

**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: October 2, 2018

CALENDAR: 1:00 P.M. CHAPTER 13

**PLEASE REVIEW CAREFULLY AS THE COURT'S ORDER PREPARATION AND SUBMISSION
PROCEDURE IN CHAPTER 13 CASES HAS CHANGED EFFECTIVE SEPTEMBER 3, 2018.**

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

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

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

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

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

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

October 2, 2018 at 1:00 p.m.

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1. [18-24911](#)-B-13 JEREMY/LINDSAY ARNOLD OBJECTION TO CONFIRMATION OF
[MJ-1](#) Mark Shmorgon PLAN BY WELLS FARGO BANK, N.A.
9-13-18 [[28](#)]

Tentative Ruling

TELEPHONE APPEARANCE

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. ("Creditor") holds a deed of trust secured by the residence of Jeremy and Lindsay Arnold, the debtors ("Debtors"). Creditor timely filed Proof of Claim No. 7 on September 12, 2018, in which it asserts \$1,647.42 in pre-petition arrearages. The plan does not propose to cure these arrearages. Dkt. 2, p. 3. 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 filed August 3, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a) and cannot be confirmed. Therefore, the objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, Debtors will be given a further opportunity to confirm a plan. But, if 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 Debtors have not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

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

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

2. [16-22412](#)-B-13 DANIEL/EVE DINEEN
[TAG](#)-3 Aubrey L. Jacobsen

CONTINUED MOTION TO MODIFY PLAN
7-13-18 [[70](#)]

No Ruling

3. [18-24912](#)-B-13 ALICE OSEGUERA MOTION FOR RELIEF FROM
[SMR-1](#) Peter L. Cianchetta AUTOMATIC STAY
8-28-18 [[13](#)]

JOHN RIESCHICK VS.

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

The court's decision is to deny without prejudice the motion for relief from stay.

Movants' Motion for Relief from Stay

John and Elvira Rieschick ("Movants") seek relief from the automatic stay with respect to real property commonly known as 8623 Diamond Oak Way, Elk Grove, CA 95828 ("Property"). Debtor Alice Oseguera ("Debtor") occupies the property as a tenant pursuant to a written rental agreement. Due to a loss of income from a serious medical condition, Debtor failed to pay rent of \$1,775.00 due for July 2018. Debtor was served with a 3-day notice to pay rent or quit on July 3, 2018, and an unlawful detainer action was commenced in state court on July 13, 2018. The unlawful detainer proceeding was stayed when the Debtor filed her Chapter 13 petition on August 3, 2018.

Movants provided the Declaration of John Rieschick to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property. The Rieschick Declaration states that there are 2 post-petition defaults, with a total of \$3,490.93 in post-petition payments past due; an additional \$1,775.00 will come due for October by the time of the hearing. Additionally, there is 1 pre-petition payment in default, with a total of \$1,893.34 in pre-petition payments past due. Dkt. 17 ¶¶ 6, 7.

Debtor's Opposition

The Debtor filed an opposition on September 19, 2018. Dkt. 24.

First, Debtor opposes because the Property is her residence, and is thus necessary for an effective reorganization. Dkt. 25 ¶ 3.

Second, Debtor proposes to amend the plan to pay any arrearages over 6 months, rather than the entire 60-month period of the plan. Debtor states that her filed plan assumes the lease and cures the arrearages as required by 11 U.S.C. § 365(b)(1)(A).

Third, Debtor says she paid the August post-petition rent by UPS. However, Debtor states she withheld \$216.60 for air conditioning repairs, \$350.00 for plumbing, and \$21.00 for bug bombs. Dkt. 25 ¶¶ 4, 5.

Fourth, Debtor claims she was never served the 3-day Notice to Pay or Quit, and was not served with process for the unlawful detainer action filed by Movant. No evidence was presented on this claim. The court does not consider this objection in its analysis because, without evidence of non-receipt, there is a presumption that notice was received.

Movants' Reply

Movants claim that Debtor has a history of not paying the required utility charges pre-petition, and that Debtor may have entered into a sub-lease on the Property with a third party. Dkt. 34, ¶¶ 6-8.

Also, Movants state that, by advise of counsel, the post-petition rent that was mailed

and marked for September was refused and not cashed. Further, Movants dispute the basis for Debtor withholding rent for the repairs noted in the opposition on the grounds that those withholdings violate the lease agreement. Movants also dispute getting notice of the repairs, and state that notice is required under the lease before withholding rent. Dkt. 34 ¶ 9.

