

**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: March 3, 2020**

**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

**March 3, 2020 at 1:00 p.m.**

---

1. [16-24200](#)-B-13    LESLIE LEWIS    MOTION TO MODIFY PLAN  
MC-[3](#)    Muoi Chea    1-16-20 [[71](#)]

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

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

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

The court will enter a minute order.

**March 3, 2020 at 1:00 p.m.**

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

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

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

The court will enter a minute order.

3. [19-21010](#)-B-13 CLARENCE COOK MOTION TO CONFIRM PLAN  
[JGD](#)-7 John G. Downing 1-21-20 [[137](#)]  
**Thru #4**

#### **Tentative Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to deny the motion without prejudice and not confirm the amended plan for the reasons stated in the ruling at Calendar Item #4 regarding the motion at Docket 131

Based on the denial of the motion (dkt. 131) to approve the stipulation (dkt. 135) at Item #4, the court cannot grant the Debtor's motion to confirm (dkt. 137), and therefore cannot confirm, the Fourth Amended Chapter 13 Plan (dkt. 140), which classifies the U.S. Bank (as trustee) mortgage claim as a Class 4 claim rather than a Class 1 claim. Moreover, because this case has been pending for over one year without a confirmed plan, the Debtor will be provided one more opportunity to confirm an amended plan. The Debtor will therefore have until May 5, 2020, to confirm a fifth amended plan otherwise this case will be dismissed.

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

The court will enter a minute order.

4. [19-21010](#)-B-13 CLARENCE COOK MOTION TO APPROVE STIPULATION  
[JGD](#)-8 John G. Downing 1-21-20 [[131](#)]

#### **Tentative Ruling**

##### Introduction

Before the court is a Motion to Approve Stipulation filed by Debtor Clarence Cook ("Debtor"). Dkt. 131. Debtor requests approval of a stipulation with U.S. Bank (in its capacity as trustee) that provides for classification of the lender's claim in Class 4 rather than Class 1 of the Debtor's Fourth Amended Chapter 13 Plan. Dkt. 135. The Debtor's Fourth Amended Chapter 13 Plan is filed at docket 140.

The court takes judicial notice of the docket and the claim register in this Chapter 13 case. Findings of fact and conclusions of law are set forth below. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052. For the reasons explained below, the motion will be denied without prejudice and the stipulation will not be approved.

##### Background

Debtor states that his U.S. Bank (as trustee) mortgage loan was not in default when he filed the petition that commenced this Chapter 13 case on February 19, 2019. Rather, Debtor states there was a \$1,498.94 escrow shortage calculated at the end of the year

despite the Debtor paying his required monthly amount set by the lender. The escrow shortage apparently arises due to insufficient funds in escrow to pay subsequent tax payments.

Debtor states that the lender processed a payment the same day he filed his petition, i.e., February 20, 2019. Exhibit 2 to docket 133 shows that the lender processed a payment of \$2,621.05 on February 20, 2019. Although the year is not stated, that payment corresponds with the Debtor's bank statement at Ex. 1 to dkt. 133 which shows a payment withdraw by SPS, presumably the lender's servicer, on "02/20" in the amount of \$2,621.05.

The petition that commenced this case on February 20, 2019, was filed at 4:32 p.m. There is no indication whether the payment made on that date was processed before or after the petition was filed and, thus, whether the payment on that date was a pre- or postpetition payment. But the difference may not matter for present purposes.

Lender's proof of claim, Claim No. 5-1, filed on May 1, 2019, state a prepetition default in the amount of \$4,589.93. Of that amount, the Mortgage Proof of Claim Attachment submitted with the proof of claim states that \$1,647.13 is a principal and interest arrearage as of the date of the petition. Put differently, according to the lender, there was in fact a prepetition default in the payment of principal and interest. And as all attorneys who practice in this district know or should know, "[t]he proof of claim, not [the] plan or the schedules, shall determine the amount and classification of a claim[.]" Form EDC 3-080 (Form Chapter 13 Plan) at § 3.02.

