

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**April 3, 2018 at 1:00 p.m.**

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1. [17-24500](#)-B-13 MICHAEL/ANTOINETTE CORTEZ MOTION TO CONFIRM PLAN  
[MET-3](#) Mary Ellen Terranella 2-20-18 [[63](#)]

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

The court's decision is to not confirm the amended plan.

First, the claims of Ditech Financial, PNC Mortgage, and Second Change Home Loans are misclassified as Class 4 claims, which are secured claims that are not in default. The Debtors acknowledge a pre-petition arrearage on each of these claims. A plan cannot be confirmed where the debtors acknowledge a default yet provide for the creditor in Class 4 rather than Class 1.

Second, Debtors propose to take a withdrawal from a retirement account of at least \$47,461.59 to pay the pre-petition arrears on their second mortgage and state that they will also have more withdrawn to pay the taxes for the withdrawal. Such a withdrawal is not in compliance with the Local Bankruptcy Rules and Local Form Plan itself and it appears that it will affect their ability to make plan payments. Either the Debtors' will have a retirement plan repayment or they will incur a significant tax liability on this withdrawal amount, both of which will affect their ability to make plan payments. This does not appear to be in their best interest. Additionally, the Debtors have not shown evidence as to why they should be allowed to pay these debts directly to Second Change Home Loans and not through the Chapter 13 plan as required by the Local Bankruptcy Rules. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6). The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3).

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

**April 3, 2018 at 1:00 p.m.**

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2. [18-20400](#)-B-13 IRMA BANUELOS  
[JPJ](#)-1 Richard L. Jare

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-6-18 [[15](#)]

CONTINUED TO 4/10/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF  
CREDITORS SET FOR 4/05/18.

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

The court will enter an appropriate minute order.

3. [17-27301](#)-B-13 GERARDO GARCIA AND  
[TOG-1](#) CLEMENTINA ARIAS  
Thomas O. Gillis

MOTION TO CONFIRM PLAN  
2-9-18 [[36](#)]

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

The Motion to Confirm the First Amended Chapter 13 Plan of Debtors has been set for hearing on the 42-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 first 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 filed on February 9, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

4. [13-34802](#)-B-13 DARRYL CARTER  
[14-2144](#)  
CARTER V. BARBER

MOTION FOR TERMINATING  
SANCTIONS  
3-1-18 [[134](#)]

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

Defendant Ronald Barber's Motion for Terminating Sanctions 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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion.

Ronald Barber ("Defendant") move for terminating sanctions pursuant to Fed. R. Civ. P. 37(b)(2)(A)(v) on grounds that Darryl C. Carter ("Plaintiff") failed to obey the court's order entered February 6, 2018, requiring him to appear for deposition and warned Plaintiff that if he did not appear for said deposition, that the court will impose additional discovery sanctions which may include, but are not necessarily limited to, contempt and dismissal of the adversary proceeding.

No response was filed by the Debtor.

#### **Discussion**

The Ninth Circuit has a five-part test, with three subparts to the fifth part, to determine whether a case-dispositive sanction under Fed. R. Civ. P. 37(b)(2)(A)(v) is just:

"(1) [T]he public's interest in expeditious resolution of litigation; (2) the court's need to manage its dockets; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Connecticut General Life Insurance Company v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007). The subparts of the fifth factor are: whether the court has considered lesser sanctions, whether it tried the lesser sanctions, and whether it warned the recalcitrant party about the possibility of case-dispositive sanctions. *Conn. Gen. Life Ins. Co.*, 482 F.2d at 1096, citing *Jorgensen v. Cassidy*, 320 F.3d 906, 912 (9th Cir. 2003); quoting *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987).

Both of the first two factors (public interest in expeditious resolution of litigation and docket control) support of imposition of sanctions. Plaintiff has delayed this adversary proceeding. Plaintiff's failure to comply with any part of the court's order entered February 5, 2018 (dkt. 129) significantly impeded resolution of this action and has caused substantial delay. This adversary proceeding has been pending since May 28, 2014, and Plaintiff's refusal to cooperate in the discovery process would require a trial continuance and consideration of several discovery motions.

