

**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**

**DAY: TUESDAY**

**DATE: May 7, 2019**

**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

**May 7, 2019 at 1:00 p.m.**

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1. [19-21100](#)-B-13 ZARLAKHTA HOTAK  
[JPJ](#)-1 James L. Keenan  
OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
4-2-19 [[14](#)]

**Tentative Ruling**

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

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

First, the Debtor does not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective November 9, 2018.

Second, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Debtor has claimed an improper deduction at line 29 of the Calculation of Disposable Income (Form 122C-2) in the amount of \$1,500.00 for her son's private school tuition but the Debtor may only take a deduction of \$160.42 per child. Additionally, the Statement of Current Monthly Income (Form 122C-1) includes an improper marital adjustment at line 13 in the amount of \$1,200.00. This amount was determined to be the non-filing spouse's credit card debt incurred for the family's ordinary household expenses. Taking into account these improper amounts, the correct monthly income at line 15 of Form 122C-1 is \$13,612.00, and the correct adjustment at line 44 of Form 122C-2 is \$11,091.12. Therefore the plan must pay no less than \$151,252.80, or 100%, to general unsecured creditors.

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

The plan filed February 25, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

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

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

**May 7, 2019 at 1:00 p.m.**

The court will enter a minute order.

2. [18-23901](#)-B-13 DAN/MEGHAN MILLER OBJECTION TO CONFIRMATION OF  
Thru #4 Peter G. Macaluso PLAN BY JPMORGAN CHASE BANK,  
N.A.  
4-23-19 [[65](#)]

**No Ruling**

3. [18-23901](#)-B-13 DAN/MEGHAN MILLER MOTION TO MODIFY PLAN  
PGM-3 Peter G. Macaluso 4-1-19 [[51](#)]

**No Ruling**

4. [18-23901](#)-B-13 DAN/MEGHAN MILLER MOTION TO APPROVE LOAN  
PGM-4 Peter G. Macaluso MODIFICATION  
4-6-19 [[57](#)]

**Final Ruling**

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

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

Debtors seek court approval to incur post-petition credit. JPMorgan Chase Bank, N.A. ("Creditor"), whose claim the plan filed September 13, 2018, provides for in Class 1, has agreed to a trial loan modification. Under the terms, after all trial period payments are timely made and the Debtors have continued to make all eligibility requirements of the modification program, the mortgage will be permanently modified. Debtors are required to make three payments each in the amount of \$1,454.05. The first payment is due May 1, 2019, and the last payment is due July 1, 2019. Any difference between the amount of the trial period payments and the regular mortgage payments will be added to the balance of the loan along with any other past due amounts.

The motion is supported by the Declaration of Daniel Miller and Meghan Miller. The Declaration affirms Debtors' desire to obtain the post-petition financing and states that the modification will increase the distribution to unsecured creditors from 0% to 5%.

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

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

The court will enter a minute order.

5. [19-21202](#)-B-13 ROBERT/AMY MOORE  
[JPJ](#)-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-29-19 [[12](#)]

**Final Ruling**

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

There being no other objection to confirmation, the plan filed February 28, 2019, will be confirmed.

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

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

The court will enter a minute order.

6. [18-26104](#)-B-13 VERNON/JAMIE JIMMERSON MOTION TO CONFIRM PLAN  
[FF-2](#) Gary Ray Fraley 4-2-19 [[58](#)]

**No Ruling**

7. [18-27106](#)-B-13 EVELYN ZIELESCH MOTION TO MODIFY PLAN  
[MRL](#)-1 Mikalah R. Liviakis 3-23-19 [[21](#)]

WITHDRAWN BY M.P.

**Final Ruling**

The Debtor having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

The court will enter a minute order.

8. [15-24907](#)-B-13 YVONNE SILVEIRA  
Scott J. Sagaria

MOTION TO SUBSTITUTE ATTORNEY  
4-17-19 [[62](#)]

**Final Ruling**

The motion is brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). However, no proof of service was filed. Therefore, the motion to substitute attorney is dismissed without prejudice.

The court will enter a minute order.



9. [19-20007](#)-B-13 NICHOLAS BONANNO OBJECTION TO CONFIRMATION OF  
[GLF](#)-3 Marc Voisenat PLAN BY THE SOCOTRA OPPORTUNITY  
**Thru #11** FUND, LLC  
4-22-19 [[59](#)]

**No Ruling**

10. [19-20007](#)-B-13 NICHOLAS BONANNO MOTION TO CONFIRM PLAN  
[MEV](#)-1 Marc Voisenat 3-21-19 [[44](#)]

**No Ruling**

11. [19-20007](#)-B-13 NICHOLAS BONANNO OBJECTION TO CLAIM OF LVNV  
[MEV](#)-2 Marc Voisenat FUNDING, LLC, CLAIM NUMBER 3  
3-22-19 [[49](#)]

**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. 3-1 of LVNV Funding, LLC and the claim is disallowed in its entirety.

Nicholas Bonanno, the Chapter 13 Debtor ("Objector"), requests that the court disallow the claim of LVNV Funding, LLC ("Creditor"), Claim No. 3-1. The claim is asserted to be in the amount of \$4,325.34. 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 proof of claim, the last payment was received on or about February 8, 2007, which is more than four years prior to the filing of this case. Hence, when the case was filed on January 2, 2019, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

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

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

The court will enter a minute order.

12. [19-21107](#)-B-13 LARRY BELLANI  
AP-1 Michele M. Poteracke  
**Thru #14**

OBJECTION TO CONFIRMATION OF  
PLAN BY ABS REO TRUST V  
4-11-19 [[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 in part, sustain the objection in part, and deny confirmation.

Objecting creditor ABS REO Trust V holds a deed of trust secured by the Debtor's residence. The creditor asserts the Debtor impermissibly modifies the creditor's rights by failing to provide for ongoing post-petition payments and for \$21,004.19 in pre-petition arrearages. Although the creditor states that it will file a proof of claim prior to the claims bar deadline, the creditor provides no evidence to support the basis for the claimed pre-petition arrearages. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

However, the creditor's objection is sustained as to Debtor's plan not being feasible due to Debtor not having disposable income to fund the plan.

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

The objection is ORDERED OVERRULED IN PART and SUSTAINED IN PART for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

13. [19-21107](#)-B-13 LARRY BELLANI  
[CJO-1](#) Michele M. Poteracke

OBJECTION TO CONFIRMATION OF  
PLAN BY FIDELITY BANK  
4-11-19 [[24](#)]

**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.

Objecting creditor Fidelity Bank holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$14,794.33 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) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Additionally, the creditor's objection is sustained as to Debtor's failure to provide

alternative treatment for creditor's claim should the Debtor's primary residence fail to sell within the proposed eight months, and as to Debtor's plan not being feasible due to Debtor not having disposable income to fund the plan.

The plan filed March 11, 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.

14.	<a href="#"><u>19-21107</u></a> -B-13	LARRY BELLANI	OBJECTION TO CONFIRMATION OF
	<a href="#"><u>JPJ</u></a> -1	Michele M. Poteracke	PLAN BY JAN P. JOHNSON
			4-10-19 [ <a href="#"><u>17</u></a> ]

#### **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 plan cannot be assessed for feasibility because Debtor failed to file a detailed statement showing gross receipts and ordinary and necessary expenses related to his net income from rental property and/or operation of a business.

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

Third, the Debtor has not filed his 2015 and 2016 tax returns or provided copies to the Trustee. The Debtor has failed to cooperate with 11 U.S.C. § 521(a)(3).

Fourth, the Debtor does not have funds to pay the proposed plan payments since his monthly net income on Line 23C is \$-1,655.00 and his proposed plan payments are \$520.00. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed March 11, 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.

15. [19-21010](#)-B-13 CLARENCE COOK  
[JPJ](#)-1 John G. Downing  
**Thru #16**

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
3-29-19 [[19](#)]

**Tentative Ruling**

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

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on April 16, 2019. The confirmation hearing for the amended plan is scheduled for May 7, 2019. The earlier plan filed March 3, 2019, is not confirmed.

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

The court will enter a minute order.

16. [19-21010](#)-B-13 CLARENCE COOK  
[JPJ](#)-2 John G. Downing

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
4-1-19 [[24](#)]

**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 § 704.730 to exempt rental property located at 227-229 North 6th Street, San Jose, California, which he has not resided at since 2010, cash, six bank accounts, and Tesla stock. The Debtor is not entitled to claim his interest as exempt under § 704.730 because none of this property was his primary residence on the date the petition was filed.

