

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**August 7, 2018 at 1:00 p.m.**

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1. [14-25618](#)-B-13 SHELDON/MELANIE HIRSCH AMENDED MOTION TO MODIFY PLAN  
[DJC](#)-12 Diana J. Cavanuagh 6-28-18 [[204](#)]

**Tentative Ruling:** The Amended Motion to Confirm First Modified Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

Objecting creditor U.S. Bank Trust N.A., as Trustee of Bungalow Series F Trust c/o BSI Financial Services, its successors and/or assignees ("Creditor") holds a deed of trust secured by the Debtors' residence. The creditor filed a timely proof of claim on August 22, 2014, in which it asserted \$63,770.3 in pre-petition arrearages. The default has been reduced to \$14,558.84 after adequate protection payments were paid by the Trustee to the Creditor. Creditor objects to confirmation on grounds that the plan does to set forth a reasonable schedule and time period for the payment of arrearages owed, does not correctly identify the lien holder since Creditor filed a Transfer of Claim on June 22, 2017, does not list the correct monthly payment of \$976.43 that has remained unchanged since the filing of the petition, and the Additional Provisions are unclear as to how much will be paid on the claim. The plan impermissibly modifies the rights of Creditor under 11 U.S.C. § 1322(b)(2).

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

The court will enter an appropriate minute order.

**August 7, 2018 at 1:00 p.m.**

**Final Ruling:** No appearance at the August 7, 2018, hearing is required.

The Motion to Confirm Third Amended Chapter 13 Plan 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 third amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on June 28, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

3. [18-23532](#)-B-13 MELODY SIMPSON  
[JPJ](#)-1 W. Steven Shumway

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
7-12-18 [[14](#)]

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

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

The plan proposes an impermissible modification of the secured claim of Carrington Mortgage Services, holder of the first deed of trust on the Debtor's principal residence. No evidence that the lender has consented to or is considering a loan modification has been presented. The plan does not comply with 11 U.S.C. § 1322(b)(2). Moreover, because this court views the additional provisions included in Section 7 of the Debtor's plan as inconsistent with § 1322(b)(2) when there is no evidence that the lender has actually consented to a loan modification, this court consistently denies confirmation of plans that include such provisions.

The plan filed June 5, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

4. [17-21449](#)-B-13 JOHN KRAINTZ AND LESLIE MOTION TO MODIFY PLAN  
[MC-2](#) WENTLING KRAINTZ 6-27-18 [[57](#)]  
Muoi Chea

**Tentative Ruling:** The Motion to Confirm Second Modified Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been 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 objects to confirmation on the ground that Debtors are delinquent to the Chapter 13 Trustee in the amount of \$1,146.00, which represents approximately 1 plan payment.

Debtors filed a response stating that they paid this installment on July 25, 2018, and that Debtor's objection was filed on day before the due date.

The Debtors having cured their plan payment, the modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

5. [18-23651](#)-B-13 THOMAS HURST  
[HLC-1](#) Peter G. Macaluso  
[Thru #6](#)

OBJECTION TO CONFIRMATION OF  
PLAN BY BUTTE COUNTY TAX  
COLLECTOR  
7-17-18 [[12](#)]

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

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

### **Background**

This is the Debtor's second Chapter 13 case pending within one year of the dismissal of the Debtor's prior Chapter 13 case. The Debtor's prior Chapter 13 case, case no. 15-21405, was filed on February 24, 2015. The Debtor requested a § 1307(b) voluntary dismissal of his prior Chapter 13 case on June 14, 2018. Case no. 15-21405, dkt 45. An order dismissing the Debtor's prior Chapter 13 case was filed and entered on June 20, 2018. Case no. 15-21405, dkts. 46, 47.

The Debtor filed this Chapter 13 case on June 12, 2018, which means the Debtor filed this Chapter 13 case two days *before* he requested dismissal of his prior Chapter 13 case and eight days *before* the Debtor's prior Chapter 13 case was dismissed. Thus, the Debtor had two chapter 13 cases pending at the same time.