#### Discussion

The United States Bankruptcy Court for the Eastern District of California has adopted a claim classification structure in Chapter 13 cases. General Order 18-03 adopts Form EDC 3-080, a standard form Chapter 13 plan, and Local Rule 3015-1(a) makes use of the Form EDC 3-080 standard Form Chapter 13 Plan mandatory.<sup>1</sup>

The mandatory Chapter 13 plan classifies long-term secured debts on which the last payment is due after the plan term and which are in default when the petition is filed as Class 1 claims. Class 1 claims are paid by the Trustee. Class 1 of the mandatory Chapter 13 plan states as follows:

Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence. . . . Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.

EDC 3-080, § 3.07 & § 3.07(b).

The Debtor acknowledges that a mortgage loan in prepetition default must be paid as a Class 1 claim. Through the stipulation, however, the Debtor seeks to alter that classification and classify the U.S. Bank mortgage claim in Class 4. Classification of the mortgage as a Class 4 claim would permit the Debtor to make postpetition mortgage payments directly to the lender. Class 4 of the mandatory Chapter 13 plan states as follows:

Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and

---

<sup>1</sup>Local Bankruptcy Rule 3015-1(a) states as follows:

(a) Mandatory Form Plan. All chapter 13 debtors, as well as the trustee and holders of unsecured claims, when proposing a plan pursuant to 11 U.S.C. §§ 1321, 1323, and 1329(a), shall utilize Form EDC 3-080, the standard form Chapter 13 Plan.

are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed or the plan is confirmed.

EDC 3-080, § 3.10.

It is true, as the Debtor notes, that the Bankruptcy Code does not prohibit a debtor from making postpetition mortgage payments directly to his or her lender. See *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), adopted and affirmed, 550 F.3d 1202 (9th Cir. 2008). However, it is equally true that the right to make direct payments is not absolute and the bankruptcy court may, in its discretion, condition by local rule or general order the circumstances under which direct payments may be made. *Id.* at 46-47, 53; *Geisbrecht v. Fitzgerald (In re Geisbrecht)*, 429 B.R. 682, 685 & 690-91 (9th Cir. BAP 2010). The Eastern District of California Bankruptcy Court has done precisely that through both a local rule and general order which establish a Class 1 and Class 4 claim classification structure.

The court acknowledges that it may be possible, in an appropriate case and under appropriate circumstances, to confirm a plan that provides for direct payments to the mortgage lender on a debt in default when the petition was filed. Indeed, Local Bankruptcy Rule 1001-1(f) states as follows:

Modification of Requirements. The Court may sua sponte or on motion of a party in interest for cause, modify the provisions of these Rules in a manner not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding.

However, this is not an appropriate case to depart from the otherwise applicable Class 1/Class 4 classification structure. In fact, the Debtor provides no reason that would justify a departure from the classification structure other than an apparent mistaken belief that his U.S. Bank mortgage loan was not in prepetition default when the petition was filed. The problem with that, however, is that the controlling proof of claim states otherwise. Therefore, for the foregoing reasons, the Debtor's motion to approve the stipulation with his mortgage lender regarding the plan classification and treatment of the lender's claim at dkt. 131 will be denied and the stipulation at docket 135 will not be approved.

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

The court will enter a minute order.

5. [20-20713](#)-B-13 GAVIN MEHL  
[GGM](#)-7 Pro Se

MOTION TO EXTEND AUTOMATIC STAY  
2-14-20 [[13](#)]

CASE DISMISSED: 2/25/2020

**Final Ruling**

The case was dismissed on February 25, 2020. The motion is denied as moot.

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

The court will enter a minute order.

6. [19-21322](#)-B-13 ALAN PURCELL AND KERRY MOTION TO MODIFY PLAN  
[DPR](#)-1 PILLEY-PURCELL 1-23-20 [[40](#)]  
David P. Ritzinger

**No Ruling**



### **Tentative Ruling**

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to grant the motion to extend automatic stay.

Debtors seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on January 16, 2020, due to delinquency in plan payments (case no. 19-21301, dkt. 39, 41). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

### **Discussion**

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

The Debtors state that the instant case was filed in order to protect their property from foreclosure and repossession actions. They state that their circumstances have changed because Joint Debtor Kayla Yazzie has gained full-time employment as a medical assistant. In the prior case she was working as an on-call medical assistant and was not working consistent hours. With Debtor and Joint Debtor's combined regular income, they contend that they can be able to make their plan payments.