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

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

The court will enter a minute order.

17. [19-21111](#)-B-13 JOSELITO HALLARE OBJECTION TO CONFIRMATION OF  
[CJO](#)-1 Arasto Farsad PLAN BY CENLAR FSB  
[Thru #18](#) 4-11-19 [[26](#)]

**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.

Objecting creditor Cenlar FSB holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$452.86 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) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed March 8, 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.

18. [19-21111](#)-B-13 JOSELITO HALLARE OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Arasto Farsad PLAN BY JAN P. JOHNSON  
4-10-19 [[23](#)]

**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 does not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective November 9, 2018.

The plan filed March 8, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

**Final Ruling**

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

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

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

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

The court will enter a minute order.

20. [19-21313](#)-B-13 VASILIOS TSIGARIS  
[JHW](#)-1 Marc A. Caraska  
**Thru #21**

OBJECTION TO CONFIRMATION OF  
PLAN BY SANTANDER CONSUMER USA,  
INC.  
4-9-19 [[15](#)]

**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.

Objecting creditor Santander USA, Inc. holds a secured interest in a 2016 Nissan NV200. The creditor has filed a timely proof of claim in which it asserts \$369.20 in pre-petition arrearages. The plan does not provide for creditor's claim or 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) & 1325(a)(5)(B). The plan cannot be confirmed.

The plan filed March 2, 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.

21. [19-21313](#)-B-13 VASILIOS TSIGARIS  
[JPJ](#)-1 Marc A. Caraska

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
4-10-19 [[19](#)]

**Tentative Ruling**

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

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

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

Second, the plan cannot be assessed for feasibility because Debtor failed to file a detailed statement showing gross receipts and ordinary and necessary expenses related to his net income from rental property and/or operation of a business.

Third, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) shows that the Debtor's monthly disposable income is \$3,713.61 and the Debtor must pay no less than \$222,816.60

to unsecured non-priority creditors. The plan will pay \$0.00 to unsecured non-priority creditors.

Fourth, the Debtor has not filed a spousal waiver of right to claim exemptions as requested by the Trustee at the meeting of creditors. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed March 2, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

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

The court will enter a minute order.



22. [19-21114](#)-B-13 LYNDA STOVALL  
[PGM](#)-2 Peter G. Macaluso  
**Thru #23**

MOTION TO VALUE COLLATERAL OF  
GOLDEN 1 CREDIT UNION  
4-2-19 [[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). 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 Golden 1 Credit Union at \$15,000.00.

Debtor's motion to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Hyundai Sonata Limited ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$15,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2-1 filed by Golden 1 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 on June 16, 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 \$24,772.48. 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 \$15,000.00. *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.

23. [19-21114](#)-B-13 LYNDA STOVALL  
[TGM](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY THE BANK OF NEW YORK  
MELLON  
3-25-19 [[20](#)]

### **No Ruling**

24. [19-21414](#)-B-13 JOSEPH PETERSON  
Thru #25 Catherine King

MOTION TO EXTEND AUTOMATIC STAY  
3-14-19 [[9](#)]

### **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 by the Trustee.

The court's decision is to deny 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 January 13, 2019, due to material default (case no. 18-22034, dkt. 19). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition. This calculates to April 6, 2019. Therefore, the hearing on May 7, 2019, is more than 30 days after the petition was filed. The hearing cannot be completed before the expiration of the 30-day period as required pursuant to 11 U.S.C. § 362(c)(3)(B). Therefore, the automatic stay of 11 U.S.C. § 362(a) has terminated in its entirety. *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011); *see also Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Additionally, the Debtor failed to disclose the filing of the previous case on the petition in this case. The Debtor has not fully and accurately provided all information required by the petition. The Debtor has not demonstrated that the petition was filed in good faith. The motion does not comply with 11 U.S.C. § 362(c)(3)(B).

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

The court will enter a minute order.

25. [19-21414](#)-B-13 JOSEPH PETERSON  
[JPJ](#)-1 Catherine King

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
4-16-19 [[20](#)]

### **Final Ruling**

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

There being no other objection to confirmation, the plan filed March 7, 2019, will be confirmed.

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

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

26. [19-20715](#)-B-13 DANIEL/MICHELE MILLS  
[MJD](#)-3 Matthew J. DeCaminada

OBJECTION TO CLAIM OF MERRICK  
BANK, CLAIM NUMBER 6  
3-13-19 [[30](#)]

### **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. 6-1 of Merrick Bank and the claim is disallowed in its entirety.

Daniel Mills and Michele Mills, the Chapter 13 Debtor ("Objectors"), request that the court disallow the claim of Merrick Bank ("Creditor"), Claim No. 6-1. The claim is asserted to be in the amount of \$1,065.74. Objectors assert 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 proof of claim, a charge off date is listed as January 31, 2012, which is more than four years prior to the filing of this case. Hence, when the case was filed on February 7, 2019, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

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

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

The court will enter a minute order.

27. [18-26916](#)-B-13 JERIMIAH CANNADAY  
[WSS](#)-2 W. Steven Shumway

MOTION TO CONFIRM PLAN  
3-14-19 [[57](#)]

CASE CLOSED: 04/24/2019

**Final Ruling**

The case was closed on April 24, 2019. The motion to confirm 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.

**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 the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

29. [19-20621](#)-B-13 MERCEDES MOYA-GRANT  
[JPJ](#)-1 Richard L. Jare

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
3-20-19 [[31](#)]

**Tentative Ruling**

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

The matter will be determined at the scheduled hearing.

This matter was continued from April 9, 2019, and again from April 23, 2019, to provide Debtor additional time to submit proof of her social security number to the Trustee pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

The court will enter a minute order.

### **Final Ruling**

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

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

The Debtor died in October of 2018 and Shawn Leighton has been the representative assisting the case to complete the discharge of the Debtor's debts. Secured creditors in this case have been paid in full, including Debtor's car loan with Bank of America. Payments actually made to unsecured creditors in this case total \$0, the total value of assets of the estate after deducting liens and exemptions is \$1,160.36, and the Trustee asserts that the liquidation value is \$4,519.00. Ms. Leighton proposes to pay an additional \$7,950.00 into the plan by April 15, 2019, providing unsecured creditors approximately \$4,519.00. Ms. Leighton will draw on her father's estate to pay these funds. Accordingly, the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate had been liquidated under Chapter 7 of the Bankruptcy Code on such date.

Ms. Leighton requests that the court enter a hardship discharge since the Debtor is no longer alive and able to make regular Chapter 13 plan payment since there is no income from the Debtor to support the plan payments.

### **Discussion**

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

Here, the Debtor has satisfied 11 U.S.C. § 1328(b)(1)-(3). The court finds that providing unsecured creditors approximately \$4,519.00 is not less than what they would have received in a Chapter 7 liquidation pursuant to 11 U.S.C. § 1328(b)(2).

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

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

The court will enter a minute order.



31. [19-20022](#)-B-13 RAYMOND/CHRISTINE BELCHER MOTION TO CONFIRM PLAN  
[PGM](#)-2 Peter G. Macaluso 4-1-19 [[50](#)]

**No Ruling**

32. [14-31025](#)-B-13 MARIO/MEDELYN BUENO  
[PGM](#)-1 Peter G. Macaluso

MOTION TO MODIFY PLAN  
3-25-19 [[42](#)]

**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.

34. [19-21127](#)-B-13 GERALDINE DEGUZMAN  
[JPJ](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
4-10-19 [[20](#)]

**Tentative Ruling**

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

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on April 26, 2019. The confirmation hearing, however, has not been set. Nonetheless, the earlier plan filed March 12, 2019, is not confirmed.

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

The court will enter a minute order.

35. [15-29529](#)-B-13 JEFFREY/JULIE ROGERS  
[JPJ](#)-2 Gerald B. Glazer

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
4-1-19 [[43](#)]

**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.

37. [16-28433](#)-B-13 TINA VAUNHEFFLYUNN  
[JLK](#)-1 James L. Keenan

MOTION TO REFINANCE  
4-23-19 [[26](#)]

**Final Ruling**

The motion is brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). However, no proof of service was filed nor the conditional loan approval from Caliber Home Loans. Therefore, the motion to refinance mortgage is dismissed without prejudice.

The court will enter a minute order.