Meanwhile, by a Grant Deed recorded on February 14, 2018, an individual by the name of Charrissa N. Hurst transferred encumbered property subject to a notice of tax sale located at 1227 Billie Road, Paradise, California ("Property"), to the Debtor. The Debtor apparently did not disclose that transfer in his prior chapter 13 case. The Debtor also did not list the Property (or disclose the transfer) in the Schedules/Statement of Financial Affairs filed in this case.

For the reasons explained below, the court sustains Creditor's § 1325(a)(3) bad faith objection and denies confirmation of the Debtor's plan on that basis. The court also denies without prejudice Creditor's request to dismiss this Chapter 13 case.

### **Discussion**

Bad faith is determined based on a consideration of a totality of the circumstances. *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999) (citation omitted). The totality of the circumstances includes factors leading up to the filing of a petition. See *Matter of Little Creek Develop. Co.*, 779 F. 2d 1068, 1072 (5th Cir. 1986).

Filing a second Chapter 13 case before a pending Chapter 13 case is dismissed (or, more accurately, before dismissal of a pending Chapter 13 case is even requested), receipt of the Property subject to a pending notice of tax sale, the concealment of the Property (and its transfer) in two bankruptcy cases, and the attempt to confirm a Chapter 13 plan in this case without full, accurate, and honest disclosure of all property and property interests are all indicative of bad faith conduct by the Debtor. The court will not confirm the Debtor's plan under those circumstances. In fact, at a minimum, the Debtor must fully and truthfully disclose all assets before the court will confirm a plan in this case. Therefore, Creditor's § 1325(a)(3) bad faith objection is sustained and confirmation of the Debtor's plan is denied. Creditor's request for dismissal is also denied without prejudice.

Further, the Debtor is **ORDERED** to file amended Schedules disclosing his interest in the Property by August 14, 2018.

The Debtor is also cautioned that any request for a voluntary dismissal of this case will be reviewed under *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. 2008) (court may sua sponte take appropriate action to address debtor's bad faith and abusive conduct).

The plan filed June 12, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

6.	<a href="#"><u>18-23651</u></a> -B-13 THOMAS HURST <a href="#"><u>JPJ</u></a> -1 Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 7-18-18 [ <a href="#"><u>17</u></a> ]
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**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The Debtor has not amended Schedule A/B as requested by the Trustee at the meeting of creditors to include the small plot of land he owns, with a single-wide mobile home on it, located at 1227 Billie Road, Paradise, California ("Property"). The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Additionally, unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. The debt on the Property is owed to Butte County Tax Collector in the amount of \$7,213.51. The Debtor has fully exempted all of his other property and any equity in this Property is non-exempt. Excluding the unknown value of the Property, the total amount of non-exempt property in the estate is \$185.00, which consists of cash-on-hand and two Wells Fargo checking accounts. The total amount that will be paid to unsecured creditors is \$0.00.

The plan filed June 12, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

7. [18-23472](#)-B-13 JERIMIAH CANNADAY  
[JPJ](#)-1 W. Steven Shumway

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-12-18 [[18](#)]

CONTINUED TO 8/14/18 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF  
CREDITORS HELD 8/09/18.

**Final Ruling:** No appearance at the July 31, 2018, hearing is required.

The court will enter an appropriate minute order.

8. [18-23475](#)-B-13 MARCOS FLORES  
[JPJ](#)-1 Robert L. Goldstein

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-12-18 [[14](#)]

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

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

First, the Debtor has not provided the Trustee with a copy of his 2016 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).

Second, the Debtor has not filed an amended Schedule J to list all of his expenses as requested at the meeting of creditors. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The plan filed June 1, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

9. [18-23279](#)-B-13 ROBERT/JENNIFER PAINTER OBJECTION TO CONFIRMATION OF  
[JHW](#)-1 Rabin J. Pournazarian PLAN BY FORD MOTOR CREDIT  
**Thru #10** COMPANY, LLC  
6-28-18 [[14](#)]

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

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

Subsequent to the filing of Ford Moto Credit Company LLC's objection, the Debtors filed an amended plan on July 23, 2018. The confirmation hearing for the amended plan is scheduled for September 4, 2018. The earlier plan filed May 24, 2018, is not confirmed.

