

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

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

**PRE-HEARING DISPOSITIONS**

**DAY: TUESDAY**

**DATE: June 4, 2019**

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

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

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

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

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

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



2. [19-21802](#)-B-13 JOSE PEREZ OBJECTION TO CONFIRMATION OF  
[AP-1](#) Michael Benavides PLAN BY WELLS FARGO BANK, N.A.  
**Thru #3** 4-24-19 [[20](#)]

**Tentative Ruling**

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

The court's decision is to sustain the objection and deny confirmation 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 \$23,289.58 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Additionally, once the pre-petition arrears and post-petition arrears owed to the Creditor are accounted for, the Debtor lacks adequate income to make all payments due under the plan. The plan is not feasible pursuant to 11 U.S.C. § 1325(a)(6).

The plan filed April 7, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

3. [19-21802](#)-B-13 JOSE PEREZ OBJECTION TO CONFIRMATION OF  
[JPJ-1](#) Michael Benavides PLAN BY JAN P. JOHNSON  
5-8-19 [[25](#)]

**Tentative Ruling**

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

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

First, the Debtor has failed to amend Schedule J to include the non-filing spouse's expenses as requested by the Trustee at the meeting of creditors. The Debtor has not complied with 11 U.S.C. § 1325(a)(1), (a)(3), and § 521(a)(3).

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

Third, the plan payment in the amount of \$1,950.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account

of Class 1 arrearage claims, and executory contract and unexpired lease arrearage claims. The plan does not comply with Section 5.02 of the mandatory form plan.

Fourth, 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).

Fifth, the Debtor has not provided the Trustee with a copy of his 2018 California income tax return. The Debtor has failed to cooperate with the Trustee as necessary to enable the Trustee to perform his duties. The Debtor has failed to comply with 11 U.S.C. § 521(a)(3).

The plan filed April 7, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

4. [19-20204](#)-B-13 MARY SIMPSON  
[MJD](#)-3 Matthew J. DeCaminada

CONTINUED MOTION TO CONFIRM  
PLAN  
4-11-19 [[47](#)]

**No Ruling**

**Final Ruling**

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

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

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

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

The court will enter a minute order.

6. [19-21305](#)-B-13 EDWIN/MEGAN PAWLEY MOTION TO CONFIRM PLAN  
[JMC](#)-2 Joseph M. Canning 3-29-19 [[23](#)]  
**Thru #7**

**Tentative Ruling**

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

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

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$4,271.50, which represents approximately 1 plan payment. An additional payment of \$4,271.50 will be due by the date of the hearing on this matter. 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).

Second, feasibility depends on the granting of motions to value collateral for AmeriCredit and Solano First Federal Credit Union, formerly known as CMT Federal Credit Union. To date, the Debtors have failed to file, set for hearing, and serve on the respondent creditors and the Trustee a stand-alone motion to value the collateral.

Third, the Debtors have failed to amend Schedules I and J to reflect adjustments in income and expenses since Debtor Edwin Pawley will be working with his father rather than with Elite Wireless Group. The Debtors have failed to comply with 11 U.S.C. § 521(a)(3) and have failed to carry the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

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

The court will enter a minute order.

7. [19-21305](#)-B-13 EDWIN/MEGAN PAWLEY OBJECTION TO CONFIRMATION OF  
[TJS](#)-1 Joseph M. Canning PLAN BY SOLANO FIRST FEDERAL  
CREDIT UNION  
4-23-19 [[31](#)]

**Tentative Ruling**

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

The court's decision is to overrule the objection but deny confirmation of the plan.

Objecting creditor Solano First Federal Credit Union, formerly known as CMT Federal Credit Union ("Creditor"), holds an interest against a 2017 Keystone Bullet CCH ("Vehicle"). Creditor objects to confirmation on grounds that the plan does not provide the Creditor with an appropriate interest rate and that the Debtors have allowed insurance coverage on the Vehicle to lapse.

However, Creditor's objection rests on the Debtors' filing of a motion to value the Vehicle. See Item #6. Thus, the Creditor's objection is overruled but the plan filed March 29, 2019, nonetheless does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

The court will enter a minute order.



8. [19-21705](#)-B-13 TOBY TOLEN  
[JGD](#)-2 John G. Downing

MOTION TO CONFIRM PLAN  
4-22-19 [[31](#)]

**No Ruling**

### **Tentative Ruling**

This matter was continued from May 21, 2019. Debtor Nicholas Bonanno ("Debtor") stated at that hearing that an amended plan was filed on May 20, 2019, which would resolve the issues raised by The Socotra Opportunity Fund, LLC ("Creditor"). Creditor stated at the hearing that the Debtor and Creditor have agreed to an adequate protection payment that includes post-petition payments and terms regarding the sale of the real property located at 7929 Butte Ave., Sacramento, California ("Property"). The parties indicated that they are working on a stipulation and that the motion would be withdrawn if the parties reached an agreement. It does not appear any agreement was reached and the motion has not been withdrawn.

If no agreement has been reached, the court's decision will be to deny without prejudice the motion for relief from stay for the reasons stated below.

### **Introduction**

Creditor moves for relief from the automatic stay of 11 U.S.C. § 362(a) for "cause" under 11 U.S.C. § 362(d)(1). Dkt. 53. Debtor has opposed the motion. Dkt. 65. Creditor replied to the Debtor's opposition. Dkt. 74.

The court has reviewed the motion, opposition, reply, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket in this Chapter 13 case. Findings of fact and conclusions of law are set forth below. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052. For the reasons explained below, Creditor's motion will be denied without prejudice.

### **Background**

In April of 2017, Debtor obtained a \$370,000.00 loan from Socotra Capital, Inc. Dkt. 55 at ¶4. The loan is evidenced by a promissory note and secured by deed of trust that encumbers the Property. *Id.* The note and deed of trust were assigned to Creditor in April of 2017. *Id.* at ¶9.