The third criteria (prejudice to the parties seeking sanctions) strongly supports the sanction. A party is prejudiced if the opposing party impairs the ability to go to trial. *Adriana International Corporation v. Thoeren*, 913 F.2d. 1406, 1412 (9th Cir. 1990). Plaintiff's complaint seeks \$1,000,000.00 in damages yet the Plaintiff has refused to comply with the court's February 6, 2018, order and refused to appear at his re-set and re-noticed deposition. Defendant's inability to depose Plaintiff has substantially prejudiced Defendant's ability to obtain evidence and meaningfully defend Plaintiff's serious allegations.

The fourth criteria (policy favoring decision on the merits) does not support the sanction here. Granting a case-dispositive sanction would dispose of all the claims in favor of the Defendants without further trial court proceedings. A decision would not be reached on the merits. However, the Plaintiff has refused to appear for deposition and obey the court's order. Due to Plaintiff's refusal to explain his claim, it is impossible for the court to reach a decision on the merits.

The fifth criteria (less severe sanction) also supports the sanction here. All of the components listed in *New Images of Beverly Hills*, 482 F.3d at 1096, are in evidence here. First, a less severe sanction was ordered by the bankruptcy court on February 6, 2018. Plaintiff was ordered to appear at his re-set and re-noticed deposition. This did not occur. Thus, the court did consider lesser sanctions and implemented them to no avail. Finally, the court warned Plaintiff that failure to comply with the order will result in additional sanctions that may include, but are not necessarily limited to, dismissal and contempt. See Fed. R. Civ. P. 34(b)(2)(A); Fed. R. Bankr. P. 7034. Dkt. 129. Plaintiff has had ample notice of a case-dispositive sanction and ignored the court's order.

All elements of the five-part test having been established, the court finds Plaintiff is in contempt and the adversary proceeding shall be dismissed with prejudice.

The court will enter an appropriate minute order.

**Tentative Ruling:** The Motion to Confirm 2nd Modified Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the second modified plan.

First, according to Schedule I, Debtor's son will contribute \$1,500.00 per month to the Debtor's income and household. No evidence of the son's ability and willingness to contribute \$1,500.00 per month has been presented. The Debtor has failed to carry her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the treatment of M&T Bank in Class 1 is improper and invalid. The Debtor's motion to impose the automatic stay, which was denied with prejudice on January 9, 2018, states that a foreclosure sale was held. The motion for relief from the automatic stay filed by M&T Bank was heard and granted in part and to the extent there was a co-debtor stay the court annulled it on March 6, 2018. The Debtor has no ownership interest in the real property located at 9560 Moss Hill Way, Sacramento, California.

Third, the plan does not appear to be proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) and the action of the Debtor in filing the petition does not appear to be filed in good faith pursuant to 11 U.S.C. § 1325(a)(7). Two previous Chapter 13 petitions were filed by the Debtor and dismissed in the one-year period prior to the filing of this petition. Additionally, in this case the Debtor transferred a 1% interest in real property to her son less than 24 hours prior to the scheduled foreclosure sale. The court has already determined that this transfer is part of a scheme to delay, hinder, or defraud creditors and the Debtor has failed to rebut the presumption that this case was not filed in good faith.

Fourth, there is no evidence of the Debtor's ability to increase plan payment in month 15 from \$2,100.00 to \$3,700.00. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan 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). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other 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.

First, the Debtor has not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. The Debtor failed to comply with 11 U.S.C. § 1325(a)(1).

Second, 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).

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

Fourth, the plan does not specify a minimum dividend to Class 7 unsecured nonpriority creditors at § 3.14 pursuant to 11 U.S.C. § 1325(a)(1).

Fifth, the plan does not specify a plan term. It cannot be determined whether the plan complies with 11 U.S.C. § 1322(c).

Sixth, the claim of Wells Fargo Dealer Services is misclassified as a Class 1 claim that matures after the completion of this plan. The Debtor testified at her March 8, 2018, meeting of creditors that her 2012 Chevrolet Equinox was "charged-off" and she does not believe she owed anything to the creditors.

