UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

February 17, 2016 at 10:00 a.m.

1.	12-26502-B-13 EAS-1	FRANKLYN/CALLISTA CRAWFORD Edward A. Smith	MOTION TO SET ASIDE DISMISSAL OF CASE 2-1-16 [92]

DEBTOR DISMISSED:
01/07/2016
JOINT DEBTOR DISMISSED:
01/07/2016

Tentative Ruling: The Debtors' Motion to Set Aside Dismissal of Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to grant the motion to vacate dismissal.

Debtors argue that either mistake or excusable neglect justify the court vacating the order dismissing the case. As stated in the Declaration of Franklyn Crawford, the Debtors experienced financial difficulty due to the failing health of Joint-Debtor Callista Crawford. Debtor was required to reduce his working hours in order to care for Joint-Debtor, who later required 24-hour in-home care. These changes in circumstances caused monthly expenses to increase and monthly income to decline and, as a result, the Debtors fell behind in monthly payments.

The Debtor further states that he made a good faith effort to cure the arrearage prior to the hearing on the Trustee's Application to Dismiss. The Debtor states that he met with the Trustee's office staff and thought he paid the amount required as directed, but in fact tendered an amount less than that required. As a result, the Debtors' case was dismissed. The Debtor further states that at the time of his meeting with the Trustee's office staff, he was experiencing extreme emotional trauma because Joint-Debtor was being transferred from their family home to a full-skilled nursing facility due to her diagnosis of end-stage Alzheimer's Disease. Debtor states that he was trying to cope with the realization that his wife would never return home again and was emotionally devastated by that realization. Because of the emotional distress he was under, Debtor did not understand and was mistaken in his communications with the Chapter 13 Trustee's office and mistakenly submitted an incorrect amount that resulted in the dismissal of the case. The Debtor states that he has made over 40 plan payments in the 60-month plan. The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

DISCUSSION

The court finds that the motion is supported by both cause and excusable neglect. Cause exists because the Debtors fell behind on their plan payments due to Joint-Debtor's medical condition that required the Debtor to reduce his working hours

and care for Joint-Debtor. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.,* 507 U.S. 380 (1993), the court also finds the Debtors' request is supported by a showing of excusable neglect because the shortage in plan payments was due to Debtor experiencing extreme emotional trauma from Join-Debtor's diagnosis with end-stage Alzheimer's Disease and permanent transfer from their home to a nursing facility. Vacating dismissal will not result in prejudice to any party.

Given the unique circumstances of the Debtors, the court will grant the motion to reconsider and vacate the order dismissing the case.

The court shall issue an appropriate civil minute order consistent with this ruling.

2.	15-29704-B-13 JPJ-1	GARY HORTON Allan R. Frumkin	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 1-28-16 [12]

Final Ruling: CONTINUED TO 3/02/16 AT 10:00 A.M. IN ORDER TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS HELD ON 2/8/16.

3. 15-29510-B-13 OSCAR/LILIA BARROGA — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Gary Ray Fraley — 1-28-16 [16]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 are delinquent to the Chapter 13 Trustee in the amount of $396.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make plan payments proposed and have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, feasibility depends on the granting of a motion to value collateral of Carmax for a 2005 Lexus. That motion is scheduled for hearing on March 16, 2016.

The Debtors have filed an amended Schedule J on February 8, 2016. The amended schedule removes the duplicate expenses of a car payment listed in Class 2B of the plan.

For the first and second reasons stated above, the plan filed December 9, 2015, 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 shall issue an appropriate civil minute order consistent with this ruling.

4. 15-23515-B-13 JACQUELINE/ROBERT COONEY MOTION TO CONFIRM PLAN
HDR-5 Harry D. Roth 12-21-15 [84]

Tentative Ruling: The Motion to Confirm Third Amended 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 third amended plan.

First, the plan payment in the amount of $2,565.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, and Class 2 secured claims. The aggregate of the monthly amounts plus the Trustee's fee is $2,888.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, the Trustee calculates that the plan will take approximately 109 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).

Third, the Debtors are proposing a plan duration of 61 months, 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 amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue an appropriate civil minute order consistent with this ruling.

5.	15-23126-B-13 JPJ-1	TAMARA MURRAY Mikalah R. Liviakis	OBJECTION TO CLAIM OF CAVALRY SPV II, LLC, CLAIM NUMBER 1 12-15-15 [53]

Final Ruling: No appearance at the February 17, 2016, hearing is required.

The Trustee's Objection to Allowance of Claim of Cavalry SPV II, LLC 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. 1-1 of Cavalry SPV II, LLC and the claim is disallowed in its entirety.