The court will enter an appropriate minute order.

10. [18-23279](#)-B-13 ROBERT/JENNIFER PAINTER OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Rabin J. Pournazarian PLAN BY JAN P. JOHNSON  
7-18-18 [[18](#)]

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

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 July 23, 2018. The confirmation hearing for the amended plan is scheduled for September 4, 2018. The earlier plan filed May 24, 2018, is not confirmed.

The court will enter an appropriate minute order.

11. [18-23983](#)-B-13 SHARON LOCKETT  
[RJ-2](#) Richard L. Jare

MOTION TO VALUE COLLATERAL OF  
ELITE ACCEPTANCE CORP.  
7-19-18 [[21](#)]

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

The court's decision is to value the secured claim of Elite Acceptance Corp. at \$3,000.00.

Debtor's motion to value the secured claim of Elite Acceptance Corp. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Nissan Altima S ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$3,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

#### **Discussion**

The lien on the Vehicle's title secures a purchase-money loan incurred on June 26, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$10,500.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$3,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

**Tentative Ruling:** The Expedited Motion to Extend the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is to deny the motion.

### **Introduction**

Debtor Timothy Neher ("Debtor") moves to have the automatic stay of 11 U.S.C. § 362(a) extended beyond thirty days in this Chapter 13 case. Dkt 24. This is the Debtor's second Chapter 13 case pending within the past year. The Debtor's prior Chapter 13 case was dismissed after the Debtor failed at his sixth attempt to confirm a plan by a court-ordered deadline. Case no. 17-23129, dkts. 338 & 339. Consequently, the automatic stay extends only for a period of thirty days from the petition date of this second Chapter 13 case. See 11 U.S.C. § 362(c)(3)(A).

The Debtor's motion to extend the automatic stay is opposed by secured creditor LendingHome Funding Corporation ("Creditor"), which holds a first deed of trust on the Debtor's real property located in Chico, California ("Property"). Dkt 32. The Debtor has replied to Creditor's opposition. Dkt. 46.

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 dockets in this Chapter 13 case and in the Debtor's prior Chapter 13 cases: *In re Neher*, case no. 17-23129 (Bankr. E.D. Cal. 2017); and in *In re Neher*, case no. 17-22519 (Bankr. E.D. Cal. 2017).

For the reasons below, the Debtor's motion will be denied and the automatic stay will not be extended beyond August 7, 2018.

### **Procedural Background of This Case**

The Debtor filed the petition that commenced this Chapter 13 case on June 20, 2018. Dkt. 1. The Debtor filed the present motion to extend the automatic stay on July 10, 2018. Dkt. 24.

On July 10, 2018, the Debtor also filed a motion for an order shortening time that requested a July 10, 2018, hearing on the motion to extend the automatic stay. Dkt. 21. Although the court declined to hear the motion to extend the automatic stay on July 10, 2018, the motion for an order shortening time was granted and a hearing on the motion to extend the automatic stay was set for July 17, 2018, at 3:00 p.m., in Department E. Dkt. 29.

The Debtor's motion to extend the automatic stay was heard in Department E and conditionally granted on an interim basis on July 17, 2018, with a continued hearing set on August 7, 2018. Dkt. 41. An interim order extending the automatic stay through August 31, 2018, unless earlier terminated by order of the court, was entered on July 25, 2018. Dkt. 43.

The Civil Minutes from the July 17, 2018, hearing state that, in this second Chapter 13 case filed within one year of the Debtor's previously-dismissed Chapter 13 case, after thirty days the automatic stay terminates under § 362(c)(3)(A) only as to the Debtor and nothing more. Dkt. 41. This judge respectfully disagrees with that view. Accordingly, the Civil Minutes from the July 17, 2018, hearing are modified by these Civil Minutes, which will be incorporated into this court's order denying the Debtor's motion to further extended the automatic stay beyond August 7, 2018.