The loan was a 24-month loan with a maturity date of June 1, 2019. *Id.* at ¶11. However, Creditor states that it accelerated the loan due to multiple defaults by the Debtor. *Id.* at ¶ 12. Creditor's acceleration made the loan due and payable in full, which the Debtor then failed to pay. *Id.* As a result, a notice of default was recorded in September 2018, a notice of trustee's sale was recorded in December 2018, and a trustee's sale of the Property was scheduled for January 3, 2019. *Id.* at ¶ 13, 15.

No sale occurred because on the day before the scheduled trustee's sale, January 2, 2019, the Debtor filed the petition that commenced this Chapter 13 case. Dkt. 1.

Creditor states that the unpaid balance due on the loan as of the petition date was \$409,314.03. Dkt. 55 at ¶18. As of the date the motion was filed, April 19, 2019, that amount increased to \$439,019.37. *Id.* at ¶19. Creditor also states that the Debtor has not made (and is not making) postpetition payments, *id.* at ¶20, and it has not received any proof from the Debtor that the Property is insured. *Id.* at ¶ 24.

### **Discussion**

Section 362(d) of the Bankruptcy Code provides for relief from the automatic stay for cause, including a lack of adequate protection. 11 U.S.C. § 362(d)(1). Creditor groups its grounds for relief on the basis of cause into three categories: (1)

inadequate protection, (2) lack of insurance, and (3) bad faith.<sup>1</sup> None of these provide a basis for relief.

#### Creditor is Adequately Protected

In a motion brought under § 362(d)(1), the party seeking relief bears the burden on the issue of the debtor's equity - or lack thereof - in property. 11 U.S.C. § 362(g)(1). Creditor has not met this burden.

Creditor submitted no evidence of the Property's value with its motion. The only evidence of the Property's value is in Schedule A/B which values the Property at \$850,000.00. Dkt. 1 at 2.

Schedules are filed under penalty of perjury. See Fed. R. Bankr. P. 1008. Some courts treat schedules as evidentiary admissions under Federal Rule of Evidence 801(d)(2). *Heath v. American Express Travel Related Services Co., Inc. (In re Heath)*, 331 B.R. 424, 431 (9th Cir. BAP 2005). Others treat them as judicial admissions. *In re Roots Rents, Inc.*, 420 B.R. 28, 40 (Bankr. D. Utah). Whatever their status, schedules carry evidentiary weight. *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969-70 (9th Cir. 2012). Therefore, for purposes of this motion only, the court relies on Schedule A/B as the only evidence of the Property's value and values the Property at \$850,000.00.<sup>2</sup>

The Ninth Circuit has held that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). Here, Creditor claims it is owed \$439,019.27 as of April 2019. Based on the Property's \$850,000.00 value that leaves equity of \$410,981.00 which, in turn, creates an equity cushion of 48.350%. Creditor is therefore adequately protected, even in the absence of postpetition payments.

#### Lack of Insurance

Creditor asserts that it "has not received any proof of insurance from Debtor regarding the Property, despite Debtor's obligation to insure the Property under the Loan Agreement." Dkt. 55 at ¶24. Debtor states that the Property is insured. Dkt. 65 at 3:14-15.

Notably, Creditor does not state that it demanded proof from the Debtor that the Property is insured and the Debtor failed or refused to provide it.

Although the Debtor bears the burden on all issues except the existence of equity, see 11 U.S.C. § 362(g)(2), Creditor, as the party moving for stay relief, must still make some prima facie showing and blindly asserting a claim without some evidentiary production does not cut it. See *In re Spencer*, 568 B.R. 278, 279-80 (Bankr. W.D. Mich. 2017) (citations omitted). In other words, merely stating that proof of insurance has not been provided without any evidentiary indication that the Debtor was asked to produce it is not sufficient. See *id.* at 279. *Palcios v. Upside Investments, LP (In re Palcios)*, 2013 WL 1615790 (9th Cir. BAP 2013), illustrates this point.

In *Palcios*, the bankruptcy appellate panel held that a lack of insurance may be a basis for relief from the automatic stay for cause. *Id.* at 3. And on that basis it affirmed

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<sup>1</sup>These include failure to make postpetition payments resulting in a lack of adequate protection, failure to provide proof the Property is insured, bad faith filing of this Chapter 13 case the day before a scheduled foreclosure, and prepetition violations of the loan documents. See dkt. 53 at 1:23-2:3.

<sup>2</sup>If Creditor believes that the Property has a different value, it is incumbent on Creditor to produce evidence of that different value. It has not done that. In the absence of contrary evidence, the court may accept the Debtor's sworn scheduled value as conclusive. See *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

the bankruptcy court's order terminating the automatic stay when the debtor failed to provide a secured creditor with proof its real property collateral was insured as required by the terms of a deed of trust. *Id.* In so doing, however, the bankruptcy appellate panel noted that the secured creditor had produced some evidence that the debtor was on notice that secured creditor wanted proof its collateral was insured before the stay relief motion was filed. *Id.* As noted above, Creditor has produced no such evidence here.

#### Bad Faith

Creditor contends the Debtor filed this Chapter 13 case in bad faith because the Debtor filed it the day before a scheduled trustee's sale of the Property. The court disagrees.

The Debtor did not acquire an interest in the Property and then file bankruptcy the day before a scheduled foreclosure. See *In re Powers*, 135 B.R. 980, 1002 (Bankr. S.D. Cal. 1991). The Debtor did not file bankruptcy the day before a foreclosure sale and schedule property he does not own in order to create an appearance the property is property of the estate protected by the stay. See *In re Gilbert*, 535 B.R. 317, 325 (Bankr. C.D. Cal. 2015). The Debtor has not repeatedly filed bankruptcy cases in order to stop foreclosures. See *In re Bradley*, 38 B.R. 425, 431 (Bankr. C.D. Cal. 1984) (citing and discussing cases). And the Debtor has not failed to prosecute this case after filing it to stop a foreclosure sale. See *In re Campora*, 2015 WL 5178823, 11 (E.D.N.Y. 2015).

