

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

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

**PRE-HEARING DISPOSITIONS COVER SHEET**

**DAY: TUESDAY**

**DATE: January 5, 2021**

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

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

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

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

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

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

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**January 5, 2021 at 1:00 p.m.**

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1. <a href="#"><u>20-24704</u></a> -B-13     JAMES/JUNE GRAY <a href="#"><u>RDG</u></a> -1             David A. Boone	OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE RUSSELL D. GREER 12-8-20   [ <a href="#"><u>17</u></a> ]
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**Final 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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

Debtors' Chapter 13 Calculation of Your Disposable Income and Schedule J provide for charitable contributions in the amount of \$1,200.00 per month. The contributions have not been included on Debtors' Statement of Financial Affairs and are not substantiated by Debtors' 2019 income tax returns.

The Chapter 13 Trustee requests documentation supporting Debtors' tithing in the amount of \$1,200.00 per month. Without reviewing these documents, it cannot be determined whether Debtors' plan is proposed in good faith and whether Debtors are paying all available income into the plan. 11 U.S.C. §1325(a)(3).

The plan filed December 3, 2020, 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 minutes.

The court will issue an order.

**January 5, 2021 at 1:00 p.m.**

### **Final Ruling**

The motion has been set for hearing on 28-days notice. 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for hardship discharge.

Debtor moves for a hardship discharge on grounds that she has lost her monthly income from In-Home Supportive Services upon the death of the disabled woman she cared for, her two adult children moved out of Debtor's residence and no longer help Debtor with her living expenses including rent, and she is unable to work any extra hours at her main job at Paradise Adolescent Group Home since COVID-19 has resulted in decreased staffing needs. Debtor is a 59-year-old cancer survivor and is still under the care of a doctor for her health problems including hypertension and high blood pressure.

The Debtor has paid into her plan for 45 months but can no longer afford the approximately \$400.00 in monthly plan payments moving forward. As of December 8, 2020, Debtor had paid a total of \$14,876.00 into her Chapter 13 plan. Secured creditor One Main Financial has been paid the full value of its motor vehicle plus interest, or a total of \$9,948.48. Debtor's general unsecured creditors would have received \$0 if her case had been converted to a Chapter 7.

### **Discussion**

After confirmation of a plan, circumstances may arise that prevent a debtor from completing a plan of reorganization. In such situations, the debtor may ask the court to grant a "hardship discharge." 11 U.S.C. § 1328(b). Generally, such a discharge is available only if : (b)(1) the debtor's failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; (b)(2) creditors have received at least as much as they would have received in a chapter 7 liquidation case; and (b)(3) modification of the plan is not possible under 11 U.S.C. § 1329. 11 U.S.C. § 1328(b)(1)-(3).

Here, the Debtor has satisfied 11 U.S.C. § 1328(b)(1)-(3):

First, Debtor's loss of income was out of her control because the woman she cared for passed away, her adult children moved out and no longer provide financial assistance, and she is unable to make up for the financial shortfall.

Second, Debtor's creditors received more than they would have in a Chapter 7. Debtor has paid a total of \$14,876.00 into her plan over the past 45 months and unsecured creditors would have received \$0 in a Chapter 7.

Third, modification of the plan is not possible since the Debtor's budget is at a deficit. She does not anticipate that her budget shortfall will likely improve and does not have the ability to fund any amount for the remaining 15 months.

The court grants the motion and the clerk of the court shall issue a discharge pursuant to 11 U.S.C. § 1328(b).

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

The court will issue an order.

### 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 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 20 of NetCredit and disallow the claim in its entirety.

The Chapter 13 Trustee requests that the court disallow the claim of NetCredit ("Creditor"), Claim No. 20. The claim is asserted to in the amount of \$7,395.59. The Trustee asserts that the claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was June 18, 2020. The Creditor's claim was filed November 17, 2020.

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 minutes.  
The court will issue an order.

### 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 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 7 of Navy Federal Credit Union and disallow the claim in its entirety.

The Chapter 13 Trustee requests that the court disallow the claim of Navy Federal Credit Union ("Creditor"), Claim No. 7. The claim is asserted to in the amount of \$455.10. The Trustee asserts that the claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was May 14, 2020. The Creditor's claim was filed June 24, 2020.