## Relevant Background of Debtor's Prior (Dismissed) Chapter 13 Case

The Debtor filed the petition that commenced this Chapter 13 case the same day that the order dismissing the Debtor's prior Chapter 13 case was filed and entered, *i.e.*, June 20, 2018. *Compare*, dkt. 1 with case no. 17-23129, dkt. 338. More precisely, the petition that commenced this Chapter 13 case was filed at 2:35 p.m. on June 20, 2018, whereas the order dismissing the Debtor's prior Chapter 13 case was filed at 9:17 a.m., also on June 20, 2018.<sup>1</sup> *Id.*

The Debtor's prior Chapter 13 case was dismissed when, after six failed attempts, the Debtor was unable to confirm a plan by a court-ordered deadline. Case no. 17-23129, dkt. 331 & 338. Essentially, the Debtor sought to confirm a plan that would allow him to retain the Property and then sell the Property to a family member after twelve months to pay off Creditor's secured claim. Case no. 17-23129, dkt. 295.

The court in the Debtor's prior Chapter 13 case determined that the Debtor's plan was not feasible. Case no. 17-23129, dkt. 331. The court expressed significant concern over the Debtor's ability (or more accurately inability) to perform under the plan proposed noting that the Debtor had made two plan payments within the span of a year, retained funds he was obligated to turn over to the trustee, and turned over those funds to the trustee only after the trustee objected.<sup>2</sup> *Id.* Thus, the court's concern in the Debtor's prior Chapter 13 case was not so much what the Debtor proposed in the plan (although as noted that was a significant concern) but more so the Debtor's ability to even perform what the plan proposed. *Id.*

The plan that the Debtor now seeks to confirm in this Chapter 13 case is nearly identical to the plan the court rejected in the Debtor's prior dismissed Chapter 13 case. *Compare*, case no. 17-23129, dkt. 295 with case no. 18-23887, dkt. 16.

## Discussion

Absent circumstances not applicable here, if an individual debtor in a Chapter 7, 11, or 13 case was a debtor in a single or joint case that was pending and dismissed within the preceding year, "the stay under [§ 362](a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case[.]" 11 U.S.C. § 362(c)(3)(A). However, a party in interest may file a motion to continue the automatic stay and, after notice and a hearing within the applicable thirty-day period, "the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) . . . only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed[.]" 11 U.S.C. § 362(c)(3)(B).

A second bankruptcy "case is presumptively filed not in good faith . . . as to all creditors, if . . . there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under Chapter 7, 11, or 13[.]" 11 U.S.C. § 362(c)(3)(C)(i)(III). The presumption that the second bankruptcy case was filed not in good faith may only be overcome by clear and convincing evidence of a substantial change in the debtor's financial or personal circumstances. 11 U.S.C. § 362(c)(3)(C). The court considers the totality of the circumstances in determining good faith. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

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<sup>1</sup>The petition was a "bare bones" petition. Schedules and the Statement of Financial Affairs were not filed until July 5, 2018. Dkt. 14.

<sup>2</sup>The Debtor also had some difficulty making the filing fee installment payment in the prior dismissed Chapter 13 case. Case no. 17-23129, dkt. 50. He seems to have the same difficulty in this case as well. Dkt. 42.

The Debtor has not produced clear and convincing evidence of changed financial or personal circumstances. Consequently, the Debtor has not rebutted the presumption that this second Chapter 13 case was filed not in good faith.

This Chapter 13 case was filed the same day the Debtor's prior Chapter 13 case was dismissed. More precisely, this Chapter 13 case was filed a mere five hours after the order dismissing the Debtor's prior Chapter 13 case was filed. It is difficult to fathom how there could be any substantial change in the Debtor's financial or personal circumstances during the span of those five hours.

Except for a slight (and dubious) increase in income attributed to unoccupied rental property, the Debtor's income in this Chapter 13 case and in the prior dismissed Chapter 13 case appear to be relatively the same. If anything, according to the Statements of Financial Affairs filed in both cases, the Debtor's annual income has decreased and continues to decrease.