It is true that the Debtor filed this Chapter 13 case the day before Creditor's scheduled trustee's sale and the filing of this case did in fact prevent that sale from going forward. That explains the initial skeletal filing. However, there is no evidence that the Debtor engaged any other conduct typically associated with a pre-foreclosure filing to suggest that the Debtor filed this Chapter 13 case in bad faith or for an improper purpose. Required documents that were not filed with the petition were timely filed and the Debtor has appeared in proper prosecution of this case subsequent to its filing.

#### Remaining Cause

The court does not consider Debtor's prepetition defaults under the note and deed of trust to be sufficient cause for stay relief. Those defaults will be cured if a plan can be confirmed.

The court also declines to rule on feasibility issues in the context of Creditor's stay relief motion. Although plan confirmation issues may be considered in the context of a stay relief motion when deciding if relief is warranted for cause under § 362(d)(1), there must be a plan pending for confirmation when the stay relief motion is heard. See *Palacios*, 2013 WL 1615790, \*4-\*5. That is not the case here. The court recently denied confirmation of the Debtor's plan on May 9, 2019. Dkts. 68, 70, 72-73. The Debtor has not yet filed another plan. There are therefore no confirmation issues to consider in relation to Creditor's stay relief motion.

#### Conclusion

For all the foregoing reasons, Creditor's motion for relief from the automatic stay is denied without prejudice.

The court will enter a minute order.

10. [18-25410](#)-B-13 NEAL/LOURDES BASSETT  
[FF-3](#) Gary Ray Fraley

MOTION TO CONFIRM PLAN  
4-25-19 [[76](#)]

### **Tentative Ruling**

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

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

Subsequent to the filing of the Trustee's objection, an amended plan was filed on May 24, 2019. The confirmation hearing for the amended plan is scheduled for July 2, 2019. The earlier plan filed April 16, 2019, is not confirmed.

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

The court will enter a minute order.

**Final Ruling**

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

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

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

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

The court will enter a minute order.

12. [17-24512](#)-B-13 LINDA CONKLING COUNTER MOTION FOR ALLOWANCE OF  
[DNL](#)-1 Matthew J. DeCaminada ADMINISTRATIVE EXPENSE  
**Thru #13** 5-21-19 [[89](#)]

**No Ruling**

13. [17-24512](#)-B-13 LINDA CONKLING OBJECTION TO CLAIM OF AMERICAN  
[MJD](#)-4 Matthew J. DeCaminada RIVER EAST RANCH HOMEOWNERS  
ASSOCIATION, CLAIM NUMBER 3-2  
4-10-19 [[85](#)]

**Final Ruling**

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

The court's decision is to sustain the objection to Claim No. 3-2 of American River East Ranch Homeowners Association and disallow the claim in its entirety.

Debtor Linda Conkling ("Objector") requests that the court disallow the amended claim of American River East Ranch Homeowners Association ("Creditor"), Claim No. 3-2. The amended claim is asserted to be secured in the amount of \$14,514.21. Objector asserts that the amended claim should be disallowed because the proof of claim is not accompanied by evidence that the security interest has been perfected pursuant to Rule 3001(d).

According to the Debtor, the amended claim does not provide any documents showing the security interest of the amended claim and thus must not be classified as a secured claim. The only attachment to the amended Claim is a pre- and post-petition ledger showing the Debtor's alleged delinquency along with a copy of the Covenants, Conditions, & Restrictions. The HOA did not provide any documentation that a lien had been recorded with the county nor a notice of default as required by California Civil Code §2924.

Under California law, the amount of the assessment, plus any costs of collection, late charges, and interest shall be a lien on the owner's separate interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the and other sums. California Civil Code §5675(a). Further, the itemized statement of the charges owed by the owner shall be recorded together with the notice of delinquent assessment. California Civil Code §5675(b). Debtor contends that the amended claim of the HOA does not provide any of the aforementioned documents as evidence of a security interest in the Property.

**Discussion**

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie*

*(In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the proof of claim is not accompanied by evidence that the security interest has been perfected. The Creditor does not provide any documentation of its security interest to classify the amended claim as secured. Nothing has been recorded with the county recorder. Objector has satisfied its burden of overcoming the presumptive validity of the claim.

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

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

The court will enter a minute order.



14. [19-21512](#)-B-13 LAVANH SYHAVONG  
[JPJ](#)-1 Robert W. Fong

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
4-24-19 [[12](#)]

### **Tentative Ruling**

This matter was continued from May 14, 2019. Debtor Lavanh Syhavong ("Debtor") was required to file a response due May 21, 2019. Any reply by the Chapter 13 Trustee was due May 28, 2019. The Debtor filed a response on May 17, 2019, and the Trustee did not file any reply.

The matter will be determined at the scheduled hearing.

The Chapter 13 Trustee originally objected to confirmation on grounds that the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. Form 122C-2, Line 16, has a claimed expense of \$2,861.04 that is overstated and should be approximately \$1,982.56 based on Debtor's pay advices and 2018 income tax returns. Also Form 122C-2, Line 43, has a claimed expense of \$200.00 for "additional deduction for 20-year old vehicle" that is improper. The Debtor is not permitted to claim this deduction. *Drummond v. Luedtke (In re Luedtke)*, 508 B.R. 408 (9th Cir. BAP 2014). When the overstated expenses are corrected, the Debtor's monthly disposable income increases from \$143.64 to \$1,222.12 and the Debtors must pay no less than \$73,237.20 to non-priority unsecured creditors. The plan currently proposes to pay \$9,775.20 to non-priority unsecured creditors.

Debtor's response filed May 18, 2019 states that her deductions are correctly claimed based on her specific circumstances. Specifically, in the six-month period prior to filing her case, Debtor had extraordinary overtime hours assigned to her. At the time she was the sole referral coordinator when there are usually three referral coordinators. Debtor was assigned overtime hours to catch up on office work. Since then, the office now has three referral coordinators, including Debtor. Her average gross income during the Means Test period was \$5,301.00, while her typical ongoing gross income is \$3,818.23, as reflected on Schedule I. Debtor also contends that her monthly vehicle expenses are reasonable given that her and her husband's two vehicles are each 8 and 20 years old with 170,000 and 161,000 miles.