Seventh, the claim of Title Max is misclassified as a Class 1 claim that matures after the completion of this plan. The Debtor testified at her March 8, 2018, meeting of creditors that her 2015 Kia Rio has contractual monthly payments of \$600.00. Schedule D lists the debt with a claim amount of \$8,000.00. Based off this information, the loan will mature within the life of the Debtor's plan.

Eighth, the Debtor does not appear to be able to make all payments under the plan. Schedules I and J show Debtor's monthly net income as -\$2,611.20. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Ninth, the Debtor has not amended her petition to add a prior Chapter 7 petition, case no. 12-28580, as requested by the Trustee at the March 8, 2018, meeting of creditors. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed February 14, 2018, 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 an appropriate minute order.

7. [11-43810](#)-B-13 KEVIN/AMANDA COMBS MOTION TO AVOID LIEN OF EQUABLE  
[DBJ-5](#) Douglas B. Jacobs ASCENT FINANCIAL, LLC  
**Thru #8** 2-14-18 [[69](#)]

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

The Motion to Avoid Lien of Equable Ascent Financial, LLC 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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Equable Ascent Financial, LLC ("Creditor") against the Debtors' property commonly known as 2570 Oro Quincy Hwy, Oroville, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of \$6,967.73. An abstract of judgment was recorded with Butte County on April 11, 2011, which encumbers the Property. A first mortgage against the Property totals \$187,000.00. *See* dkt. 1, Sch. D.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$119,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 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 Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

8. [11-43810](#)-B-13 KEVIN/AMANDA COMBS MOTION TO AVOID LIEN OF BUTTE  
[DBJ-6](#) Douglas B. Jacobs FEDERAL CREDIT UNION  
2-14-18 [[74](#)]

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

The Motion to Avoid Lien of Butte Federal Credit Union 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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling

from the parties' pleadings.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Butte Federal Credit Union ("Creditor") against the Debtors' property commonly known as 2570 Oro Quincy Hwy, Oroville, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of \$1,277.63. An abstract of judgment was recorded with Butte County on October 7, 2011, which encumbers the Property. A first mortgage against the Property totals \$187,000.00. See dkt. 1, Sch. D.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$119,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 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 Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

9. [18-20011](#)-B-13 JASON/TIFFANIE RUPCHOCK CONTINUED OBJECTION TO  
[JPJ](#)-1 Michael Benavides CONFIRMATION OF PLAN BY JAN P.  
JOHNSON  
2-21-18 [[22](#)]

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan, the objection 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.

An order confirming the plan filed January 11, 2018, was entered on March 22, 2018.

The court will enter an appropriate minute order.

10. [17-24614](#)-B-13 ALFONSO/CAMMIE MACIEL MOTION TO VALUE COLLATERAL OF  
[PLC-4](#) Peter L. Cianchetta WHEEL FINANCIAL GROUP, LLC  
**Thru #11** 2-19-18 [[57](#)]

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

The court's decision is to deny without prejudice the motion to value collateral.

Debtors' motion to value the secured claim of Wheels Financial Group, LLC ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2004 Chevrolet Silverado ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$4,124.00 as of the petition filing date. Debtors reached this valuation by deducting repair costs of \$1,900.00 from the Kelley Blue Book fair market value of \$6,024.00. As the owners, Debtors' 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. 7-1 filed by Wheels Financial Group, LLC dba 1-800LoanMart is the claim which may be the subject of the present motion.

#### **Opposition**

Creditor has filed an opposition asserting that the value of the Vehicle should be no less than \$6,492.50. Creditor reached this valuation by averaging Debtors' valuation of \$4,124.00 with Creditor's valuation of \$8,861.00.

#### **Discussion**

The Debtors state that the purchase-money loan was incurred on June 11, 2016. The petition was filed on July 13, 2017. Therefore, the debt on the Vehicle was incurred less than 910 days prior to filing of the petition. The purchase money debt on a motor vehicle acquired for a debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value. Accordingly, the Debtors' motion is denied without prejudice.

The court will enter an appropriate minute order.

11. [17-24614](#)-B-13 ALFONSO/CAMMIE MACIEL MOTION TO CONFIRM PLAN  
[PLC-5](#) Peter L. Cianchetta 2-19-18 [[62](#)]

**Tentative Ruling:** The Motion to Confirm Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the third amended plan.

First, feasibility depends on the granting of a motion to value collateral for Wheels Financial Group, LLC. That motion was denied without prejudice at Item #10.