In addition, Movants argue that cause exists for relief under 11 U.S.C. § 362(d)(1) because the plan does not provide adequate protection to Movants and the proposed cure of pre-petition arrears takes place over 41 months, which is not a prompt cure as required by § 365(b)(1)(C).

Finally, Movants argue that they are entitled to relief under 11 U.S.C. § 362(d)(2) because Debtor and the bankruptcy estate do not have equity in the Property, and Debtor did not demonstrate that the Property is necessary for a successful reorganization.

Discussion

Movants present evidence that they are the owners of the Property, and Debtor does not dispute this point. Movants commenced an unlawful detainer action in California Superior Court, County of Sacramento on July 13, 2018, with a Notice to Quit served on July 3, 2018. Dkt. 16, Exh. C. Debtor's testimony on not receiving the Notice to Quit is not persuasive.

However, based on the evidence submitted, Debtor has demonstrated that the Property is necessary for her effective reorganization in this Chapter 13 case insofar as it provides the Debtor with a means of support for herself and her daughter, and a means by which the Debtor is able to generate income through employment which will be used to fund a plan. Therefore, a basis for relief under § 362(d)(2) is not established.

Even if cause were established under § 362(d)(1), termination of the automatic stay is not mandatory for at least two reasons. First, in addition to terminating the stay, § 362(d)(1) permits the court to condition or modify the stay. Second, at least pending confirmation of Debtor's plan and as further modified if necessary, Movants are adequately protected as Debtor proposed to cure arrearages upon assumption of the lease. Debtor apparently will have postpetition arrearages cured as well. In any case, there are arrearages that will have to be cured through a modified plan. See 11 U.S.C. § 1323(a). For guidance, the court considers a cure of up to one year to be prompt within the meaning of § 365(b)(1)(A).

The parties have presented contradictory evidence on whether post-petition payments have been made. Based on the evidence submitted, it appears that rent for September 2018 was mailed by Debtor, and Movants concede that they received the rent but refused it on advice of counsel. There is a dispute on whether rent for August is a pre-petition or post-petition debt. Again, however, all arrears must be cured through a modified plan which, as noted below, are the July and August payments. See 11 U.S.C. § 365(b). This issue, and any non-monetary defaults, if any, may appropriately be addressed through confirmation of a modified plan.

In the meantime, Debtor shall tender, and Creditor shall accept (or if in their possession, the Creditor shall accept) the previously-mailed September rent payment as the rent payment for September 2018. Debtor shall make the October 2018 lease payment no later than October 15, 2018, with subsequent lease payments thereafter to be made according to the terms of the lease. Debtor shall have fourteen (14) days from the entry of an order on this motion to file, set, and serve a modified plan that addresses a cure of the July and August lease payments, as well as any other non-monetary defaults under the lease, if any.

If the Debtor fails to make the October 2018 lease payment as ordered, or any lease payment thereafter due as required by the lease, or if the Debtor fails to timely file, set, and serve a modified plan that addresses defaults under the lease within fourteen (14) days of the order on this motion, Movants may serve Debtor with written notice of any default, after which Debtor shall have ten (10) days from the date of service of any such default notice to cure the default. If the default is not cured within that ten (10) day period, Movants may file a declaration of default and an ex parte order

terminating the automatic stay to permit Movants to commence and/or continue unlawful detainer proceedings under applicable state law.

No other or additional relief is granted by the court.

THE COURT SHALL ISSUE A MINUTE ORDER DENYING THE MOTION WITHOUT PREJUDICE FOR THE REASONS STATED HEREIN.

4. [18-24113](#)-B-13 WAYNE ROSEMOND MOTION TO SELL
[PGM](#)-2 Peter G. Macaluso 9-3-18 [[53](#)]
DEBTOR DISMISSED: 09/07/2018

This motion is denied as moot, the case having been dismissed on September 7, 2018.
Dkt. 62.

THE COURT SHALL PREPARE AN APPROPRIATE MINUTE ORDER.

5. [18-24813](#)-B-13 ENRIQUE/MARIA RODRIGUEZ OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Thomas O. Gillis PLAN BY JAN P JOHNSON
9-12-18 [[18](#)]

Final Ruling

Jan Johnson, the Chapter 13 Trustee ("Trustee"), filed a notice of withdrawal of his objection. Dkt. 23. Thus, 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.