The matter will be determined at the scheduled hearing.

### **Tentative Ruling**

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

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

First, the plan will take approximately 60 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Second, the plan payment in the amount of \$1,742.57 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The plan does not comply with Section 5.02 of the mandatory form plan.

Third, the plan does not comply with 11 U.S.C. § 1325(a)(4) because 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 \$61,168.55. The total amount that will be paid to unsecured creditors is \$0.00.

Fourth, the plan does not appear to have been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3). The monthly plan payment is \$1,742.57 but Schedules I and J states that Debtor's monthly net income is \$10,553.19.

Fifth, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,742.57, which represents the first plan payment that was due on April 25, 2019. An additional payment of \$1,742.57 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Sixth, 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).

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

Eighth, it is unclear whether the plan complies with 11 U.S.C. § 1325(b)(1)(B). The Calculation of Disposable Income (Form 122C-2) includes a deduction at Line 16 for income taxes in the amount of \$7,398.25. However, the Debtor has failed to provide any documentation that his actual expenses for taxes average approximately 38% of the gross income of the Debtor and his non-filing spouse.

Ninth, the Debtor failed to disclose the filing of a previous case, number 17-26681, on this petition. The Debtor has not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. 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).

Tenth, Questions 4, 5, and 16 of the Statement of Financial Affairs provide information from 2015, 2016, and 2017, which appears to be the information list in the previous case. The Debtor has not disclosed the information applicable to this case, such as

the annual income for 2017, 2018, and year-to-date and any retainer paid to Debtor's counsel within the one-year period to the filing of this petition. The Debtor has not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. The plan has not been proposed in good faith as required under 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).

Eleventh, the Debtor failed to disclose his interest in printers, computers, and a desk in his spouse's business on Schedule A/B. The Debtor has not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. The plan has not been proposed in good faith as required under 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).

Twelfth, the plan cannot be effectively administered because the terms for the payment of Debtor's attorney's fees is unclear. Section 3.06 provides a monthly payment of \$0.00 for administrative expenses. It is not possible to pay the balance of the Debtor's attorney's fees and any other administrative expense through the plan with a monthly payment specified at \$0.00.

Thirteenth, the plan proposes an interest rate of 0% for El Dorado County Tax Collector in Class 2A. The plan does not comply with 11 U.S.C. § 511(a). The plan does not provide treatment for the creditor's secured debt that is either acceptable to the creditor or which will result in payment in full with the appropriate interest rate. The plan does not comply with 11 U.S.C. § 1325(a)(5)(A) or (B).

Fourteenth, 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).

Fifteenth, the Debtor has not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. The Debtor has not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

The plan filed March 25, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

16. [17-24418](#)-B-13 CARLOS/KELLY SMITH MOTION TO MODIFY PLAN  
[MCN](#)-6 William F. McLaughlin 4-25-19 [[102](#)]

**No Ruling**

17. [19-22020](#)-B-13 WENDY HENRY  
[JPJ](#)-1 David M. Brady

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
5-15-19 [[16](#)]

### **Tentative Ruling**

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

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

First, the plan does not contain either the Debtor's original wet or electronic signature, and does not contain either the Debtor's attorney's original wet or electronic signature.

Second, the plan incorrectly classifies Caliber Home Loans as a Class 1 debt, which is defined as "all delinquent secured claims that mature after the completion of this plan, including those secured by debtor's principal residence." Caliber Home Loans is listed as being owed \$0.00 in pre-petition arrears.

Third, the plan payment in the amount of \$411.02 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The plan does not comply with Section 5.02 of the mandatory form plan.

Fourth, 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 \$1,173.77 and the Debtor must pay no less than \$70,426.20 to unsecured non-priority creditors. The plan pays only \$11,752.73 to unsecured non-priority creditors.

The plan filed April 1, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

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

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

The court will enter a minute order.

18. [19-20131](#)-B-13 ROBIN BACON AND KAREN CONTINUED MOTION TO CONFIRM  
[TBG-1](#) HARRELL PLAN  
Stephan M. Brown 4-12-19 [[21](#)]

**No Ruling**

19. [18-27132](#)-B-13 STUART KOPPLE  
Pro Se

MOTION TO CONFIRM PLAN  
5-3-19 [[94](#)]

**Final Ruling**

The pro se Debtor and Chapter 13 Trustee entered into a stipulation to continue this matter to July 2, 2019, at 1:00 p.m. No appearance is necessary.

The court will enter a minute order.

**Final Ruling**

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

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

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

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

The court will enter a minute order.



21. [19-21842](#)-B-13 MARIANN HANNON-CHAPMAN MOTION TO CONFIRM PLAN  
[FF-1](#) AND PAUL CHAPMAN 4-23-19 [[16](#)]  
**Thru #22** Gary Ray Fraley

**Tentative Ruling**

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

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

Subsequent to the filing of the Trustee's objection, an amended plan was filed on May 3, 2019. The confirmation hearing for the amended plan is scheduled for June 11, 2019. The earlier plan filed March 26, 2019, is not confirmed.

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

The court will enter a minute order.

22. [19-21842](#)-B-13 MARIANN HANNON-CHAPMAN OBJECTION TO CONFIRMATION OF  
[JPJ-01](#) AND PAUL CHAPMAN PLAN BY JAN P. JOHNSON  
Gary Ray Fraley 4-30-19 [[20](#)]

**Tentative Ruling**

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

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on May 3, 2019. The confirmation hearing for the amended plan is scheduled for June 11, 2019. The earlier plan filed March 26, 2019, is not confirmed.

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

The court will enter a minute order.

**Final Ruling**

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

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

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

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

The court will enter a minute order.

