

Eastern District of California

November 14, 2017 at 1:00 p.m.

- The court will enter an appropriate minute order.

2. [17-26013](#)-B-13 DIANA EVANS
[JPJ](#)-1 Jonathan D. Matthews
Thru #4

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
10-25-17 [[45](#)]

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 conditionally deny the motion to dismiss.

First, the Debtor did not appear at the meeting of creditors set for October 19, 2017, as required pursuant to 11 U.S.C. § 343. The meeting of creditors was continued to November 16, 2017, to allow Debtor another opportunity to appear and be examined.

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

Third, the 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).

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

Fifth, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors may receive a higher distribution in a Chapter 7 proceeding. The Debtor has claimed real property in Vallejo, California as exempt under California Code of Civil Procedure § 704 for "100% of fair market value, up to any applicable statutory limit." However, the claim exemption is improper. Additionally, the Debtor has an interest in six more properties but does not claim any of these properties exempt and some of these properties do not have any debts against them. Therefore, the Debtor may have an interest in these properties that is free and clear and non-exempt. Alternatively, it cannot be determined whether the Debtor owes more than \$1,184,200.00 in non-contingent, liquidated, secured debts and is therefore not eligible for relief under Chapter 13 pursuant to 11 U.S.C. § 109(e). It is also uncertain whether the Debtor has accurately listed all her assets - such as a vehicle, jewelry, retirement, or life insurance policies - on Schedule A/B. The Debtor does not list any priority unsecured creditors and proposes to pay a 0% dividend to general unsecured creditors. The plan does not appear to comply with 11 U.S.C. § 1325(a)(4).

Sixth, it appears that the Debtor has failed to list almost all her expenses on Schedule J. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Seventh, it cannot be determined whether the plan complies with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's projected disposable income might not be applied to make payments to unsecured creditors. The Debtor has not filled out Form 122C-2 Chapter 13 Calculation of Your Disposable Income.

Eighth, the plan cannot fully be assessed for feasibility. The Debtor does not specify the amount of the Class 1 arrearage dividend to SPS. The Trustee cannot comply with § 2.08(b) of the plan.

Ninth, the Debtor has not filed the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Counsel must proceed to obtain approval of attorney's fees and costs by separate motion pursuant to 11 U.S.C. § 330.

Tenth, the Debtor has not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. The Debtor has not fully answered questions #2, 3, and 9-20 of the Statement of Financial Affairs and has not listed her 2017 year-to-date income. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan filed September 25, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

3. [17-26013](#)-B-13 DIANA EVANS OBJECTION TO CONFIRMATION OF
[MDE](#)-1 Jonathan D. Matthews PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
10-4-17 [[36](#)]

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

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

First, objecting creditor Deutsche Bank National Trust Company holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$60,360.37 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Second, the Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6). Given the amount of pre-petition arrears and the requirement to make ongoing note installments, it appears that the Debtor does not have sufficient net income to fund the plan.

The plan filed September 25, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

4. [17-26013](#)-B-13 DIANA EVANS OBJECTION TO CONFIRMATION OF
[RAS](#)-1 Jonathan D. Matthews PLAN BY THE BANK OF NEW YORK
MELLON
10-17-17 [[39](#)]

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

The court's decision is to overrule the objection but deny confirmation for reasons stated at Items #2 and #3.

Objecting creditor Bank of New York Mellon asserts that it holds a deed of trust secured by real property located at 145 Duane Lane, Martinez, California, to which Debtor holds a 10% interest. The creditor does not state whether there are any pre-petition arrearages and has not yet filed a proof of claim. Although the creditor states that it will file a proof of claim prior to the claims bar deadline, the creditor provides no evidence to support the basis for its claim. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, the plan filed September 25, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Items #2 and #3. The objection is overruled and the plan is not confirmed.

The court will enter an appropriate minute order.

5. [17-21520](#)-B-13 MARK ENOS CONTINUED MOTION TO CONVERT
[JPJ](#)-2 Peter L. Cianchetta CASE TO CHAPTER 7 AND/OR MOTION
[Thru #6](#) TO DISMISS CASE
8-30-17 [[59](#)]

Tentative Ruling: This matter was continued from September 26, 2017, to be heard in conjunction with the confirmation hearing for the plan filed September 29, 2017.

The court's decision is to grant the motion to convert case to a Chapter 7.

This motion was filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted or dismissed based on the following grounds.

First, Debtor has not prosecuted this cause after his motion to confirm was heard and denied on August 1, 2017. Although the Debtor has taken further action to confirm a plan in this case, the motion to confirm the plan filed September 29, 2017, is denied without prejudice at Item #6. There is unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c) (1).

