

**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: April 7, 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.

# Eastern District of California

**April 7, 2020 at 1:00 p.m.**

- No appearance at the April 7, 2020, hearing is required. The court will enter a minute order.

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3. [20-20409](#)-B-13 MARGARET SOMKOPULOS  
AP-1 Peter G. Macaluso  
**Thru #5** OBJECTION TO CONFIRMATION OF  
PLAN BY DEUTSCHE BANK NATIONAL  
TRUST COMPANY  
3-12-20 [[42](#)]

**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 amended plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

First, feasibility depends on the granting of a motion to value collateral of Deutsche Bank National Trust Company. That matter is heard at Item #5, PGM-1, and is denied without prejudice.

Second, it is not clear if the Debtor can make payments under the plan or comply with the plan pursuant to 11 U.S.C. § 1325(a)(6). Indeed, the court made findings on March 17, 2020, that a significant portion of Debtor's income, which comes from contributions from her daughter, was not substantiated and therefore is unavailable to the Debtor. As the court noted at the time, availability of that income is necessary for plan feasibility. See Dkt. 47.

The plan filed January 24, 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 ruling appended to the minutes.

The court will enter a minute order.

4. [20-20409](#)-B-13 MARGARET SOMKOPULOS  
[DPC-1](#) Peter G. Macaluso  
OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
3-11-20 [[38](#)]

**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 amended plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

First, 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).

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

Third, it is not clear if the Debtor can make payments under the plan or comply with the plan pursuant to 11 U.S.C. § 1325(a)(6). Indeed, the court made findings on March 17, 2020, that a significant portion of Debtor's income, which comes from contributions from her daughter, was not substantiated and therefore is unavailable to the Debtor. As the court noted at the time, availability of that income is necessary for plan feasibility. See Dkt. 47. For this reason alone, the plan is not confirmable even if all other objections are resolved.

Fourth, Debtor's plan proposes to retain rental property in West Sacramento and lists it in Class 2(b) with a monthly dividend of \$7,641.00. However, it has negative equity and negative cash flow of \$5,641.00.

Fifth, the maximum fee that may be charged in a nonbusiness case is \$4,000.00 pursuant to Local Bankr. R. 2016-1. The attorney's fees exceed this amount.

Sixth, feasibility depends on the granting of a motion to value collateral of Deutsche Bank National Trust Company. That matter is heard at Item #5, PGM-1, and is denied without prejudice.

The plan filed January 24, 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 ruling appended to the minutes.

The court will enter a minute order.

5. [20-20409](#)-B-13 MARGARET SOMKOPULOS MOTION TO VALUE COLLATERAL OF  
[PGM-1](#) Peter G. Macaluso DEUTSCHE BANK NATIONAL TRUST  
COMPANY  
3-10-20 [[30](#)]

### **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.

The court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

Debtor is the owner of the subject real property commonly known as 3810 Spaulding Court, West Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of \$400,000.00 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).

Opposition was filed by Deutsche Bank National Trust Company, as trustee on behalf of the holders of the Impac Secured Assets Corp. Mortgage Pass-Through Certificates Series 2007-2 ("Creditor"). Creditor asserts that there is a legitimate dispute regarding valuation based on its appraisal of the Property in Debtor's prior Chapter 13 case, no. 19-23982. Creditor states that the appraisal was conducted on September 26, 2019, and that the value of the Property has likely changed due to the passage of time and the current COVID-19 outbreak. Creditor requests that this matter be continued so that it can obtain an updated appraisal and requests that the Debtor provide the Creditor access to the Property to conduct an interior inspection.

Value is determined in light of the purpose of valuation and the proposed disposition of the property valued. See 11 U.S.C. § 506(a). The purpose of valuation here is cram-down for plan confirmation and, thus, classification of Creditor's claim as a Class 2(B) claim under the plan filed January 24, 2020. Dkt. 3 at p.3, § 3.08. However, based on the rulings sustaining objections to confirmation at Items #3, AP-1, and #4, DPC-1, which incorporate the court's prior ruling of March 17, 2020, dkt. 47, the plan is not feasible, is not confirmable, and therefore is not confirmed. The motion to value is therefore moot and will be denied without prejudice as such.

Nonetheless, Debtor shall provide Creditor with access to the Property and its interior on a date after May 3, 2020, in light of current COVID-19 shelter-in-place order(s).

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

The court will enter a minute order.