### **Tentative Ruling**

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

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

Objecting creditor Land Home Financial Services, Inc. ("Creditor") holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$176.33 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Debtor Deborah Arnold ("Debtor") disputes that any pre-petition arrearages are owed. Debtor states in her response that she was not in default on her mortgage when her petition was filed and is not in default on her mortgage now. Debtor contends that the Creditor's asserted pre-petition arrearage of \$176.33 is actually a "projected escrow shortage" and not a mortgage arrearage. According to the Debtor, Creditor's proper course of action is to either accept direct payment of \$176.33 from the Debtor or increase the mortgage payment by \$15.00 per month to offset the projected escrow shortage rather than demand the \$2,403.61 mortgage payment through the plan. Debtor acknowledges that the plan filed April 2, 2019, does not provide for the Creditor because counsel forgot to list the Creditor in the additional provisions. Debtor requests that the Creditor be provided for in Class 4 of the plan with payments to be made directly from the Debtor to the Creditor. Debtor states that requiring payment of the mortgage through the plan is unreasonable because it would result in an unjustified and disproportionate penalty to the Debtor who is current on payments and would result in additional administrative fees of up to \$14,418.00. Debtor requests that the court overrule the objection and confirm the plan.

### **Discussion**

The Creditor filed proof of claim no. 5 on May 8, 2019, which shows a pre-petition arrearage of \$176.33. The Debtor has not filed any objection to the proof of claim.

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

The Debtor has not filed an objection to Creditor's claim and there has not been a noticed hearing on the matter. Therefore, as it stands, the proof of claim with the stated pre-petition arrearage is prima facie valid. Since the plan does not propose to cure these arrearages or 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 April 2, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

25. [17-27747](#)-B-13 RONALD WITSCHI, JR.  
[LP-2](#) Lewis Phon

MOTION TO MODIFY PLAN  
4-25-19 [[58](#)]

**No Ruling**

26. [19-20747](#)-B-13 DANIEL/TERESA STALTER MOTION TO CONFIRM PLAN  
[CK-3](#) Catherine King 4-22-19 [[53](#)]

**Final Ruling**

The Debtors filed an amended notice of hearing on the motion to confirm the amended plan filed May 6, 2019. The hearing is set for June 18, 2019, at 1:00 p.m. The motion is continued to that date and time.

No appearance a the June 4, 2019, hearing is necessary.

The court will enter a minute order.

27. [19-21947](#)-B-13 GABRIEL HOUSE  
[JPJ](#)-1 Mark A. Wolff

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
5-15-19 [[15](#)]

### **Tentative Ruling**

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

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$800.00, which represents approximately 1 plan payment. An additional payment of \$800.00 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, Section 1.02 of the Debtor's plan indicates that there are Nonstandard Provisions appended which state, "Debtor is in the process of selling the Dodge Ram 3500 which is secured by Sierra Central Credit Union. Debtor believes the value of the property is more than the debt owed to the Credit Union. Provided that the sale of the Dodge Ram is sufficient to pay the Credit Union in full, Debtor shall be authorized to sell such vehicle without a separate court order." Although the Trustee does not oppose the sale of the asset, the Trustee opposes the selling of the asset as a provision of the plan rather than bringing a motion before the court pursuant to Local Bankr. R. 3015-1(h)(1)(D).

The plan filed March 29, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

28. [19-21952](#)-B-13 PHOUTHAVONG VONGKHAMPHANH OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Eric John Schwab PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
5-8-19 [[14](#)]

### **Tentative Ruling**

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

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$2,908.00, which represents approximately 1 plan payment. An additional payment of \$2,908.00 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor has failed to amend Schedule I to update the non-filing spouse's employment information and income as requested by the Trustee at the meeting of creditors. To date, no amendments have been filed with the court. The Debtor has failed to comply with 11 U.S.C. § 1325(a)(1), (a)(3), and § 521(a)(3).

Third, the Debtor has failed to amend Form 122C-1 to include the non-filing spouse's income as requested by the Trustee at the meeting of creditors. To date, no amendments have been filed with the court. The Debtor has failed to comply with 11 U.S.C. § 521(a)(3).

The plan filed March 29, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

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

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

The court will enter a minute order.



**Final Ruling**

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

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

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

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

The court will enter a minute order.

30. [19-22153](#)-B-13 LESLIE/KIM ROSS  
[JPJ](#)-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
5-8-19 [[20](#)]

WITHDRAWN BY M.P.

**Final Ruling**

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

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

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

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

The court will enter a minute order.

31. [10-32656](#)-B-13 MICHAEL/CHERYL CARTER  
[17-2219](#) WW-7  
CARTER, JR. ET AL V. OCWEN  
LOAN SERVICING, LLC ET AL

MOTION TO EXTEND DEADLINES  
4-23-19 [[129](#)]

**No Ruling**

32. [19-22061](#)-B-13 JULIEANNE/RANDY PRICE OBJECTION TO CONFIRMATION OF  
AP-1 Michael O'Dowd Hays PLAN BY THE BANK OF NEW YORK  
**Thru #33** MELLON TRUST COMPANY  
5-16-19 [[24](#)]

**Tentative Ruling**

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

The court's decision is to overrule the objection but deny confirmation of the plan for reasons stated at Item #33.

Objecting creditor The Bank of New York Mellon Trust Company, N.A. as successor-in-interest to all permitted successors and assigns of JPMorgan Chase Bank, National Association, as Trustee for Specialty Underwriting and Residential Finance Trust Mortgage Loan Asset-Backed Certificates, Series 2005-BC3 ("Creditor") holds a deed of trust secured by the Debtors' residence. The Creditor asserts \$11,511.61 in pre-petition arrearages but has not yet filed a proof of claim. Although the Creditor states that it will file 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.

Nonetheless, the plan filed April 10, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The plan is not confirmed.

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

The court will enter a minute order.