Second, the plan cannot be effectively administered because the terms for payment of the Debtors' attorney's fees and other administrative expenses are unclear. Section 3.06 of the plan specifies a monthly payment of \$0.00 for administrative expenses. It is not possible for the Trustee to pay the balance of the Debtor's attorney's fees and another other administrative expenses through the plan with a monthly payment specified at \$0.00.

Third, 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 Calculation of Disposable Income (Form 122C-2) filed on November 13, 2017, includes improper expenses at Lines #13e and #17. When the overstated expenses of \$598.72 (Line #13e to-be-surrendered collateral of Americredit/GM Financial) and \$483.00 (Line #17 since Debtor's pay advice does not have any involuntary deductions) are added, Debtors' monthly disposable income changes from \$4.27 to \$1,085.99. This means the Debtors must pay no less than \$65,159.40 to their unsecured, non-priority creditors. The amended plan pays 0% dividend to unsecured, non-priority creditors. Based on the filed claims, the Debtors must pay a 100% dividend to their unsecured, non-priority creditors.

Fourth, the plan payments for months 1-15 (\$1,140.00 for month 1, \$1,214.00 for months 2 and 3, and \$1,399.00 for months 4 to 15) do not equal the aggregate of the Trustee's fees, monthly payment for administrative expenses, and monthly dividends payable on account of Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is \$1,672.00. The plan does not comply with Section 5.2 of the mandatory form plan.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

12. [17-24418](#)-B-13 CARLOS/KELLY SMITH AMENDED MOTION TO CONFIRM PLAN  
[MCN](#)-4 William F. McLaughlin 2-17-18 [[69](#)]

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

The court's decision is to not confirm the amended plan.

Although the Debtors filed an amended plan on January 22, 2018, they did 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.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

13. [17-24618](#)-B-13 JENNIFER WILKINSON  
[RJ-2](#) Richard L. Jare

MOTION TO MODIFY PLAN  
2-27-18 [[52](#)]

**Tentative Ruling:** The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

According to the Chapter 13 Trustee, Section 7.02 of the Nonstandard Provisions incorrectly states the amount of post-petition arrears as \$5,338.17. This is contrary to the Trustee's records that show a post-petition delinquency through February 2018 at \$6,968.17. This is broken down as \$1,630.00 (August 2017) + \$1,779.39 (November 2017) + \$1,779.39 (December 2017) + \$1,779.39 (January 2018). The only disbursements the Trustee has made to the Class 1 creditor were \$1,630.00 (payment dated September 29, 2017), \$1,630.00 (payment dated October 31, 2017), \$1,779.39 (payment dated February 28, 2018). The Trustee states that it has no opposition to the Debtor stating that the correct amount of post-petition arrears as \$6,968.17 in the confirmation order.

The Debtor filed a response stating that it will provide for the correct amount of post-petition arrears in the order confirming.

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

The court will enter an appropriate minute order.

14. [18-20422](#)-B-13 EFRAIN CELEDON  
[JPJ](#)-1 Thomas O. Gillis

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE JAN P. JOHNSON  
AND/OR MOTION TO DISMISS CASE  
3-6-18 [[16](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other 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.

According to Schedule J, the Debtor owes a domestic support obligation. Pursuant to Local Bankr. R. 3015-1(b)(6), the Debtor is required to serve upon the Trustee no later than 14 days after filing the petition a Domestic Support Obligation Checklist. Debtor has filed a response stating that it sent the Domestic Support Obligation Checklist to the Trustee on March 20, 2018.

The plan filed January 26, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

The court will enter an appropriate minute order.

15. [18-20026](#)-B-13 BRIAN SHAW  
[APN-1](#) Peter L. Cianchetta

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-2-18 [[19](#)]

GATEWAY ONE LENDING &  
FINANCE VS.

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the 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 are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion for relief from stay.