6. [17-25411](#)-B-13 JAMES/LILLIE JOHNSON  
[RAS](#)-1 Mary Ellen Terranella

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-6-20 [[103](#)]

DEUTSCHE BANK NATIONAL TRUST  
COMPANY VS.

### **Final Ruling**

Secured creditor, Deutsche Bank National Trust Company, as Trustee for Carrington Mortgage Loan Trust, Series 2005-OPT2, Asset Backed Pass-Through Certificates Series 2005-OPT2 ("Creditor") moves for relief from the automatic stay of 11 U.S.C. § 362(a) pursuant to § 362(d)(1) for cause. Creditor asserts that debtors James and Lillie Johnson ("Debtors") have defaulted on their obligation under a promissory note secured by the Debtors' real property located at 2796 Elmhurst, Fairfield, California ("Property") and it is not adequately protected. Docket 103. The Chapter 13 Trustee filed a non-opposition to the motion. Dkt. 109. The Debtors oppose the motion. Dkt. 112.

The court has determined this matter may be decided on the papers. See General Order No. 612 at 2, ¶ 2 (E.D. Cal. March 18, 2020) (ordering all civil matters to be decided on the papers due to courthouse closure and national COVID-19 crisis). 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 therefore issues this Final Ruling. Findings of fact and conclusions are set forth below. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

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

Creditor's motion requests relief the court has already granted. Creditor is a Class 4 creditor under the Debtor's modified plan. Dkts. 53 at § 3.10, 112 at 2:18. The modified plan was confirmed on April 2, 2019. Dkt. 99. The modified plan states that "[u]pon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are . . . (2) modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract[.]" Dkt. 53 at § 3.11(a)(2).

In short, there is no need for the court to terminate the automatic stay as Creditor requests because all stays were modified as of April 2, 2019, to permit Creditor to exercise its rights under applicable non-bankruptcy law in the event of the Debtors' default. In other words, Creditor has already been granted all the relief to which it is entitled making the current motion unnecessary and the relief requested in it moot. Creditors' motion is therefore denied as such.

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

The court will enter a minute order.

7. [20-20814](#)-B-13 PATRICK EASTER AND TINA MOTION TO VALUE COLLATERAL OF  
[JJC](#)-1 GUEVARA-EASTER REGIONAL ACCEPTANCE CORPORATION  
Julius J. Cherry 2-26-20 [[13](#)]

### **Final Ruling**

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

The court's decision is to value the secured claim of Regional Acceptance Corporation at \$13,175.00.

Debtors' motion to value the secured claim of Regional Acceptance Corporation ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2014 Chrysler 300S ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$13,175.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' 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. 6-1 filed by Regional Acceptance Corporation 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 on June 30, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$30,463.86. 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 \$13,175.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.

**Final Ruling**

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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.



### **Final 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). Nonetheless, the court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on February 19, 2020, after the Debtor failed to obtain confirmation of an amended plan within 60 days of the date of the entry of the court's order denying confirmation of the Debtor's plan (case no. 18-25574, dkts. 86, 87). 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 Debtor states that her prior plan failed because she was unable to confirm a modified plan due to her delinquency in plan payments. The delinquency occurred due to unexpected major car repairs including a new alternator and battery, and the loss of one of her care-taker clients through In Home Health Services/State of California. Debtors contends that her circumstances have changed because the vehicle repairs have been made, she now has a new care-taker client, and her income is higher in the present case. Additionally, she has started receiving social security benefits in the amount of \$824.00 per month, which will help her in making plan payments that are now less than the amount proposed in the modified plan in her previous case.

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

10. [20-20722](#)-B-13 ANTHONY/KAYLA YAZZIE OBJECTION TO CONFIRMATION OF  
[VVF](#)-1 Peter G. Macaluso PLAN BY AMERICAN HONDA FINANCE  
CORPORATION  
2-24-20 [[20](#)]

CONTINUED TO 5/05/2020 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTORS'  
MOTION TO VALUE COLLATERAL OF AMERICAN HONDA FINANCE.

**Final Ruling**

No appearance at the April 7, 2020, hearing is required. The court will enter a minute  
order.

11. [19-27025](#)-B-13 JOSEPH BENEFIELD  
[JLZ](#)-1 Jon L. Zitomer

OBJECTION TO NOTICE OF  
POSTPETITION MORTGAGE FEES,  
EXPENSES, AND CHARGES  
3-3-20 [[15](#)]

### **Final Ruling**

The court has before an Objection to Postpetition Mortgage Fee Charged by Union Bank filed by debtor Joseph Benefield ("Debtor"). Debtor objects to a Notice of Postpetition Mortgage Fees, Expenses, and Charges filed by creditor MUFG Union Bank, fka Union Bank, NA ("Creditor") which includes a \$950.00 charge for reviewing the proof of claim and plan review. Debtor states that Creditor is properly classified as a Class 4 claim, no response of any kind was required by Creditor, and there is no reason why review of the plan would have required more than 15 minutes to figure that out.