33. [19-22061](#)-B-13 JULIEANNE/RANDY PRICE OBJECTION TO CONFIRMATION OF  
[JPJ-1](#) Michael O'Dowd Hays PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
5-15-19 [[20](#)]

**Tentative Ruling**

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

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

First, it is unclear whether the property located at 9 Donnie Lane, Willows, California, is an asset of the Debtors' bankruptcy estate since the Debtors testified at the meeting of creditors that Bank of New York Mellon, holder of the second deed of trust, foreclosed on the property pre-petition. The Debtors have failed to carry the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the claim of Bank of New York Mellon is not a Class 1 claim because, in

accordance with 11 U.S.C. § 1322(b)(5), it is not a claim that will receive ongoing monthly contractual payments. The Debtor's Nonstandard Provisions states, "Any payment or mortgage arrears and on-going payment owed to the Bank of New York Mellon Trust deferred for the duration of the debtor's 60-month Chapter 13 Plan." The Debtors have not provided any evidence that such an agreement with Bank of New York Mellon exists. The plan modifies the claim, which is impermissible pursuant to 11 U.S.C. § 1322(b)(2) and § 1325(a)(1).

The plan filed April 10, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the 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 60 days, the case will be dismissed on the Trustee's ex parte application.

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

The court will enter a minute order.

34. [19-21664](#)-B-13 RESPAL/NENITA MENDOZA  
[AF-2](#) Arasto Farsad

MOTION TO CONFIRM PLAN  
4-15-19 [[23](#)]

**No Ruling**

35. [19-21864](#)-B-13 IMELDA DEL ROSARIO  
[JPJ](#)-1 Pro Se  
**Thru #36**

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
5-9-19 [[25](#)]

**Tentative Ruling**

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

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

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

Second, the Debtor has failed to amend the plan to specify when vesting will occur per the form plan. The Debtor has failed to comply with 11 U.S.C. § 521(a)(3).

Third, the plan payment in the amount of \$120.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The plan does not comply with Section 5.02 of the mandatory form plan.

Fourth, 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).

Fifth, the Debtor has failed to amend her petition to list a previous case that was filed by the Debtor. The Debtor has failed to comply with 11 U.S.C. § 521(a)(3).

The plan filed April 10, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

36. [19-21864](#)-B-13 IMELDA DEL ROSARIO  
[RMP](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY REAL TIME RESOLUTIONS,  
INC.  
5-6-19 [[22](#)]

**Tentative Ruling**

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

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

Objecting creditor Real Time Resolutions, 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 \$50,618.86 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Creditor's request that the Debtor's case be dismissed with a 180 day bar against re-filing pursuant to 11 U.S.C. §109(g) or that Debtor's case be dismissed under 11 U.S.C. § 1307(c)(1), and an award for attorney's fees and costs, are overruled.

The plan filed April 10, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.



37. [19-22064](#)-B-13 JESUS HARO  
[JPJ](#)-1 Scott D. Hughes

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
5-15-19 [[18](#)]

### **Tentative Ruling**

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

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

First, the Debtor has failed to amend Schedule A/B and the Statement of Financial Affairs to properly disclose the transfer of personal residences and commercial property that occurred pre-petition in 2018. The Debtor has failed to comply with 11 U.S.C. § 1325(a)(1) and § 521(a)(3).

Second, the Debtor testified at the meeting of creditors that he failed to list a domestic support obligation that is court ordered and withdrawn from his paycheck. Pursuant to Local Bankr. R. 3015-1(b)(6), the Debtor is required to serve upon the Trustee no later than 14 days after filing the petition a Domestic Support Obligation Checklist. The Debtor has not provided the Trustee with this checklist, thus hindering the Trustee from performing his duties under 11 U.S.C. §§ 1302(b)(6) and (d)(1). The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(2).

The plan filed April 9, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

### Final Ruling

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

The court's decision is to sustain the objection to Amended Claim No. 5-2 of the Franchise Tax Board as filed by Debtors Martin Snezek and Annette Snezek.

Chapter 13 Trustee Jan Johnson ("Objector") requests that the court disallow the amended claim of Franchise Tax Board ("FTB"), Amended Claim No. 5-2. The amended claim is asserted to be secured in the amount of \$13,315.90. Objector asserts that the Debtors do not have the right, power, or authority to amend a timely proof of claim filed by the FTB. The FTB timely filed its unsecured claim in the amount of \$13,315.90 on December 1, 2016. The deadline for governmental units to file a proof of claim was January 25, 2017. Debtors filed an amended proof of claim on March 22, 2019.

### Discussion

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

The court finds that the Debtors have not provided any evidence that they have the right, power, or authority to amend a timely proof of claim filed by the Creditor. The Debtors have not cited to any case law or the United States Bankruptcy Code, Federal Rules of Bankruptcy Procedure, or Local Rules to support their authority. Objector has satisfied its burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, Amended Claim No. 5-2 of the Franchise Tax Board, as filed by Debtors Martin Snezek and Annette Snezek, is disallowed in its entirety. The objection to the amended proof of claim is sustained.

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

The court will enter a minute order.

**Final Ruling**

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

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

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

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

The court will enter a minute order.

40. [19-21876](#)-B-13 SCOTT YODER  
[JPJ](#)-1 Richard L. Sturdevant

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
5-8-19 [[15](#)]

### **Tentative Ruling**

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

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

First, the Debtor failed to submit proof of social security number to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Second, the plan cannot be fully assessed for feasibility. In Class 1, the arrearage dividend is listed as "see additional provisions" but there is no Non-Standard Provisions listed in the plan and the Debtor failed to check the box at section 1.02 to indicate that there would be any Non-Standard Provisions. The Debtor has failed to carry his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, 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 Schedule A/B, the Debtor's opinion of value of residential property in Solano County is \$360,000.00 but the Trustee values the property could be worth approximately \$493,000.00. Additionally, according to Schedules A, B, and C, the total value of non-exempt property in the estate is \$18,612.00. The total amount that will be paid to unsecured creditors under the plan is \$0.00.

The plan filed April 15, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

41. [17-26184](#)-B-13 DEREK/AMIE REDMAN  
[MJD](#)-3 Matthew J. DeCaminada

MOTION TO MODIFY PLAN  
4-19-19 [[53](#)]

**No Ruling**

42. [19-22084](#)-B-13 PETER DAO  
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
5-9-19 [[18](#)]

WITHDRAWN BY M.P.