38. [19-21233](#)-B-13 JOSE/LILIANA BENITEZ  
[BW-1](#) Gabriel E. Liberman

OBJECTION TO CONFIRMATION OF  
PLAN BY FOUNDATION FINANCE  
COMPANY  
4-4-19 [[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).

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

Subsequent to the filing of the Foundation Finance Company's objection, the Debtors filed an amended plan on April 25, 2019. The confirmation hearing for the amended plan is scheduled for June 4, 2019. The earlier plan filed February 28, 2019, is not confirmed.

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

The court will enter a minute order.



39. [17-24834](#)-B-13 PATRICIA LEMKE  
[PGM](#)-3 Peter G. Macaluso

CONTINUED OBJECTION TO CLAIM OF  
DARLA O'DEA, CLAIM NUMBER 5  
1-18-19 [[73](#)]

**No Ruling**

40. [18-20337](#)-B-13 CAROL SMITH  
[JPJ](#)-1 Barry H. Spitzer

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
3-26-19 [[19](#)]

**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 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.

### **Tentative Ruling**

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

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

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 1233 1st Avenue, Oroville, California ("Property").

Proposed purchaser Joseph Sanders has agreed to purchase the Property for \$216,000.00. Mr. Sanders currently resides in the property and is an acquaintance of a mutual friend. The purchaser was displaced by the Paradise Camp Fire. Mr. Sanders will pay \$2,000.00 as earnest money and shall acquire a new loan for \$166,000.00. Mr. Sanders shall pay \$48,000.00 at closing, with the closing date being May 31, 2019, unless extended pursuant to the terms of the contract. Neither party is employing a real estate broker or agent, and there will be no real estate agent fees. Debtor's father assisted Debtor with the paperwork and is not being paid in any way. The parties intend to retain the services of Timios Title and the Debtor's share of title company fees is estimated at \$1,000.00. The property is secured by an interest only first mortgage held by Donald Charles Steinsiek Investment Trust. The estimated pay off of this loan is \$94,500.

The Trustee has filed a response and, while not opposing the motion to sell, requests that the following provisions be included in the order approving the sale of real property:

1. The Trustee must approve any title company used in connection with the escrow.
2. The escrow is not permitted to close without the Trustee submitting a demand to the title company that complies with the Chapter 13 plan, or waives this right in writing.
3. The Debtor is required to provide the Trustee with all of the contact information for the title company upon opening of escrow.
4. The Trustee must approve the final closing statement prior to any close of escrow.
5. If any of these conditions are not met or the Trustee cannot participate in the escrow in a way that complies with the Chapter 13 plan, the Trustee can submit an ex parte application to the court explaining the issues and requesting that the motion to sell be denied.

At the time of the hearing the court will announce the proposed sale and request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

The court will enter a minute order.

43. [19-20938](#)-B-13 REUBEN MOHAMMED  
[DPB](#)-4 Douglas P. Broomell  
**Thru #45**

MOTION TO VALUE COLLATERAL OF  
CONSUMER PORTFOLIO  
4-9-19 [[54](#)]

### **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 set the matter for an evidentiary hearing subject to Local Bankr. R. 9017-1.

Debtor's motion to value the secured claim of Consumer Portfolio ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Chevrolet Silverado ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$10,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### **Proof of Claim Filed**

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

### **Opposition by Consumer Portfolio**

Creditor opposes the motion and asserts that the replacement value of the Vehicle is \$16,639.00. Creditor bases its valuation on a valuation report from the Kelley Blue Book. Dkt. 62, exh. 3.

### **Discussion**

Creditor is the lienholder of the Vehicle. Creditor asserts that the value of the Vehicle is approximately \$16,639.00 based on the value provided by Kelley Blue Book. In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). The retail value suggested by the Creditor cannot be relied upon by the court to establish the Vehicle's replacement value. This value assumes that the Vehicle is in good condition. This may not be the case.

Nor has the Debtor proven to the court's satisfaction the replacement value of the Vehicle. The standard is what a retail merchant would sell the Vehicle for to the Debtor given its particular age and condition.

While neither parties have persuaded the court regarding their position of the value of the Vehicle, the Debtor has the burden of proof. Therefore, the motion will be denied without prejudice.

The matter is set for an evidentiary hearing subject to Local Bankr. R. 9017-1 for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

44. [19-20938](#)-B-13 REUBEN MOHAMMED  
[JPJ](#)-1 Douglas P. Broomell

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
4-2-19 [[39](#)]

#### **Tentative Ruling**

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

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

First, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) filed February 17, 2019, shows that the Debtor's monthly disposable income is \$4,497.58 and the Debtor must pay no less than \$269,984.80 or 100% to unsecured non-priority creditors. The plan pays only \$16,661.17 or 44% to unsecured non-priority creditors.

Second, the plan payment in the amount of \$3,600.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The plan does not comply with Section 5.02 of the mandatory form plan.

Third, the Debtor has not provided any information regarding his handyman business. The Debtor has failed to fully and accurately provide all information required by the petition, schedules, and Statement of Financial Affairs. The Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan filed March 4, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

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

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

The court will enter a minute order.

45. [19-20938](#)-B-13 REUBEN MOHAMMED  
[MSK](#)-1 Douglas P. Broomell

OBJECTION TO CONFIRMATION OF  
PLAN BY CONSUMER PORTFOLIO  
SERVICES, INC.  
4-4-19 [[45](#)]

#### **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 deny confirmation of the plan.

Feasibility depends on the granting of the motion to value collateral at Item #43. The court rejected both the Debtor's and Creditor's valuations. Nonetheless, the plan is not confirmed for reasons stated at Item #44.

The plan filed March 4, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled but the plan is not confirmed.

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

The court will enter a minute order.

46. [18-20239](#)-B-13 CAROLYN SCHMIDT MOTION TO MODIFY PLAN  
[MRL](#)-3 Mikalah R. Liviakis 3-21-19 [[50](#)]

**No Ruling**



47. [19-21941](#)-B-13 LAMARR SATTERFIELD  
[MWM](#)-1 Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-15-19 [[13](#)]

JACKSON SQUARE PROPERTIES,  
LLC VS.

DEBTOR DISMISSED: 04/09/2019

**Final Ruling**

The case was dismissed on April 9, 2019. The motion for relief from stay 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.

48. [16-23543](#)-B-13 KENNETH/BARBARA ENDICOTT  
[DJC](#)-3 Diana J. Cavanaugh

MOTION FOR WAIVING JOINT  
DEBTORS 522 CERTIFICATE AND/OR  
MOTION FOR WAIVING JOINT  
DEBTOR'S 1328 CERTIFICATE  
4-3-19 [[57](#)]

### **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.

The Joint Debtor Barbara Endicott passed away on September 1, 2018, before being able to satisfy the requirement that she complete the 11 U.S.C. § 1328 certificate or certificate of Chapter 13 Debtor regarding 11 U.S.C. § 522(q) exemptions.

Based on the evidence submitted, the court will grant the relief requested. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

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

The court will enter a minute order.

49. [15-21845](#)-B-13 JOSEPH BARNES  
[SS](#)-11 Scott D. Shumaker

MOTION TO MODIFY PLAN  
3-20-19 [[238](#)]

**No Ruling**

### **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 \$2,289.00.

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 2009 Honda Civic ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$2,289.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3-1 filed by Santander Consumer USA 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 June 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$13,989.18. 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 \$2,289.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.

### **Tentative Ruling**

The 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 by the Chapter 13 Trustee.

The court's decision is to grant the motion and authorize the Debtors to incur post-petition debt.

The motion seeks permission to purchase real property commonly known as 8233 NW 160th Terr, Edmond, Oklahoma. The purchase of the real property follows the court's granting of the Debtor's motion to sell real property in Pollock Pines, California. Debtors intend to use the \$77,878.00 from the sale of their real property to purchase real property in Oklahoma, where they currently live and work. Debtors request permission to incur debt for the initial loan amount of \$191,127.00 with a 30 year fixed rate loan at 5.75%. The monthly payment including mortgage insurance and escrow will be approximately \$1,655.00 per month.

The Chapter 13 Trustee opposes the motion on grounds that Debtors have not provided complete and accurate information regarding their current monthly expenses. According to the original Schedule I filed August 10, 2016, the Debtor worked in Milpitas, California on the date the petition was filed. The Amended Schedule I filed April 6, 2019, shows that Debtor has worked in Edmond, Oklahoma for the past 6 months. Additionally, the Debtors filed a change of address on February 21, 2018, changing their address from a P.O. box in Polluck Pines, California to a P.O. box in Edmond, Oklahoma. Thus, it appears that the Debtors have not had a monthly expense for rent in Milpitas since they moved to Edmond.