The objection is overruled as moot for reasons stated in the ruling appended to the minutes.

There being no other objection to confirmation, the plan filed July 31, 2018, will be confirmed.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER CONFIRMING WITHIN SEVEN (7) DAYS WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

Tentative 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 deny confirmation of the amended plan.

11 U.S.C. § 1322(a)(2) requires that any Chapter 13 Plan provide for full payment of all priority claims, including tax debt as provided by § 507(a)(8).

Here, the Franchise Tax Board filed Amended Proof of Claim No. 4-2 on August 22, 2018, which claims \$878.47 in priority unsecured debt. The Internal Revenue Service filed a second amended Proof of Claim No. 5-3 on September 24, 2018, that claims \$2,320.86 in priority unsecured debt. There are no claim objections filed to reduce these claims, and Debtor did not submit evidence that these creditors consented to less than full payment through the plan. Thus, Debtor's First Amended Plan, which only provides for \$2,501.00 of the \$3,199.33 priority unsecured debt, cannot be confirmed.

On the evidence presented, the court cannot confirm the first amended plan. Therefore, the court denies Debtor's motion to confirm the first amended plan without prejudice.

Because the plan is not confirmable, Debtor will be given a further opportunity to confirm a plan. But, if 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 Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

THE COURT SHALL ISSUE AN APPROPRIATE MINUTE ORDER.

7. [18-23816](#)-B-13 LISA SLEDGE CONTINUED OBJECTION TO
[APN-1](#) Mary Ellen Terranella CONFIRMATION OF PLAN BY WELLS
Thru #9 FARGO BANK, N.A.
8-9-18 [[34](#)]

Tentative Ruling

TELEPHONE APPEARANCE

This matter was continued from September 4, 2018, and again from September 18, 2018, to be heard in conjunction with the motion to value collateral of Wells Fargo Dealer Services and to allow time for further communication between counsel for Lisa Sledge, the debtor ("Debtor"), and counsel for Wells Fargo Bank, N.A., the creditor ("Creditor"). The objection was originally filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). 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 as to the valuation of collateral, monthly payments and interest rate, and sustain the objection as to acknowledging Wells Fargo Dealer Services has a purchase money security interest. The plan is confirmed provided that Wells Fargo Dealer Services' interest in its collateral is valued at \$3,733.24. See Item #9, dkt. 27, MET-2. Otherwise, if Creditor objects to this disposition, or the parties have not reached some other resolution, the court will set an evidentiary hearing as stated on the record on September 18, 2018.

The plan filed June 23, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

8. [18-23816](#)-B-13 LISA SLEDGE CONTINUED OBJECTION TO
[JPJ-1](#) Mary Ellen Terranella CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
8-8-18 [[31](#)]

Tentative Ruling

This matter was continued from September 4, 2018, and again from September 18, 2018, to be heard in conjunction with the motion to value collateral of Wells Fargo Dealer Services and to allow time for further communication between counsel for Lisa Sledge, the debtor ("Debtor"), and counsel for Wells Fargo Bank, N.A., the creditor ("Creditor"). The objection and motion were originally filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection, deny the motion to dismiss, and confirm the plan provided that Wells Fargo Dealer Services' interest in its collateral is valued at \$3,733.24. See Item #5, dkt. 27, MET-2. Otherwise, if Creditor objects to this disposition, or the parties have not reached some other resolution, the court will set an evidentiary hearing as stated on the record on September 18, 2018.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed June 23, 2018, is confirmed.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

9. [18-23816](#)-B-13 LISA SLEDGE
[MET-2](#) Mary Ellen Terranella

CONTINUED MOTION TO VALUE
COLLATERAL OF WELLS FARGO
DEALER SERVICES
7-31-18 [[27](#)]

Tentative Ruling

This matter was continued from August 14, 2018, to provide creditor Wells Fargo Dealer Services ("Creditor") an opportunity to appraise the debtor's vehicle. It was further continued from September 4, 2018, and again from September 18, 2018, to allow time for further communication between counsel for Lisa Sledge, the debtor ("Debtor"), and counsel for Creditor regarding valuation of the collateral.

The court's decision is to value the secured claim of Wells Fargo Dealer Services at \$3,733.24. Otherwise, if Creditor objects to this disposition, or the parties have not reached some other resolution, the court will set an evidentiary hearing as stated on the record on September 18, 2018.

