

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**August 1, 2017 at 1:00 p.m.**

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1. [17-23902](#)-B-13 LUIS/FELICIA FLORES MOTION TO VALUE COLLATERAL OF  
MOH-1 Michael O'Dowd Hays WELLS FARGO BANK, N.A.  
**Thru #2** 7-18-17 [[19](#)]

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

The court's decision is to value the secured claim of Wells Fargo Bank, N.A. at \$8,200.00.

Debtors' motion to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by the Declaration of Clancy Callahan. Debtors are the owners of a 2013 Nissan VN 200 SV ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$8,200.00 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. 2 filed by Wells Fargo Bank, N.A. 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 March 6, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$13,150.09. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$8,200.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

**August 1, 2017 at 1:00 p.m.**

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

The court's decision is to value the secured claim of Ally Financial at \$13,548.00.

Debtors' motion to value the secured claim of Ally Financial ("Creditor") is accompanied by the Declaration of Clancy Callahan. Debtors are the owners of a 2010 Dodge Challenger 2-Door R/T Coupe ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$13,548.00 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. 3 filed by Ally Financial 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 March 22, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$16,592.61. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$13,548.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

3. [17-23405](#)-B-13 RAM KUAR AND SHIU NATH  
JPJ-1 Gary Ray Fraley  
**Thru #4** OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-11-17 [[19](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6). The Debtors listed their daughter's contribution of \$2,500.00 twice on Schedule I, or \$5,000.00 total. However, the Debtors testified at the meeting of creditors that they only receive \$2,500.00 from their daughter. If this is the case, the Debtors do not have sufficient net income to afford plan payments.

Second, the claim of Wells Fargo Bank is mis-classified as a Class 2 claim. The Debtors testified at the meeting of creditors that the mortgage is delinquent approximately \$30,000.00 and should be classified as a Class 1 creditor.

Third, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$1,805.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$1,805.00 will also be due. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed May 19, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

4. [17-23405](#)-B-13 RAM KUAR AND SHIU NATH  
RCO-1 Gary Ray Fraley  
OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
6-23-17 [[14](#)]

**Tentative Ruling:** The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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 objecting creditor holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts \$34,364.20 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 May 19, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

5. [17-23313](#)-B-13 VIRGIL EVANS  
JPJ-1 Jonathan D. Matthews

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
6-30-17 [[41](#)]

**Thru #6**

**And #46**

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor and Debtor's counsel did not appear at the meeting of creditors set for June 29, 2017, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor failed to file the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Counsel must proceed to obtain approval of his attorney's fees and costs by separation motion pursuant to 11 U.S.C. § 330.

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

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

Fifth, 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).

Sixth, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,986.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$1,986.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Seventh, the plan proposes monthly plan payments of \$500.00 and provides for treatment of SPS in class 1. However, the plan is incomplete because it fails to specify a monthly dividend for the pre-petition arrears of \$330,000.00. An incomplete plan is unable to be administered.

Eighth, the plan understates the monthly contract installment amount owed to SPS in Class 1 at \$400.00. The proof of claim filed by Deutsche Bank National Trust Company on June 13, 2017, Claim No. 2-1, shows the monthly contract installment amount is \$1,776.78. The plan will take approximately 600 months to complete, or 50 years, 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).

The plan filed May 31, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

6. [17-23313](#)-B-13 VIRGIL EVANS  
TGM-1 Jonathan D. Matthews

OBJECTION TO CONFIRMATION OF  
PLAN BY DEUTSCHE BANK NATIONAL  
TRUST COMPANY  
6-16-17 [[37](#)]

**Tentative Ruling:** The Objection of Deutsche Bank to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Objecting creditor Deutsche Bank National Trust Company holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$52,900.30 in pre-petition arrearages. As of June 7, 2017, creditor estimates the arrearages to total \$53,131.72. 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 May 31, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

7. [17-23715](#)-B-13 THOMAS MULLINAX  
JPJ-1 Steven A. Alpert

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-11-17 [[17](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor did not appear at the meeting of creditors set for July 6, 2017, as required pursuant to 11 U.S.C. § 343. The meeting was continued to July 27, 2017. Debtor appeared at this continued meeting of creditors.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$444.30, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$444.30 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Due to the delinquency, the plan filed May 31, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

8. [17-23516](#)-B-13 DAN KAO  
JPJ-1 Peter G. Macaluso  
**Thru #9**

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-11-17 [[26](#)]

**Tentative Ruling:** The Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

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

Second, the plan cannot be assessed for feasibility. Although the Debtor filed an amended Schedules A/B on July 12, 2017, to reflect ownership of real property located at 1657 Hatcher Drive, Woodland, California, the Debtor has not filed an amended Statement of Financial Affairs to disclose a business at question #27. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The court notes that the Debtor has filed a wet signature in an amended plan dated July 18, 2017, to comply with Local Bankr. R. 9004-1(c)(1)(B).

