAUSHAL 2-23-19 [44]  
Peter G. Macaluso

**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. The Debtors have 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.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

67. 16-26791-B-13 MONICA WILSON-POUGH  
JPJ-1 Mohammad M. Mokarram

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
3-1-19 [29]

DEBTOR DISMISSED: 03/05/19

**Final Ruling**

The case was dismissed on March 5, 2019. Therefore, the motion is dismissed as moot.

The court will enter a minute order.

68. 18-26693-B-13 ANTHONY SIPPPIO MOTION TO CONFIRM PLAN  
LBG-2 Lucas B. Garcia 2-15-19 [44]  
Thru #70

**No Ruling**

69. 18-26693-B-13 ANTHONY SIPPPIO MOTION TO VALUE COLLATERAL OF  
LBG-3 Lucas B. Garcia WELLS FARGO BANK, N.A.  
2-15-19 [50]

**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 deny the motion without prejudice.

Debtor's motion to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 8472 Winterberry Drive, Elk Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of \$442,689.00 as of the petition filing date. As the owner, Debtor's opinion of value is some 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). However, Debtor's opinion of value is based on zillow.com. Zillow.com is unreliable and admissible hearsay and, as a lay witness, Debtor may not base his opinion of value on hearsay. *See Fed. R. Evid. 701*. Consequently, the Debtor's declaration contains no opinion as to the value of the Property. *See In re Guerra*, 2008 WL 3200931, \*2 n.4 (Bankr. E.D. Cal. 2008).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The court will enter a minute order.

70. 18-26693-B-13 ANTHONY SIPPPIO MOTION TO VALUE COLLATERAL OF  
LBG-4 Lucas B. Garcia KEY BANK, N.A.  
2-15-19 [55]

**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 deny the motion without prejudice.

Debtor's motion to value the secured claim of Key Bank ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 8472 Winterberry Drive, Elk Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of \$442,689.00 as of the petition filing date. As the owner, Debtor's opinion of value is some 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). However, Debtor's opinion of value is based on zillow.com. Zillow.com is unreliable and admissible hearsay and, as a lay witness, Debtor may not base his opinion of value on hearsay. See Fed. R. Evid. 701. Consequently, the Debtor's declaration contains no opinion as to the value of the Property. See *In re Guerra*, 2008 WL 3200931, \*2 n.4 (Bankr. E.D. Cal. 2008).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The court will enter a minute order.

71. [19-20293](#)-B-13 ROLINA BROWN  
[JPJ](#)-1 Peter G. Macaluso  
**Thru #72** OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
2-28-19 [[20](#)]

**No Ruling**

72. [19-20293](#)-B-13 ROLINA BROWN  
[KPM](#)-1 Peter G. Macaluso  
OBJECTION TO CONFIRMATION OF  
PLAN BY STAMBUL/BROWNSTEIN  
2-26-19 [[18](#)]

**No Ruling**



73. 19-20397-B-13 JASMINE SMITH MOTION TO CONFIRM PLAN  
SS-2 Scott D. Shumaker 2-20-19 [21]

**Thru #74**

CASE DISMISSED: 03/28/2019

**Final Ruling**

The case was dismissed on March 28, 2019. Therefore, the motion is dismissed as moot.

The court will enter a minute order.

74. 19-20397-B-13 JASMINE SMITH MOTION TO VALUE COLLATERAL OF  
SS-3 Scott D. Shumaker J.P. MORGAN CHASE BANK, N.A.  
3-18-19 [33]

CASE DISMISSED: 03/28/2019

**Final Ruling**

The case was dismissed on March 28, 2019. Therefore, the motion is dismissed as moot.

The court will enter a minute order.

**Final 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.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

76. 19-20680-B-13 JESSICA KELLER  
LBG-1 Lucas B. Garcia

CONTINUED MOTION TO EXTEND  
AUTOMATIC STAY  
2-19-19 [10]

**Tentative Ruling**

This matter has been continued twice: once from March 5, 2019, to allow the Debtor to file a declaration from her roommate regarding his financial contribution to the Debtor, and again from March 26, 2019, to allow the Debtor to become current on plan payments.

The matter will be determined at the schedule hearing.