Debtor's motion to value the secured claim of Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Nissan Titan Crew CAB XE ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$3,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

It appears that Claim No. 3-1 filed by Wells Fargo Dealer Services is the claim which may be the subject of the present motion.

Opposition by Creditor

The Declaration of Adam Zacher, employee of Auto Inspection Service, an appraisal service company, states that the price a retail merchant would charge for the Vehicle is \$6,496.33. This valuation is based on an inspection of the interior of the Vehicle, including upholstery, electronic gages, and dashboard assembly, and an exterior inspection including the condition of the paint and tires. The valuation also concluded that the Vehicle was of sound mechanical condition since no mechanical failures were brought to light by the registered owner of the Vehicle.

Response by Debtor

The Declaration of Lisa Sledge asserts that the inspection by Mr. Zacher did not take into account any mechanical issues and that he did not look under the hood to observe any issues that could have existed.

Debtor's fiancée personally took the Vehicle to Nissan of Vacaville for an oil change on August 18, 2018, prior to Mr. Zacher's inspection on August 23, 2018, and the service department provided a detailed list of necessary repairs. This list included V8 spark plug service, cooling service, transmission service, rear differential service, drive belt repair, left and right tie rod ends, brake fluid exchange service, and rear brakes and rotors replacement. The total repair cost for mechanical issues is \$2,763.09.

September 18, 2018 Hearing

At the continued hearing, counsel for Creditor requested a continuance for further discussion with Debtor's counsel on valuing the Vehicle. Debtor's counsel consented to the continuation.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on April 30,

2011, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$9,373.07 according to Claim No. 3-1. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The court is persuaded by Debtor's argument that the mechanical repairs should be deducted from Mr. Zacher's valuation. This would reduce the Vehicle's value to \$3,733.24. Thus, the valuation motion is granted, and Creditor's secured claim is determined to be in the amount of \$3,733.24. See 11 U.S.C. § 506(a) and FED. R. BANKR. P. 3012.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

10. [18-24720](#)-B-13 ARTURO/ROSANA BUSTOS
[JPJ](#)-1 Seth L. Hanson

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-12-18 [[15](#)]

No Ruling

11. [17-28123](#)-B-13 QUENTIN/SHEELAH HOLLOMAN OBJECTION TO CLAIM OF GEORGE
[JPJ](#)-1 Mikalah R. Liviakis ROYAL, CLAIM NUMBER 29
8-9-18 [[36](#)]

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. 20 of creditor American Safety Casualty Insurance Co. ("Creditor"), and disallow the claim in its entirety.

Quentin and Sheelah Holloman, the debtors ("Debtors"), filed a petition for Chapter 13 relief on December 14, 2017. Dkt. 1. A Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines was filed on December 30, 2017; a review of the BNC Certificate of Mailing does not show that Creditor was included on the mailing list. Dkts. 14, 15. The Notice states that the deadline to file claims for non-governmental units was November 18, 2015. Dkt. 9. Creditor did not file a motion to extend the deadline to file his claim pursuant to Federal Rule of Bankruptcy procedure 3002(c)(6), and did not file his proof of claim until July 17, 2018. POC 20.

Because Creditor did not request an extension of time to file his claim, failed to oppose the Trustee's objection to his claim, and failed to timely file his claim, Claim No. 20 is disallowed in its entirety pursuant to 11 U.S.C. § 502(b)(9).

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

12. [18-22324](#)-B-13 DEBRA THOMPSON
[TAG](#)-1 Aubrey Jacobsen

OBJECTION TO CLAIM OF GLOBAL
PAYMENTS, INC., CLAIM NUMBER 4
8-17-18 [[33](#)]

DEBTOR DISMISSED: 09/13/2018

Final Ruling

This objection is denied as moot, as the case was dismissed on September 13, 2018.
Dkts. 38, 39.

THE COURT SHALL PREPARE AN APPROPRIATE MINUTE ORDER.

13. [18-24625](#)-B-13 MARK ROBINSON
[JPJ](#)-1 Scott D. Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P JOHNSON
9-12-18 [[16](#)]

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, Mark Robinson, the debtor ("Debtor"), is delinquent to the Chapter 13 Trustee in the amount of \$1,961.00, which represents approximately 1 plan payment. 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, Debtor has not provided the Trustee with a copy of a filed California tax return for tax year 2017. Thus, Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Third, 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. Debtor also did not provide Trustee with satisfactory proof of his social security number. Thus, Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv) and Federal Rule of Bankruptcy Procedure 4002(b)(1)(B).