Creditor filed a response stating it attempted to contact Debtor's counsel to resolve the matter but a voice mail indicated his office is closed until April 6, 2020. Creditor states the fees are consistent with fees charged in bankruptcy cases and Fannie Mae guidelines. However, to resolve the objection, Creditor offers to waive half of the fee and file an amended notice. An Amended Notice of Postpetition Mortgage Fees, Expenses, and Charges was filed on March 24, 2020, in which fees are \$457.00.

The court has determined this matter may be decided on the papers. See General Order No. 612 at 2, ¶ 2 (E.D. Cal. March 18, 2020) (ordering all civil matters to be decided on the papers due to courthouse closure and national COVID-19 crisis). 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(c).

Creditor's amended notice supercedes its initial notice to which the Debtor's objection relates. Debtor's objection is therefore moot and is overruled as such.

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

The court will enter a minute order.

12. [20-20634](#)-B-13 DEEANNE HELTON AND MOTION TO CONFIRM PLAN  
[FF-2](#) MICHAEL COOPER 3-3-20 [[25](#)]  
Gary Ray Fraley

CONTINUED TO 4/21/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 4/16/2020.

**Final Ruling**

No appearance at the April 7, 2020, hearing is required. The court will enter a minute order.

13. [20-20435](#)-B-13 JOHN EPPS AND NICOLE  
[CAS](#)-1 GAGETTA  
**Thru #15** Peter G. Macaluso  
OBJECTION TO CONFIRMATION OF  
PLAN BY CAPITAL ONE AUTO  
FINANCE  
3-11-20 [[21](#)]

**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.

The court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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 Capital One Auto Finance. That motion is heard at Item 15, PGM-1, and granted.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed January 27, 2020, is confirmed.

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

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

The court will enter a minute order.

14. [20-20435](#)-B-13 JOHN EPPS AND NICOLE  
[DPC](#)-1 GAGETTA  
Peter G. Macaluso  
OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
3-11-20 [[25](#)]

**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.

The court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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 Capital One Auto Finance. That motion is heard at Item 15, PGM-1, and granted.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed January 27, 2020, is confirmed.

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

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

The court will enter a minute order.

15. [20-20435](#)-B-13 JOHN EPPS AND NICOLE MOTION TO VALUE COLLATERAL OF  
[PGM-1](#) GAGETTA CAPITAL ONE AUTO FINANCE  
Peter G. Macaluso 3-10-20 [[16](#)]

### **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 has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

The court's decision is to value the secured claim of Capital One Auto Finance at \$9,570.00.

Debtors' motion to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2013 Ford F150 ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$9,570.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 9-1 filed by Capital One Auto Finance, a division of Capital One, N.A., is the claim which may be the subject of the present motion.

### **Opposition**

Creditor has filed an opposition asserting a value of \$14,715.00. In support of this valuation, Creditor has filed as an exhibit a Kelley Blue Book printout which lists a private party value and range and a blank declaration.

### **Discussion**

The private party value suggested by the Creditor cannot be relied upon by the court to establish the Vehicle's replacement value. Section 506(a)(2) asks for "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." The Creditor does not provide evidence of the price a retail merchant would charge but rather that of a private party. Therefore, the court gives no weight to the Creditor's valuation.

Creditor's other (and much larger) problem is that there is no name of any individual on the declaration Creditor filed in support of its opposition, i.e., the line "I

\_\_\_\_\_, declare as follows:" appears as quoted - blank. The declaration is also not signed by an individual, presumably, because there is no name of an individual who purportedly submitted the declaration. Creditor's blank declaration is tantamount to no declaration at all. Creditor has therefore not submitted any admissible evidence of the Vehicle's value contrary to the Debtors' opinion. And in the absence of contrary evidence, the court accepts the Debtors' opinion of Vehicle's value as conclusive. *Enewally*, 368 F.3d at 1173.

The lien on the Vehicle's title secures a purchase-money loan incurred on May 6, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$23,568.17. 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 \$9,570.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.

**Final Ruling**

The motion 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.

