

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

January 16, 2018 at 1:00 p.m.

1. [17-27301](#)-B-13 GERARDO GARCIA AND OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 CLEMENTINA ARIAS PLAN BY JAN P. JOHNSON AND/OR
Thomas O. Gillis MOTION TO DISMISS CASE
12-27-17 [[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). The Debtors have filed a nonopposition to the objection.

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

First, Codebtor failed to submit proof of her social security number to the Trustee at the meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). The Debtor has not cooperated with the Trustee as necessary to enable the Trustee to perform his duties pursuant to 11 U.S.C. § 521(a)(3).

Second, Chase Mortgage has been misclassified as a Class 1 debt which is specifically designated for "all delinquent secured claims that mature after the completion of this plan." Debtors' had testified at the meeting of creditors on December 21, 2017, that their second mortgage owed to Chase Mortgage had matured and was due and payable at the time of the petition. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed November 17, 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.

January 16, 2018 at 1:00 p.m.

2. [17-27707](#)-B-13 ANTHONY SIPPPIO OBJECTION TO CONFIRMATION OF
[DWE](#)-1 Lucas B. Garcia PLAN BY U.S. BANK, N.A.
Thru #3 12-13-17 [[18](#)]

Final Ruling: No appearance at the January 16, 2018, hearing is required.

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 continue the matter to January 23, 2018, to be heard in conjunction with the motions to value collateral of Key Bank, N.A. and Wells Fargo Bank NV, N.A.

The court will enter an appropriate minute order.

3. [17-27707](#)-B-13 ANTHONY SIPPPIO OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Lucas B. Garcia PLAN BY JAN P. JOHNSON
12-27-17 [[36](#)]

Final Ruling: No appearance at the January 16, 2018, hearing is required.

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 continue the matter to January 23, 2018, to be heard in conjunction with the motions to value collateral of Key Bank, N.A. and Wells Fargo Bank NV, N.A.

The court will enter an appropriate minute order.

4. [17-27623](#)-B-13 JOSEPHINE WRIGHT
[JPJ](#)-1 Timothy J. Walsh

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-27-17 [[13](#)]

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 plan cannot be assessed for feasibility because the Debtor has misclassified Nissan Motor Acceptance Corporation under Section 2.11 of the plan as a Class 4 creditor. The plan specifically states, "Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan." However, Nissan Motor Acceptance filed a proof of claim indicating that the last payment due to the creditor is on April 18, 2022, and Debtor's plan proposes a 60-month term with the last payment in the plan due November 25, 2022, approximately 6 months after the final payment is due for the 2015 Nissan Sentra. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$120.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed November 20, 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.

5. [17-28123](#)-B-13 QUENTIN/SHEELAH HOLLOMAN MOTION TO VALUE COLLATERAL OF
[MRL](#)-1 Mikalah R. Liviakis CARMAX AUTO SUPERSTORES WEST
COAST, INC.
12-16-17 [[8](#)]

Final Ruling: No appearance at the January 16, 2018, hearing is required.

The Motion to Value 2014 Toyota Avalon Collateral of Carmax Auto Superstores West Coast, Inc. has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Carmax Auto Superstores West Coast, Inc. at \$15,000.00.

Debtors' motion to value the secured claim of Carmax Auto Superstores West Coast, Inc. ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2014 Toyota Avalon ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$15,000.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1 filed by CarMax Business Services, LLC 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 November 20, 2014, according to Claim No. 1, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$20,257.54. 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 \$15,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

6. [17-27526](#)-B-13 HIAWATHA HUSBAND
[BDA](#)-1 Peter G. Macaluso
Thru #7 OBJECTION TO CONFIRMATION OF
PLAN BY CAPITAL ONE AUTO
FINANCE
12-19-17 [[25](#)]

Final Ruling: No appearance at the January 16, 2018, hearing is required.

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 continue the matter to January 23, 2018, to be heard in conjunction with the motion to value collateral of Capital One Auto Finance.

The court will enter an appropriate minute order.

7. [17-27526](#)-B-13 HIAWATHA HUSBAND
[JPJ](#)-1 Peter G. Macaluso
OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-27-17 [[38](#)]

Final Ruling: No appearance at the January 16, 2018, hearing is required.