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

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

The court will enter a minute order.

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

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

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

The court will enter a minute order.

9. [19-26329](#)-B-13 DANNY/DAWN GRANATA  
[MB-1](#) Michael Benavides

MOTION TO CONFIRM PLAN  
1-28-20 [[41](#)]

**No Ruling**

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

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

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

The court will enter a minute order.

11. [19-27735](#)-B-13 AMY MCCLELLAN  
[DPC](#)-1 John G. Downing

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
1-22-20 [[18](#)]

### **Tentative Ruling**

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

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

First, the terms for payment of the Debtor's attorney's fees are unclear. The plan does not specify as to 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.

Second, it is unclear whether the Debtor may be able to make payments under or comply with the plan. Schedule I, Line 8a states Debtor receives net income of \$1,550.00 from rental property or from operating a business. Line 13 states that there is anticipated increases in income from work with Forest Service and applying for restaurant jobs but no proof of income has been provided. Additionally, the Debtor provided proof of income in the form of handwritten bills for auto cleaning and detailing work from June through December 2019, which averaged \$600.00 per month.

The objection regarding Debtor's failure to appear at the meeting of creditors is resolved. The Debtor appeared at the continued meeting of creditors on February 27, 2020, and it was concluded as to the Debtor. 11 U.S.C. § 343.

Nonetheless, for the first and second reasons stated above, the plan filed December 16, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

12. [19-26941](#)-B-13 MICHAEL WYCLIFFE AND  
[DPC](#)-1 REBECCA WEAVER  
Peter G. Macaluso

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
12-17-19 [[17](#)]

### **Tentative Ruling**

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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 Debtors have not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtors have not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Second, the Debtors have 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 Debtors have not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Third, the Debtors have filed incomplete or unclear documents. Schedule J lists Debtor's net income as -\$6.00, County of Nevada appears as a creditor but not arrearage dividend or monthly payment is listed, and Debtors failed to list any real property on Schedule A.

The objection regarding Debtors' failure to appear at the meeting of creditors is resolved. The Debtors appeared at the continued meeting of creditors on February 27, 2020, and it was concluded as to the Debtors. 11 U.S.C. § 343.

Nonetheless, for the first and second reasons stated above, the plan filed November 13, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

13. [19-26250](#)-B-13 MICHELLE/GABRIEL DELGADO MOTION FOR RELIEF FROM  
[EAT](#)-1 Pro Se AUTOMATIC STAY  
2-3-20 [[48](#)]

NATIONSTAR MORTGAGE LLC VS.

CASE DISMISSED: 2/27/2020

**Final Ruling**

The case was dismissed on February 27, 2020. The motion is denied as moot.

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

The court will enter a minute order.

14. [17-26052](#)-B-13 TANISHA MAVY  
[TM](#)-21 Pro Se

MOTION TO MODIFY PLAN  
2-3-20 [[168](#)]

**Final Ruling**

The motion was not 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). Only 29 days of notice was provided. Therefore, the motion to modify plan is denied without prejudice.

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

The court will enter a minute order.



15. [16-26053](#)-B-13 JOHN PUGH  
[JGD](#)-9 John G. Downing

MOTION TO MODIFY PLAN  
1-10-20 [[131](#)]

**No Ruling**

16. [19-27653](#)-B-13 JUAN ZARAGOZA AND MARIA CONTINUED OBJECTION TO  
[DPC](#)-1 GARCIA CONFIRMATION OF PLAN BY DAVID P  
**Thru #17** Harry D. Roth CUSICK  
1-21-20 [[16](#)]

**Tentative Ruling**

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

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on February 7, 2020. The confirmation hearing for the amended plan is scheduled for April 7, 2020. The earlier plan filed November 11, 2019, is not confirmed.

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

The court will enter a minute order.

17. [19-27653](#)-B-13 JUAN ZARAGOZA AND MARIA OBJECTION TO DEBTORS' CLAIM OF  
[DPC](#)-2 GARCIA EXEMPTIONS  
Harry D. Roth 1-21-20 [[20](#)]

**Tentative Ruling**

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 4003(b). Consequently, 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 objection.

The court's decision is to overrule the objection.