Because the modified plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

The modified plan fails to specify a cure of the post-petition arrearage, including a specific post-petition arrearage amount, interest rate, and monthly dividend, owed to US Bank Home Mortgage listed in Class 1 of the previously confirmed plans for the month of November 2019 in the amount of \$1,064.32. The Trustee is therefore unable to fully comply with § 3.07(b) of the plan.

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

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

The court will enter a minute order.



17. [20-20446](#)-B-13 DENA NOEL  
[EAT](#)-1 Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
3-24-20 [[25](#)]

DEBTOR DISMISSED:  
02/18/2020

WELLS FARGO BANK, N.A. VS.

### **Final Ruling**

The court has before it a motion to annul the automatic stay of 11 U.S.C. § 362(a) filed by Wells Fargo Bank, N.A. ("Creditor"). The motion is not opposed by Debtor Dena Noel ("Debtor") and, as explained below, for good reason.

The court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). And for good reason, again explained below, additional briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

### Background

On or about March 11, 2011, the Debtor executed a promissory note secured by a first priority deed of trust recorded against real property located at 1836 Maryland Ave., West Sacramento, California ("Property"). The Debtor subsequently died on January 11, 2018.

Following a default under the note and deed of trust, Creditor commenced non-judicial foreclosure proceedings against the Property. A notice of default was recorded on August 14, 2019. A notice of trustee's sale was recorded on November 12, 2019. A foreclosure sale was initially set for December 17, 2019, but thereafter continued to January 28, 2020. The sale occurred at 1:20 p.m. on January 28, 2020, at which time the Property was sold to a third-party bidder.

Meanwhile, at 12:54 p.m. on January 28, 2020, unbeknownst to Creditor, someone filed the petition that commenced this case in the Debtor's name. Obviously, the petition could not have been filed by a deceased debtor. A few case-related documents listing Creditor as the only creditor in the case were also filed with the petition. The case was subsequently dismissed on February 18, 2020, for failure to timely file documents.

### Discussion

The court retains jurisdiction to annul the automatic stay despite dismissal of the case. *Johnson v. TRE Holdings LLC (In re Johnson)*, 346 B.R. 190, 194 (9th Cir. BAP 2006) (stating that after a case is dismissed the court may annul the automatic stay and thereby retroactively ratify an act that otherwise violates the stay). The court may annul the automatic stay for cause. See 11 U.S.C. § 362(d)(1). The court considers the *Fjeldsted* factors when determining whether an annulment of the automatic stay for cause is warranted. See *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 24-25 (Bankr. 9th Cir. 2003) (factors to consider in granting annulment). Several of those factors weigh in favor of an annulment here.

The circumstances of this case are indicative of an intent to hinder and delay Creditor in that someone other than the Debtor filed the petition that commenced this case. Creditor was unaware that the petition that commenced this case was filed 26 minutes before its foreclosure sale occurred. Within weeks of learning of this case, Creditor sought appropriate relief from this court. Attempting to unwind foreclosure at this point would result in substantial economic prejudice to the innocent third-party bidder who appears to have purchased the Property in good faith at what by all accounts was a properly-conducted foreclosure sale. And the Debtor obviously cannot be harmed by retroactive relief because there is no Debtor to harm.

### Conclusion

For the foregoing reasons, Creditor's motion is granted and the automatic stay is annulled retroactive to the date and the time the petition that commenced this case was filed, *i.e.*, 12:54 p.m. on January 28, 2020. Annulment validates Creditor's foreclosure and the sale of the Property to the third-party bidder. The 14-day stay of Rule 4001(a)(3) is waived. All other relief is denied.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes and the automatic stay is annulled retroactive to 12:54 p.m. on January 28, 2020.

The court will enter a minute order.

**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 to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

The Chapter 13 Trustee objects to confirmation of the plan on grounds that the "Nonstandard Provisions" is not attached to the plan despite Section 1.02 indicating that there are nonstandard provisions. Due to the missing nonstandard provisions, the Trustee is unclear what the plan payments should be. The Trustee does not oppose granting modification of the plan if the only terms missing from the nonstandard provisions were the plan payment terms stated in the motion.

Debtors filed a response stating that they inadvertently e-filed the plan without the attached Nonstandard Provisions. Debtors have filed a copy of the plan with the subject attachment as exhibit A, docket 68. The Nonstandard Provisions reiterate the terms stated in the motion and further provide that all previous disbursements made by the Trustee to Class 2 creditors are hereby authorized. There are no changes to plan filed February 28, 2020.