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 continue the matter to January 23, 2018, to be heard in conjunction with the motions to value collateral of Capital One Auto Finance.

The court will enter an appropriate minute order.

8. [17-27127](#)-B-13 SHERWIN BRAMLETT MOTION TO VALUE COLLATERAL OF
[PGM](#)-1 Peter G. Macaluso JOHN LYNCH
12-18-17 [[35](#)]

Final Ruling: No appearance at the January 16, 2018, hearing is required.

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

The matter will be continued to February 6, 2018, at 1:00 p.m. pursuant to the stipulation entered into between Debtor and creditor John Lynch.

The court will enter an appropriate minute order.

9. [17-27645](#)-B-13 LISA BINSFELD
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-27-17 [[15](#)]

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

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

First, based on the proof of claim filed by the Internal Revenue Service on December 6, 2017, Claim No. 1, the plan will take approximately 70 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). The Debtor agrees with the Trustee's assessment and offers to increase plan payments to \$555.00 beginning February 2018 and through the life of the plan so that the plan will complete in 60 months. This will be provided for in the order confirming.

Second, feasibility of the plan cannot be assessed. Section 2.06 of the plan states that the total amount of attorney's fees in this case is \$4,000.00 to be paid through the Debtor's plan. But this contradicts the Rights and Responsibilities, Statement of Financial Affairs #16, and Form 230, Compensation Statement of Attorney for the Debtor(s), which all indicate that of the \$4,000.00 in attorney's fees, \$1,000.00 was paid to the Debtor's attorney prior to the filing of the petition and the balance of the \$3,000.00 shall be paid through the Debtor's plan. The Debtor agrees with the Trustee's assessment and states that Section 2.06 of the plan should state that \$1,000.00 was paid prior to the filing of the petition and that the balance of \$3,000.00 are to be paid through the plan. This will be provided for in the order confirming.

Third, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$500.00, which represents approximately 1 plan payment. The Debtor states that it is now current on plan payments. The Debtor appears to be able to make plan payments proposed and has carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed November 21, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

The court will enter an appropriate minute order.

10. [17-27451](#)-B-13 LUEGENE SIMPSON
[JPJ](#)-1 Peter G. Macaluso
Thru #11

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-27-17 [[30](#)]

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

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

First, the Debtor has not provided the Trustee with copies of his last 4 years of tax returns pursuant to 11 U.S.C. § 1308, specifically his 2016 tax returns. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$5,080.00, which represents approximately 1 plan payment. The Debtor has not made any plan payments since the petition was filed on November 10, 2017. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtor has not filed an amended Statement of Financial Affairs to correct questions #5 and #8 to provide for his correct income and a bank account that was closed 8 months prior to the filing of the petition. The Debtor has not cooperated with the Trustee as necessary to enable the Trustee to perform his duties. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

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

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

The court will enter an appropriate minute order.

11. [17-27451](#)-B-13 LUEGENE SIMPSON
[PPR](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY CITIBANK N.A.,
12-22-17 [[25](#)]

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

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

Objecting creditor Citibank N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$86,311.64 in pre-petition arrearages. The plan does not propose to cure these

arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed November 22, 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.

12. [17-27458](#)-B-13 CARMEN HALAMANDARIS
[JPJ](#)-1 T. Mark O'Toole

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
12-27-17 [[20](#)]

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

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$461.00, which represents approximately 1 plan payment. The Debtor has not made any plan payments since the petition was filed on November 13, 2017. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The plan filed November 27, 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.

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

Second, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income from his job with the Santa Barbara Unified School District 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, feasibility depends on the granting of a motion to value collateral for Townsgate Capital. To date, the Debtor has not filed, set for hearing, or served on the respondent creditor and the Trustee a stand-alone motion to value the collateral pursuant to 11 U.S.C. § 3015-1(j).

Fourth, the terms for payment of the Debtor's attorney's fees are unclear. Section 2.07 fails to specify a monthly payment for administrative expenses.

Fifth, the Debtor has claimed an interest in household furnishings, appliances, and clothes as exempt under California Code of Civil Procedure § 703.140(b). However, the Debtor is married and has not filed a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2). Without the spousal waiver, the Debtor may not claim exemptions under § 703.140(b).

Sixth, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$2,569.11, which represents approximately 1 plan payment. The Debtor has not made any plan payments since this petition was filed on November 6, 2017. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed November 20, 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.