Gateway One Lending & Finance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2003 Mercedes-Benz SL-Class, VIN ending in 4220 (the "Vehicle"). The moving party has provided the Declaration of [name of declarant] to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Saboor Sadiq Declaration provides testimony that Debtor has not made 2 post-petition payments, with a total of \$790.52 in post-petition payments past due. The Declaration also provides evidence that there are 6 pre-petition payments in default, with a pre-petition arrearage of \$4,215.06.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$9,541.86, as stated in the [name of declarant] Declaration, while the value of the Vehicle is determined to be \$8,024.00, as stated in Schedules E/F filed by Debtor.

Debtor listed the Vehicle as surrendered in Schedules E/F and Movant states in its motion that it is in possession of the Vehicle.

### **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 the Vehicle having been listed as "surrendered" in Debtor's Schedules E/F, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow Gateway One Lending & Finance, 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.

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.

16. [18-20727](#)-B-13 GREGORY/KATHRYN  
[JPJ](#)-1 KLAGENBERG  
Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-12-18 [[13](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other 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 Calculation of Disposable Income (Form 122C-2) includes expenses that exceed the Internal Revenue Service standards. When the overstated expenses of \$375.00 (Line #10 rental/housing expenses) and \$932.35 (Line #16 taxes) are added, Debtors' monthly disposable income changes from -\$39.84 to \$1,267.51. This means the Debtors must pay no less than \$70,050.60 to their unsecured, non-priority creditors. The plan pays only \$7,873.74 to their unsecured, non-priority creditors. Section 3.14 of the Debtor's plan states that the total of the unsecured, non-priority creditors is \$29,162.00. Based on this amount, it appears the Debtors' plan must be increased from 27% to 100% repayment of the unsecured, non-priority creditors.

The plan filed February 9, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained 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 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

17. [18-20332](#)-B-13 WANDA BARBER  
[AP-1](#) Scott D. Hughes

OBJECTION TO CONFIRMATION OF  
PLAN BY NATIONSTAR MORTGAGE,  
LLC  
3-8-18 [[15](#)]

**Tentative Ruling:** The Confirmation of the Chapter 13 Plan 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). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other 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 Nationstar Mortgage, LLC's objection, the Debtor filed an amended plan on March 26, 2018. The confirmation hearing for the amended plan is scheduled for May 8, 2018. The earlier plan filed January 22, 2018, is not confirmed.

The court will enter an appropriate minute order.

18. [18-20443](#)-B-13 VENIAMIN YEVTUSHENKO  
[JPJ](#)-1 Mark Shmorgon

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-6-18 [[19](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss case 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). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other 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 testified under oath at the first meeting of creditors that he is an independent contractor working for Harmony Healthcare Transportation and his income is listed on Schedule I as wages. Pursuant to Local Bankr. R. 2016-1, the maximum fee that may be charged is \$4,000.00 in nonbusiness and \$6,000.00 in business cases. Since this is a nonbusiness case, Debtor's attorney's fees cannot be in the amount of \$6,000.00.

The plan filed January 27, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained 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 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

19. [18-21243](#)-B-13 VLADIMIR MAXIMOV  
MS-1 Mark Shmorgon  
**Thru #20**

MOTION TO VALUE COLLATERAL OF  
INTERNAL REVENUE SERVICE  
3-5-18 [[11](#)]

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

The Motion to Value Collateral of Internal Revenue Service has been set for hearing on the 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. 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 value the secured claim of Internal Revenue Service at \$8,518.32.

Debtor's motion to value the secured claim of Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2004 Mercedes-Benz M-Class ML 350 Sport Utility 4D; 2008 Mercedes-Benz C-Class C 300 Sport Sedan 4D; household goods; electronics; books and pictures; sports and hobby equipment; wearing apparel; jewelry; cash on hand; Wells Fargo Checking Account; Wells Fargo Savings Account; Bank of America Checking; and auto mechanic hand and power tools (collectively "Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of \$8,518.32 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *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. 1-1 filed by Internal Revenue Service is the claim which may be the subject of the present motion.

#### **Discussion**

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2). The time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. *See* 11 U.S.C. § 1325(a).