Nonetheless, for the first and second reasons stated above, the plan filed June 6, 2017, with wet signatures filed July 18, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

9. [17-23516](#)-B-13 DAN KAO  
MJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
6-29-17 [[19](#)]

**Tentative Ruling:** The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A 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 Wells Fargo Bank, N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$36,730.83 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 Debtor filed a response acknowledging and agreeing with the amount of pre-petition arrears and has stated that he can account for these changes in an order confirming. However, the plan filed June 6, 2017, with wet signatures filed July 18, 2017, is not confirmable for reasons stated at Item #12. See 11 U.S.C. §§ 1322 and 1325(a). Therefore, the objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

10. [17-20320](#)-B-13 RAFAEL/SABRINA MURCIA MOTION TO MODIFY PLAN  
SDB-1 W. Scott de Bie 6-20-17 [[21](#)]

**Final Ruling:** No appearance at the August 1, 2017, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on June 20, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

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

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

First, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A/B and C, the total value of non-exempt property in the estate is \$35,942.60, which includes a 8% cost-of-sale on Debtor's real property and a 5% cost-of-sale on a 2009 Ford Crown Victoria. Debtor has no priority unsecured debts and is proposing to pay a 25% dividend to his general unsecured creditors. Pursuant to § 2.15 of Debtor's amended plan, Debtor estimates that his general unsecured debts total \$29,68.29. Debtor's amended plan must pay 100% to his general unsecured creditors.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$563.20, which represents approximately .18 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$3,063.20 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The court will enter an appropriate minute order.

12. [17-23520](#)-B-13 REV ANDERSON  
CJO-1 Kayla M. Grant  
**Thru #13**

OBJECTION TO CONFIRMATION OF  
PLAN BY CENLAR FSB  
7-13-17 [[29](#)]

**Tentative Ruling:** Pingora Loan Servicing, LLC's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

The court's decision is to overrule the objection and determine whether the plan is confirmable at the hearing for reasons stated at Item #13.

Objecting creditor Cenlar FSB, servicer for Pingora Loan Servicing, LLC, holds a deed of trust secured by the Debtor's residence. The creditor asserts \$6,829.69 in pre-petition arrearages but has not yet filed a proof of claim. The creditor provides no evidence to support the basis or the amount of claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

The court will enter an appropriate minute order.

13. [17-23520](#)-B-13 REV ANDERSON  
JPJ-1 Kayla M. Grant

AMENDED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
7-13-17 [[27](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

The matter will be determined at the scheduled hearing.

Chapter 13 Trustee Jan Johnson objects to confirmation on grounds that 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) shows that the Debtor's monthly disposable income is \$313.52 and the Debtor must pay no less than \$18,811.20 to unsecured non-priority creditors. The plan will pay only \$1,145.98 to unsecured non-priority creditors. Debtor filed a response stating that he had filed an amended Form 122C-2 on July 25, 2017, showing that his monthly disposable income is -\$102.24 and that he is not required to pay anything to unsecured non-priority creditors.

The Trustee also states that the Debtor is delinquent in the amount of \$910.00, which represents approximately 1 plan payment. By the time this matter is heard an additional plan payment in the amount of \$910.00 will also be due. Debtor filed a response stating that he has made one payment of \$910.00 and will make another \$910.00 prior to the date of the hearing.

**Final Ruling:** No appearance at the August 1, 2017, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 14 of Borrowers First Inc. and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Borrowers First Inc. ("Creditor"), Proof of Claim No. 14 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$12,086.30. Objector asserts that the Claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was February 1, 2017. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's Proof of Claim was filed February 8, 2017.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

*Id.* at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason

that would permit the court to allow its late-filed proof of claim.

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

The court will enter an appropriate minute order.