Based on the objections and evidence presented, the plan filed July 24, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objections are sustained and the plan is not confirmed.

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

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

14. [18-24827](#)-B-13 ELIZABETH CANETE
[JPJ](#)-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-12-18 [[15](#)]

Tentative Ruling

TELEPHONE APPEARANCE

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, deny confirmation of the plan, and conditionally deny the motion to dismiss.

First, the plan proposes \$0.00 of each monthly plan payment for administrative expenses, while proposing \$2,205.00 in attorney's fees be paid through the plan. Dkt. 2, p. 2. Based on this discrepancy, the plan does not comply with Section 5.2 of the mandatory form plan.

Second, the plan submitted on July 31, 2018, does not have signatures from Debtor or Debtor's attorney, as required by LBR 9004-1(c)(1). Dkt. 2, p. 6.

The plan filed July 31, 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, Debtor will be given a further opportunity to confirm a plan. But, if 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 Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

15. [18-22528](#)-B-13 ORLANDO CISNEROS
[JPJ](#)-2 Kyle W. Schumacher

MOTION TO CONVERT CASE TO
CHAPTER 7 AND/OR MOTION TO
DISMISS CASE
8-22-18 [[68](#)]

No Ruling

TELEPHONE APPEARANCE

16. [15-25730](#)-B-13 JEFFREY/KELLY ERCOLINI
[JPJ](#)-2 Peter G. Macaluso

OBJECTION TO CLAIM OF AMERICAN
SAFETY CASUALTY INSURANCE CO.,
CLAIM NUMBER 20
8-9-18 [[72](#)]

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. 20 of creditor American Safety Casualty Insurance Co. ("Creditor"), and disallow the claim in its entirety.

Jeffrey and Kelly Ercolini, the debtors ("Debtors"), filed a petition for Chapter 13 relief on July 17, 2015. Dkt. 1. A Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines was filed and served on July 30, 2015; Creditor was included on the mailing list. Dkts. 9, 11, p. 1. The Notice states that the deadline to file claims for non-governmental units was November 18, 2015. Dkt. 9. Creditor failed to file a claim until July 17, 2018. POC 20.

Federal Rule of Bankruptcy Procedure 9006(b)(3) prohibits an enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances listed in Rule 3002(c). *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016) ("[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."); *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-33 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). Creditor does not argue that any of those six circumstances apply.

Claim No. 20 was not timely filed, and is thus disallowed in its entirety pursuant to 11 U.S.C. § 502(b)(9).

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

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 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.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

18. [18-23937](#)-B-13 LEE WUERZBURGER
[DWE](#)-1 Seth L. Hanson

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
8-30-18 [[19](#)]

NATIONSTAR MORTGAGE, LLC VS.

Final Ruling

This matter is denied as moot, as the court granted the Chapter 13 trustee's motion to dismiss this case at the hearing on September 25, 2018. Dkt. 34.

THE COURT SHALL PREPARE AN APPROPRIATE MINUTE ORDER.

19. [17-21139](#)-B-13 ELIZABETH EIDE
[RAS](#)-1 Pauldeep Bains

CHAMPION MORTGAGE COMPANY
VS.

No Ruling

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-5-18 [[59](#)]

TELEPHONE APPEARANCE

20. [18-24744](#)-B-13 TANESHA ALLEN OBJECTION TO CONFIRMATION OF
[JHW](#)-1 Mark Shmorgon PLAN BY FORD MOTOR CREDIT
Thru #21 COMPANY, LLC
8-23-18 [[23](#)]

Final Ruling

Creditor Ford Motor Credit Company, LLC's ("Creditor's") objection is denied as moot. Subsequent to the filing of Creditor's objection, Debtor filed an amended plan on September 6, 2018. Dkt. 34. The confirmation hearing for the amended plan is scheduled for October 16, 2018. Confirmation of the plan filed July 29, 2018, was denied in line item # 21.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

21. [18-24744](#)-B-13 TANESHA ALLEN OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Mark Shmorgon PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-12-18 [[37](#)]

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 objection was filed.

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

Subsequent to the filing of the Trustee's objection, Debtor filed an amended plan on September 6, 2018. Dkt. 34. The confirmation hearing for the amended plan is scheduled for October 16, 2018. The earlier plan filed July 29, 2018, is not confirmed.