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 minutes.

The court will issue an order.

5. [20-24821](#)-B-13 ALEISHA CORREA  
[AP-1](#) Kathleen H. Crist

OBJECTION TO CONFIRMATION OF  
PLAN BY LAKEVIEW LOAN  
SERVICING, LLC  
12-10-20 [[17](#)]

### **Final 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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

Objecting creditor Lakeview Loan Servicing, LLC holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$6,855.10 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for full payment of the arrearage and maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed October 19, 2020, 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 minutes.

The court will issue an order.



6. [20-24822](#)-B-13 NORBERTO ROSARIO RIVERA OBJECTION TO CONFIRMATION OF  
[DWE](#)-1 Kathleen H. Crist PLAN BY NATIONSTAR MORTGAGE LLC  
12-4-20 [[15](#)]

### **Final 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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

Objecting creditor Nationstar Mortgage LLC holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$10,182.98 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for full payment of the arrearage and maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed October 19, 2020, 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 minutes.

The court will issue an order.

7. [20-22127](#)-B-13 ANAMARIA MALDONADO MOTION TO MODIFY PLAN  
[MKM-1](#) Michael K. Moore 12-1-20 [[30](#)]  
**Thru #8**

**Final Ruling**

The motion 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 was filed.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

Feasibility depends on the granting of a motion to approve loan modification, MKM-2. That motion is heard at Item #8 and is granted.

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed. The order confirming shall include the following language: "All previously disbursed payments made to the Class 1 arrears claim of Freedom Mortgage Corporation are allowed in the amount already paid by the trustee."

The motion is ORDERED GRANTED for reasons stated in 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 issue an order.

8. [20-22127](#)-B-13 ANAMARIA MALDONADO MOTION TO APPROVE LOAN  
[MKM-2](#) Michael K. Moore MODIFICATION  
12-2-20 [[36](#)]

**Final Ruling**

The motion has been set for hearing on 28-days notice. 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the loan modification.

Debtor seeks court approval to incur post-petition credit. Freedom Mortgage Corp. ("Creditor"), whose claim the plan provides for in Class 1, has agreed to a permanent loan modification that will reduce Debtor's mortgage payment from the current \$1,733.20 a month to \$1,500.29 a month. The modification reduces Debtor's interest rate from 5.25% to 3.25% and is fixed.

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

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's 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 minutes.

The court will issue an order.

9. [20-24330](#)-B-13 AMADO GUERZO MOTION TO CONFIRM PLAN  
[HWW](#)-2 Hank W. Walth 11-30-20 [[27](#)]  
**Thru #10**

**Final 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 has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

Feasibility depends on the granting of a motion to value collateral of Bank of America N.A., HWW-3. That matter is heard at Item #10 and is granted.

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

The motion is ORDERED GRANTED for reasons stated in 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 issue an order.

10. [20-24330](#)-B-13 AMADO GUERZO MOTION TO VALUE COLLATERAL OF  
[HWW](#)-3 Hank W. Walth BANK OF AMERICA N.A.  
12-7-20 [[31](#)]

**Final Ruling**

The motion has been set for hearing on 28-days notice. 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to value the secured claim of Bank of America N.A. at \$0.00.

Debtor moves to value the secured claim of Bank of America N.A. ("Creditor") pursuant to 11 U.S.C. § 506(a). Debtor is the owner of the subject real property commonly known as 3831 Canyonlands Road, Stockton, California ("Property"). Debtor seeks to value the Property at a fair market value of \$446,000.00 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).

### **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 \$377,564.49. A second deed of trust secures a claim with a balance of approximately \$154,000.00. Creditor's third deed of trust secures a claim with a balance of approximately \$325,943.00. The estimated balance owed is approximately \$325,943.00. Creditor's claim is an in rem claim only because the Debtor's personal liability was discharged along with his wife's on July 15, 2009, in chapter 7 case no. 08-34722-A-7. The Debtor and his wife did not enter into a reaffirmation agreement with Creditor.