Trustee objects to confirmation on grounds that Schedule C impermissibly claims exemptions under both California Code of Civil Procedure § 703.140(b) and 704. California Code of Civil Procedure § 703.140(a) specifically states that "the exemptions provided by subdivision (b) may be elected in lieu of all other exemptions provided by this chapter."

It appears the Debtors filed an amended Schedule C on February 18, 2020, electing to claim exemptions under only California Code of Civil Procedure § 704. Therefore, the Trustee's objection is overruled.

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

The court will enter a minute order.

18. [19-20354](#)-B-13 ERIC BENSON AND KARRI MOTION TO MODIFY PLAN  
[RLC](#)-2 O'DONNELL 1-16-20 [[93](#)]  
Stephen M. Reynolds

**No Ruling**

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

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

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

The court will enter a minute order.

20. [19-27160](#)-B-13 DEANDRA JACKSON  
[DPC](#)-1 Pro Se

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
1-7-20 [[25](#)]

DEBTOR DISMISSED: 2/17/2020

**Final Ruling**

The case was dismissed on February 17, 2020. The objection to confirmation is overruled as moot.

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

The court will enter a minute order.

21. [19-27461](#)-B-13 RICHARD ACOSTA  
[DPC](#)-2 Michael O'Dowd Hays

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
2-3-20 [[33](#)]

### **Final Ruling**

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to 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 § 704.140 for an "unknown" amount for a possible claim against PG&E for property damage caused by the November 2018 Camp Fire. The Debtor has not identified any personal injury on Schedule B or C but rather has only identified that there may be a property damage claim. While California Code of Civil Procedure § 704.140(a) provides a cause of action for personal injury is exempt without making a claim, a settlement or damage award may not be. CCP § 704.140(b) and (d). The Debtor, as the exemption claimant, has not carried his burden of demonstrating he is entitled to the exemption claimed. *Diaz v. Kosmala (In re Diaz)*, 547 B.R. 329, 336-37 (9th Cir. BAP 2016); *In re Tallerico*, 532 B.R. 774 (Bankr. E.D. Cal. 2015); *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Cal. 2015).

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

The objection is ORDERED SUSTAINED and the claimed exemption is DISALLOWED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

22. [19-27562](#)-B-13 KENNETH SMITHOUR CONTINUED OBJECTION TO  
[DPC](#)-1 Mary Ellen Terranella CONFIRMATION OF PLAN BY DAVID  
**Thru #24** P. CUSICK  
1-22-20 [[13](#)]

**Tentative Ruling**

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

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

The Debtor has 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).

The objection regarding Debtor's failure to appear at the meeting of creditors is resolved. The Debtors appeared at the continued meeting of creditors on February 13, 2020, and it was concluded as to the Debtor. 11 U.S.C. § 343. Additionally, the Debtor's motions to value collateral of Travis Credit Union were granted at Items 23 and 24.

Nonetheless, due to the failure to provide payment advices to the Trustee, the plan filed November 13, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

23. [19-27562](#)-B-13 KENNETH SMITHOUR MOTION TO VALUE COLLATERAL OF  
[MET](#)-1 Mary Ellen Terranella TRAVIS CREDIT UNION  
2-13-20 [[19](#)]

**Tentative Ruling**

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to value the secured claim of Travis Credit Union at \$7,500.00.

Debtor's motion to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2004 Lexus RX330 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$7,500.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as 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. 3-1 filed by Travis Credit Union is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred in 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$7,709.74. 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 \$7,500.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.

24. [19-27562](#)-B-13 KENNETH SMITHOUR MOTION TO VALUE COLLATERAL OF  
[MET](#)-2 Mary Ellen Terranella TRAVIS CREDIT UNION  
2-13-20 [[23](#)]

### **Tentative Ruling**

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to value the secured claim of Travis Credit Union at \$12,000.00.

Debtor's motion to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Lexus RX ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$12,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as 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. 4-1 filed by Travis Credit Union is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred in 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$30,770.93. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$12,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.