15. [17-23028](#)-B-13 LESIA BANADA  
CPG-2 Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
7-17-17 [[45](#)]

EJ VENTURES, LLC VS.  
DEBTOR DISMISSED: 06/28/2017

**Final Ruling:** No appearance at the August 1, 2017, hearing is required. The case having been dismissed on June 28, 2017, the motion for relief from stay is dismissed as moot.

The court will enter an appropriate minute order.

16. [17-23228](#)-B-13 ANDRES FLORES  
JPJ-1 Patrick Riazzi

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
6-30-17 [[26](#)]

DEBTOR DISMISSED: 07/27/2017

**Final Ruling:** No appearance at the August 1, 2017, hearing is required. The case having been dismissed on July 27, 2017, the objection to confirmation is dismissed as moot.

The court will enter an appropriate minute order.



17. [17-22634](#)-B-13 RANDY RICHARDSON AND  
TGM-1 JACQUELYN  
W. Steven Shumway

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
WILMINGTON SAVINGS FUND  
SOCIETY, FSB  
6-7-17 [[20](#)]

**Tentative Ruling:** This matter was continued from July 3, 2017. The Objection of Wilmington Savings to Confirmation of Chapter 13 Plan was originally filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

The court's decision is to determine the matter at the scheduled hearing.

Wilmington Savings Fund Society, FSB doing business as Christiana Trust, not in its individual capacity but solely as trustee for BCAT 2015-14BTT ("Wilmington Savings"), objects to confirmation on grounds that the Debtors' plan understates the amount of arrearages. Wilmington Savings' claim is secured by real property commonly known as 7921 Rock Springs Road, Penryn, California. Wilmington Savings asserts that the Debtors' arrearages total \$34,701.40.

The Debtors filed an objection stating that the delinquency amount stated in Wilmington Savings' objection pertains to Debtor's prior bankruptcy case (no. 15-24061). That case was dismissed on January 23, 2017, but Wilmington Savings, under the creditor name Selene Finance LP, had received \$25,612.80 in regular payments and \$5,593.92 in payments against the delinquency. See case no. 15-24061, dkt. 110.

The parties agreed to continue the matter to August 1, 2017, so that Wilmington Savings can review the payment receipts and documents provided by the Debtors.

18. [17-23435](#)-B-13 RYAN GRIMES  
JPJ-1 John David Maxey

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-11-17 [[14](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor did not appear at the meeting of creditors set for July 6, 2017, as required pursuant to 11 U.S.C. § 343.

Second, 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).

Third, the plan does not provide treatment for the priority debt owed to the Internal Revenue Service. The plan does not comply with 11 U.S.C. § 1322(a)(2).

Fourth, the plan cannot be assessed for feasibility because the Debtor states on the Statement of Financial Affairs #27 that his business Outdoor Services, Inc. was closed in 2012 but Schedule I states that that same business is the sole source of Debtor's income. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fifth, if the business Outdoor Services, Inc. is still in operation, the Debtor has failed to disclose his interest in it on Schedule A/B. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan filed May 22, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

19. [17-21038](#)-B-13 ANTHONY/RENEE TOKUNO  
JHW-1 Diana J. Cavanaugh

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
6-23-17 [[41](#)]

CREDIT ACCEPTANCE CORP. VS.

DEBTOR DISMISSED: 07/30/2017

**Final Ruling:** No appearance at the August 1, 2017, hearing is required. The case having been dismissed on July 30, 2017, the motion for relief from stay is dismissed as moot.

The court will enter an appropriate minute order.

20. [17-23739](#)-B-13 JUAN CALZADA  
JPJ-1 Stephen M. Reynolds

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-11-17 [[16](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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 list income received from a seasonal holiday light business on Schedule I, the Statement of Financial Affairs, or the Means Test. The Debtor also failed to list or value two timeshares on Schedule A/B. The plan is not proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

Second, according to Schedule A/B, the Debtor values his primary residence located in Woodland, California at \$420,000.00. The Trustee values the property at as much as \$475,000.00. The amount based on the Trustee's preliminary investigation would suggest that there is non-exempt property in the estate and that unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. If so, the plan would not comply with 11 U.S.C. § 1325(a)(4).