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV II, LLC ("Creditor"), Claim No. 1-1. The claim is asserted to be in the amount of $1,755.65. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the documents attached to the proof of claim, the last payment was received on or about June 13, 2008, which is more than four years prior to the filing of this case. Hence, when the case was filed on April 17, 2015, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court shall issue an appropriate civil minute order consistent with this ruling.

6.	15-24826-B-13 RFM-1	CLIFFORD/KATHLEEN GIANNUZZI Mary Ellen Terranella	MOTION FOR RELIEF FROM AUTOMATIC STAY 1-22-16 [79]

KEYBANK USA, N.A. VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Nonetheless, the Debtors have filed a response.

The court's decision is to deny the motion for relief from stay without prejudice, provided that a stipulation is entered by the Keybank, USA, N.A. resolving the motion.

Keybank, USA, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2004 Ski Supreme 220 Sky, 2004 Mercruise 350 MAG MPI 315, and 2004 Tandem Trailer (the "Personal Property"). The moving party has provided the Declaration of Carolyn Brown to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Brown Declaration provides testimony that Debtor has not made 5 post-petition payments, with a total of $1,078.72 in post-petition payments past due. The Declaration further states that the debt secured by this asset is $10,595.17.

Debtors have filed an opposition asserting that Movant's Personal Property is listed in the Debtors' plan as a Class 4 claim to be paid outside of the plan by the Debtors' son. The monthly payments are $270.00. The Debtors' son fell behind on payments but obtained a loan from his grandmother to bring the payments current. The Debtors' attorney spoke with the Creditor's counsel on February 3, 2016, inquiring whether his client would accept funds to bring the loan current. Creditor's counsel indicated that his client would accept reinstatement of funds and that the Creditor would prepare a Stipulation resolving the motion for relief from stay.

Provided that the Creditor prepare and file a Stipulation resolving the motion and the stipulation together with an order approving it are filed by February 24, 2016, the motion for relief from stay will be denied without prejudice. If a stipulation and order approving it are not filed by February 24, 2016, the motion will be deemed granted for cause under 11 U.S.C. § 362(d)(1) without further notice or order of the court.

The court shall issue an appropriate civil minute order consistent with this ruling.

7. 15-25547-B-13 TIMOTHY/MONICA BARRY MOTION TO CONFIRM PLAN
MWB-3 Mark W. Briden 12-31-15 [79]
Thru #8

Tentative Ruling: The Motion for Order Confirming Third Amended 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 third amended plan.

The petition in this chapter 13 case was filed on July 13, 2015, which means this case has now been pending for seven months without a confirmed plan. The fourth attempt to confirm a plan - the third amended plan filed by debtors Timothy Berry and Monica Barry - is now before the court. For the reasons explained below, confirmation of the third amended plan will be denied.

The initial plan was filed with the petition on July 13, 2015. The initial plan was rendered moot by a first amended plan filed on August 27, 2015, following an objection by creditors Mervyn Mihan and Janet Mihan and an objection and conditional motion to dismiss filed by the Chapter 13 Trustee. Debtors eventually withdrew the first amended plan on October 29, 2015. A second amended plan was filed on November 13, 2015. The debtors withdrew the second amended plan on December 16, 2015. The third amended plan was filed on December 31, 2015, and, like its predecessors, it is not confirmable.

The Trustee, Mihans, and U.S. Bank have objected to confirmation of the third amended plan on the grounds that it is not feasible. The court agrees.

The third amended plan is not feasible because it relies on speculative refinancing and a speculative foreclosure and sale transaction to fund it. The additional provisions state that the debtors will refinance their personal residence within twenty-four months of confirmation. However, there is no evidence of any pending, requested, or approved refinancing. And there is no assurance the debtors would even qualify for refinancing. The additional provisions also state the debtors will foreclose on certain property within twelve months of confirmation and then within twelve months thereafter (so another twenty-four months) list and sell the foreclosed property. Of particular concern is that the latter transaction leaves open the possibility of the debtors' request for additional time.

The court will not confirm a plan that relies on speculative transactions over a period of twenty-four months (or possibly longer). The court is not persuaded that the debtors have satisfied their burden of demonstrating the third amended plan is feasible. See 11 U.S.C. § 1325(a)(6). Therefore, the objections to confirmation of the third amended plan filed by U.S. Bank, the Trustee, and the Mihans on the grounds that the plan is not feasible are SUSTAINED, and confirmation of the third amended plan is DENIED.