25. [15-25365](#)-B-13 DEA MCKEE  
[MC-5](#) Muoi Chea

MOTION TO MODIFY PLAN  
1-24-20 [[99](#)]

**No Ruling**

26. [19-27665](#)-B-13 ANTOINETTE EDWARDS CONTINUED OBJECTION TO  
[DPC](#)-1 Peter G. Macaluso CONFIRMATION OF PLAN BY DAVID  
**Thru #29** P. CUSICK  
1-22-20 [[41](#)]

**Tentative Ruling**

Confirmation of the plan filed December 12, 2019, depends on the granting of motions to value collateral of Bosco Credit, LLC and CALHFA Mortgage Assistance Corporation. Because those motions are denied without prejudice for the reasons stated at Items #28 (dkt. 28) and #29 (dkt. 33), the objection to confirmation by the Chapter 13 Trustee is sustained and the plan is not confirmed.

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

The court will enter a minute order.

27. [19-27665](#)-B-13 ANTOINETTE EDWARDS CONTINUED OBJECTION TO  
[MRG](#)-1 Peter G. Macaluso CONFIRMATION OF PLAN BY BOSCO  
CREDIT LLC  
1-22-20 [[38](#)]

**Tentative Ruling**

Confirmation of the plan filed December 12, 2019, depends on the granting of motions to value collateral of Bosco Credit, LLC and CALHFA Mortgage Assistance Corporation. Because those motions are denied without prejudice for the reasons stated at Items #28 (dkt. 28) and #29 (dkt. 33), the objection to confirmation by Bosco Credit LLC is sustained and the plan is not confirmed.

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

The court will enter a minute order.

28. [19-27665](#)-B-13 ANTOINETTE EDWARDS MOTION TO VALUE COLLATERAL OF  
[PGM](#)-2 Peter G. Macaluso BOSCO CREDIT, LLC  
1-20-20 [[28](#)]

**Tentative Ruling**

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

The motion to value will be denied without prejudice.

Debtor's motion to value the secured claim of Bosco Credit, LLC ("Creditor"), holder of a second deed of trust, is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 212 Clearbrook Court, Suisun, California ("Property"). Debtor seeks to value the Property at a fair market value of \$368,000.00 as of the petition filing date.

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

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

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

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

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

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

#### **Responses**

Creditor has filed an opposition asserting that the list price of the Property is \$425,900.00 and that the estimated sales price is \$414,900.00. Creditor bases these values from a broker's price opinion attached as Exhibit A. Creditor notes that it has not had the opportunity to conduct a full appraisal of the Property and requests additional time to obtain an interior inspection and appraisal of the Property.

The Chapter 13 Trustee has filed a response of non-opposition to Debtor's motion.

The Debtor responds by stating that Creditor's objection is not supported by any declaration. The Debtor also acknowledges that her opinion of value is based on lay testimony and personal knowledge of the Property. Debtor requests that the Creditor's objection be overruled or that the motion for value be set for an evidentiary hearing.

#### **Discussion**

The Debtor correctly recognizes that she has the burden of proving value. Dkt. 57 at 2:2-3 ("The debtors [sic] understands and acknowledges that the burden of persuasion falls squarely on the debtor's shoulders."). The Debtor's only evidence of value is her lay opinion. See *Id.* at 2.

A property owner's lay opinion of value may be admissible evidence. See Fed. R. Evid. 701; *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). The problem here, however, is that even if the Debtor's opinion of the value of the Property is admissible it is not credible or reliable and, therefore, is not entitled to any weight.

Debtor states in her Schedule A - which she signed and filed under penalty of perjury -

that the fair market value of the Property is \$400,000.00. See dkt. 1, sch. A at 1. Debtor states in the declaration that she filed in support of the motion to value, which she also signed under penalty of perjury, that the fair market value of the Property is \$368,000.00. The difference is that Schedule A makes a reduction for the costs of sale. See Dkt. 1, Sch. A at 1.

The court will disregard the Debtor's "cost of sale reduction" stated in Schedule A as improper and impermissible in the context of the present motion. Valuation here is not for purposes of a forced sale where a cost of sale reduction may be permissible and proper. Rather, Debtor seeks to value property she intends to retain. In that regard, *In re Case*, 115 B.R. 666 (9th Cir. BAP 1990), is instructive.

Although *Case* was a Chapter 12 case, it nevertheless addressed the valuation of debtor-retained real property under § 506(a) for purposes of a plan. *Id.* at 669. And in *Case*, the BAP held that it was improper for the debtor (and the court) to deduct costs of sale from the valuation of debtor-retained property. *Id.* at 670.