The objection is overruled as moot and the motion is denied as moot for reasons stated in the ruling appended to the minutes.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

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 payment in the amount of \$3,075.00 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. Trustee estimates that, due to the Class 1 claim of Shell Point mortgage increasing from \$1,535.00 to \$1,710.71, the monthly payment must be \$3,256.00. Thus, the plan does not comply with Section 5.2 of the mandatory form plan.

Second, Trustee argues that the plan fails the liquidation analysis because Debtors only provide \$12,895.00 to unsecured creditors, while Trustee asserts there is at least \$331,080.00 of nonexempt property to pay unsecured creditors if this case were converted to a Chapter 7. The court's review of the nonexempt property from Debtors' most recently filed schedules is as follows:

Type	Fair Market Value (Sch A/B)	Secured Claims (Sch D)	Exemption (Sch C)	Nonexempt Equity
1516 Adams Street	\$0.00, based on Debtors' statement that they hold only legal title in joint tenancy	---	---	\$0.00
1125 Willow Lane	\$445,000.00	\$356,981.00	\$100,000.00	\$0.00
2003 Harley Davidson	\$6,415.00	---	---	\$6,415.00
1969 Chevy Camaro	\$2,500.00	---	\$550.00	\$1,950.00
1967 Chevy Truck C-10	\$2,500.00	---	\$2,500.00	\$0.00
2002 Jeep Wrangler	\$5,413.00	\$5,436.00	---	\$0.00
2014 Hyundai Sonata	\$12,042.00	\$12,098.00	---	\$0.00
Household Goods and Furnishings	\$2,500.00	---	\$2,500.00	\$0.00
Electronics	\$1,200.00	---	\$1,200.00	\$0.00
Firearms	\$1,000.00	---	\$1,000.00	\$0.00

Clothes	\$800.00	---	\$800.00	\$0.00
Jewelry	\$2,750.00	---	\$2,750.00	\$0.00
Cash	\$1,500.00	---	\$1,500.00	\$0.00
Deposits of Money, Bonds, Mutual Funds, or Publicly Traded Stocks (Aggregate)	\$5,549.00	---	\$3,562.00	\$1,987.00
Term Life Insurance Policy	\$0.00	---	---	\$0.00
Total				\$10,352.00

Dkt. 11, pp. 3-17.

Thus, based strictly on the schedules filed by Debtors, \$10,352.00 would go to the priority unsecured claims provided in Section 3.12, and no distribution would be paid to general unsecured creditors. Debtors' plan provides for \$3,075.00 per month, with \$270.00 for administrative expenses, \$2,202.69 for Class 1 monthly payments and arrearages, and \$328.88 for Class 2 claims, leaving \$273.43 per month for unsecured claims. This gives a total of \$16,405.80 to priority unsecured claims, which exceeds the estimated liquidation analysis of \$10,352.00 on nonexempt property. Thus, without accounting for the Trustee's estimated change for Class 1 described above, Debtors' plan does comply with the liquidation analysis required by 11 U.S.C. § 1325(a)(4).

However, the court's review of the filed priority unsecured claims shows \$17,652.97 claimed by the Internal Revenue Service in Proof of Claim No. 2, and \$6,113.47 claimed by the Franchise Tax Board in Proof of Claim No. 3, for a total of \$23,766.44 in priority unsecured claims. Debtor's plan only provides for \$12,895.00 in priority unsecured claims. Thus, because this plan does not provide for full payment of priority unsecured claims and no evidence was presented that these claimants consented to any other treatment, this plan is not confirmable pursuant to 11 U.S.C. § 1322(a)(2).

The plan filed August 7, 2018, 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 CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

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. 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 granted for reasons stated in the ruling appended to the minutes.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER CONFIRMING WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

24. [18-22956](#)-B-13 MARIO/DEBORAH DERENZI
[DPR](#)-1 David P. Ritzinger

MOTION TO CONFIRM PLAN
8-21-18 [[25](#)]

No Ruling

TELEPHONE APPEARANCE

25. [18-24759](#)-B-13 RICHARD CAMILLIERI
[JPJ](#)-1 Susan J. Turner

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-12-18 [[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, deny confirmation of the plan, and conditionally deny the motion to dismiss.

Jan Johnson, the Chapter 13 Trustee ("Trustee"), objects because the plan filed by Richard Camillieri, the debtor ("Debtor"), does not commit all disposable income to unsecured creditors.