Debtors reply stating that they will file amended schedules. A review of the court's docket shows that amended schedules were filed on May 1, 2019.

### **Discussion**

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Debtors have resolved the Trustee's opposition by filing amended schedules. The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. The motion is granted.

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

The court will enter a minute order.

52. [19-20246](#)-B-13 FRANK/ELENA ESTRADA MOTION TO CONFIRM PLAN  
[JJC-2](#) Julius J. Cherry 3-14-19 [[28](#)]  
**Thru #53**

**Final Ruling**

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing.

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

Feasibility depends on the granting of a motion to value collateral of Ally Bank, JJC-1. Debtors' valuation of the collateral at \$17,521.41 as requested in their motion to value, dkt. 23, and their motion for reconsideration, dkt. 45, is denied. Debtors have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

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

The court will enter a minute order.

53. [19-20246](#)-B-13 FRANK/ELENA ESTRADA MOTION TO RECONSIDER  
[JJC-3](#) Julius J. Cherry 4-15-19 [[45](#)]

**Final Ruling**

Before the court is a Motion for Rehearing and Reconsideration of Debtors' Motion for Order Valuing Collateral of Ally Bank filed by Debtors Frank and Elena Estrada ("Debtors"). Dkt. 45. The motion is unopposed. 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 court has determined that oral argument will not assist in the resolution of this motion. *See* Local Bankr. R. 9014-1(h). The court therefore issues this decision as a Final Ruling. Findings of fact and conclusions of law are set forth below. *See* Fed. R. Bankr. P. 52(a); Fed. R. Bankr. P. 7052.

The court's decision is to deny in part and grant in part the motion to reconsider. The secured claim of Ally Bank is valued at \$21,437.51.

**Discussion**

Debtors filed a motion to value their vehicle on March 1, 2019. Dkt. 23. Debtors sought to value their vehicle by eliminating several non-purchase money security interest items under *Americredit Financial Services, Inc. v. Penrod (In re Penrod)*, 611 F.3d 1158 (9th Cir. 2010). Debtors' motion relied exclusively on *Penrod*. It made no mention of any possible reduction under state law.

Debtors' motion to value was set for hearing on April 2, 2019. Dkt. 24. Service on the lender secured by an interest in the Debtors' vehicle was defective under Bankruptcy Rule 7004(h) so, rather than deny the motion outright, on April 2, 2019, the

court continued the hearing to April 9, 2019, to allow for proper service. Dkts. 37, 40.

Debtors' motion was heard on April 9, 2019, at which time it was denied without prejudice. Dkts. 43, 44. Debtors moved for reconsideration on April 15, 2019. Dkt. 45. Filed within 14 days of the entry of the order denying the motion to value, Debtors' motion for reconsideration is governed by Civil Rule 59(e) which is applicable by Bankruptcy Rule 9023. *First Ave. West Building, LLC v. James (In re Onecast Media, Inc.)*, 439 F.3d 558, 561-62 (9th Cir. 2006); *In re Zinnel*, 2012 WL 8022513, \*1-2 (Bankr. E.D. Cal. 2012). Particularly relevant here, a Civil Rule 59(e) motion is not a vehicle by which to raise arguments or present evidence for the first time that could have been raised or presented earlier. See *School Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

Debtors' motion for reconsideration is denied to the extent it requests a value reduction for theft deterrent, extended warranty, and gap insurance. These items were incurred (and included) as part of the "price" under *Penrod* the Debtors paid for their acquisition of the vehicle. See Claim No. 1-1, Attachment 2. In other words, unlike the negative equity at issue in *Penrod*, these items were not antecedent debts at the time of purchase included in the financed sales price.

The court will not consider Debtors' state law argument regarding insurance cancellation and refunds which is raised for the first time in the motion for reconsideration. Had Debtors briefed the initial motion to value better, this argument very easily could (and should) have been raised in the initial motion. No reason is given for why it was not or could not have been.

The Debtors are correct that the court overlooked \$1,866.51 of negative equity apparently included in the sales "price" of the Debtors' purchase of the vehicle. See *Id.* The court adopts the pro-rata approach supported by the cases under which the percentage of the total amount originally financed that was secured by a PMSI is multiplied by the present balance of the debt owed to creditor on its claim. The product is the amount of the present claim that is secured by a PMSI and protected by the hanging paragraph of § 1325(a). The non-PMSI portion of the claim may be treated as unsecured so long as the value of the collateral does not support it.

According to the Retail Installment Contract at dkt. 26, exh. B, the total amount of the original financing for the subject collateral was \$26,712.16. The portion of the amount originally financed secured by a PMSI was \$25,015.19. This is 93.647% of the total amount financed. It follows that 6.353% is the non-PMSI amount that financed negative equity on the trade-in vehicle.

Multiplying 93.647% by the present claim amount of \$22,891.83 equals \$21,437.51, which is the PMSI portion of the present claim held by creditor. The negative equity portion of the present claim is not protected by the hanging paragraph and, as a result, may be treated as an unsecured claim if it is uncollateralized.

The vehicle's value is less than the PMSI-portion of the creditor's claim. The entire PMSI portion of this claim is protected by the hanging paragraph. The entire non-PMSI portion of this claim (negative-equity financing) is unsupported by the collateral's value. The creditor has a secured claim equal to \$21,437.51 and an unsecured claim for the balance of the claim.

The motion is ORDERED DENIED IN PART AND GRANTED IN PART for reasons stated in the ruling appended to the minutes.

The court will enter an appropriate minute order.

54. [19-20747](#)-B-13 DANIEL/TERESA STALTER CONTINUED OBJECTION TO  
[Thru #58](#) Catherine King CONFIRMATION OF PLAN BY LASSEN  
COUNTY FEDERAL CREDIT UNION  
3-21-19 [[34](#)]

**Tentative Ruling**

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

The court's decision is to conditionally overrule the objection as moot provided that the Debtors file their amended plan by May 8, 2019, at 5:00 p.m. and re-set the confirmation hearing on 35-days' notice.

Subsequent to the filing of the Trustee's objection, the Debtors filed a motion to confirm amended plan on April 22, 2019, that provides for the secured claim of Lassen County Federal Credit Union on terms agreeable by the creditor. The Debtors set a confirmation hearing for June 4, 2019. However, problematic is that the amended plan was filed as an exhibit, dkt. 56, and not as a separate document. The Debtors shall have until May 8, 2019, at 5:00 p.m. to file their amended plan as a separate document and must re-set a confirmation hearing on 35-days' notice.

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

The court will enter a minute order.

55. [19-20747](#)-B-13 DANIEL/TERESA STALTER MOTION TO VALUE COLLATERAL OF  
[CK-1](#) Catherine King LASSEN COUNTY FEDERAL CREDIT  
UNION  
WITHDRAWN BY M.P. 3-19-19 [[18](#)]

**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.

56. [19-20747](#)-B-13 DANIEL/TERESA STALTER MOTION TO VALUE COLLATERAL OF  
[CK-2](#) Catherine King LASSEN COUNTY FEDERAL CREDIT  
UNION  
WITHDRAWN BY M.P. 3-19-19 [[22](#)]

**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.

57. [19-20747](#)-B-13 DANIEL/TERESA STALTER CONTINUED OBJECTION TO  
[JPJ](#)-1 Catherine King CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
3-20-19 [[28](#)]

#### **Tentative Ruling**

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

The court's decision is to conditionally overrule the objection as moot and conditionally deny the motion to dismiss as moot provided that the Debtors file their amended plan by May 8, 2019, at 5:00 p.m. and re-set the confirmation hearing on 35-days' notice.

Subsequent to the filing of the Trustee's objection, the Debtors filed a motion to confirm amended plan on April 22, 2019, that proposes payments adequate to pay Debtors' Class 2 payments, priority claims, unsecured claims, and attorney's fees and trustee's fees. The Debtors set a confirmation hearing for June 4, 2019. However, problematic is that the amended plan was filed as an exhibit, dkt. 56, and not as a separate document. The Debtors shall have until May 8, 2019, at 5:00 p.m. to file their amended plan as a separate document and must re-set a confirmation hearing on 35-days' notice.

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

The court will enter a minute order.