Second, according to the Trustee's motion dated August 30, 2017, the Debtor was \$6,539.60 delinquent in plan payments, which represents 2.13 plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c) (1).

Based on Debtor's Schedules A/B filed March 6, 2017, the total value of non-exempt equity in the estate is \$33,820.94 from the available equity in the Debtor's residence after 8% cost of sale and deduction of liens and exemptions, and a 2009 Ford Crown Victoria Police Intercep, minus 5% cost of sale. Although there is equity in the estate for conversion to a Chapter 7, Debtor's attorney represented at the September 26, 2017, hearing that the Debtor would opt for dismissal of the case should the plan filed September 29, 2017, not be confirmed.

The court will enter an appropriate minute order.

6. [17-21520](#)-B-13 MARK ENOS MOTION TO CONFIRM PLAN
[PLC](#)-4 Peter L. Cianchetta 9-29-17 [[68](#)]

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

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

First, the Debtor has improperly stated the amount of his post-petition arrears under Class 1 of the plan in the amount of \$6,962.25, which represents five monthly contractual installment payments. Trustee's records shows that the post-petition arrears is actually \$2,784.90, which represents two monthly contract installment payments for August and September.

Second, the plan payment in the amount of \$3,400.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is \$3,787.63. The plan does not comply with Section 4.02 of the

mandatory form plan.

Third, based on the filed allowed claims, the Debtor's proposed plan will complete in approximately 73 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).

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

The court will enter an appropriate minute order.

7. [17-26031](#)-B-13 ANGEL REYES
[JPJ](#)-1 Harry D. Roth
[Thru #8](#)

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-25-17 [[36](#)]

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

Second, the plan payment in the amount of \$2,194.64 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is \$2,262.90. The plan does not comply with Section 4.02 of the mandatory form plan.

Third, it does not appear that Debtor has the ability to fund the plan payments as proposed. Schedule J, Line #23a, shows a monthly net income of \$1,341.85. The monthly contract amount due to Ocwen Loan Servicing, LLC alone exceeds this amount. The Debtor has not carried its burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fourth, the Debtor did not disclose a prior Chapter 13 bankruptcy filed within 8 years of the current petition. See case no. 17-23605. The Debtor has not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

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

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

The court will enter an appropriate minute order.

8. [17-26031](#)-B-13 ANGEL REYES
[RAS](#)-1 Harry D. Roth

OBJECTION TO CONFIRMATION OF
PLAN BY OCWEN LOAN SERVICING,
LLC
10-3-17 [[30](#)]

Tentative Ruling: The Objection to Confirmation of Debtor's Chapter 13 Plan of Reorganization was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2).

The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection but deny confirmation of the plan for reasons stated at Item #7.

Objecting creditor Ocwen Loan Servicing, LLC holds a deed of trust secured by the Debtor's residence. The creditor asserts \$12,864.16 in pre-petition arrearages but has not yet filed a proof of claim. The creditor provides no evidence to support the amount of claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, for reasons stated at Item #7, the plan filed September 14, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is not confirmed.

The court will enter an appropriate minute order.

9. [17-26134](#)-B-13 GIANNA CARTER
[JPJ](#)-1 Mark Shmorgon

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
10-25-17 [[29](#)]

CONTINUED TO 12/19/17 AT 1:00 P.M. TO BE HEARD AFTER THE EVIDENTIARY HEARING ON
DEBTOR'S MOTION TO VALUE COLLATERAL OF TUCSON FEDERAL CREDIT UNION.

Final Ruling: No appearance at the November 14, 2017, hearing is required. The court
will enter an appropriate minute order.

10. [17-26045](#)-B-13 WAYNE/DORIS ROSEMOND
[EMM](#)-1 Pro Se
Thru #11

OBJECTION TO CONFIRMATION OF
PLAN BY THE BANK OF NEW YORK
MELLON
10-20-17 [[20](#)]

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

The court's decision is to overrule the objection but deny confirmation of the plan for reasons stated at Item #11.