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

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

The court will enter a minute order.

**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.

Because the amended plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

The Debtors' plan proposes to pay interest on arrears to Franklin Credit Management in Class 1. This creditor is not entitled to interest under 11 U.S.C. § 1322(e) unless the note provides for interest on late payments or applicable non-bankruptcy law requires it. The Debtors have not demonstrated either.

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 ruling appended to the minutes.

The court will enter a minute order.

20. [20-20151](#)-B-13 DEBORAH CHILDRESS  
[DPC](#)-2 George T. Burke

OBJECTION TO DEBTORS 11 U.S.C.  
SEC. 1328 CERTIFICATION BY  
DAVID CUSICK  
3-4-20 [[18](#)]

### **Final Ruling**

The objection 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 objection is sustained and the Debtor is not entitled to a discharge.

The Trustee objects to Debtor' §1328 certificate, which certifies eligibility for a Chapter 13 Discharge because she has "not received a Discharge in a Chapter 7 . . . Bankruptcy case filed within four (4) years prior to filing this case." In fact, Debtor did receive a Chapter 7 discharge on July 24, 2019, which is within four years preceding the filing of this bankruptcy case. See case no. 19-22418. Therefore, Debtor is not entitled to a discharge in this case.

For the foregoing reasons, the Debtor is not entitled to a discharge.

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

The court will enter a minute order.

21. [19-27653](#)-B-13 JUAN ZARAGOZA AND MARIA MOTION TO CONFIRM PLAN  
[HDR-2](#) GARCIA 2-27-20 [[34](#)]  
Harry D. Roth

### **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.

Because the amended plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

The Debtors have not filed a motion to value collateral of Ally Bank, which is required to reduce the secured claim from the estimated \$19,323.42 to \$9,500.00. Unless a motion to value is filed and granted, Debtors' plan will take at least 71 months to complete; this exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

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 ruling appended to the minutes.

The court will enter a minute order.

22. [20-20054](#)-B-13 DAVID/LISA EUFEMIA  
[HDP](#)-1 CARLSON  
Robert P. Huckaby  
TITLE HOLDING SERVICES CORP.  
VS.

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
2-24-20 [[41](#)]

### **Final Ruling**

Title Holding Services Corp., as Trustee of Paragon Strategic Trust THSC 14-101 ("Creditor") moves for relief from automatic stay of 11 U.S.C. § 362(a) as to real property located at 1468 Apple Valley Drive, Lake Tahoe, California ("Property"). Debtors are delinquent 130 pre-petition payments totaling \$65,567.07 and 1 post-petition payments totaling \$659.05. Debtors' equity in the property is \$91,744.00 or 21.59%, total liens are \$333,256, and Creditor's valuation of the property is \$425,000.

The Chapter 13 Trustee filed a response stating the status of the case, but nothing that is necessarily in favor of granting or denying Creditor's motion.

Debtors David and Lisa Carlson ("Debtors") oppose the motion. Debtors state that they have filed an objection to Creditor's claim, which is set for May 5, 2020. On May 24, 2020, they also filed an adversary proceeding, adv. no. 20-02031, to avoid Creditor's lien and invalidate its right to foreclosure on the Debtors' real property on the basis Creditor lacks standing to foreclose. Debtors argue that they have sufficient equity in the property and that granting relief from stay would be premature. Moreover, Debtors state that should the objection to Creditor's claim or the action to avoid creditor's lien be denied, they will provide for the Creditor in an amended plan.

Creditor rejects Debtors' arguments and states that if the Debtors wish to succeed on the present motion for relief from stay, they should file an amended plan that cures the arrears and catches up on post-petition payments.

The court has determined this matter may be decided on the papers. See General Order No. 612 at 2, ¶ 2 (E.D. Cal. March 18, 2020) (ordering all civil matters to be decided on the papers due to courthouse closure and national COVID-19 crisis). 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 deny the motion without prejudice.

The court initially notes that Debtors' Florida law foreclosure standing argument appears to lack merit and border on the frivolous. The court makes this observation not as a final determination but, rather, as a caution to the Debtors and their attorney that either or both will be sanctioned under Fed. R. Bankr. P. 9011 and/or the court's inherent authority if the court ultimately finds in Creditor's favor on this issue in the context of the claim objection or adversary proceeding and determines that Creditor does in fact have standing under California law to foreclose.

That said, because there is equity in the Property there is no basis for relief under § 362(d)(2). Creditor also has not submitted evidence of a scheme by the Debtors to hinder, delay, or defraud which means relief under § 362(d)(4) (as stated on the § 362 information sheet) is also unwarranted. That leaves § 362(d)(1).