The total dollar amount of the obligation represented by the tax lien with Internal Revenue Service is \$54,924.52 as stated in Claim No. 1-1. Debtor asserts that the price a retail merchant would charge for the Personal Property is \$8,518.32. 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 \$8,518.32. *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 court will enter an appropriate minute order.

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

The Motion to Value Collateral of Franchise Tax Board has been set for hearing on the 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. 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 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 Debtor's declaration. Debtor is the owner of a 2004 Mercedes-Benz M-Class ML 350 Sport Utility 4D; 2008 Mercedes-Benz C-Class C 300 Sport Sedan 4D; household goods; electronics; books and pictures; sports and hobby equipment; wearing apparel; jewelry; cash on hand; Wells Fargo Checking Account; Wells Fargo Savings Account; Bank of America Checking; and auto mechanic hand and power tools (collectively "Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of \$8,518.32 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *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. 2-1 filed by Franchise Tax Board is the claim which may be the subject of the present motion.

#### **Discussion**

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2). The time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. *See* 11 U.S.C. § 1325(a).

The total dollar amount of the obligation represented by the tax lien with Franchise Tax Board is \$7,865.08 as stated in Claim No. 2-1. This tax lien is junior to that of the Internal Revenue Service in the amount of \$54,924.52 as stated in Claim No. 1-1. Debtor asserts that the price a retail merchant would charge for the Personal Property is \$8,518.32. 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 \$0.00. *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 court will enter an appropriate minute order.

21. [18-20751](#)-B-13 JACQUELYN WESTON  
[SDB](#)-1 W. Scott de Bie

MOTION TO VALUE COLLATERAL OF  
SANTANDER CONSUMER USA  
2-28-18 [[9](#)]

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

The motion to value having been withdrawn by the Debtor, the motion is dismissed as moot.

The court will enter an appropriate minute order.

22. [16-20955](#)-B-13 MARIO/FLORA RODRIGUEZ MOTION TO MODIFY PLAN  
[SDB-2](#) W. Scott de Bie 2-22-18 [[46](#)]

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation 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 Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on February 22, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

23. [17-20556](#)-B-13 STEPHANIE GRIESS  
[EAT](#)-1 Ashley R. Amerio

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-1-18 [[24](#)]

WELLS FARGO BANK, N.A. VS.

CASE DISMISSED: 3/21/18

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

The case having been dismissed on March 21, 2018, the motion is dismissed as moot.

The court will enter an appropriate minute order.

24. [18-20357](#)-B-13 MISAEL/CONSORCIA APOSTOL OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Marc A. Caraska PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-6-18 [[17](#)]

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, 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 23, 2018, will be confirmed.

The court will enter an appropriate minute order.

25. [18-20559](#)-B-13 DANIEL/GUILLERMINA OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 CASTANEDA PLAN BY JAN P. JOHNSON  
Brian A. Barboza 3-12-18 [[22](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan 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). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other 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 Trustee's objection, the Debtors filed an amended plan on March 30, 2018. The confirmation hearing for the amended plan must be set. Nonetheless, the earlier plan filed February 8, 2018, is not confirmed.

The court will enter an appropriate minute order.

26. [18-20562](#)-B-13 JANN CO  
[CCH-1](#) Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF  
PLAN BY UNITED SECURITY  
FINANCIAL CORP.  
3-8-18 [[14](#)]

**Tentative Ruling:** United Security Financial Corp.'s Objection to Confirmation of the Chapter 13 Plan 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). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other 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 confirm the plan.

Objecting creditor United Security Financial Corp. holds a deed of trust secured by the Debtor's residence. The creditor asserts \$90.29 in pre-petition arrearages but has not yet filed a proof of claim. The creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

The plan filed January 31, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

The court will enter an appropriate minute order.

27. [18-20467](#)-B-13 DAVID BRUCE AND ELAINE OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 CRAWFORD-BRUCE PLAN BY JAN P. JOHNSON AND/OR  
Gary Ray Fraley MOTION TO DISMISS CASE  
3-6-18 [[15](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other 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 plan at Section 3.05 fails to specify whether counsel shall seek approval of fees by either complying with Local Bankr. R. 2016-1(c) or by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330. Fed. R. Bankr. P. 2002, 2016, and 2017. No fees and costs shall be awarded in connection with plan confirmation.