58. [19-20747](#)-B-13 DANIEL/TERESA STALTER OBJECTION TO DEBTORS' CLAIM OF  
[JPJ](#)-2 Catherine King EXEMPTIONS  
3-20-19 [[31](#)]

#### **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 exemptions are disallowed in their entirety.

The Trustee objects to the Debtors' use of both California Code of Civil Procedure § 703 and § 704 to exempt real and/or personal property. Debtors have failed to cite any authority for the proposition that they may utilize some of the exemptions available under § 703 and other exemptions as available under § 704.

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

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

The court will enter a minute order.

59. [19-21347](#)-B-13 FELICIA HUDSON  
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
4-10-19 [[28](#)]

### **Tentative Ruling**

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

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

First, the Debtor did not appear at the meeting of creditors set for April 4, 2019, as required pursuant to 11 U.S.C. § 343.

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

Third, the Debtor has not provided the Trustee with a copy of the federal 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).

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

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

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

The court will enter a minute order.

60. [19-21747](#)-B-13 ARACELY RIVAS  
[PGM](#)-2 Peter G. Macaluso  
**Thru #61**

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
4-1-19 [[19](#)]

### **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 Wells Fargo Bank, N.A. at \$3,721.00.

Debtor's motion to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Kia Rio ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$3,721.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 4-1 filed by Wells Fargo Bank, N.A., d/b/a Wells Fargo Auto is the claim which may be the subject of the present motion.

### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred in February 9, 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 \$14,793.42. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$3,721.00. *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.

61. [19-21747](#)-B-13 ARACELY RIVAS  
[PGM](#)-3 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF  
TITLEMAX OF CALIFORNIA, INC.  
4-1-19 [[24](#)]

### **Final Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re*

*Eliapo*), 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of Titlemax of California, Inc. at \$3,210.00.

Debtor's motion to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Chevrolet Equinox ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$3,210.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

#### **Discussion**

The lien on the Vehicle's title does not secure a purchase-money loan. Because of this, the requirement that the loan be incurred more than 910 days prior to filing of the petition is not applicable. The Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$3,210.00. 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.

62. [19-20949](#)-B-13 ANNA RATH  
[BPC](#)-1 Pro Se  
**Thru #65**

OBJECTION TO CONFIRMATION OF  
PLAN BY THE GOLDEN 1 CREDIT  
UNION  
4-3-19 [[39](#)]

CASE DISMISSED: 4/30/19

**Final Ruling**

The case was dismissed on April 30, 2019. 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.

63. [19-20949](#)-B-13 ANNA RATH  
[EAT](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY LAKEVIEW LOAN  
SERVICING, LLC  
4-1-19 [[32](#)]

CASE DISMISSED: 4/30/19

**Final Ruling**

The case was dismissed on April 30, 2019. 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.

64. [19-20949](#)-B-13 ANNA RATH  
[JHW](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY SANTANTER CONSUMER USA,  
INC.  
4-2-19 [[35](#)]

CASE DISMISSED: 4/30/19

**Final Ruling**

The case was dismissed on April 30, 2019. 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.

65. [19-20949](#)-B-13 ANNA RATH  
[JPJ](#)-2 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
4-1-19 [[28](#)]

CASE DISMISSED: 4/30/19

**Final Ruling**

The case was dismissed on April 30, 2019. 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.

66. [18-26950](#)-B-13 MUHAMMAD CHOUDHRY  
[JPJ](#)-2 George T. Burke

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
3-29-19 [[30](#)]

**No Ruling**



67. [19-22153](#)-B-13 LESLIE/KIM ROSS  
[MET](#)-1 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF  
TRAVIS CREDIT UNION  
4-21-19 [[12](#)]

### **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 \$12,150.00.

Debtors' motion to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2011 Ford Edge ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$12,150.00 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. 1-1 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 does not secure a purchase-money loan and instead was a lien against the Vehicle in exchange for a loan. Because of this, the requirement that the loan be incurred more than 910 days prior to filing of the petition is not applicable. 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 \$12,150.00. 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.

68. [17-23854](#)-B-13 TIAJUANNA TOLES MOTION TO APPROVE LOAN  
[PGM](#)-3 Peter G. Macaluso MODIFICATION  
**Thru #69** 4-1-19 [[75](#)]

**Final Ruling**

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

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

Debtor seeks court approval to incur post-petition credit. BSI Financial Services, on behalf of US Bank Trust, N.A. ("Creditor") has agreed to a trial loan modification. Under the terms, after all trial period payments are timely made and the Debtor has continued to make all eligibility requirements of the modification program, the mortgage will be permanently modified. Debtor is required to make one payment in the amount of \$800.00, and three payments each in the amount of \$1,327.61. The first of the three payments is due May 1, 2019, and the last payment is due July 1, 2019. Any difference between the amount of the trial period payments and the regular mortgage payments will be added to the balance of the loan along with any other past due amounts.

The motion is supported by the Declaration of Tiajuanna Toles. The Declaration affirms Debtor's desire to obtain the post-petition financing.

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

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

The court will enter a minute order.

69. [17-23854](#)-B-13 TIAJUANNA TOLES MOTION TO MODIFY PLAN  
[PGM](#)-4 Peter G. Macaluso 4-1-19 [[80](#)]

**No Ruling**

70. [18-25756](#)-B-13 DAVID SIMS  
[PGM](#)-3 Peter G. Macaluso

MOTION TO CONFIRM PLAN  
3-22-19 [[66](#)]

**No Ruling**

71. [19-20957](#)-B-13 BRIAN HAMILTON  
[JPJ](#)-2 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
4-12-19 [[13](#)]

CONTINUED TO 5/14/19 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF  
CREDITORS SET FOR 5/09/19.

**Final Ruling**

No appearance at the hearing is necessary. The court will enter a minute order.

72. [19-21257](#)-B-13 SOLEDAD/BRIAN ASH  
[CJO](#)-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF  
PLAN BY NAVY FEDERAL CU  
3-29-19 [[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.

Objecting creditor Navy Federal CU holds a deed of trust secured by the Debtors' residence. The creditor has filed timely Claim No. 9-1 in which it asserts \$693.52 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) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed February 28, 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.

HONDA LEASE TRUST VS.

### **Tentative Ruling**

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

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

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

The Young Declaration provides testimony that Debtor has not made 1.94 post-petition payments, with a total of \$999.60 in post-petition payments past due. Additionally, the Debtors surrendered the Vehicle to the dealer on April 5, 2019.

### **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). In fact, the Vehicle was surrendered to the dealership on April 5, 2019. And no opposition or showing having been made by the Debtors 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.

74. [19-21258](#)-B-13 TROY EMRY  
[JPJ](#)-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
4-2-19 [[20](#)]

### **Tentative Ruling**

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

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

First, the plan and Schedule E/F understate the amount of the priority claims owed to Franchise Tax Board and the Internal Revenue Service. Adjusting to the correct amounts owed, the plan will take approximately 67 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Second, the Debtor has not provided the Trustee with copies of payment advices from his new employer, Comcast Business. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Third, according to Schedule J, the Debtor owes a domestic support obligation. Pursuant to Local Bankr. R. 3015-1(b)(6), the Debtor is required to serve upon the Trustee no later than 14 days after filing the petition a Domestic Support Obligation Checklist. The Debtor has not provided the Trustee with this checklist. The Debtor has failed to comply with Local Bankr. R. 3015-1(c)(2).

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

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

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

The court will enter a minute order.

75. [12-40959](#)-B-13 IANCU/DORINA GHERASIM MOTION TO AVOID LIEN OF  
[PGM-1](#) Peter G. Macaluso CITIBANK (SOUTH DAKOTA), N.A.  
**Thru #76** 4-6-19 [[67](#)]

**Final Ruling**

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

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

This is a request for an order avoiding the judicial lien of Citibank (South Dakota), N.A. ("Creditor") against the Debtors' property commonly known as 5000 Yancy Court, Sacramento, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of \$24,211.01. An abstract of judgment was recorded with Sacramento County on July 2, 2010, which encumbers the Property. The first deed of trust against the Property totals \$256,747.25.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$212,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$22,075.00 on amended Schedule C, dkt. 66.

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

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

The court will enter a minute order.