Disregarding the Debtor's cost of sale reduction in the Schedules puts the Debtor in the untenable a position of having made two conflicting and contradictory sworn statements regarding her opinion of the Property's value. One sworn statement is a fair market value of \$400,000.00 and the other sworn statement is a fair market value of \$368,000.00. And so for that reason, as stated previously, the Debtor's lay opinion is not credible, it is not reliable, and it is not given any weight. That means the Debtor has not carried burden of proving the Property's fair market value. That also means there is no basis for an evidentiary hearing since the Debtor has failed to initially establish a disputed factual issue of value.

Therefore, for the foregoing reasons, the Debtor's motion to value Creditor's collateral will be denied without prejudice. Furthermore, based on the court's credibility determination, any re-filed motion shall include admissible evidence of the Property's value other than the Debtor's opinion.

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

The court will enter a minute order.

29. [19-27665](#)-B-13 ANTOINETTE EDWARDS  
[PGM](#)-3 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF  
CALHFA MORTGAGE ASSISTANCE  
CORPORATION  
1-20-20 [[33](#)]

#### **Tentative Ruling**

CALHFA Mortgage Assistance Corporation ("Creditor") holds a third deed of trust against the real property located at 212 Clearbrook Court, Suisun, California. The motion is denied without prejudice for the reason stated in the ruling at Item #28 (dkt. 28).

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

The court will enter a minute order.

30. [19-27469](#)-B-13 AARON/JESSICA MEAUX CONTINUED OBJECTION TO  
[MRG](#)-1 Peter G. Macaluso CONFIRMATION OF PLAN BY  
**Thru #32** CONSUMER PORTFOLIO SERVICES  
12-18-19 [[20](#)]

**Tentative Ruling**

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

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

Feasibility depends on the granting of a motion to value collateral of Consumer Portfolio Services. That motion is granted at Item #31, DCN PGM-2.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed December 12, 2019, is confirmed.

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

The court will enter a minute order.

31. [19-27469](#)-B-13 AARON/JESSICA MEAUX MOTION TO VALUE COLLATERAL OF  
[PGM](#)-2 Peter G. Macaluso CONSUMER PORTFOLIO SERVICES  
1-20-20 [[34](#)]

**Tentative Ruling**

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

The court's decision is to grant the motion based on the parties' stipulation at dkt. 57 and value the secured claim of Consumer Portfolio Services whose collateral consists of a 2007 Chevrolet Avalanche at \$6,500.00 to be paid through the Chapter 13 Plan at 7.00% interest as a Class 2(b) Claim with a monthly dividend of \$139.00.

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

The court will enter a minute order.

32. [19-27469](#)-B-13 AARON/JESSICA MEAUX MOTION TO VALUE COLLATERAL OF  
[PGM](#)-3 Peter G. Macaluso WILSHIRE CONSUMER CREDIT  
1-20-20 [[29](#)]

**Final Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local

Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of Wilshire Consumer Credit at \$2,300.00.

Debtors' motion to value the secured claim of Wilshire Consumer Credit ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2007 Honda CRV ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$2,300.00 as of the petition filing date. As the owner, 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. 12-1 filed by Wilshire Con. Cr-C/O Peritus Portfolio Services is the claim which may be the subject of the present motion.

#### **Response**

Although the Chapter 13 Trustee attempted to file a response, it appears that two certificates of service were instead filed by the Trustee.

#### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred on November 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$6,304.03. 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 \$2,300.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.

**Tentative Ruling**

Debtor Maria Williams ("Debtor") seeks to voluntarily dismiss her case because the purpose for which she had filed her bankruptcy, to save her home, has become moot. The court granted Wells Fargo Home Loans' motion for relief from stay as to real property, which was part of multiple transfers and bankruptcy filings. See [dkt s. 42](#), 43.

The court's decision is to grant the motion to dismiss subject to the restriction noted below.

Because Debtor requested - and will be granted - a voluntary dismissal following a secured creditor's request for relief from the automatic stay of 11 U.S.C. § 362(a), this Chapter 13 case will be dismissed pursuant to 11 U.S.C. § 109(g)(2) which means the Debtor shall be barred from filing any single or joint case for a period of 180 days from the entry of the dismissal order.