The plan filed June 13, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

21. [17-23040](#)-B-13 PATRICK BERNARD  
AF-2 Arasto Farsad  
DEBTOR DISMISSED: 06/13/2017

MOTION TO CONFIRM PLAN  
6-12-17 [[25](#)]

**Final Ruling:** No appearance at the August 1, 2017, hearing is required. The case having been dismissed on June 13, 2017, the motion to confirm is dismissed as moot.

The court will enter an appropriate minute order.

**Final Ruling:** No appearance at the August 1, 2017, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) 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 filed on June 25, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

23. [17-23141](#)-B-13 CAROL CICCONE MOTION TO SELL  
MOH-1 Michael O'Dowd Hays 7-13-17 [[22](#)]

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

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 52 Orchardcrest Drive, Oroville, California ("Property").

Proposed purchaser Terry Aultman has agreed to purchase the Property for \$139,000.00. After deducting 8% in estimated closing costs, the net sale would be \$126,960.00. The mortgage of approximately \$72,500.00 will be paid in full and Debtor will net \$54,460.00. This is within the \$175,000.00 exemption of § 704.730(a)(3) claimed by the Debtor. Debtor is 65 years old and is entitled to claim exemption § 704.730(a)(3).

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 court will enter an appropriate minute order.

24. [13-26844](#)-B-13 DIOSDADO RODRIGUEZ  
SDH-3 Scott D. Hughes

MOTION FOR COMPENSATION FOR  
SCOTT D. HUGHES, DEBTOR'S  
ATTORNEY  
6-29-17 [[50](#)]

**Final Ruling:** No appearance at the August 1, 2017, hearing is required.

The Motion for Additional Attorney Fees 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

#### **REQUEST FOR ADDITIONAL FEES AND COSTS**

As part of confirmation of the Debtor's Chapter 13 plan, Scott Hughes ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 33. Applicant now seeks additional compensation in the amount of \$1,000.00 in fees and \$17.42 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 53.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would receive a loan modification from Wells Fargo Bank, N.A. in January 2017 after the plan had been confirmed on August 7, 2013. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	\$1,000.00
Additional Costs and Expenses	\$ 17.42

The court will enter an appropriate minute order.



25. [17-23745](#)-B-13 CYNTHIA HARDING  
JPJ-1 Shareen Golbahar

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
7-11-17 [[13](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The Debtor did not appear at the meeting of creditors set for July 6, 2017, as required pursuant to 11 U.S.C. § 343.

The plan filed June 1, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

26. [17-23146](#)-B-13 RAYMOND CORREA  
JPJ-1 Taras Kurta  
**Thru #27**  
**And #47**

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON  
6-22-17 [[18](#)]

**Tentative Ruling:** This matter was continued from July 17, 2017, to be heard in conjunction with the motion to value collateral of Santander Consumer USA. Trustee's Objection to Confirmation of the Chapter 13 Plan was originally filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor did not appear at the meeting of creditors set for June 15, 2017, as required pursuant to 11 U.S.C. § 343.

Second, feasibility depends on the granting of a motion to value collateral for Santander Consumer USA. That motion was denied without prejudice at Item #27.

The plan filed May 19, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

27. [17-23146](#)-B-13 RAYMOND CORREA  
TBK-1 Taras Kurta

MOTION TO VALUE COLLATERAL OF  
SANTANDER CONSUMER USA  
7-13-17 [[33](#)]

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

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

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 LX ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$3,460.00 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).

However, the court finds issue with the Debtor's valuation. The Debtor's valuation of \$3,460.00 is based on Edmunds.com. However, this is a "private party" value. This is the value in which a private party, who is not a retailer, could buy or sell a car. The standard here must be a retail valuation, taking into account the condition of the car. See 11 U.S.C. § 506(a).

In the Chapter 13 context, the replacement value of personal property used by debtors 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 Debtor has not persuaded the court regarding his position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The court will enter an appropriate minute order.

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

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$2,090.00, which represents approximately 1.11 plan payments. By the time this matter is heard, an additional plan payment in the amount of \$1,890.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan does not provide a cure of post-petition arrears in the amount of \$3,145.71 owed to Green Planet Servicing, LLC/Planet Home Lending, LLC listed in Class 1. The plan provides for a cure of post-petition arrears in the amount of only \$2,146.32. The modified plan fails to specify a complete cure of all the post-petition arrears. The plan therefore cannot be effectively administered.

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

The court will enter an appropriate minute order.