Failure to make post-petition payments is cause under § 362(d)(1). *Dangcil v. JP Morgan Chase Bank, N.A. (In re Dangcil)*, 2017 WL 1075045, \*8 (9th Cir. BAP 2017) (internal quotations and citations omitted). Here, however, by Creditor's own admissions it is protected by a 21.59% equity cushion. An equity cushion in excess of 20% provides adequate protection, even in the absence of payments. See *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396 (9th Cir. 1984). Creditor is therefore adequately protected- at least for the short-term. Creditor's motion is therefore denied without prejudice.

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

The court will enter a minute order.



## **Final Ruling**

### Introduction

The court has before it a motion for compensation filed by attorney Richard Kwun as the attorney of record in this Chapter 13 case filed by debtor Steven Slater ("Debtor"). Dkt. 48. Mr. Kwun seeks attorney's fees in the amount of \$3,375.50 for 12.1 hours of work at \$275.00 per hour. The work was performed by Mr. Kwun in his capacity as a purported partner of an Illinois law firm by the name of Allen Chern, LLP ("Chern Law"). The Chapter 13 Trustee ("Trustee") opposes the motion on the basis that, among other reasons, the motion fails to identify who at Chern Law performed pre-petition services for the Debtor. Dkt. 53. Mr. Kwun filed a reply. Dkt. 56.

The court has determined this matter may be decided on the papers. See General Order No. 612 at 2, ¶ 2 (E.D. Cal. March 18, 2020) (ordering all civil matters to be decided on the papers due to courthouse closure and national COVID-19 crisis). 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 Trustee's objection has merit, it will be sustained, and the motion be denied without prejudice.

### Discussion

Mr. Kwun holds himself out as a partner of Chern Law. Indeed, he signed the Debtor's petition and filed this Chapter 13 case in that capacity. Dkt. 1 at 7.

The circumstances surrounding Mr. Kwun's fee motion are identical to the circumstances in three other cases in which this court addressed compensation for another Chern Law partner. See e.g., *In re Gary Vitalie*, 19-23098 at Dkts. 64-65; *In re David Carter*, 19-23222 at Dkts. 54-55; and *In re Lucia Salas*, 19-23827 at Dkts 52-53). In *Vitalie*, *Carter*, and *Salas* the court issued detailed rulings that, among other things, required the identification of any individual (attorney or non-attorney) at Chern Law who performed pre-petition services for the debtor along with time and task records for the individual performing the service(s). *Id.* During a hearing held in this case on February 18, 2020, the court made its rulings in the *Vitalie*, *Carter*, and *Salas* cases equally applicable to this case. Dkt. 44 (audio).

Mr. Kwun states that he seeks compensation for no one other than himself. Dkt. 56 at 1:16-17. Yet, he also states that "[t]he amount claimed by Applicant includes the \$2,175.00 paid by debtor pre petition [sic]" *Id.* at 2:18-19. The \$2,175.00 the Debtor paid pre-petition was paid to Chern Law in Illinois. See e.g., dkt. 1, SOFA #16. And based on the partnership agreement the court reviewed in the *Vitalie*, *Carter*, and *Salas* matters, which is the same agreement that governs here, the court is aware that someone at Chern Law, whether attorney or non-attorney, provided pre-petition services to the Debtor. So contrary to Mr. Kwun's statement, it does appear that Mr. Kwun is in fact requesting compensation for pre-petition services performed by others at Chern Law. He has, however, failed to comply with this court's order insofar as he has not identified the individual(s) at Chern Law who provided pre-petition services to the Debtor for which compensation is sought. The motion will therefore be denied without prejudice.

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

IT IS FURTHER ORDERED that Mr. Kwun shall file proof that the \$2,175.00 the Debtor paid Chern Law for pre-petition services has been returned to the Debtor as ordered on February 18, 2020. Proof that the funds have been returned to the Debtor shall be filed by April 14, 2020. Failure to do so will result in sanctions.

The court will enter a minute order.

24. [20-20658](#)-B-13 BERNARDO/RACHAEL HUBBARD OBJECTION TO CONFIRMATION OF  
[DPC](#)-1 Susan J. Turner PLAN BY DAVID P CUSICK  
3-18-20 [[27](#)]

**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). A written reply was filed by the Debtors.

The court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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 Ally Financial. That motion was heard on March 10, 2020, and the court entered an order granting the motion to value on April 2, 2020.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed February 5, 2020, is confirmed.