76. [12-40959](#)-B-13 IANCU/DORINA GHERASIM MOTION TO AVOID LIEN OF  
[PGM-2](#) Peter G. Macaluso DISCOVER BANK  
4-6-19 [[60](#)]

**Final Ruling**

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

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



This is a request for an order avoiding the judicial lien of Discover Bank ("Creditor") against the Debtors' property commonly known as 5000 Yancy Court, Sacramento, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of \$22,846.81. An abstract of judgment was recorded with Sacramento County on February 28, 2012, which encumbers the Property. The first deed of trust against the Property totals \$256,747.25 and a senior judicial lien in favor of Citibank (South Dakota), N.A. totals \$24,211.01.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$212,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$22,075.00 on amended Schedule C, dkt. 66.

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

The 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)(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 the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

78. [19-21165](#)-B-13 FLOYD CHRISTENSEN  
[AP-1](#) Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK NATIONAL  
ASSOCIATION  
4-11-19 [[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 sustain the objection and deny confirmation.

Objecting creditor U.S. Bank National Association holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$31,456.67 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) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Additionally, Debtor's plan is not feasible due to Debtor not having disposable income to fund the plan after accounting for the increased payment owed to the creditor.

The plan filed March 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.

79. [18-26670](#)-B-13 ROBERT/DOROTHY RUSSO MOTION TO CONFIRM PLAN  
[GTB](#)-1 George T. Burke 3-15-19 [[37](#)]

**Thru #80**

**No Ruling**

80. [18-26670](#)-B-13 ROBERT/DOROTHY RUSSO OBJECTION TO CLAIM OF UNIFUND  
[JPJ](#)-3 George T. Burke CCR, CLAIM NUMBER 6-1  
3-11-19 [[32](#)]

**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. 6-1 of Unifund CCR and disallow the claim in its entirety.

Chapter 13 Trustee Jan Johnson ("Objector") requests that the court disallow the claim of Unifund CCR ("Creditor"), Claim No. 6-1. The claim is asserted to be in the amount of \$1,830.55. Objector asserts that claim should be disallowed due to the fact that the proof of claim did not include a statement with all of the following information: the name of the entity from whom the creditor purchased the account; the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account; the date of an account holder's last transaction; the date of the last payment on the account; and the date on which the account was charged to profit and loss. See Fed. R. Civ. P. 3001(c)(3)(A).

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

The court finds that the proof of claim does not include the required information pursuant to Fed. R. Civ. P. 3001(c)(3)(A). Objector has satisfied its burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety. The objection to the proof of claim is sustained.

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

The court will enter a minute order.

81. [19-20771](#)-B-13 MARTIN HERNANDEZ  
[JPJ](#)-1 Mark W. Briden

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
4-16-19 [[24](#)]

### **Tentative Ruling**

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

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

The Chapter 13 Trustee objects to confirmation on grounds that the Debtor failed to amend his petition to correct the spelling of his last name, failed to disclose his annual income from employment for years 2017 and 2018 on the Statement of Financial Affairs, failed to serve the Trustee with a Domestic Support Obligation Checklist, and failed to serve the Trustee with a Class 1 Checklist and Authorization to Release Information.

Debtor filed a response stating that he has filed and served on the Trustee an amended petition correcting the misspelled last name and an amended Statement of Financial Affairs, and emailed to the Trustee the Domestic Support Obligation Checklist and Class 1 Mortgage Checklist.

Since the issues have been resolved, the plan filed February 21, 2019, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan is confirmed.

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

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

The court will enter a minute order.

82. [16-24973](#)-B-13 MARTIN/ANNETTE SNEZEK  
[SLE](#)-3 Steele Lanphier

MOTION TO MODIFY PLAN  
3-22-19 [[89](#)]

**No Ruling**

83. [18-24576](#)-B-13 ALAIN KOZIK AND JON BECK CONTINUED MOTION TO MODIFY PLAN  
[PSB-2](#) Pauldeep Bains 3-11-19 [[41](#)]  
**Thru #84**

**No Ruling**

84. [18-24576](#)-B-13 ALAIN KOZIK AND JON BECK MOTION TO SELL  
[PSB-4](#) Pauldeep Bains 4-5-19 [[56](#)]

**Tentative Ruling**

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

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

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell the property described as 1083 Glenrose Avenue, California ("Property").

Proposed purchasers Jolynn Pike and Thomas Bales have offered to purchase the property for \$297,000.00. The sale of the property will allow the Chapter 13 case to complete immediately rather than the full 60 months and Debtors will be able to fund their plan at 100% of the claims. Commissions will go to HomeSmart ICARE Realty (seller's broker) in the amount of \$8,910.00 and to Gregory Real Estate Group (buyer's broker) in the amount of \$7,425.00. Net proceeds to the Debtors will be approximately \$88,943.11.

The Trustee has filed a response and, while not opposing the motion to sell, requests that the following provisions be included in the order approving the sale of real property:

1. The Trustee must approve any title company used in connection with the escrow.
2. The escrow is not permitted to close without the Trustee submitting a demand to the title company that complies with the Chapter 13 plan, or waives this right in writing.
3. The Debtors are required to provide the Trustee with all of the contact information for the title company upon opening of escrow.
4. The Trustee must approve the final closing statement prior to any close of escrow.
5. If any of these conditions are not met or the Trustee cannot participate in the escrow in a way that complies with the Chapter 13 plan, the Trustee can submit an ex parte application to the court explaining the issues and requesting that the motion to sell be denied.

At the time of the hearing the court will announce the proposed sale and request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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

The court will enter a minute order.

85. [17-28379](#)-B-13 JAMES STRAIN  
[JPJ](#)-1 Scott J. Sagaria

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
4-1-19 [[30](#)]

**No Ruling**



86. [18-27779](#)-B-13    MARCUS WOODFORK AND SHERI    MOTION TO CONFIRM PLAN  
[MRL](#)-1    TOMKINS    3-15-19 [[25](#)]  
Mikalah R. Liviakis

### **Final Ruling**

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

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

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

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

The court will enter a minute order.

87. [19-21082](#)-B-13 RONDELL DANIEL  
[JPJ](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
4-10-19 [[19](#)]

**Tentative Ruling**

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

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

The Debtor has failed to file his Credit Counseling Certificate with the court as requested by the Trustee at the meeting of creditors. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

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

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

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

The court will enter a minute order.

88. [19-21282](#)-B-13 KATHLEEN RAPISURA-PARDO OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Peter L. Cianchetta PLAN BY JAN P. JOHNSON  
Thru #91 4-10-19 [[30](#)]

### **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.

The Chapter 13 Trustee objects to confirmation on grounds that the Debtor failed to amend Schedule J to list the correct monthly net income on Line 23a, failed to file a spousal waiver of right to claim exemptions, failed to amend her petition to list prior cases filed, and that feasibility depends on the granting of motions to value collateral for Acceptance Now, Farmers Ins Group FCU, and Wells Fargo Dealer Services.

The Debtor has filed an amended Schedule J, the spousal waiver of right to claim exemptions, and an amended petition to list her prior case filed. Additionally, the motions to value collateral for Acceptance Now, Farmers Ins Group FCU, and Wells Fargo Dealer Services are granted.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed March 1, 2019, 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 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.

89. [19-21282](#)-B-13 KATHLEEN RAPISURA-PARDO MOTION TO VALUE COLLATERAL OF  
[PLC](#)-1 Peter L. Cianchetta ACCEPTANCE NOW, LLC  
4-9-19 [[14](#)]

### **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 Acceptance Now, LLC at \$1,500.00.

Debtor's motion to value the secured claim of Acceptance Now, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a sofa ("Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of

\$1,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

#### **Discussion**

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

The total dollar amount of the obligation represented by the financing agreement with Acceptance Now, LLC as stated in the Debtor's declaration. Debtor asserts that the price a retail merchant would charge for the Personal Property is \$1,500.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$1,500.00. 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.

90. [19-21282](#)-B-13 KATHLEEN RAPISURA-PARDO MOTION TO VALUE COLLATERAL OF  
[PLC-2](#) Peter L. Cianchetta FARMERS INSURANCE GROUP FCU  
4-9-19 [[19](#)]

#### **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 Farmers Insurance Group FCU at \$9,934.00.

Debtor's motion to value the secured claim of Farmers Insurance Group FCU ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2003 Ford F250 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$9,934.00 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. 7-1 filed by Farmers Ins Group FCU is the claim which may be the subject of the present motion.

## Discussion

The lien on the Vehicle's title does not secure a purchase-money loan and instead was a lien against the Vehicle in exchange for a loan. Because of this, the requirement that the loan be incurred more than 910 days prior to filing of the petition is not applicable. 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 \$9,934.00. 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.