29. [17-23654](#)-B-13 SHARON OGBODO  
JPJ-1 Matthew J. DeCaminada

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-11-17 [[29](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

The Trustee filed an objection to confirmation with a hearing scheduled for August 1, 2017. Oddly, Debtor's response has a hearing scheduled for August 29, 2017.

Separately, the Debtor filed an amended plan on July 7, 2017. The confirmation hearing for the amended plan is scheduled for August 29, 2017. It appears that the Debtor may have mistaken the Trustee's objection to pertain to the amended plan filed July 7, 2017, and not the earlier plan filed May 31, 2017.

Since an amended plan was filed, the earlier plan filed May 31, 2017, is not confirmed.

The court will enter an appropriate minute order.

**Final Ruling:** No appearance at the August 1, 2017, hearing is required.

The Motion to Confirm Debtor's Second Amended Plan Filed on June 20, 2017, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) 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 second 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 filed on June 20, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

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

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

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

The court will enter an appropriate minute order.

32. [17-23660](#)-B-13 DIANA BROOKS  
AP-1 Candace Y. Brooks  
**Thru #33**

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
7-12-17 [[25](#)]

**Tentative Ruling:** The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Objecting creditor Wells Fargo Bank, N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$52,469.90 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 June 14, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

33. [17-23660](#)-B-13 DIANA BROOKS  
JPJ-1 Candace Y. Brooks

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-11-17 [[21](#)]

**Tentative Ruling:** The Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the plan cannot be assessed for feasibility because while the Debtor proposes to pay creditors and complete the plan by selling her real property within 8 months, the Debtor has not yet hired a real estate agent or listed the property for sale. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan payment in the amount of \$2,124.00 for months 2-6 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 aggregate of the monthly amounts plus the Trustee's fee is \$2,141.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Third, the Debtor has not submitted proof of her social security number as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). The Debtor has not complied with 11



U.S.C. § 521(a)(3).

Fourth, the Debtor is delinquent to the Chapter 13 Trustee. By the time this matter is heard, an additional plan payment in the amount of \$2,124.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fifth, the proposed plan does not specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend owed to Wells Fargo Home Mortgage provided for in Class 1. The plan cannot be effectively administered.

The plan filed June 14, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

34. [17-23764](#)-B-13 BRENDA SMITH  
JPJ-1 Marc A. Caraska  
**Thru #35**

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-11-17 [[25](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, feasibility depends upon the granting of a motion to value collateral for JPMorgan Chase Bank, N.A. That motion is granted at Item #34.

Second, the Debtor filed amended schedules on July 10, 2017, to reflect that she had previously filed for bankruptcy on October 11, 2016, case no. 16-26774. The plan has been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed June 2, 2017, is confirmed.

The court will enter an appropriate minute order.

35. [17-23764](#)-B-13 BRENDA SMITH  
MAC-1 Marc A. Caraska

MOTION TO VALUE COLLATERAL OF  
JPMORGAN CHASE BANK, N.A.  
6-23-17 [[16](#)]

**Final Ruling:** No appearance at the August 1, 2017, hearing is required.

The Motion to Value Collateral Encumbered by JPMorgan Chase Bank, N.A. 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)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of JPMorgan Chase Bank, N.A. at \$7,526.00.

Debtor's motion to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Jaguar XF ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$7,526.00 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. 5 filed by JPMorgan Chase Bank, N.A. National Bankruptcy Dept. 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 April 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 \$17,739.75. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$7,526.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

36. [17-23766](#)-B-13 JUDITH RANDEL  
ADR-1 Justin K. Kuney  
**Thru #38**

MOTION TO VALUE COLLATERAL OF  
CAPITAL ONE, N.A.  
7-3-17 [[16](#)]

**Final Ruling:** No appearance at the August 1, 2017, hearing is required.

Debtor's Motion for Order Valuing Collateral 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Capital One National Association at \$4,500.00.

Debtor's motion to value the secured claim of Capital One National Association ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Kia Soul ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$4,500.00 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 filed by Capital One Auto Finance, c/o Ascension Capital Group 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 July 15, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$10,800.28. 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 \$4,500.00. *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 court will enter an appropriate minute order.