Second, the plan cannot be effectively administered because payment of the Debtors' attorney's fees and other administrative expenses are unclear. Section 3.06 of the plan specifies a monthly payment of \$0.00 for administrative expenses.

The plan filed January 30, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained 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 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

28. [18-21067](#)-B-13 GARRET AMBROSIO AND MOTION FOR RELIEF FROM  
[KH-1](#) ELAINE GABAGAT-AMBROSIO AUTOMATIC STAY  
Mary Ellen Terranella 3-16-18 [[11](#)]

SWH 2017-1 BORROWER, LP VS.

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

The court's decision is to grant the motion for relief from stay.

SWH 2017-1 Borrower, LP ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 301 Greenmont Drive, Vallejo, California (the "Property"). Movant has provided the Declaration of Candice Burney to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Declaration states that Movant is the legal owner of the property and that Movant and Debtors entered into a one-year lease agreement. Exh. 1, Dkt. 16. Movant seeks to proceed with the unlawful detainer action filed in state court on January 8, 2018.

#### **Discussion**

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Solano on January 8, 2018, after a lawfully served three-day notice to pay rent or quit expired. The court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at \*8-\*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

29. [16-25470](#)-B-13 MICHAEL HANKS  
[MET](#)-5 Mary Ellen Terranella

MOTION TO MODIFY PLAN  
2-8-18 [[79](#)]

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

The court's decision is to permit the requested modification and confirm the modified plan provided Debtor is current at the time of the hearing.

Chapter 13 Trustee objects to confirmation on grounds that the debtor is delinquent in the amount of \$2,848.00 representing approximately 1 plan payment, that an additional plan payment in the amount of \$2,850.00 will be due before the date of this hearing, and that Section 3.06 of the plan specifies a monthly payment of \$0.00 for administrative expenses.

Debtor filed a response stating that it had overnighted funds in the amount of \$13,194.00 to the Trustee on March 27, 2018. The funds are from the sale proceeds of Debtor's mother-in-law's mobile home that had closed the week of March 10, 2018. These funds will bring the Debtor's plan current through March 2018.

Additionally, Debtor states that attorney's fees under Section 3.06 will be paid in the amount of \$390.00 per month and shall be provided for in the order confirming.

Provided Debtor is current at the time of the hearing, the modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

30. [16-27674](#)-B-13 STEVEN RENO  
[JPJ](#)-1 Tammie L. Cummins

OBJECTION TO CLAIM OF  
SACRAMENTO METROPOLITAN AIR  
QUALITY MGT, CLAIM NUMBER 6  
2-6-18 [[35](#)]

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

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 Sacramento Metropolitan Air Quality Mgt and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Sacramento Metropolitan Air Quality Mgt ("Creditor"), Proof of Claim No. 6 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$40,278.00. Objector asserts that the Claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was March 15, 2017. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed December 21, 2017.

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 court will enter an appropriate minute order.

31. [18-20376](#)-B-13 MIHA AHRONOVITZ  
[JPJ](#)-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-6-18 [[15](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan 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). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other 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.

First, feasibility depends on Debtor obtaining a loan modification with Bayview Loan Servicing, LLC/Bayview Financial Loan. The Debtor has provided no evidence that the lender has consented to or is considering a loan modification.

Second, feasibility depends on the granting of a motion to value for Specialized Loan Servicing, LLC as holder of the second deed of trust on Debtor's residence. To date, the Debtor has not filed, set for hearing, and served on the respondent creditor and Trustee a stand-alone motion to value the collateral.

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

The plan filed January 24, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained 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 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

**Tentative Ruling:** The Motion to Confirm Debtors' [sic] First Amended Plan Filed on February 20, 2018, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to confirm the first amended plan provided that Debtor is current on plan payments.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$825.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$825.00 will also be due. The last payment posted to the Debtor's case was on November 28, 2017. The Debtor has filed a response asserting that he will be current before the hearing on this matter.

Second, the plan payment in the amount of \$352.50 (for months 1-4) and \$825.00 (for months 5-22) do not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on the monthly payment for administrative expenses, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is \$848.00. The Debtor has filed a response stating that it will increase plan payments to \$850.00 and provide this change in the order confirming.