14. [17-27471](#)-B-13 RICHARD/IVONNE SCHAFER
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
12-27-17 [[29](#)]

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

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

First, the Debtor did not appear at the meeting of creditors set for December 21, 2017, as required pursuant to 11 U.S.C. § 343. The meeting has been continued to January 18, 2018, to allow the Debtor another opportunity to attend.

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 Codebtor did not provided proof of her identity at the meeting of creditors set for December 21, 2017, as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(A). The meeting has been continued to January 18, 2018, to allow the Debtor another opportunity to provide proof.

Fourth, the Codebtor did not provided proof of her social security number at the meeting of creditors set for December 21, 2017, as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). The meeting has been continued to January 18, 2018, to allow the Debtor another opportunity to provide proof.

Fifth, feasibility depends on the granting of a motion to value collateral for Real Time Resolutions. To date, the Debtors have not filed, set for hearing, or served on the respondent creditor and the Trustee a stand-alone motion to value the collateral pursuant to 11 U.S.C. § 3015-1(j).

Sixth, the plan proposes an impermissible modification of the secured claim of Ocwen Loan Servicing, the holder of the first deed of trust on the Debtors' principal residence. No evidence has been provided that the lender has consented to or is considering a loan.

Seventh, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$2,600.00, which represents approximately 1 plan payment. The Debtors have not made any plan payments since this petition was filed on November 13, 2017. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Although Debtors request a continuance of this matter to a date after the continued meeting of creditors, the Debtors nonetheless have not filed a motion to value collateral for Real Time Resolutions, propose an impermissible modification of the secured claim of Ocwen Loan Servicing, and are delinquent to the Trustee. Therefore, the objection to confirmation will not be continued.

The plan filed November 27, 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.

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

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

First, the Debtor did not appear at the meeting of creditors set for December 21, 2017, as required pursuant to 11 U.S.C. § 343.

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

Third, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$612.77, which represents approximately 1 plan payment. The Debtor has not made any plan payments since the petition was filed on November 7, 2017. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

Fifth, the Debtor has not provided the Trustee with a copy of 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).

Sixth, the plan does not specify a minimum dividend to Class 1 general unsecured creditors pursuant to 11 U.S.C. § 1325(a)(1). The plan cannot be fully assessed for feasibility or effectively administered.

Seventh, the plan cannot be fully assessed for feasibility because the Debtor has misclassified Solano First Credit Union under both Section 2.08 and 3.02 of the plan for a 2012 BMW 7 Series 750i, and misclassified past due rent under 2.08 of the plan. Section 2.08 is designated for "all delinquent secured claims that mature after the completion of this plan." Section 3.02 is specifically for "Executory Contracts and Unexpired Leases." Solano First Credit Union filed a proof of claim indicating that the last payment due to the creditor is on September 27, 2022, and Debtor's plan proposes a 60-month term with the last payment in the plan due November 25, 2022, approximately 2 months after the final payment is due for the vehicle. The debts for the vehicle and past due rent do not fall under Section 2.08, and the debt for the vehicle does not fall under Section 3.02. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Eighth, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) shows that the Debtor's monthly disposable income is \$2,805.23 and the Debtor must pay no less than \$168,313.80 to unsecured non-priority creditors. The Debtor's plan is not proposing to pay a dividend to the unsecured, non-priority creditors.

The plan filed November 21, 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.

16. [17-26480](#)-B-13 TORREAN TYUS
[JPJ](#)-1 Peter G. Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
11-21-17 [[34](#)]

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

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

First, feasibility depends on the granting of a motion to value collateral for Santander Consumer USA, Inc. Debtor and the creditor have entered into a stipulation valuing the 2011 Ford Mustang at \$13,999.00. Debtor has agreed to file an amended Chapter 13 Plan and accompanying schedules, as and if necessary, to conform with the terms of the stipulation.

Second, Debtor testified at the meeting of creditors that his girlfriend contributes \$208.00 per month toward the Class 2A payment of a 2016 Fiat 500. The Debtor's Schedule I, Statement of Financial Affairs, and Form 122C-1 do not provide for this contribution. The Debtor has not amended his schedules to provide for this contribution. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

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

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

The court will enter an appropriate minute order.