37. [17-23766](#)-B-13 JUDITH RANDEL  
CJO-1 Justin K. Kuney

OBJECTION TO CONFIRMATION OF  
PLAN BY BANK OF AMERICA, N.A.  
7-13-17 [[23](#)]

**Tentative Ruling:** The Bank of America, N.A.'s Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Objecting creditor Bank of America, N.A. holds a deed of trust secured by the Debtor's residence. The creditor asserts \$3,957.25 in pre-petition arrearages but has not yet filed a proof of claim. The creditor provides no evidence to support the amount of claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed June 2, 2017, is confirmed.

The court will enter an appropriate minute order.

38. [17-23766](#)-B-13 JUDITH RANDEL  
JPJ-1 Justin K. Kuney  
OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-11-17 [[20](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Feasibility depends on the granting of a motion to value collateral for Capital One National Association. That motion was granted at Item #36.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed June 2, 2017, is confirmed.

The court will enter an appropriate minute order.

39. [16-25468](#)-B-13 ROBERT DANIEL, AND DIANNA MOTION FOR COMPENSATION BY THE  
PSB-6 DANIEL LAW OFFICE OF BAINS LEGAL, PC  
Pauldeep Bains FOR PAULDEEP BAINS, DEBTORS'  
ATTORNEY(S)  
6-25-17 [[78](#)]

**Final Ruling:** No appearance at the August 1, 2017, hearing is required.

The Motion for Additional Attorney Fees 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

#### **REQUEST FOR ADDITIONAL FEES AND COSTS**

As part of confirmation of the Debtors' Chapter 13 plan, Pauldeep Bains ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 42. Applicant now seeks additional compensation in the amount of \$2,200.00 in fees and \$0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 81.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtors would receive a loan modification from Select Portfolio Services, Inc. in December 2016 after the plan had been confirmed on October 26, 2016. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	\$2,200.00
Additional Costs and Expenses	\$ 0.00

The court will enter an appropriate minute order.

40. [13-21575](#)-B-13 AMALIA GRIEGO  
JPJ-3 Scott D. Hughes  
**Thru #41**

OBJECTION TO CLAIM OF NEVADA  
COUNTY TAX COLLECTOR, CLAIM  
NUMBER 10  
6-8-17 [[72](#)]

**Final Ruling:** No appearance at the August 1, 2017, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 10 of Nevada County Tax Collector and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Nevada County Tax Collector ("Creditor"), Proof of Claim No. 10 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$22,859.24. Objector asserts that the Claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a government unit was August 5, 2013. The Creditor's Proof of Claim was filed February 8, 2017.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

*Id.* at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

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

The court will enter an appropriate minute order.

41. [13-21575](#)-B-13 AMALIA GRIEGO OBJECTION TO CLAIM OF NEVADA  
JPJ-4 Scott D. Hughes COUNTY TAX COLLECTOR, CLAIM  
NUMBER 11  
6-8-17 [\[76\]](#)

**Final Ruling:** No appearance at the August 1, 2017, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 11 of Nevada County Tax Collector and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Nevada County Tax Collector ("Creditor"), Proof of Claim No. 11 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$29,980.05. Objector asserts that the Claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a government unit was August 5, 2013. The Creditor's Proof of Claim was filed February 9, 2017.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is



allowed, and excusable neglect is not among them.  
Thus, the 90-day deadline for filing claims under Rule  
3002(c) cannot be extended for excusable neglect.

*Id.* at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

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

The court will enter an appropriate minute order.

**Tentative Ruling:** The Motion to Value Collateral of Home Expo Financial Inc. was originally 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to grant the motion and value the secured claim of Home Expo Financial Inc. at \$0.00.

### Introduction

This matter was continued from July 17, 2017, so that Debtors Johnnie and Kimberly Rhynes ("Debtors") could submit an anticipated letter confirming the amount owed to the senior lienholder on their residence located at 2014 Crawford Court, Fairfield, California ("Property"). Debtors represented that the amount owed the senior lienholder is substantially more than the amount stated in the senior lienholder's proof of claim filed on August 28, 2014, as Claim No. 10-1. That letter was not filed as of July 31, 2017. Nevertheless, upon further consideration and review of the docket, the court has determined that the current balance owed the senior lienholder is immaterial to the disposition of the Debtors' motion to value. Therefore, for the reasons explained below, the court will grant the Debtors' motion to value and will value the secured claim of Home Expo Financial Inc. ("Creditor") at \$0.00.

### Discussion

Creditor is the successor in interest to Bucks Financial, LLC., the prior secured creditor that held the second deed of trust on the Property. See Claim No. 14, p. 7. Debtors seek to value Creditor's claim at \$0.00.