Provided that the Debtor is current on plan payments, the amended plan will be deemed to comply 11 U.S.C. §§ 1322, 1323, and 1325(a) and will be confirmed.

The court will enter an appropriate minute order.

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

The matter will be determined at the scheduled hearing.

First, the Chapter 13 Trustee objects to confirmation on grounds that the treatment of Coldwell Banker Mortgage is unclear. The secured lien is listed in Class 1 of the plan filed February 23, 2018. Trustee states it is unclear whether the loan will be treated in Class 1 with disbursements by the Trustee or if the loan will only be paid when the property is sold. Debtor filed a response stating that the sale of her real property was completed on March 6, 2018, and that the entire balance owed on the mortgage, including arrears, has been paid in full.

Second, Trustee states that the plan cannot be effectively administered because the monthly payments are specified only in the Nonstandard Provisions but the box at Section 1.02 is not checked. Without the box checked, the Nonstandard Provisions will be given no effect. In Debtor's response, Debtor states that it intends for the Additional Provisions of Section 7.01 to apply to the payment terms.

Third, Trustee states that the plan cannot be effectively administered because the modified plan fails to specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend owed to Ocwen Loan Servicing in Class 1. Debtor responds that she intends to pay the accrued post-petition mortgage arrears through the modified plan and that the modified plan as proposed sufficiently funds both the pre-petition and post-petition arrears on the Ocwen claim.

The matter will be determined at the scheduled hearing.

**Tentative Ruling:** The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, the treatment of Select Portfolio Service/SPS is unclear. The motion states that the Debtors intended for the loan to be in Class 4. However, there is nothing in the Class 4 table of the plan filed on January 31, 2018. The treatment is also unclear in the Nonstandard Provisions which states that Select Portfolio Service shall have received \$19,104.05 combined for its on-going mortgage payment and pre-petition mortgage arrearages payment.

Second, the plan cannot be effectively administered. The modified plan does not specify a cure of the entire post-petition arrearage of \$16,929.91 owed to Wells Fargo, N.A. in Class 1 including a specific post-petition arrearage amount, interest rate, and monthly dividend. The Trustee is therefore unable to fully comply with § 3.07(b) of the plan.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

35. [18-20390](#)-B-13 THOMAS/SAMMY BOONE  
[JPJ](#)-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-6-18 [[14](#)]

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, 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 24, 2018, will be confirmed.

The court will enter an appropriate minute order.

36. [17-27891](#)-B-13 JOHN REAL  
[JPJ](#)-2 Gary Ray Fraley

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
2-20-18 [[29](#)]

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

The Trustee's Objection to Debtor's Claim of Exemption 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 Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The court's decision is to sustain the objection and the exemption is disallowed in its entirety.

The Trustee objects to the Debtor's use of California Code of Civil Procedure § 704.730 in the amount of \$168,145.16 to exempt his primary residence located at 6517 Ranch Hand Way, Citrus Heights, California. Pursuant to Debtor's testimony at the first meeting of creditors held February 15, 2018, and information listed on Schedule J and the Statement of Financial Affairs, the Debtor is less than 65 years old, is married, has dependants, and is a member of a family unit. The Debtor is not mentally or physically disabled or otherwise unable to engage in substantial gainful employment. The Debtor is entitled to an exemption on his residence of no more than \$100,000.00.

The Trustee's objection is sustained and the claimed exemptions are disallowed.

The court will enter an appropriate minute order.

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

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. 16 of Mohela and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Mohela ("Creditor"), Proof of Claim No. 16 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$16,061.91. Objector asserts that the Claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was July 5, 2017. Notice of Bankruptcy Filing and Deadlines, dkt. 17. The Creditor's proof of claim was filed January 10, 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 court will enter an appropriate minute order.

38. [18-20699](#)-B-13 ARVIS CURRY OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Mohammad M. Mokarram PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-12-18 [[13](#)]

CONTINUED TO 4/10/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF  
CREDITORS SET FOR 4/05/18.

**Final Ruling:** No appearance at the April 3, 2018, hearing is required.

The court will enter an appropriate minute order.