The court also notes that the Schedules in this Chapter 13 case appear to have been manipulated - and thereby filed in bad faith - in an effort to artificially lower total unsecured debt. In the prior dismissed Chapter 13 case the Debtor's amended Schedule E/F, filed on June 15, 2018, listed unsecured debt totaling \$144,298.66. Case no. 17-23129, dkt. 324. The Schedule E/F filed in this case states that on the June 20, 2018, petition date - just five days after the amended Schedules in the prior dismissed Chapter 13 case were filed - the Debtor had unsecured debt of \$117,451.75. Dkt. 14. Not only are individual unsecured debts suspiciously lowered in the Schedules filed in this Chapter 13 case but, apparently, within just five days there was a \$27,846.91 reduction in unsecured debt. There is no explanation to support or substantiate that reduction and, based on the Debtor's income (or lack thereof), such a significant reduction does not appear possible or even believable.

The plan proposed in this Chapter 13 case also does not differ materially from the plan rejected in the Debtor's prior dismissed Chapter 13 case. And if in the prior dismissed Chapter 13 case the court determined that the Debtor lacked an ability to perform the plan terms proposed, in the absence of clear and convincing evidence that the Debtor's financial or personal circumstances have improved between this case and the prior one (which there is none) the Debtor's ability to perform (and thereby feasibility of the plan) is no better in this case. The Debtor's difficulty in paying filing fee installments reinforces this conclusion.

Finally, the court notes that the Debtor is a serial filer of non-productive bankruptcy cases. Although this is the Debtor's second Chapter 13 case filed within a one-year period, this Chapter 13 case is actually the Debtor's third Chapter 13 case filed within the span of fifteen months. The first case was filed on April 17, 2017, and dismissed on May 5, 2017, for failure to timely file documents. Case no. 17-22519, dkt. 12. The serial filing of non-productive bankruptcy cases is indicative of bad faith conduct, a manipulation of the Bankruptcy Code, and the filing of bankruptcy cases in an inequitable manner.

In short, the court is not clearly convinced that the Debtor has established a substantial change in his financial or personal circumstances in the five-hour span between the dismissal of his prior Chapter 13 case and the filing of the petition in this Chapter 13 case. That means the Debtor has not rebutted the presumption that this case was filed not in good faith and that also means the automatic stay in this Chapter 13 case will not be further extended beyond August 7, 2018. Moreover, considering the totality of the circumstances referenced hereinabove, the court is persuaded that this case was indeed filed in bad faith. See *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999) (citation omitted) (bad faith determined by examining totality of the circumstances); *Elliot-Cook*, 357 B.R. at 814; see also *Matter of Little Creek Develop. Co.*, 779 F.2d 1068, 1072 (5th Cir. 1986) (totality of the circumstances includes factors leading up to the filing of a petition).

Therefore, for the foregoing reasons, the Debtor's motion to further extend the automatic stay will be denied and the automatic stay of § 362(a) will be deemed terminated in its entirety - and not just as to the Debtor - after August 7, 2018. And with regard to the latter, as further explained below, this court departs from and

amends the July 17, 2018, Civil Minutes, dkt. 41, and the order entered on July 25, 2018, that corresponds with those Civil Minutes. Dkt. 43.

In *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011), the bankruptcy appellate panel wrestled with the interpretation of § 362(c)(3)(A) and the extent to which the automatic stay terminates in a debtor's second bankruptcy case filed within a year of the dismissal of a prior bankruptcy case, noting both a majority and a minority view. *Id.* at 366.

The majority view (reflected in the Civil Minutes of July 17, 2018) holds that under § 362(c)(3)(A) the automatic stay terminates after thirty days in a second bankruptcy case filed within one year only as to the debtor and the debtor's property but not as to the estate's interest in such property. *Id.* Courts that follow the majority view look to the phrase "with respect to the debtor" in § 362(c)(3)(A) in isolation to define – and thence limit – the effective reach of § 362(c)(3)(A) and the extent of the automatic stay termination. *Id.* The minority view, on the other hand, holds that the phrase "with respect to the debtor" must be read and analyzed in the context of § 362(c)(3) as a whole and what Congress sought to accomplish in BAPCPA through its limitation of the automatic stay in the second bankruptcy case. *Id.*