The motion to value is accompanied by the Debtors' declaration. Debtors value the Property at a fair market value of \$224,000.00 as of the petition filing date of May 16, 2014. As the owners, Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). The court also previously valued the Property at \$224,000.00 as of the petition date in an order filed on June 30, 2014, granting the Debtors' earlier motion to value the same Property. See Dkts. 29, 45.

Creditor makes three arguments in opposition to the Debtors' motion to value:

#### (1) What date determines valuation?

Creditor asserts the proper valuation date is the date the current motion to value was filed. The court disagrees. Creditor has provided no basis for deviating from the petition date as the date to determine valuation. The petition date is the most logical point for determining value in the context of a Chapter 13 lien strip motion. *In re Montiel*, 2017 Bankr. LEXIS 1797, at \*8 (Bankr. W.D. Wash. 2017); see also *BAC Home Loans Servicing, LP v. Abdelgadir (In re Abdelgadir)*, 455 B.R. 896, 902 (9th Cir. BAP 2011). Further, the court finds that the timing of this motion does not create an equitable exception to using the petition date for valuation in this case. *In re Montiel*, 2017 Bankr. LEXIS 1797, at \*14.

On the petition date, Creditor's right to prevent modification of its claim depended on two factors: whether the Property had equity to support the lien, and whether the claim was secured solely by Debtors' principal residence, 11 U.S.C. § 1322(b)(2). *In re Montiel*, 2017 Bankr. LEXIS 1797, at \*11. There was no equity in the Property to support Creditor's lien on the petition date. In fact, Creditor had no interest in the

Property until September 2, 2014, when Bucks Financial assigned the second deed of trust to Creditor. This date is after the court (Holman, J.) determined in June of 2014 that Bucks Financial's second deed of trust was a secured claim of \$0.00. See Dkts. 29, 45.

Since valuation is determined as of the petition date and Creditor had no right to prevent modification of its claim on the petition date (either because Creditor had not yet acquired an interest in the Property or there was no equity in the Property), the court denies Creditor's request to continue the matter so that Creditor can obtain an appraisal. The court also overrules Creditor's objection to the use of the petition date as the date of valuation. The date of valuation is the petition date and Judge Holman determined that as of the petition date Creditor's secured claim had a value of \$0.00.

(2) What is the balance of the senior lien holder Seterus, Inc.?

Creditor also asserts that, based on Claim No. 10, the balance owed the senior lienholder is now \$154,709.48 which means there is equity for its junior lien to attach. The amount listed in Claim No. 10-1 is indeed less than the value asserted in Debtors' motion. However, there already has been a judicial determination that \$265,045.00 is the balance owed on the first deed of trust as of the petition date. The order in which that determination was made became final long ago. More important, as explained further below, the determination made by that order, i.e., Property valuation at \$244,000.00 and a first deed of trust balance of approximately \$265,045.00 resulting in a \$0.00 secured claim on the second deed of trust, was subsequently incorporated into a modified plan that the court confirmed without any objection by Creditor.

(3) Creditor states it was not on notice to object to confirmation.

This is incorrect. Obviously, Creditor could not have been on notice as to the plan filed May 16, 2014, and confirmed August 22, 2014, because its interest in the Property did not exist at that time. Bucks Financial did not transfer its interest in the second deed of trust to Creditor until September 2, 2014.

In any case, on June 14, 2016, Debtors filed and served Creditor with a modified plan and motion to confirm it. See Dkt. 90. The address at which Creditor was served matches the address on Creditor's proof of claim, Claim No. 14. The address on Creditor's proof of claim is the address where Creditor's attorney, who filed the proof of claim nearly two years earlier, stated notices to Creditor should be sent.

Debtors' modified plan classified Creditor's secured claim based on its second deed of trust as a Class 2 claim and, importantly, valued it at \$0.00.<sup>1</sup> Creditor did not object to confirmation of the Debtors' modified plan or oppose the motion to confirm it. Accordingly, the Debtors' modified plan with the valuation of Creditor's secured claim based on its second deed of trust valued at \$0.00 was confirmed on August 4, 2016, see dkt. 114, and the confirmation was entered on August 15, 2016. See Dkt. 115.