Inasmuch as this is the debtor's fourth failed attempt to confirm a plan, the debtors will be given sixty days to confirm a plan. If the debtors fail to confirm a fourth amended plan on their fifth attempt at confirmation, the court will, upon denial of confirmation, consider whether this case should be converted to a chapter 7 case under 11 U.S.C. § 1307(c)(1) for unreasonable delay that is prejudicial to creditors.

A hearing at which the court will consider confirmation of a fourth amended plan or, if confirmation is denied, conversion to chapter 7, is set for **April 19, 2016, at 1:30 p.m.** The debtors shall file and serve their fifth amended plan to provide notice consistent with that hearing date.

8. 15-25547-B-13 TIMOTHY/MONICA BARRY
MWB-4 Mark W. Briden

OBJECTION TO CLAIM OF MERVYN HOLMES MIHAN AND JANET L. MIHAN TRUSTEES OF THE MERVYN AND JANET MIHAN 1999 TRUST, CLAIM NUMBER 6
12-26-15 [73]

Tentative Ruling: The Motion for Order Partially Disallowing Claim of Creditor Mervyn Holmes Mihan and Janet L. Mihan Trustees of the Mervyn and Janet Mihan 1999 Trust Dated 04/27/99, Which Claim Was Filed November 2, 2015, and Referenced as Claim 6-1 has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Introduction

Debtors Timothy Barry and Monica Barry have filed an objection to the claim of Mervyn Holmes Mihan and Janet L. Mihan, Trustees of the Mervyn and Janet Mihan 1999 Trust Dated 4/27/99, filed on November 2, 2015, as Claim No. 6. The debtors seek to have the Mihan Trust's claim partially disallowed. The Mihans have opposed the debtors' objection and have also requested an evidentiary hearing on one part of the objection. For the reasons explained below, the objection will be overruled in part and deferred in part pending determination following an evidentiary hearing which the court will grant.

Statement of Facts

There are three components to the Mihan Trust's claim and the debtors' objection to that claim:

(1) The first concerns a March 27, 2015, recorded Shasta County judgment in the amount of $7,220 which is not at issue.

(2) The second concerns a promissory note dated December 19, 2005, in the original principal amount of $75,000, secured by a first deed of trust recorded against real property located in Igo, Shasta County, California. With respect to this component of the Mihan Trust's claim, the debtors object to certain pre-petition interest, attorney's fees, and costs which they assert they do not owe and should not have to pay because the Mihans delayed foreclosure.

(3) The third concerns an outstanding balance owing on a promissory note dated April 6, 2005, in the original principal amount of $60,000, which was secured by real property located in Anderson, Shasta County, California. Debtors contend the balance owing on this note was satisfied in full when the Mihans received proceeds from a short sale of the property. The Mihans dispute the debtors' assertion that the obligation was satisfied with short sale proceeds.

Applicable Standard

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for a proof of claim executed and filed in accordance with the applicable Rules. Fed. R. Bankr. P. 3001(f); see also Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. See Id. at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." Id. at 707 (citation omitted) (internal quotation marks omitted). "[T]o rebut the

prima facie evidence a proper proof of claim provides, the objecting party must produce 'substantial evidence' in opposition to it." Am. Express Bank, FSB v. Askenaizer (In re Plourde), 418 B.R. 495, 504 (B.A.P. 1st Cir. 2009)).

The evidentiary presumption created by Rule 3001(f) "operates to shift the burden of going forward but not the burden of proof." Litton, 347 B.R. at 706 (citing Garner v. Shier (In re Garner), 246 B.R. 617, 622 (B.A.P. 9th Cir. 2000). The burden of proof always remains on the party who carries the burden under applicable nonbankruptcy law. Raleigh v. Ill. Dep't of Revenue, 530 U.S. 15, 20-21 (2000); see also In re Pashenee, 531 B.R. 834 (Bankr. E.D. Cal. 2015). "That is, the burden of proof is an essential element of the claim itself; one who asserts a claim is entitled to the burden of proof that normally comes with it." Raleigh, 530 U.S. at 21.

Discussion

The Mihan Trust has met its initial burden by filing a properly completed and supported proof of claim - Claim No. 6. Their proof of claim is presumptively valid. That shifts the burden to the debtors to produce substantial evidence to support their objections to the second and third components of the Mihan Trust's claim, i.e., (1) pre-petition interest, attorney's fees, and costs on the Igo property obligation should be disallowed and (2) the Mihans agreed to accept short sale proceeds in full satisfaction of the Anderson property note. The debtors have not satisfied their burden on the former. And the latter involves disputed material facts which necessitates an evidentiary hearing.