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

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

The court will enter a minute order.

25. [20-20759](#)-B-13 MALIK JOHNSON MOTION TO VALUE COLLATERAL OF  
[MJD](#)-2 Matthew J. DeCaminada SANTANDER CONSUMER USA  
3-2-20 [[22](#)]

### **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 Santander Consumer USA at \$11,500.00.

Debtor's motion to value the secured claim of Santander Consumer USA ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Chrysler 300 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$11,500.00 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).

A non-opposition was filed by the Trustee. No opposition was filed by the Creditor.

### **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 lien on the Vehicle's title secures a purchase-money loan incurred in February 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$22,365.25. 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 \$11,500.00. *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.

26. [19-27461](#)-B-13 RICHARD ACOSTA MOTION TO CONFIRM PLAN  
[MOH](#)-2 Michael O'Dowd Hays 2-13-20 [[39](#)]

**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.

Because the amended plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

First, although various changes have been made in the first amended plan, the Debtor still as not addressed or resolved the objections raised by the Trustee and creditor Deutsche Bank. These include an objection regarding Debtor's real property interest and transfers as to 3235 and 3237 Dry Creek Road, speculative income of \$2,820.00 from Schedules I and J that is insufficient to pay the new monthly plan payment of \$3,973.00, and class treatment of Deutsche Bank.

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 ruling appended to the minutes.

The court will enter a minute order.

27. [15-25365](#)-B-13 DEA MCKEE  
[MC-6](#) Muoi Chea

MOTION TO MODIFY PLAN  
3-2-20 [[119](#)]

### **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.

28. [20-20368](#)-B-13 ROMY OSTER OBJECTION TO CONFIRMATION OF  
[DPC](#)-1 Mark W. Briden PLAN BY DAVID P. CUSICK  
**Thru #29** 3-16-20 [[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 to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$2,500.00, which represents approximately 1 plan payment. An additional payment of \$2,500.00 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6). Even if the Debtor is current, the plan is still not confirmable for the reason stated in the ruling at Item #29, RPZ-1.

The plan filed January 23, 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 ruling appended to the minutes.

The court will enter a minute order.

29. [20-20368](#)-B-13 ROMY OSTER OBJECTION TO CONFIRMATION OF  
[RPZ](#)-1 Mark W. Briden PLAN BY FEDERAL HOME LOAN  
MORTGAGE CORPORATION  
3-19-20 [[21](#)]

**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 to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

Objecting creditor Federal Home Loan Mortgage Corporation holds a deed of trust secured

by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$25,279.43 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 payment in full of the arrearage as well as 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 January 23, 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 ruling appended to the minutes.

The court will enter a minute order.



30. [19-27880](#)-B-13 JONATHAN GARCIA CONTINUED OBJECTION TO  
[DPC](#)-1 Richard L. Jare CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
2-12-20 [[28](#)]

CONTINUED TO 5/5/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF  
CREDITORS SET FOR 4/23/2020.

**Final Ruling**

No appearance at the April 7, 2020, hearing is required. The court will enter a minute  
order.

31. [20-20194](#)-B-13 FLORA BROUGHTON CONTINUED OBJECTION TO  
[DPC](#)-1 Peter G. Macaluso CONFIRMATION OF PLAN BY DAVID  
**Thru #34** CUSICK  
3-4-20 [[26](#)]

**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 to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

The court's decision is to sustain the objection and not confirm the plan.

Feasibility depends on the granting of a motion to value collateral and/or avoid lien of Bosco Credit c/o Franklin Credit Management Corp. That matter is heard at Item #33, PGM-1, and is denied without prejudice.

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

The court will enter a minute order.

32. [20-20194](#)-B-13 FLORA BROUGHTON CONTINUED OBJECTION TO  
[LBJ](#)-1 Peter G. Macaluso CONFIRMATION OF PLAN BY BOSCO  
CREDIT LLC  
2-18-20 [[23](#)]

**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). A 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 to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

The court's decision is to sustain the objection and not confirm the plan.

Feasibility depends on the granting of a motion to value collateral and/or avoid lien of Bosco Credit c/o Franklin Credit Management Corp. That matter is heard at Item #33, PGM-1, and is denied without prejudice.

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

minutes.

The court will enter a minute order.