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 minutes.

The court will issue an order.

11. [20-25032](#)-B-13 VICENTE NARANJO  
[RWF](#)-1 Robert W. Fong  
**Thru #12**

MOTION TO AVOID LIEN OF  
PORTFOLIO RECOVERY ASSOCIATES,  
LLC  
12-2-20 [[14](#)]

**Final Ruling**

The motion has been set for hearing on 28-days notice. 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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

This is a request for an order avoiding the judicial lien of Portfolio Recovery Associates, LLC ("Creditor") against the Debtor's property commonly known as 2911 South Lincoln Street, Stockton, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$2,181.00. An abstract of judgment was recorded with San Joaquin County on November 22, 2013, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$211,918.32 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$175,000.00 on Schedule C. The first deed of trust recorded against the Property totals \$46,871.95.

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 minutes.

The court will issue an order.

12. [20-25032](#)-B-13 VICENTE NARANJO  
[RWF](#)-2 Robert W. Fong

MOTION TO AVOID LIEN OF  
PRECISION RECOVERY ANALYTICS  
INC.  
12-2-20 [[23](#)]

**Final Ruling**

The motion has been set for hearing on 28-days notice. 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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

This is a request for an order avoiding the judicial lien of Precision Recovery Analytics Inc. ("Creditor") against the Debtor's property commonly known as 2911 South Lincoln Street, Stockton, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$4,566.91. Although evidence of an abstract of judgment is filed as an exhibit by the Debtor, there is no showing that it was recorded.

Nonetheless, pursuant to the Debtor's Schedule A, the Property has an approximate value of \$211,918.32 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$175,000.00 on Schedule C. The first deed of trust recorded against the Property totals \$46,871.95.

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 minutes.

The court will issue an order.

13. [20-21935](#)-B-13 AARON/JENNIFER BUCKHOLZ  
[JCK](#)-1 Kathleen H. Crist  
OBJECTION TO CLAIM OF OE  
FEDERAL CREDIT UNION, CLAIM  
NUMBER 9  
10-27-20 [[25](#)]

### 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 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 9 of OE Federal Credit Union and disallow the claim in its entirety.

Debtors request that the court disallow the claim of OE Federal Credit Union ("Creditor"), Claim No. 9. The claim is asserted to in the amount of \$2,225.88. The Debtors assert 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 11, 2020. The Creditor's claim was filed June 17, 2020.

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 minutes.

The court will issue an order.

14. [20-24737](#)-B-13 CHRISTIAN LOPEZ  
[RDG](#)-1 Richard Kwun

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
12-7-20 [[14](#)]

### **Final 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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

First, Debtor has not made the payments called for by the plan under 11 U.S.C. §1325(a)(2). Debtor is \$713.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$713.00 is due December 25, 2020.

Second, paragraph 2.01 of Debtor's plan provides for a monthly plan payment of \$713.00. The debtor has failed to provide admissible evidence that his plan is mathematically feasible. Debtor's Class 2 lease and attorney's fees alone total \$1,025.00 per month without the Trustee's fees.

The Trustee's opposition regarding Debtor's failure to list any household items or clothing in his schedules has been resolved. Amended schedules were filed on December 9, 2020.

Due to the two issues stated above, the plan filed October 12, 2020, 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 minutes.

The court will issue an order.

15. [20-22949](#)-B-13 ROBERT/PENELOPE CASH  
[JAD](#)-4 Jessica A. Dorn

MOTION TO CONFIRM PLAN  
11-4-20 [[48](#)]

### **Final 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 has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

Feasibility depends on the granting of a motion to value the collateral of American Honda Finance Corporation. That motion was denied on December 10, 2020.

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

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

The court will issue an order.

16. [18-26050](#)-B-13 DONNIE LEA  
[GSJ](#)-3 Grace S. Johnson

MOTION TO MODIFY PLAN  
11-6-20 [[53](#)]

### **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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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 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 issue an 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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 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 issue an order.

18. [19-27058](#)-B-13 JULIET WILLIAMS  
[JLL](#)-1 Jennifer G. Lee

MOTION TO MODIFY PLAN  
11-5-20 [[32](#)]

### **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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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 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 issue an order.