The bankruptcy appellate panel in *Reswick* found the minority view to be more persuasive and adopted it. *Id.* at 366-369. It concluded that the minority view better comports with principles of statutory construction, does not make § 362(c)(3)(A) internally inconsistent by rendering its reference to "or property securing such debt or with respect to any lease" meaningless, recognizes that the phrase "with respect to the debtor" distinguishes between the debtor and a debtor's spouse consistent with the "single or joint" case reference in the beginning of § 362(c)(3), and does not render § 362(c)(3)(A) difficult to reconcile with § 362(c)(3)(B), which permits any party in interest (and not just the debtor) to move to extend the automatic stay and thence recognizes that property other than the debtor's is subject to stay termination.

The bankruptcy appellate panel continues to adhere to *Reswick*, recognizing that under § 362(c)(3)(A) the automatic stay terminates in its entirety after thirty days. See *Fareed Sepehry-Fard v. U.S. Bank, N.A. (In re Sepehry-Fard)* 2018 WL 2709718, \*4 (9th Cir. BAP 2018); *Ortola v. Ortola (In re Ortola)*, 2011 WL 7145793 (9th Cir. BAP 2011). Decisions of the bankruptcy appellate panel carry considerable weight. See *State Compensation Ins. Fund v. Hoffmeier (In re Silverman)*, 616 F.3d 1001, 1005 (9th Cir. 2010) (Ninth Circuit "treat[s] the BAP's decisions as persuasive authority given its special expertise in bankruptcy issues and to promote uniformity of bankruptcy law throughout the Ninth Circuit").

*Reswick* has also been followed by at least two district courts in the Ninth Circuit, including our own. *Vitalich v. Bank of New York Mellon*, 569 B.R. 502, 509-510 (N.D. Cal. 2016); *Vassallo v. Naiman*, 2012 WL 691783, \*2 (E.D. Cal. 2012); *United States v. Weldon*, 2011 WL 13247437, \*3 (E.D. Cal. 2011).

Numerous bankruptcy courts within the Ninth Circuit also follow *Reswick's* conclusion that after thirty days, under § 362(c)(3)(A) the automatic stay terminates in its entirety and not just as to the debtor. See e.g., *In re Bishop*, 2017 WL 1788412, \*1 (Bankr. C.D. Cal. 2017); *In re Wilson*, 2016 WL 3751620, \*3 n.6 (Bankr. E.D. Wa. 2016); *In re Whitescorn*, 2013 WL 1121393, \*2 (Bankr. D. Ore. 2013); *In re Smith*, 481 B.R. 633, 636 n.4 (Bankr. D. Nev. 2012); *In re Jackola*, 2011 WL 2518930, \*3 (Bankr. D. Haw. 2011).

And this court is aware of at least one very recent convert from the majority to the minority view. After an exhaustive review and consideration of several U.S. Supreme Court decisions interpreting BAPCPA provisions, case law developed over the years since § 362(c)(3)(A) was added to the Bankruptcy Code, and scholarly articles about § 362(c)(3)(A), the bankruptcy court in *In re Goodrich*, 2018 WL 3570125, \_\_\_ B.R. \_\_\_ (Bankr. Vt. 2018), reconsidered and changed its earlier position from the majority to the minority view. As the *Goodrich* court explained:

In sum, after following the guideposts the Supreme

Court has planted, and reexamining this question with the benefit of over a decade of experience, scholarly study, and case law, this Court is persuaded the Minority Approach to interpreting the [§ 362(c)(3)(A)] is the most truly aligned with the congressional goal of deterring successive bankruptcy filings by an individual Debtor and should be applied in this district. The Minority Approach meaningfully implements a deterrent to repeat filings by terminating the stay as to all creditors. It prudently balances a potent, across-the-board limitation on the stay when a Debtor files a case within one year of having had another bankruptcy case dismissed, on the one hand, with the opportunity for individuals who file in good faith to retain the full impact of the stay even if their life circumstances led them to need a second bite at the bankruptcy apple.

*Id.* at \*14, \_\_\_ B.R. at \_\_\_.