Debtor filed Form 122C-1 with only \$1,795.61 of monthly income, or \$21,547.32 per year, and filed a plan based on his projected disposable income using Schedules I and J as if his income during the plan period would be below the Median Family Income. Trustee properly points out that Debtor projects his income will significantly increase from \$1,795.61 to \$6,691.68 during the plan period. As the Supreme Court stated in *Hamilton v. Lanning*, "[i]n cases in which the debtor's disposable income is higher during the plan period, the mechanical approach would deny creditors payments that the debtor could easily make." *Hamilton v. Lanning*, 130 S. Ct. 2464, 2476 (2010). Thus, the court must take into account Debtor's projected income on Schedule I, which shows a reasonably certain increase in monthly income to \$6,691.68, or \$80,300.16 per year; this is above the median income for a three-person household of \$79,061.00 per year. Compare dkt. 1, pp. 28-29, and U.S. Trustee, Median Family Income By Family Size (2018), https://www.justice.gov/ust/eo/bapcpa/20180501/bci_data/median_income_table.htm (last visited September 25, 2018). Based on Debtor's filed schedules, the plan cannot be confirmed until Debtor calculates the appropriate disposable monthly income on Forms 122C-1 and 122C-2, and proposes a plan that complies with 11 U.S.C. § 1325(b)(3) and (4).

The plan filed July 30 2018, does not comply with 11 U.S.C. §§ 1322 and 1325. The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, Debtor will be given a further opportunity to confirm a plan. But, if 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 Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is sustained, and the motion to dismiss is conditionally denied, for reasons stated in the ruling appended to the minutes.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

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. 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 LODGE AN APPROPRIATE ORDER CONFIRMING WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

27. [18-24762](#)-B-13 KIMBERLY O'BRYAN
[JPJ](#)-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-12-18 [[12](#)]

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, deny confirmation of the plan, and conditionally deny the motion to dismiss.

Jan Johnson, the Chapter 13 Trustee ("Trustee"), objects on the grounds that Kimberly O'Bryan, the debtor ("Debtor"), has taken improper deductions on the filed Form 122C-2 to calculate her projected disposable monthly income. Trustee points to two particular deductions. First, Debtor deducted \$110.00 for education expenses on Line 29, which appears to be a duplicate from Line 21. Second, Debtor deducted \$200.00 for post-petition voluntary retirement contributions on Line 41, which Trustee argues is disposable income. Dkt. 1, pp. 46, 47, and 49. The court agrees. See *Parks v. Drummond (In re Parks)*, 475 B.R. 703 (B.A.P. 9th Cir. 2012).

The plan filed July 30, 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, Debtor will be given a further opportunity to confirm a plan. But, if 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 Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is sustained, and the motion to dismiss conditionally denied, for reasons stated in the ruling appended to the minutes.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

28. [18-21272](#)-B-13 STEPHEN/LESLY SAWYER
[LDJ](#)-2 Lukas D. Jackson

MOTION TO CONFIRM PLAN
8-7-18 [[61](#)]

No Ruling

TELEPHONE APPEARANCE

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 modified plan.

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

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

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER CONFIRMING WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

30. [18-23782](#)-B-13 DENNIS/MARY BOSTON MOTION TO CONFIRM PLAN
[SLH](#)-4 Seth Hanson 8-17-18 [[61](#)]
Thru #31

No Ruling

31. [18-23782](#)-B-13 DENNIS/MARY BOSTON MOTION TO VALUE COLLATERAL OF
[SLH](#)-5 Seth Hanson EXETER FINANCE, LLC
8-28-18 [[66](#)]

Final Ruling

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

The court's decision is to value the secured claim of Exeter Finance LLC at \$14,441.50.

Debtors' motion to value the secured claim of Creditor is accompanied by their declaration. Debtors are the owner of a 2013 Ford F-150 ("Vehicle"). Debtors seek to value the Vehicle at a replacement value of \$14,441.50 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. While Debtors assert that no claim was filed (Dkt. 66, ¶ 1), it appears that Claim No. 10 was filed by Creditor on August 23, 2018, and may be the subject of the present motion. Creditor's Proof of Claim provides a replacement value for the Vehicle of \$19,896.00, and values its claim as \$18,211.43.¹

Discussion

The court can accept a debtor's lay opinion of the value of his or her property and, in the absence of evidence to the contrary, may even accept a debtor's opinion of value as conclusive. *In re Enewally*, 368 F.3d 1165, 1173 (9th Cir. 2004). Because Creditor did not oppose the motion pursuant to LBR 9014-1(f)(1)(B), the court will accept the Debtors' opinion of value as conclusive.