**Final Ruling**

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

There being no other objection to confirmation, the plan filed April 3, 2019, will be confirmed.

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

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

The court will enter a minute order.

43. [18-25088](#)-B-13 DANIEL MASSEY  
[PLC](#)-2 Peter L. Cianchetta

MOTION TO CONFIRM PLAN  
4-18-19 [[71](#)]

**No Ruling**

**Thru #45**

**Tentative Ruling**

The court has before it a motion to confirm the second amended plan filed by Debtors Matthew and Ariana Vickers ("Debtors"). The Chapter 13 Trustee ("Trustee") has objected to confirmation and opposed the motion to confirm on the following grounds:

(1) the Debtor is [sic] delinquent to the Chapter 13 Trustee in the amount of \$2,831.75, which represents approximately 1.9 plan payments. An additional payment of \$5,400.00 will be due by the date of the hearing on this matter. 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).

(2) the amended plan fails to specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend owed to Nationstar Mortgage. The Trustee is unable to comply with § 3.07 of the plan.

(3) Nationstar Mortgage is listed in both Class 1 and Class 2A. Nationstar Mortgage does not qualify as a Class 2 debt and is improperly classified as such since the maturity date on the loan matures in March 2038, after the plan is completed. The Debtors have failed to carry the burden of showing that the plan complies with 11 U.S.C. § 135(a)(6).

(4) the Debtors projected disposable income is not being applied to make payments to unsecured creditors. According to the Calculation of Disposable Income (Form 122C-2), Debtors' monthly disposable income is \$2,331.23 and the Debtors must pay no less than \$139,873.80 to unsecured non-priority creditors. The plan proposes to pay nothing to unsecured non-priority creditors.

(5) the plan payment in the amount of \$5,400.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The plan does not comply with Section 5.02 of the mandatory form plan.

(6) the Debtors have failed to show that the plan complies with 11 U.S.C. § 1325(a)(6) since the payment of attorney's fees is inconsistent. Section 3.05 of the amended plan states that the attorney will receive a total of 43,000. This is contrary to Debtors' previously filed plans that state the attorney agreed to accept a total of \$3,500.

Dkt. 201.



The court's decision is to sustain the Trustee's objections, deny the motion to confirm, not confirm the second amended plan, and convert this Chapter 13 case to a Chapter 7 case.

The Trustee's first objection is of significant concern to the court, and it is dispositive.

This case was initially filed as a Chapter 13 case nearly a year ago, on July 18, 2018. Dkt. 1. Seven months later, on February 11, 2019, it was converted to a Chapter 7 case due to the Debtors' delinquency in plan payments and failure to prosecute. Dkts. 92, 93. Three days after that, on February 14, 2019, the Debtors moved to vacate the conversion order. Dkt. 99.

Following a hearing held on April 2, 2019, dkts. 153-154, and based largely on the Debtors' representations that they would (and could) make their Chapter 13 payments, dkt. 198, the court granted the Debtors' motion to vacate, vacated the conversion order, and ordered the case re-converted from a Chapter 7 case to a Chapter 13 case. The order re-converting the case from Chapter 7 back to the present Chapter 13 was entered on April 16, 2019. Dkt. 158. Notably, that order states as follows:

The Debtors are to make their chapter 13 payments timely. If the Debtors fail to make timely chapter 13 payments the case may be converted back to chapter 7 upon the chapter 13 trustee's ex parte application.

*Id.*, ¶ 3. At the time of the hearing on the Debtors' motion to vacate, the court further emphasized on the record that re-conversion was specifically conditioned on the Debtors' timely payment of Chapter 13 payments. Dkt. 154 (audio).

Sometimes history repeats itself. The Debtors were unable to make timely Chapter 13 payments before this case was converted to a Chapter 7 case and it is now apparent that they are unable to do so following re-conversion of this case from one under Chapter 7 to one under Chapter 13. The Debtors belong in a Chapter 7 case.

The Debtors have failed or are unable to comply with a condition of re-conversion and, more importantly, they have failed to comply with the re-conversion order. The Debtors were on notice of the consequences of not making timely Chapter 13 payments following re-conversion from Chapter 7 to Chapter 13 which means, even in the absence of a specific *ex parte* request by the Trustee, the Debtors' non-compliance with a condition of re-conversion and/or the re-conversion order is sufficient cause for conversion of this case to one under Chapter 7. See 11 U.S.C. §§ 1307(c), 1307(c)(3); see also *Fitzgerald v. Rosson (In re Rosson)*, 545 F.3d 764, 771 n.8 (9th Cir. 2008) (court may sua sponte convert to enforce its own orders). Conversion is also in the best interest of creditors given the availability of non-exempt equity available to a Chapter 7 trustee.

For the foregoing reasons, this case will be ordered converted from the present Chapter 13 case to a case under Chapter 7 of the Bankruptcy Code.

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

IT IS FURTHER ORDERED that this case is converted from a Chapter 13 to a Chapter 7 bankruptcy.

The court will enter a civil minute order.

### **Tentative Ruling**

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

The court's decision is to deny the motion to value the secured claim of Travis Credit Union without prejudice.

Debtors' motion to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors the owners of a 2011 Chevrolet Camaro ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$13,400.00 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). Debtors' attorney has also attempted to confirm the Kelley Blue Book value of the Vehicle. His investigation showed that the value of the Vehicle as of the petition filing date was between \$13,212.00 and \$14,797.00.

### **Proof of Claim Filed**

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

### **Opposition**

Creditor has filed an opposition asserting that the value of the collateral at the time the petition was filed was \$22,028.00. Creditor bases this value on the Kelley Blue Book valuation report.