Objecting creditor Bank of New York Mellon holds a deed of trust secured by the Debtors' residence. The creditor asserts \$17,561.86 in pre-petition arrearages but has not yet filed a proof of claim. Although the creditor states that it will file a proof of claim prior to the claims bar deadline, the creditor provides no evidence to support the amount of claimed pre-petition arrears. The Declaration of Monica Rodriguez filed in support of the objection does not explain how creditor reached the pre-petition arrearage amount aside from stating that "the amount represents monthly payments, pre-petition late charges advances for taxes and insurance, if any, and foreclosure costs and attorney's fees incurred with respect to the default." Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

The plan filed September 25, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

11. [17-26045](#)-B-13 WAYNE/DORIS ROSEMOND
[JPJ](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-25-17 [[25](#)]

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

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

First, the Debtors both failed to submit proof of their social security numbers to the Trustee at the meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). The meeting of creditors was continued to November 2, 2017, to allow Debtors another opportunity to provide that proof. The continued meeting of creditors was held, Debtors did not appear, and the meeting was concluded.

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

Third, the Debtors have not provided the Trustee with a copy of an income tax return

for the most recent tax year a return was filed. The Debtors have not complied with 11 U.S.C. § 521(e) (2) (A) (1).

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

Fifth, the plan will take approximately 169 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b) (4).

Sixth, the plan payment in the amount of \$2,964.00 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. The aggregate of the monthly amounts plus the Trustee's fee is \$3,294.54. The plan does not comply with Section 4.02 of the mandatory form plan.

The plan filed September 25, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

Final Ruling: No appearance at the November 14, 2017, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 10 of Ford Motor Credit Company, LLC and treat the claim as unsecured and non-priority.

Valerie Walker ("Debtor") requests that the court deem the claim of Ford Motor Credit Company, LLC ("Creditor"), Claim No. 10, as an unsecured, non-priority claim. The claim is asserted to be secured in the amount of \$22,415.53. Objector asserts that the claim should be treated as an unsecured, non-priority claim for purposes of the Debtor's Chapter 13 plan. Although Creditor has filed an Abstract of Judgment recorded with Sacramento County Recorder that would create a judgment lien on real property, Debtor's schedules show that the Debtor has no interest in any real property. Therefore, Debtor argues that Creditor has no security interest to attach to and its claim should be deemed an unsecured, non-priority claim.

Debtor further states that a judgment lien on personal property is created by the filing of a Notice of Judgment Lien with the California Secretary of State. Creditor has not provided any evidence that such a notice was filed.

Discussion

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

With regard to judgment liens, Cal. Civ. Proc. Code § 697.520 provides: "A judgment lien on personal property may be created pursuant to this article as an alternative or in addition to a lien created by levy under a writ of execution pursuant to Chapter 3 (commencing with Section 699.010) or by use of an enforcement procedure provided by Chapter 6 (commencing with Section 708.010)." Cal. Civ. Proc. Code § 697.510(a) provides: "A judgment lien on personal property described in Section 697.530 is created by filing a notice of judgment lien in the office of the Secretary of State pursuant to this article."

The court finds that Claim No. 10 should not be treated as a secured claim. Debtor has submitted exhibits consisting of the proof of claim and judgment lien filed by Ford Motor Credit Company, LLC. The judgment lien was filed with the Sacramento County Recorder, which would create a lien on any real property that Debtor has an interest. However, Debtor has claimed no interest in any real property and has only scheduled interests in personal property. Yet the evidence shows that no judgment lien was filed with the California Secretary of State with respect to the Debtor's scheduled personal

property. Therefore, there is no secured interest in any of Debtor's personal property. The Debtor has satisfied its burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, the Creditor's claim will be treated as an unsecured, non-priority claim. The objection to the proof of claim is sustained.

The court will enter an appropriate minute order.

13. [17-25458](#)-B-13 JAMES/RACHEL GARIDEL MOTION TO CONFIRM PLAN
[PJJ](#)-2 Patricia Johnson 9-27-17 [[22](#)]

Final Ruling: No appearance at the November 14, 2017, hearing is required.

The Motion to Confirm Amended Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on September 27, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

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

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$3,639.55, which represents approximately 1.06 plan payments. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the modified plan does not specify a cure of the post-petition arrearage owed to Deutsche Bank c/o Ocwen Loan Servicing for months July, September, October and partially August, including a specific post-petition arrearage amount, interest rate, and monthly dividend. Section 2.08 of the plan cannot be effectively administered.

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

The court will enter an appropriate minute order.

15. [14-32190](#)-B-13 JUAN/PATRICIA VIGIL
[JB-3](#) Mario Blanco

MOTION TO DISMISS CASE , AND/OR
MOTION TO CONVERT CASE TO
CHAPTER 7
10-10-17 [[57](#)]

Final Ruling: No appearance at the November 14, 2017, hearing is required.

The Motion by Creditor California Department of Tax and Fee Administration to Dismiss or Convert Chapter 13 Bankruptcy Case 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-BuTrk (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 dismiss the case.