Confirmation of the modified plan which values Creditor's secured claim based on its second deed of trust at \$0.00 renders the current balance owed on the first deed of trust immaterial because Creditor is now bound by the terms of a confirmed Chapter 13 plan. Creditor cannot now collaterally attack the order confirming the modified plan.

## **Conclusion**

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11

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<sup>1</sup>The court is aware that the confirmed modified plan names the creditor in Class 2 as "Bucks Financial, LLC". However, when the modified plan was filed in June of 2016 Creditor would have recognized that claim as its own based on the assignment from Bucks Financial and the proof of claim Creditor filed, both nearly two years earlier in September 2014.

U.S.C. § 506(a) is granted. Creditor's claim secured by a junior deed of trust identified as recording number 200600042574, as against real property commonly known as 2014 Crawford Court, Fairfield, California, 94533, with APN 0170-174-110, is wholly unsecured. Creditor has a secured claim valued at \$0.00.

The court will enter an appropriate minute order.

**Tentative Ruling:** The Motion to Confirm the Amended Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) 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 Citimortgage, Inc. and Chapter 13 Trustee Jan Johnson.

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

First, Citimortgage, Inc. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$2,608.93 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.

Second, the maximum fee that may be charged in non-business cases is \$4,000.00. This is a non-business case because the Debtor's main source of income is as a regularly-waged employee at Experis. Even though Debtor does operate a business called Crazy King Production, it produces a nominal amount of monthly income. The Debtor has filed a response stating that it shall reduce the total attorney's fees in § 2.06 to \$4,000.00

For the first reason stated above, the amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

44. [17-24093](#)-B-13 WYSPER HILTON MOTION TO VALUE COLLATERAL OF  
MRL-1 Mikalah R. Liviakis GENERAL MOTOR, LLC  
**Thru #45** 6-27-17 [[8](#)]

**Final Ruling:** No appearance at the August 1, 2017, hearing is required.

The Debtor having filed a Notice of Withdrawal of its Motion to Value 2010 Hyundai Tucson, Collateral of General Motors, LLC, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(B) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court will enter an appropriate minute order.

45. [17-24093](#)-B-13 WYSPER HILTON MOTION TO VALUE COLLATERAL OF  
MRL-2 Mikalah R. Liviakis IRS  
6-27-17 [[11](#)]

**Final Ruling:** No appearance at the August 1, 2017, hearing is required.

The Motion to Value Collateral of IRS 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Internal Revenue Service at \$6,942.00.

Debtor's motion to value the secured claim of Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of various items of personal property: cash on hand \$10; USAA checking and savings account \$23; Safe Credit Union checking and savings account \$10; Safe Credit Union checking account \$2.50; Prudential 401k retirement account \$2,000.00; household goods and furnishings \$2,500; two televisions; one computer, two laptops, one iPad \$1,200; bicycle \$50; clothes \$200; wedding ring and costume jewelry \$100; group term life insurance \$1; 2010 Hyundai Tucson \$10,551; 2001 Volvo S40 \$845.50 (collectively, "Personal Property"). Although the Debtor states that the total value of Personal Property is \$17,498.50, it actually calculates to \$17,493. 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 the IRS 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 total dollar amount of the obligation represented by the IRS tax lien is \$25,000 as stated in the Debtor's declaration. The Debtor states that the Personal Property is encumbered by the senior lien of GM Financial against the 2010 Hyundai Tucson in the amount of \$15,858. This leaves \$6,942 in unencumbered equity of the Personal Property for the IRS secured lien to attach. Therefore, the IRS's claim secured by a lien on the asset's title is under-collateralized. The IRS's secured claim is determined to be in the amount of \$6,942. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

46. [17-23313](#)-B-13 VIRGIL EVANS CONTINUED MOTION TO DISMISS  
JPJ-2 Jonathan D. Matthews CASE  
See Also #5-6 7-6-17 [[45](#)]

**Tentative Ruling:** This matter was continued from July 25, 2017, to allow the Debtor to become current by August 1, 2017. If the Debtor is not current by this date, the case shall be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.



47. [17-23146](#)-B-13 RAYMOND CORREA  
JPJ-2 Taras Kurta

CONTINUED MOTION TO DISMISS  
CASE

**See Also #26 - 27**

6-22-17 [[22](#)]

**Tentative Ruling:** This matter was continued from July 25, 2017, to allow the Debtor to become current by August 1, 2017. If the Debtor is not current by this date, the case shall be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.