The lien on the Vehicle's title secures a purchase-money loan incurred on August 30, 2013 (POC 10, part 1, p. 4), which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$18,788.00. 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 \$14,441.50. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

¹Debtors assert that Creditor has a claim of \$18,788.00, while Creditor's Proof of Claim provides a value of \$18,211.43. *Compare* Dkt. 68, ¶ 2, and POC 10, part 0, p. 2.

The motion is granted for the reasons stated in these minutes.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

32. [18-24587](#)-B-13 ANJANA/PARKESH KUMAR
[JPJ](#)-1 Marc Voisenat

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P JOHNSON
9-12-18 [[16](#)]

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, Jan Johnson, the Chapter 13 trustee ("Trustee"), argues that the plan does not meet the liquidation analysis in that Schedules A/B and C show non-exempt property of \$68,650.00, while unsecured creditors are paid \$0.00 through the plan. Thus, Trustee argues the plan does not comply with 11 U.S.C. § 1325(a)(4).

Second, Anjana and Parkesh Kumar, the debtors ("Debtors"), are delinquent to Trustee in the amount of \$2,639.09, which represents approximately 1 plan payment. 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).

Third, Debtors have not provided Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition, including a detailed statement showing gross receipts and ordinary and necessary expenses for rental property and/or operation of a business. Thus, Debtors have not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

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

The plan filed July 23, 2018, 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 sustained for reasons stated in the ruling appended to the minutes.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

33. [18-24892](#)-B-13 KISA BROWN
[JPJ](#)-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P JOHNSON AND/OR
MOTION TO DISMISS CASE
9-12-18 [[21](#)]

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, deny confirmation of the plan, and conditionally deny the motion to dismiss.

Debtor did not appear at the meeting of creditors set for September 7, 2018, as required pursuant to 11 U.S.C. § 343. The court notes that the meeting was continued to October 4, 2018, at 8:30 a.m.

The plan filed August 2, 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, Debtor will be given a further opportunity to confirm a plan. But, if 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 Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

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

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

34. [18-24795](#)-B-13 MAURICE PRINGLE
[JPJ](#)-1 Michael Avanesian

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P JOHNSON
9-12-18 [[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 and deny confirmation of the plan.

First, Maurice Pringle, the debtor ("Debtor"), did not appear at the meeting of creditors set for September 6, 2018, as required pursuant to 11 U.S.C. § 343.

Second, Debtor is delinquent to Jan Johnson, the Chapter 13 trustee ("Trustee"), in the amount of \$1,049.00, which represents approximately 1 plan payment. This delinquent payment also caused Trustee to default on the payment to Class 1 creditor Caliber Home Loans. 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, Debtor has not provided Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

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

Fifth, Debtor has not provided Trustee a Class 1 Checklist and Authorization to Release Information. Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankruptcy Rule 3015-1(b)(6).

Sixth, the maximum fee that may be charged in a nonbusiness case is \$4,000.00 pursuant to Local Bankruptcy Rule 2016-1. Debtor's attorney's fees of \$5,000.00 exceed this amount.

Seventh, the plan provides \$0.00 per month for administrative expenses in Section 3.06. This is insufficient to cover the attorney's fees and any other administrative expenses through the plan. The plan does not comply with Section 5.2 of the mandatory form plan.

Eighth, Debtor has not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. Debtor has not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief under § 109(h).

The plan filed August 28, 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, Debtor will be given a further opportunity to confirm a plan. But, if 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 Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

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

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

35. [18-24097](#)-B-13 PETER CASILLAS
[PGM-2](#) Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF
CHRYSLER CAPITAL CORPORATION
9-3-18 [[36](#)]

Final Ruling

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

The court's decision is to value the secured claim of Chrysler Capital Corporation at \$7,000.00.

Debtor's Motion

Peter Casillas, the debtor ("Debtor"), filed a motion to value the secured claim of Chrysler Capital Corporation ("Creditor") accompanied by Debtor's declaration. Debtor is the owner of a 2011 Kia Sorento ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$7,000.00 as of the petition filing date. As the owner, Debtor's opinion provides evidence of the collateral's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2 filed by Creditor is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on May 15, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$19,564.99. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$7,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.