Creditor California Department of Tax and Fee Administration asserts that Debtors have failed to timely pay in full their post-petition taxes that arise under applicable non-bankruptcy law pursuant to 11 U.S.C. § 1307(c), Fed. R. Bankr. P. 1017 and 9014, and Local Bankr. R. 3015-1(b)(2) and (4). Creditor further asserts that the motion is based on and incorporated by reference through the Notice of Hearing, Memorandum of Points and Authorities, and supporting Declaration of Daniel Rose.

Discussion

Title 11 United States Code § 1307(c) provides, "Except as provided in subsection (f) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause" That section then lists eleven non-exclusive species of cause.

Among other things, failure to comply with applicable local rules and terms of the Chapter 13 plan are cause under § 1307(c). Local Bankr. R. 3015-1(b)(4) provides, "Chapter 13 Debtor's Duties. In addition to the duties imposed on a Chapter 13 debtor by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and elsewhere in these Local Bankruptcy Rules, the following duties are imposed on chapter 13 debtors . . . (b)(4) Compliance with Applicable Nonbankruptcy Law. The debtor's financial and business affairs shall be conducted in accordance with applicable nonbankruptcy law including the timely filing of tax returns and payment of taxes."

The California Department of Tax and Fee Administration alleges that the Debtors are delinquent \$43,372.35 in post-petition taxes. The Debtors do not deny this allegation. Such a delinquency is cause under § 1307(c) and the court will grant the motion.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court will enter an appropriate minute order.

16. [17-26193](#)-B-13 JOHN/HELENA MOEHRING
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-25-17 [[17](#)]

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

The matter will be determined at the scheduled hearing based on changes in amended Forms.

Chapter 13 Trustee asserts that 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. Debtors testified at their meeting of creditors held on October 19, 2017, that the expenses listed under Form 122C-2, Line #43, are no longer relevant in this case. Additionally, it appears that Form 122C-2, Line #29, was overstated since Debtors only have one dependent under the age of 18 listed on Schedule J. When the overstated expenses are added together, Debtors' monthly disposable income for Form 122C-2, Line #45, increases from \$11.27 to \$1,121.49. However, Debtors filed amended Forms 122C-1 and 122C-2 on November 3, 2017, removing deductions at Line #43 and adjusting the expense at Line #29. Line #45 now appears as -\$292.81.

The Debtors filed an amended Statement of Financial Affairs on November 3, 2017, to correct that they made on-going mortgage payments that exceeded \$600.00 within the 90 days prior to their petition filing date and to correct the typographical error in the amount of fees Debtors' attorney received prior to the petition filing date. The Debtors have complied with 11 U.S.C. § 521(a)(3).

The court will enter an appropriate minute order.

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). A written reply has been filed to the objection.

The matter will be determined at the scheduled hearing.

First, the Chapter 13 Trustee and Debtors dispute whether plan payments in the amount of \$4,671.35 equals 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. The Trustee asserts that the correct amount is \$4,762.27 whereas the Debtors assert that \$4,671.35. Debtors also question what percentage the Trustee's fees are calculated at.

Second, the Trustee contends that the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. Specifically, Trustee argues that the Debtors' tax withholdings of \$6,580.77 are overstated and should be approximately \$4,263.98. Debtor contends that Form 122C-2, Line #16, is accurate given that their income tax deductions are on average \$1,658.58 per week and they anticipate paying higher income taxes for the 2017 year. However, no declaration or exhibits have been filed to support Debtors' alleged income tax deductions.

Debtors have amended the Statement of Financial Affairs to reflect that Debtors' attorney was paid \$124.00.

Should it be determined that Debtors plan filed September 18, 2017, is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

18. [17-25575](#)-B-13 ORACIO QUEZADA
[JPJ](#)-1 Mark A. Wolff

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
10-12-17 [[37](#)]

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

The matter will be determined at the scheduled hearing.

This matter was continued from November 7, 2017, to allow the Debtor to become current on plan payments no later than November 8, 2017, at 3:00 p.m. If the Debtor has not cured the delinquency, the court will deem the Debtor unable to make plan payments and that he has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

As confirmed by the Chapter 13 Trustee on the record in open court at the November 7, 2017, hearing, the Debtor has provided evidence that he has listed his house for sale and thus resolved the Trustee's concern regarding the plan's additional provision that the Debtor will pay a lump sum in month 10 in the amount of \$230,000.00 to complete the plan.

The court will enter an appropriate minute order.