19. [20-24258](#)-B-13 SHAHAR JONES  
[RDG](#)-1 Peter G. Macaluso

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
10-26-20 [[22](#)]

### **Final Ruling**

This matter was continued from November 17, 2020. The Chapter 13 Trustee filed a supplemental objection to confirmation and the Debtor filed a response.

Due to court closures related to the COVID-19 pandemic, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

The plan is not feasible under 11 U.S.C. § 1325(a)(6). Debtor's response filed December 30, 2020, states that plan payments will be as follows:

- a. \$328.00 x 3 starting October 25, 2020
- b. \$527.00 x 57 starting January 25, 2021
- c. \$4,500.00 per year (5) totaling \$22,500.00, from tax returns on or before December 2020, June 2021, June 2022, June 2023, and June 2024

The Debtor has provided no evidence that five separate payments of \$4,500.00 can be made from tax returns. Without any supporting evidence, Debtor's ability to fund the plan is speculative.

The plan filed September 4, 2020, 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 minutes.

The court will issue an order.

20. [20-24859](#)-B-13 RAMZI/GHADA ZUMOUT  
[RDG](#)-1 Colby D. LaVelle

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
12-7-20 [[16](#)]

### **Final 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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

The Chapter 13 Trustee objects to confirmation on grounds that the Debtors failed to properly indicate a dollar amount for their homestead exemption. Debtors filed amended Schedule C on December 23, 2020, listing a homestead exemption of \$100,000.00 pursuant to California Code of Civil Procedure § 704.730. The Trustee's issue is therefore resolved.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed October 20, 2020, is confirmed.

The objection is ORDERED OVERRULED for reasons stated in 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 issue an order.



21. [20-24072](#)-B-13 LORENA FLORES  
[PGM](#)-1 Peter G. Macaluso

OBJECTION TO CLAIM OF EDWARD  
SCHELLINCK, M.D., CLAIM NUMBER  
7  
10-27-20 [[22](#)]

### **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 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 has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to overrule the objection to Claim No. 7 of Edward Schellinck, M.D.

Debtor requests that the court disallow the claim of Edward Schellinck, M.D. ("Creditor"), Claim No. 7. The claim is asserted to be secured in the amount of \$18,809.77. The Debtor asserts that the claim should be disallowed because no attachments have been included with the proof of claim showing that Creditor has a secured interest in Debtor's motor vehicle.

Creditor filed a response and supporting documentation showing that Creditor had provided capital for the motor vehicle.

### **Discussion**

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. See 11 U.S.C. § 502(a). Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. See 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

Based on the documentation submitted by Creditor, the court finds that the proof of claim is valid insofar as Creditor having an interest in Debtor's motor vehicle. The court makes no determination as to the value of the motor vehicle.

The objection to the proof of claim is overruled.

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

The court will issue an order.

22. [20-24683](#)-B-13 CARLOS PITTS  
[MET](#)-1 Pro Se  
**Thru #23**  
ALVERNAZ PARTNERS LLC VS.

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
11-16-20 [[21](#)]

### **Final Ruling**

This matter was continued from December 1, 2020, at the request of pro se debtor Carlos Pitts ("Debtor"), to allow Debtor to amend his petition, schedules, plan, and other documentation related to his Chapter 13 case. A review of the court's docket shows that no amended or additional documents have been filed.

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

Alvernaz Partners LLC ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1711 North Stanford Avenue, Stockton, California (the "Property"). Movant has provided the Declaration of Dan Alexander to introduce into evidence the documents upon which it bases the claim and the obligation.

The Alexander Declaration states that Movant is the owner of the Property after purchasing it from a Maria Pitts. Debtor Carlos Pitts ("Debtor") and other occupants are generally family members of Mrs. Pitts and are holdover occupants. Movant served a Three Day Notice to Pay Rent or Quit on January 6, 2020, and filed an unlawful detainer complaint on January 17, 2020. The unlawful detainer action was scheduled for November 20, 2020, but will be continued until Movant obtains relief from stay.

### **Discussion**

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. § 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 determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d) (2).

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.