### **Discussion**

Creditor asserts that the value of the Vehicle is approximately \$22,028.00 based on the value provided by Kelley Blue Book. Such market guide valuations, however, generally presume the condition of the vehicle is excellent. See e.g., <http://www.kbb.com> (indicating that retail "value assumes the vehicle has received the cosmetic and/or mechanical reconditioning needed to qualify it as 'Excellent'" and that "this is not a transaction value; it is representative of a dealer's asking price and the starting point for negotiation"). The vehicle must be valued at its replacement value. 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 clean retail value suggested by the Creditor cannot be relied upon by the court to establish the Vehicle's replacement value. First, this value assumes that the Vehicle is in excellent condition. This may not be the case. Second, 11 U.S.C. § 506(a)(2) asks for "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." The Creditor does not provide any consideration for the condition of the Vehicle and, therefore, it cannot be determined what a retailer would charge for this Vehicle.

Separately, the court finds issue with the Debtors' valuation. First, the Declaration of Matthew Vickers is incomplete and leaves blank the mileage on the Vehicle. Second, the Declaration of W. Steven Shumway states that he accessed the Kelley Blue Book

online resource for the value of the vehicle. Dkt. 187, ¶ 4. However, this valuation of the Vehicle is based on a third party industry source and hearsay. Fed R. Evid. 801-803. There are also credibility issues with regard to the declaration. Paragraph 5 of Mr. Shumway's declaration states: "I am of the opinion that the value of **my** Auto is..." Dkt. 87 (emphasis added). This is not Mr. Shumway's vehicle, it is the Debtors' vehicle.

The Debtors have not persuaded the court regarding their 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 motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

46. [15-21194](#)-B-13 JANET LYTLE  
[MAC](#)-2 Marc A. Caraska

MOTION TO MODIFY PLAN  
4-9-19 [[30](#)]

**No Ruling**

47. [19-20995](#)-B-13 RUDY GONZALEZ, AND  
[SBT](#)-3 ROBERTA GONZALEZ  
Susan B. Terrado

MOTION TO CONFIRM PLAN  
4-8-19 [[37](#)]

**Final Ruling**

The Debtors having filed a Notice of Withdrawal for the pending Motion to Confirm Amended Plan, the withdrawal being consistent with any opposition filed to the Motion, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion to Confirm Amended Plan is dismissed without prejudice.

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

The court will enter an appropriate minute order.

48. [18-21496](#)-B-13 DANILO SESE  
[DWE-3](#) Peter G. Macaluso  
**Thru #50**  
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-9-19 [[128](#)]

### **Tentative Ruling**

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

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

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 8781 Longmore Way, Fair Oaks, California (the "Property"). Movant has provided the Declaration of Charice Gladden to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Gladden Declaration states that there are 68.7 pre-petition payments in default, approximately 6 years, with a total of \$210,601.69 in pre-petition payments past due. There is also 1 post-petition payment in default totaling \$3,273.20.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$513,524.45 as stated in the Gladden Declaration. The value of the Property is determined to be \$676,000.00 as stated in Schedules A and D filed by Debtor.

Additionally, Debtor filed an amended plan on April 24, 2019, with a confirmation hearing set for June 4, 2019, at Item #50, in which he intends to surrender the Property.

### **Discussion**

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

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property. Moreover, the Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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

The court will enter a minute order.

49. [18-21496](#)-B-13 DANILO SESE CONTINUED MOTION TO DISMISS  
[JPJ](#)-4 Peter G. Macaluso CASE  
3-27-19 [[109](#)]

**Tentative Ruling**

The motion to modify plan was granted at Item #50. Therefore, the motion to dismiss is denied as moot.

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

The court will enter a minute order.

50. [18-21496](#)-B-13 DANILO SESE MOTION TO MODIFY PLAN  
[PGM](#)-4 Peter G. Macaluso 4-24-19 [[119](#)]

**Tentative Ruling**

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

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

The Chapter 13 Trustee opposes confirmation of the plan on grounds that the Nonstandard Provisions of the plan incorrectly state that the post-petition arrears paid to Wells Fargo were \$219.91 prior to the surrender of the asset. According to the Trustee's records, \$212.91 was paid.

The Debtor filed a response agreeing with the Trustee's assessment of the total amount in post-petition arrears paid to Wells Fargo. The Debtor requests that this change be made in the order and that the plan be modified.

Provided that the order language corrects the total post-petition arrears paid to Wells Fargo, the modified plan will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a) and will be confirmed.

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

The court will enter a minute order.

51. [19-22097](#)-B-13 GUILLERMO/SANTA DEL VALLE OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Steele Lanphier PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
5-8-19 [[22](#)]

### **Tentative Ruling**

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

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

The Chapter 13 Trustee opposes confirmation on grounds that the Joint Debtor has failed to provide proof of her social security number to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B), and because the plan payment in the amount of \$2,600.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of these monthly amounts plus Trustee's fee is \$2,608.00.

The Debtors filed a response stating that Joint Debtor has now provided proof of her social security number to the Trustee, and that the additional \$8.00 per month in plan payments can be paid and provided for in the order confirming.

Provided that the issues have been resolved as asserted by the Debtors, the plan filed April 3, 2019, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed April 3, 2019, is confirmed.

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

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

The court will enter a minute order.



52. [18-26598](#)-B-13 JOE/JENITSA CHAVEZ  
[MS-1](#) Mark Shmorgon

MOTION TO MODIFY PLAN  
4-19-19 [[22](#)]

**No Ruling**

53. [17-26199](#)-B-13 HOWARD/CLARALYN SANT CONTINUED MOTION TO DISMISS  
[JPJ](#)-4 Peter L. Cianchetta CASE  
**Thru #54** 3-26-19 [[83](#)]  
**No Ruling**

54. [17-26199](#)-B-13 HOWARD/CLARALYN SANT MOTION TO MODIFY PLAN  
[PLC](#)-5 Peter L. Cianchetta 4-17-19 [[93](#)]  
**No Ruling**

55. [19-21127](#)-B-13 GERALDINE DEGUZMAN  
[JPJ](#)-3 Pro Se

CONTINUED MOTION TO DISMISS  
CASE  
5-15-19 [[34](#)]

**No Ruling**

56. [19-21082](#)-B-13 RONDELL DANIEL  
[JPJ](#)-2 Pro Se

CONTINUED MOTION TO DISMISS  
CASE  
4-12-19 [[22](#)]

**No Ruling**