33. [20-20194](#)-B-13 FLORA BROUGHTON MOTION TO VALUE COLLATERAL OF  
[PGM](#)-1 Peter G. Macaluso BOSCO CREDIT, LLC  
3-6-20 [[30](#)]

### **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 has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

Debtor's motion to value the secured claim of Bosco Credit, LLC ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 5505 Jilson Way, Elk Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of \$510,000.00 as of the petition filing date. According to the Broughton Declaration, this valuation is based on reviewing local comparable sales of homes in the neighborhood, consulting with a realtor and/or broker, and personal calculation of necessary repairs. 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).

### **Opposition**

Creditor filed an opposition arguing that the Debtor's motion is not supported by admissible evidence because it is not based on personal knowledge but relies on inadmissible hearsay and the improper expert opinion of a realtor and/or broker. The Debtor also does not set forth her ability or education to make a market analysis of comparable sales. Nor does the Debtor provide any quotes from contractors, photographs, or documentation to support the need for repairs to the Property.

Creditor requests additional time to obtain its own interior inspection and appraisal of the Property and to submit additional supplemental evidence in opposition to the motion.

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 5-1 filed by Bosco Credit, LLC is the claim which may be the subject of the present motion.

### **Discussion**

The court finds issue with Debtor's valuation. The Broughton Declaration states that

the value is based on reviewing local comparable sales of homes in the neighborhood and consulting with a realtor and/or broker. In other words, the Debtor's lay opinion of value is based on hearsay and is therefore inadmissible. Fed R. Evid. 801-803; see also *In re Guerra*, 2008 WL 3200931, \*2 n.4 (Bankr. E.D. Cal. 2008). Additionally, Debtor fails to provide any quotes from contractors, photographs, or documentation to support her calculation and deduction for repairs to the Property. Therefore, the court does not give any weight to the Debtor's valuation. As a result, the Debtor has failed to satisfy her burden on the issue of value. The motion will therefore be denied without prejudice.

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

The court will enter a minute order.

34. [20-20194](#)-B-13 FLORA BROUGHTON MOTION TO VALUE COLLATERAL OF  
[PGM-2](#) Peter G. Macaluso CARMAX AUTO FINANCE  
3-6-20 [[35](#)]

### **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).

The court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(f).

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

Debtor's motion to value the secured claim of Carmax Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2017 Hyundai Santa Fe ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$10,000.00 as of the petition filing date. Debtor's opinion of value may be evidence of value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

A non-opposition was filed by the Trustee. No opposition was filed by the Creditor. However, the absence of an opposition does not necessarily mean a motion will automatically be granted. *Rivas-Almendarez v. Holder*, 362 Fed. Appx. 606 (9th Cir. 2010). Even an unopposed motion must have merit and there must be a basis for the court to grant the relief requested. See generally, *In re Bassett*, 2019 WL 993302, \*5 (Bankr. E.D. Cal. 2019). The motion fails in both respects.

### **Proof of Claim Filed**

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

### **Discussion**

The court finds issue with Debtor's valuation. The Broughton Declaration filed in

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support of the motion states that the Debtor's opinion of value is based on reviewing "local newspapers and trade articles, web sites such as Kelley Blue Book and NADA." Dkt. 38 at 1:27-28. In other words, the Debtor's lay opinion of value is based on hearsay and is therefore inadmissible. Fed R. Evid. 801-803; *see also In re Guerra*, 2008 WL 3200931, \*2 n.4 (Bankr. E.D. Cal. 2008). As a result, the Debtor has failed to satisfy her burden on the issue of value. The motion will therefore be denied without prejudice.

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

The court will enter a minute order.

35. [19-27597](#)-B-13 PAVEL LISETSKY CONTINUED OBJECTION TO  
[DPC](#)-2 Pro Se CONFIRMATION OF PLAN BY DAVID P  
CUSICK  
1-29-20 [[22](#)]

CONTINUED TO 5/05/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 4/30/2020.

**Final Ruling**

No appearance at the April 7, 2020, hearing is required. The court will enter a minute order.

36. [17-25899](#)-B-13 CARLOS/ROBIN ROBLES  
[CYB](#)-7 Candace Y. Brooks

MOTION TO MODIFY PLAN  
3-3-20 [[126](#)]

### **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.

37. [19-26558](#)-B-13 JOSE HERNANDEZ MURGUIA MOTION TO INCUR DEBT O.S.T.  
[JCK](#)-2 AND BRIDGETTE HERNANDEZ 3-26-20 [[20](#)]  
Kathleen H. Crist

### **Final Ruling**

The Debtors having filed a notice of withdrawal of their motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

The court will enter a minute order.