The order dismissing this case shall expressly reference the 180-day re-filing bar.

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

IT IS FURTHER ORDERED that the Debtor shall be barred from filing any single or joint case for a period of 180 days from the entry of the dismissal order.

The court will enter a minute order.

34. [19-27971](#)-B-13 SEAN/CRYSTAL FAY  
MJ-1 Matthew J. DeCaminada

AMENDED MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-28-20 [[26](#)]

WASHINGTON STATE EMPLOYEES  
CREDIT UNION VS.

### **Final Ruling**

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

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

Washington State Employees filed an amended motion seeking relief from the automatic stay with respect to an asset identified as a 2014 Forest River Cherokee (the "Vehicle"). The moving party has provided the Declaration of Danette Maloney to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Maloney Declaration states that the Debtors failed to make payments for the months of November 2019 through January 2020.

Debtors filed a non-opposition to Creditor's initial motion on the basis that the Vehicle is included in Class 3 of amended plan to be surrendered. Dkt. 37

### **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 Debtors 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 Debtors or the Estate. 11 U.S.C. § 362(d)(2). And the Debtors having filed a motion of non-opposition, 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 creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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

No other or additional relief is granted by the court.

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

The court will enter a minute order.



**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

The court will enter a minute order.

36. [19-27775](#)-B-13 RANKIN LYMAN  
[DPC](#)-1 Peter G. Macaluso

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
1-30-20 [[17](#)]

**No Ruling**

HYUNDAI LEASE TITLING TRUST  
VS.

### **Final Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

Hyundai Lease Titling Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Hyundai Elantra (the "Vehicle"). The moving party has provided the Declaration of Gloria Greer to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Greer Declaration states that the lease matured on September 15, 2019, and the Debtor returned the Vehicle on September 9, 2019. All payments on the account have been made and the Vehicle is being stored pending relief from stay.

### **Discussion**

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

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

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

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

No other or additional relief is granted by the court.

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

The court will enter a minute order.

38. [19-26879](#)-B-13 GHASSAN KAMAL  
[PGM](#)-1 Peter G. Macaluso

CONTINUED MOTION TO VALUE  
COLLATERAL OF YOUSEF DOUMIT  
11-14-19 [[13](#)]

**Final Ruling**

Matter to be decided following the evidentiary hearing on March 2, 2020. If the court does not announce its decision at that time it will inform the parties and restore this matter to calendar.

39. [19-27379](#)-B-13 TAMI TRIHUB  
[DPC](#)-2 Thomas A. Moore

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
2-3-20 [[19](#)]

### **Final Ruling**

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to overrule the objection.

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

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

(Emphasis added). The court's review of the docket reveals that the spousal waiver was filed on February 25, 2020. The Trustee's objection is overruled.

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

The court will enter a minute order.

40. [15-26284](#)-B-13 MORTISHIA FAIRCHILD  
[MET](#)-2 Mary Ellen Terranella

OBJECTION TO CLAIM OF SPRINT  
CORP., CLAIM NUMBER 1  
1-17-20 [[50](#)]

### **Final Ruling**

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 1 of Sprint Corp. and the claim is disallowed in its entirety.

Mortishia Fairchild ("Objector") requests that the court disallow the claim of Sprint Corp. ("Creditor"), Claim No. 1. The claim is asserted to be in the amount of \$842.56. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about November 27, 2009, which is more than four years prior to the filing of this case. Hence, when the case was filed on August 6, 2015, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

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

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

The court will enter a minute order.

**Final Ruling**

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

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

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

The court will enter a minute order.



42. [19-26297](#)-B-13 SALEH ABDULLAH  
[HLG](#)-3 Kristy A. Hernandez

MOTION TO CONFIRM PLAN  
1-14-20 [[37](#)]

**No Ruling**

43. [19-21082](#)-B-13 RONDELL DANIEL  
Pro Se

MOTION TO VACATE DISMISSAL OF  
CASE HEARING  
2-21-20 [[52](#)]

**No Ruling**

44. [20-90017](#)-B-13 NEFTALI ALBERTO  
[TOG](#)-3 Thomas O. Gillis

MOTION TO DISMISS CASE  
2-12-20 [[18](#)]

**No Ruling**