The court recognizes that at least two bankruptcy courts within the Ninth Circuit have declined to follow *Reswick*. See *In re Rinard*, 451 B.R. 12 (Bankr. C.D. Cal. 2011); *In re Alvarez*, 432 B.R. 839, 842-843 (Bankr. S.D. Cal. 2010). However, neither are persuasive. *Rinard* has not been cited favorably on the automatic stay issue by any court in the Ninth Circuit, and the district court for the Northern District of California recently declined to follow it. *Vitalich*, 569 B.R. at 507-508. A different judge from the same court where *Rinard* originated also recently declined to follow it. See *Bishop*, 2017 WL 1788412 at \*1. *Alvarez* pre-dates *Reswick*, and it too has not been cited by any other court in the Ninth Circuit.

#### **Conclusion**

Unless and until the Ninth Circuit holds otherwise, this court adopts and will follow *Reswick* and the minority view of § 362(c)(3)(A). See also *In re Quezada*, case no. 17-25575 (Bankr. E.D. Cal. 2017), dkt. 42 & 42. Accordingly, this court holds that when the automatic stay terminates under § 362(c)(3)(A) it terminates in its entirety and not just as to the debtor and the debtor's property. Therefore, upon termination of the automatic stay consistent with this decision, in this case, the automatic stay will be deemed to have terminated as to all parties, as to all parties in interest, and for all purposes.

The motion is denied without prejudice and the automatic stay is not extended.

The Civil Minutes of July 17, 2018, dkt. 41, are amended consistent with these Civil Minutes. The court will enter an appropriate minute order consistent with these amended Civil Minutes.

13. [18-23289](#)-B-13 MICHAEL FONTES  
[JPJ](#)-1 Bruce Charles Dwigins

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-18-18 [[30](#)]

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

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

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

Second, the Debtor has improperly classified the State Board of Equalization as a Class 1 creditor. Section 3.07 of the December 1, 2017, form plan defines a Class 1 creditor as "all delinquent secured claims that mature after the completion of this plan, including those secured by debtor's principal residence." This debt is listed in the plan as a statutory line in the amount of \$564.29 and does not match this definition of a Class 1 debt.

The plan filed June 7, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

14. [18-23191](#)-B-13 MELINDA MARTINEZ  
[JPJ](#)-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
7-12-18 [[27](#)]

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

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

Debtor filed an amended plan on July 6, 2018. The confirmation hearing for the amended plan is scheduled for August 7, 2018. The earlier plan filed June 4, 2018, is not confirmed.

The court will enter an appropriate minute order.

15. [18-20396](#)-B-13 JEREMY/WENDY TRAFELET  
[JPJ](#)-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-12-18 [[45](#)]

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

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

First, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Debtors have taken several impermissible deductions on the Calculation of Disposable Income (Form 122C-2) at Line 5 (improper deduction for the number of people claimed as exempt) and improper expense at Lines 6, 7B, 7C, 7G, 8, 9, 10, 19, 33, 34, and 36. Without the improper expenses, the Debtors' correct monthly disposable income on Line 45 should be \$4,876.98 and the Debtors must pay no less than \$247,870.81 to general unsecured creditors. The plan proposes to pay only \$0.00 or 0% to general unsecured creditors.

Second, the plan cannot be assessed for feasibility. The Debtors have failed to amend the Statement of Financial Affairs for Individuals Filing for Bankruptcy to list trailers used to store household goods since they are a military family and move often. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

Third, according to Schedule I, the Debtor owes a domestic support obligation. Pursuant to Local Bankr. R. 3015-1(b)(6), the Debtor is required to serve upon the Trustee no later than 14 days after filing the petition a Domestic Support Obligation Checklist. The Debtor has not provided the Trustee with this checklist, 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)(3).