91. [19-21282](#)-B-13 KATHLEEN RAPISURA-PARDO MOTION TO VALUE COLLATERAL OF  
[PLC](#)-3 Peter L. Cianchetta WELLS FARGO DEALER SERVICES  
4-9-19 [[24](#)]

## Final Ruling

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

The court's decision is to value the secured claim of Wells Fargo Dealer Services at \$7,668.00.

Debtor's motion to value the secured claim of Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Lexus GS 350 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$7,668.00 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).

## No Proof of Claim Filed

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

## Discussion

The lien on the Vehicle's title does not secure a purchase-money loan and instead was a lien against the Vehicle in exchange for a loan. Because of this, the requirement that the loan be incurred more than 910 days prior to filing of the petition is not applicable. 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 \$7,668.00. 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**

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 Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was filed pro se and dismissed on April 8, 2019, for failure to timely file documents (case no. 19-21672, dkt. 13). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

### **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 filed for bankruptcy since they are facing foreclosure on their residence. Debtors' prior bankruptcy had failed because they sought the assistance of who they believed was an attorney but was in fact a document preparer. Debtors do not speak English and relied on their document preparer in their prior bankruptcy. When they sought the document preparer to take further steps in the prior bankruptcy, the document preparer advised them that no further help was possible. Following this news and a notice that the sale date on their residence was set for April 9, 2019, Debtors retained counsel Gary Fraley. Debtors' circumstances have changed since they are now represented by a bankruptcy attorney.

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.

## **Tentative Ruling**

### Introduction

The court has before a Motion for Contempt filed by Debtor Kirk Buckhalter ("Debtor"). Dkt. 29. Debtor moves to hold his ex-spouse, Sandra Kohmiller ("Ex-Spouse"), in contempt for violating the automatic stay of 11 U.S.C. § 362(a). The motion was filed on April 22, 2019, and is therefore heard on less than 28-days' notice. See Local Bankr. R. 9014-1(f) (2).

The Debtor did not serve Ex-Spouse or Jeffrey Meisner of Meisner Law Firm who previously appeared before this court as counsel of record for Ex Spouse. See dkt. 33. In addition to the Chapter 13 and United States trustees and the Honorable Kimberly Parker of the Sacramento County Superior Court, Debtor only served attorney Salina L. Sierra who appeared as counsel of record for Ex-Spouse in the state court proceedings which are the subject of the motion and discussed below. The court therefore issues this tentative ruling based on evidence presented with the motion and based upon its judicial notice of the docket. This tentative decision may be amended based on additional evidence the court will accept and consider at a final evidentiary hearing to determine if Ex-Spouse and attorney Sierra should be held in contempt for violating the automatic stay of § 362(a) and, if so, whether Debtor will be awarded actual damages, including attorney's fees, under § 362(k) (1). If additional evidence is not timely submitted, this tentative ruling will become the court's final ruling on the issue of contempt and liability and the court will proceed with its consideration of damages only at the final evidentiary hearing.

Consistent with the foregoing, a briefing schedule is set as follows:

- (1) The Debtor is ordered to serve Ex-Spouse and Mr. Meisner with the motion for contempt and all related documents by May 10, 2019;
- (2) Ex-Spouse and attorney Sierra may file and serve an opposition or other response to the Debtor's motion by May 28, 2019;
- (3) Debtor may file and serve an optional reply to any opposition by June 4, 2019;
- (4) An evidentiary hearing will be held on June 24, 2019, at 9:30 a.m. Local Bankruptcy Rule 9017-1 applies, except the parties shall exchange direct testimony declarations and exhibits, and deliver (not file) the same to the Department B courtroom deputy, by 3:00 p.m. on June 11, 2019. Objections to direct testimony declarations and/or exhibits shall be delivered to the Department B courtroom deputy (not filed) by 3:00 p.m. on June 13, 2019.

### Background

Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on September 8, 2018. Dkt. 1. Schedule A/B filed with the petition lists the Debtor's interest in real property located at 4919 Jurgenson Way, Elk Grove, California ("Elk Grove Property"). Ex-Spouse asserts a joint interest in the Elk Grove Property. Dkt. 23 at 2:10-14. The Elk Grove Property is involved in or subject to a marital settlement agreement in divorce proceedings between the Debtor and Ex-Spouse pending in the Sacramento County Superior Court, Case #18FL00478 (the "Divorce Proceeding"). *Id.* at 2:8-9.

The Debtor filed a plan with his petition. Dkt. 3. The plan and notice of the hearing on the motion to confirm it were served on Ex-Spouse. Dkts. 14, 15. No party in interest, Ex-Spouse included, objected to confirmation of the plan. Accordingly, the plan was confirmed on November 2, 2018. Dkt. 16.

The confirmed plan requires monthly payments by the Debtor of \$2,045.00 for 60 months.



Dkt. 3 at ¶¶ 2.01, 2.03. The Debtor's net monthly income is \$2,045.00, dkt. 1, Sch. J., Item 23c. So the entirety of the Debtor's net income is committed (and required) to fund the confirmed plan throughout its 60-month term.

The plan also proposes to pay 100% of non-priority unsecured claims, including Ex-Spouse's claim. *Id.* at 5, ¶ 3.14; see also dkt. 29 at 2:10. The lender secured by an interest in the Elk Grove Property is classified in the confirmed plan as a Class 4 secured creditor meaning its claim is paid directly by the Debtor. Dkt. 3 at ¶ 3.10. That also means that, as to the lender, the automatic stay of § 362(a) was modified upon confirmation to permit it to exercise its rights under applicable nonbankruptcy law if the Debtor defaults. *Id.*

Ex-Spouse also asserts a claim secured by the Elk Grove Property. See Claim No. 7-1 filed November 18, 2018. However, the plan makes no provision for the payment of that purported secured claim. Therefore, as to the Ex-Spouse's secured claim, if any, the automatic stay remains in place. Dkt. 3 at ¶ 3.11(b).

Recognizing that the Elk Grove Property is property of the estate that in the Divorce Proceeding remains subject to the automatic stay, dkt. 23 at 3:5-12, on January 22, 2019, Ex-Spouse moved for relief from the automatic stay for two purposes: (1) to continue to pursue her state court remedies to for legal divorce from her marriage with the Debtor and (2) to recover her interest in the Elk Grove Property in the Divorce Proceeding. Dkt. 21 at 2:3-5. The court heard the Ex-Spouse's motion at 1:54 p.m. on February 5, 2019. Dkt. 26. Following argument by her attorney, the court granted Ex-Spouse's motion in part and denied it in part: The motion was granted to permit Ex-Spouse to proceed with the dissolution of her marriage to the Debtor and denied with regard to any division of the Elk Grove Property by the state court. Dkt. 25 at 3. Ex-Spouse's attorney was instructed to prepare and upload an order within seven days. *Id.* He failed to do so.

Meanwhile, about an hour before this court heard Ex-Spouse's stay relief motion, at 12:52 p.m. on February 5, 2019, Ex-Spouse filed an action in the state court Divorce Proceeding. Dkt. 32, Ex. A. From what the court can discern, in that state court matter Ex-Spouse sought attorney's fees of somewhere between \$30,000.00 and \$40,000.00, to set aside a December 2018 property distribution agreement between the Debtor and Ex-Spouse, and for sanctions under Cal. Fam. Code § 271. *Id.* That matter was apparently heard by a state court judge on April 8, 2019, at which time the state court awarded Ex-Spouse \$3,500.00 in attorney's fees, declined to set aside the property settlement agreement, and permitted Ex-Spouse to proceed to trial on claims under Cal. Fam. Code 2122, 1101, and 271. Dkt. 32, Ex. B. Debtor's motion to hold Ex-Spouse in contempt for initiating the state court proceeding and obtaining the April 8, 2019, order followed on April 22, 2019. Dkt. 29.

#### Discussion

The \$3,500.00 in attorney's fees that the state court ordered the Debtor to pay Ex-Spouse will come from the Debtor's wages. Dkt. 31 at 9:2. As noted above, the entirety of the Debtor's wages are committed to funding his confirmed plan. That means the entirety of the Debtor's wages are - and despite confirmation of a plan that reverts property of the estate in the Debtor remain - property of the estate. *Cal. Franchise Tax Bd. v. Kendall (In re Jones)*, 657 F.3d 921, 928 (9th Cir. 2011) ("In sum, we hold that under the plain language of § 1327(b), the property of the estate reverts in the debtor upon plan confirmation, unless the debtor elects otherwise in the plan. Because Jones did not elect otherwise, she once again became the owner of her property at confirmation, *except as to those sums specifically dedicated to fulfillment of the plan.*" (Emphasis added)). Therefore, by obtaining the April 8, 2019, order that requires the Debtor to pay attorney's fees out of his wages - now and potentially in the future - Ex-Spouse and her state court attorney engaged in an act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate in violation of 11 U.S.C. § 362(a)(3).