23. [20-24683](#)-B-13 CARLOS PITTS  
[RDG](#)-1 Pro Se

CONTINUED MOTION TO DISMISS  
CASE  
12-1-20 [[34](#)]

### **Final Ruling**

This matter was continued from December 15, 2020, at the request of pro se debtor Carlos Pitts ("Debtor"). A review of the court's docket shows that no amended or additional documents have been filed.

The court's decision is to grant the motion to dismiss case.

The Chapter 13 Trustee moves for dismissal of the bankruptcy case on grounds that

Debtor failed to appear at the meeting of creditors, failed to set a confirmation hearing for the plan filed on November 4, 2020, and leaves blank much of the petition, schedules, and plan.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

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

The court will issue an order.

24. [19-20386](#)-B-13 JESUS/MELISSA GONZALEZ MOTION TO APPROVE LOAN  
[JCW](#)-1 Robert W. Fong MODIFICATION  
11-17-20 [[23](#)]

### **Final Ruling**

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Chapter 13 Trustee as to clarification of any monthly payment.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to grant the motion to approve loan modification.

Wells Fargo Bank, N.A. ("Movant") moves for an order authorizing a Loan Modification with Partial Claims Agreement and Subordinate Mortgage ("Agreement") regarding the real property generally described as 6541 Crestview Circle, Stockton, California 95219. Debtors were in default with Movant in the amount of \$10,947.79 and sought to cure this by entering into a Partial Claim Note and Mortgage with the Secretary of Housing and Urban Development ("HUD"). HUD advanced funds in the amount of \$10,947.79 on behalf of the Debtors by curing the default on the loan with Movant. The Partial Claim will be held by the HUD, bears no interest, and shall be subordinate to the first deed of trust.

Debtor will repay the funds back to HUD pursuant to the terms of the Partial Claims Promissory Note. Dkt. 25, p. 4. All terms under the existing note and deed of trust between Debtors and Movant were not modified. Thus, the principal and interest payment amounts, interest rate, maturity date, etc. remain the same. Currently, the monthly payment is \$2,203.36.

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 minutes.

The court will issue an order.

25. [20-20387](#)-B-13 PABLO/TERESA CHAGOYA  
[NAR](#)-3 Charles L. Hastings

CONTINUED MOTION TO CONFIRM  
PLAN  
10-23-20 [[94](#)]

### **Final 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 has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

Debtors' plan is not feasible. 11 U.S.C. § 1325(a)(6). Debtors' plan lists priority claims in the total amount of \$0.00. On October 14, 2020, the Internal Revenue Service filed amended proof of claim 22-2 listing priority claims in the amount of \$21,239.15. Debtors' plan does not provide for that priority claim. Accordingly, Debtors' plan fails to comply with 11 U.S.C. §1322(a)(2).

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

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

The court will issue an order.

26. [18-27726](#)-B-13 EDWARD COLOMA AND  
[JBR](#)-7 KATHERINE SANCHEZ  
Jennifer B. Reichhoff

MOTION TO SELL O.S.T  
12-23-20 [[155](#)]

### **Final Ruling**

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell the property described as 8672 Waterwell Way, Tracy ("Property").

Purchasers Antony Antony and Leena Antony agreed to purchase the Property for \$1,271,000.00. Proceeds from the sale will go toward paying off in full the first and second deeds of trust on the Property, no more than 10% toward closing costs, and an estimated \$471,199.42 to the Chapter 13 Trustee for disbursement. Exempt is \$100,000.00 pursuant to California Code of Civil Procedure § 704.730.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the estate. The sale is permissible pursuant to 11 U.S.C. § 363(f)(2). Debtors' real estate agent shall receive compensation not to exceed the terms and costs of the sale pursuant to the settlement statement.

There shall be no distributions from escrow except those authorized by the Chapter 13 Trustee ("Trustee"). The order approving the sale shall include all applicable provisions of the Trustee's standard sale order.

The motion is granted for reasons stated in the minutes.

**The Debtors' attorney shall prepare an order granting the motion and approving the sale which includes terms consistent with the Trustee's standard sale order. The order shall be approved by the Trustee.**