Fourth, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$3,455.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of \$3,455.00 will also be due. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fifth, the Debtors have not filed amended Schedules A/B and C to disclose a tax refund that they will receive in the amount of \$16,000.00 as requested by the Trustee. The plan does not comply with 11 U.S.C. § 1325(a)(4) and the Debtors have not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan filed June 27, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

16. [18-23497](#)-B-13 LANETTE LINDERMAN  
[JPJ](#)-1 Jeffrey S. Ogilvie

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
7-18-18 [[15](#)]

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

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

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

Second, the Debtor has not filed an amended Statement of Financial Affairs to show that she received income from Brian Long during 2018 or the two previous years and that her attorney received \$850.00 in fees prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed June 4, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

**Tentative Ruling:** The Motion to Confirm Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$6,544.30 through July 2, 2018. The Debtors' next proposed plan payment of \$4,061.31 falls due on July 25, 2018. The Debtors have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the proposed modified plan does not comply with 11 U.S.C. § 1325(a)(3) since the Debtors do not appear to be putting forth their best efforts to repay their creditors. Good faith depends on the totality of circumstances. *In re Warren*, 89 B.R. 87 (9th Cir. BAP 1988). Factors to be considered in determining good faith include the amount of the proposed payments, the amounts of the debtors' surplus, the debtors' employment history, ability to earn and likelihood of future increases in income, and the debtors' motivation and sincerity in seeking Chapter 13 relief.

Here, the Debtors do not appear to be proposing all of their monthly income since the modified plan fails to account for the Debtors' income tax refunds for the remaining life of the plan (see dkts. 33, 38), they have not provided their most recent pay advices to support a decrease in income, they have not explained the increase in expenses for health insurance and a son who does not reside with them, and they are attempting to lower the dividend to the nonpriority unsecured claims from 78% in their confirmed plan to 0% when their high income and high tax refunds support an ability to fund 100% of the plan. The Debtors do not appear to appreciate the significance of seeking the extraordinary relief the bankruptcy code provides in light of the fact that certain expenses are not reasonable and necessary (i.e., son's vocal lessons for \$180.00 per month).

Third, the plan payment in the amount of \$4,061.00 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 for months 10-60. The aggregate of the monthly amounts plus the Trustee's fee is \$5,119.49. The plan does not comply with Section 5.2 of the mandatory form plan.

Fourth, Debtors' original filed plan, confirmed on November 16, 2017, opted out of the attorney fee provision. Therefore, Debtors' attorney shall proceed to obtain approval of his attorney's fees and costs by separate motion pursuant to 11 U.S.C. § 330.

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

The court will enter an appropriate minute order.

18. [18-23153](#)-B-13 DAVID EMBERLIN  
[JPJ](#)-1 Gary Ray Fraley

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
6-25-18 [[16](#)]

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

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

First, although the Debtor did not appear at the meeting of creditors set for June 21, 2018, the Debtor did appear at the continued meeting on August 2, 2018, as required pursuant to 11 U.S.C. § 343.

Second, Debtor is delinquent to the Chapter 13 Trustee in the amount of \$3,005.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment of \$3,005.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtor has not provided an explanation for the difference in his gross monthly income between his schedules and his pay advices. The Debtor's gross monthly income on the schedules may be understated by approximately \$1,000.00 per month. The plan does not comply with 11 U.S.C. § 1325(a)(1) and (3).

The plan filed May 18, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

19. [18-23165](#)-B-13 AREN JACKSON  
[JPJ](#)-1 Steele Lanphier

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
6-25-18 [[12](#)]

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

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

First, the meeting of creditors was held open to August 2, 2018, to allow Debtor additional time to file his 2014 and 2016 tax returns and provide the Chapter 13 Trustee with copies pursuant to 11 U.S.C. § 1308. The meeting of creditors was concluded as to Debtor.

Second, the Debtor has not provided the Trustee with a completed Class 1 Checklist for Real Time Solutions. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Third, Debtor is delinquent to the Trustee in the amount of \$3,493.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment of \$3,493.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fourth, Real Time Resolutions filed a Claim No. 1 on June 11, 2018, in the amount of \$30,673.47. Based on this proof of claim, Debtor's plan will complete in approximately 86 months. This 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).

Fifth, although the Debtor provided pay advices for January 2018 and from his former employment, the Debtor has not provided the Trustee with copies of pay advices from his new employment as a mortgage broker, which he began one month prior to the petition date of May 19, 2018. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed May 19, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.