As stay violators, Ex-Spouse and her attorney have an affirmative obligation to remedy their violation(s) of the automatic stay. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d

1178, 1192 (9th Cir. 2003). In the context of pending litigation this requires an immediate cessation of the offending proceedings which, here, is the Divorce Proceeding except to the extent authorized by this court on February 5, 2019, *i.e.*, for dissolution of marriage only. See *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002). Since there is no indication that has occurred, stay violations by Ex-Spouse and her state court attorney continue. *Snowden v. Check Into Cash of Wash., Inc. (In re Snowden)*, 769 F.3d 651, 659 & 662 (9th Cir. 2014); *Sundquist v. Bank of America, N.A.*, 566 B.R. 563 (Bankr. E.D. Cal. 2017), *vacated in part on other grounds*, 580 B.R. 536 (Bankr. E.D. Cal. 2018).

Consequences for violating the automatic stay are contempt and statutory damages for individuals injured by any willful violation of the automatic stay. See *Havelock v. Taxel (In re Pace)*, 67 F.3d 187, 191-94 (9th Cir. 1995).

As to statutory damages, any individual victim of a willful stay violation may recover actual damages, including attorney's fees, and punitive damages in an appropriate case. See 11 U.S.C. § 362(k)(1). A violation of the automatic stay is willful if (1) the party knew of the stay and (2) the party's actions that violated the stay were intentional. *Dyer*, 322 F.3d at 1191; *Goichman v. Bloom (In re Bloom)*, 875 F.2d 224, 227 (9th Cir. 1989). According to the declaration that Ex-Spouse filed in support of her earlier stay relief motion, she knew of the Debtor's bankruptcy case in general and, specifically, she knew that the automatic stay applied to property of the estate involved in the Divorce Proceeding. Therefore, to the extent Ex-Spouse and her state court attorney obtained the April 8, 2019, for the payment of attorney's fees knowing that the automatic stay prohibits acts in the Divorce Proceeding that affect property of the estate, and because the Debtor's wages remain property of the estate as discussed above, stay violation(s) by Ex-Spouse and her state court attorney are willful.

In addition to subjecting a violator to actual and possibly punitive damages, acts taken in violation of the automatic stay are void *ab initio*. *Griffin v. Wardrobe (In re Wardrobe)*, 559 F.3d 932, 934 (9th Cir. 2009); see also *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1081-82 (9th Cir. 2000) (en banc). Inasmuch as Ex-Spouse and her state court attorney obtained an order from the state court awarding Ex-Spouse attorney's fees that will be paid from the Debtor's wages now and in the future during the plan term - and thence from property of the estate - and that also permits Ex-Spouse to proceed on claims that affect the Elk Grove Property in violation of § 362(a)(3) and this court's February 5, 2019, ruling the state court's April 8, 2019, order is void *ab initio*. It is also contrary to this court's exclusive jurisdiction over the Debtor's wages as property of the estate during the plan term. See 28 U.S.C. § 1334(e)(1).

### Conclusion

Ex-Spouse and her state court attorney willfully violated the automatic stay of § 362(a)(3) by obtaining the April 8, 2019, order from the state court ordering Debtor to pay Ex-Spouse attorney's fees now and potentially in the future. And because Ex-Spouse and her state court attorney obtained that order in violation of the automatic stay, it is void *ab initio*. Ex-Spouse and her state court attorney are subject to actual, and potentially punitive, damages under § 362(k)(1). Further proceedings to determine the extent of those damages are outlined above.

The court will prepare a minute order.

### Final Ruling

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

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

This is a request for an order avoiding the judicial lien of Employment Development Dept. ("Creditor") against the Debtor's property consisting of a 2007 Ford Focus, 50% interest in a 2009 Honda Civic, household goods, furniture, electronics and clothing, and deposit accounts with Chase Bank, Wells Fargo Bank, and Bank of America ("Personal Property").

The Debtor's claimed exemptions in the Personal Property is as follows:

1. A 2007 Ford Focus with 180,000 miles that is valued at \$447.00 pursuant to Debtor's petition. Debtor is entitled to an exemption in such property in the amount \$447.00 pursuant to C.C.P. § 703.140(b)(5).
2. A 50% interest in a 2009 Honda Civic with 180,000 miles that is valued at \$3,257.00 pursuant to Debtor's petition. Debtor is entitled to an exemption in such property in the amount of \$3,257.00 pursuant to C.C.P. § 703.140(b)(5).
3. Household goods and furniture, electronics, and clothing with a total value of \$500. Debtor is entitled to an exemption in such property in the amount of \$500 pursuant to C.C.P. § 703.140(b)(5).
4. Debtor's deposit accounts with Chase Bank, Wells Fargo Bank, and Bank of America with a total value of \$6.78. Debtor is entitled to an exemption in such property in the amount of \$6.78 pursuant to C.C.P. § 703.140(b)(5).

A judgment was entered against Debtor in favor of Creditor in the amount of \$7,246.82. An abstract of judgment was recorded with Sacramento County on July 2, 2010, which encumbers the Property. A proof of claim, Claim No. 5-4, filed by EDD Employment Development Dept lists a claim amount of \$9,882.95. All other liens recorded against the Personal Property total \$14,827.00.

Pursuant to the Debtor's Schedule A/B, the subject Personal Property has an approximate value of \$4,210.78 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b) in the amount of \$9,560.78 on Schedule C.

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

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

The court will enter a minute order.

95. [18-26684](#)-B-13 PEARLIE ABELEDA  
[RPK](#)-1 Ryan Keenan

CONTINUED MOTION TO CONFIRM  
PLAN  
1-28-19 [[49](#)]

**No Ruling**

96. [19-21385](#)-B-13 RICHARD/MONICA VINEY  
[USA](#)-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF  
PLAN BY INTERNAL REVENUE  
SERVICE  
4-11-19 [[12](#)]

### **Tentative Ruling**

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

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

The Debtors failed to file pre-petition tax returns as required by 11 U.S.C. §1308 and their plan does not provide for full payment of the Internal Revenue Services secured claim in violation of 11 U.S.C. § 1325(a)(5). The IRS has asserted a tax lien on all the Debtors' property. See *United States Internal Revenue Service v. Snyder*, 343 F.3d 1171, 1173 (9th Cir. 2003). The IRS filed Claim No. 7-1. The proof of claim is presumed to be prima facie valid. 11 U.S.C. § 502(a).

The plan filed March 6, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is denied, and the plan is not confirmed.

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

The court will enter a minute order.

97. [18-25088](#)-B-13 DANIEL MASSEY  
[JPJ](#)-3 Peter L. Cianchetta

MOTION TO CONVERT CASE TO  
CHAPTER 7 AND/OR MOTION TO  
DISMISS CASE  
4-2-19 [[66](#)]

**No Ruling**

98. [19-21098](#)-B-13 RICHARD BEJARANO  
[JPJ](#)-1 Eric John Schwab

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
4-10-19 [[26](#)]

WITHDRAWN BY M.P.

**Final Ruling**

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

There being no other objection to confirmation, the plan filed March 6, 2019, will be confirmed.

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

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

99. [19-21499](#)-B-13 WYSHICA HOGAN  
[CJC](#)-10 Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-9-19 [[23](#)]

CARMEL CAPEHART, LLC VS.  
DEBTOR DISMISSED: 04/12/2019

**Final Ruling**

The case was dismissed on April 12, 2019. The motion for relief from stay 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.



100. [19-21999](#)-B-13 CRAIG MACEY  
[MJD](#)-1 Matthew J. DeCaminada

MOTION TO VACATE DISMISSAL OF  
CASE  
4-19-19 [[23](#)]

DEBTOR DISMISSED: 04/19/2019

MATTER CALENDARED IN ERROR. MOTION TO VACATE DISMISSAL OF CASE RESOLVED 4/30/19. NO  
APPEARANCE AT THE 5/07/19 HEARING IS NECESSARY.