The Second Component - Igo Objection

The extent of the debtors' evidence supporting their objection to and disallowance of pre-petition interest, attorney's fees, and costs on the Igo transaction consists of the debtors' statements that they should not have to pay those amounts and/or that the amounts are not owed. Those statements are insufficient to overcome the presumptive validity of the Mihan Trust's proof of claim. See LBR 3007-1(a).

Beyond the debtors' mere statements that they do not owe pre-petition interest, fees, and costs on the Igo debt, the court has reviewed the Igo promissory note. It requires payment of all interest until the entire obligation is paid in full. It also provides for the recovery of attorney's fees and costs as part of the obligation if incurred to enforce the note. Paragraph 6(D) of the note entitled No Waiver by Note Holder states that even if the holder does not require immediate payment when there's a default, the holder can demand payment "at later time" if there is still a default. Put another way, delay, if any, does not equal waiver. And by admitting they owe the principal balance due on the note, the debtors effectively admit the note and all of its provisions are valid.[1]

[1]The court also notes that nothing prevented the debtors from foreclosing on the Igo property if the Mihans did not. In fact, the third amended plan now proposes this.

The Third Component - The Anderson Objection

This aspect of the debtor's objection involves disputed issues of material fact. Therefore, the court will grant the request by the Mihan Trust for an evidentiary hearing on the debtors' objection to this component of the Mihan Trust's claim. The court will also defer its ruling on this part of the objection pending the conclusion of the evidentiary hearing.

Therefore, based on the foregoing:

IT IS ORDERED that the debtors' objection to the Igo component of the Mihan Trust's claim is OVERRULED. The Mihan Trust's claim based on the Igo obligation in the principal amount of $75,000, plus all accrued pre-petition interest and all related pre-petition attorney's fees and costs, will be allowed in full without the reduction requested by the debtors.

IT IS FURTHER ORDERED that the Mihan Trust' motion for an evidentiary hearing is GRANTED, and the court will defer its ruling on the third competent of the debtors' objection to the Mihan Trust's claim related to the Anderson property transaction pending the conclusion of an evidentiary hearing or further order of this court.

IT IS FURTHER ORDERED that within ten (10) days of the entry of this order the parties shall submit a proposed joint scheduling order that includes dates for (1) written discovery, (2) any necessary depositions, and (3) three proposed dates for the evidentiary hearing.

9.	15-29747-B-13 JPJ-1 **Thru #10**	CHRISTPHER/DAPHNE CANNON Matthew J. Gilbert 1-28-16 [16]	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE

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, feasibility of the plan depends on the granting of a motion to value collateral of Ally Financial for a 2012 Chevy Malibu. That motion to value is denied at Item #10.

Second, feasibility of the plan depends on the granting of a motion to value collateral of IRS for a lien against the Debtors' personal property. To date, the Debtors have not filed, set for hearing, and served on the creditor and the Trustee a stand-alone motion to value the collateral.

Third, the Debtors have not provided the Trustee with documents requested at the 341 meeting of creditors on January 21, 2016. The Debtors must provide the Trustee with Profit and Loss Statements for the Joint-Debtor's day care business for the 6-month period preceding the filing of this case (June 2015 through November 2015).

Fourth, the Debtors have not amended the Statement of Financial Affairs to disclose the Debtor's operation of a consulting business in 2013.

Fifth, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $1,226.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make plan payments proposed and have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed December 21, 2015, 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 shall issue an appropriate civil minute order consistent with this ruling.

10. 15-29747-B-13 CHRISTPHER/DAPHNE CANNON MOTION TO VALUE COLLATERAL OF
MG-1 Matthew J. Gilbert ALLY FINANCIAL
1-15-16 [12]

Final Ruling: No appearance at the February 17, 2016, hearing is required.

The Motion to Value Collateral of Ally Financial 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)(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 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 deny the motion to value with prejudice.

The motion filed by Debtors to value the secured claim of Ally Financial ("Creditor") is accompanied by Debtor Christopher Cannon's declaration. Debtors are the owners of a 2012 Chevy Malibu ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $13,888.00 as of the petition filing date. As the owners, Debtors' opinion of value is some 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 Proof of Claim No. 2 filed by Ally Financial is the claim which is the subject of the present motion. The Claim No. 2 lists the last four digits of Debtors' account as -5150; this matches the account number provided in Debtors' Schedule D.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in May 2014 as indicated on Schedule D, which is less than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $18,890.38 (claim no. 2). Because the purchase-money loan was not incurred more than 910 days prior to the filing of the petition, the motion is denied with prejudice. *See* 11 U.S.C. § 1325(a)(9).

The court shall issue an appropriate civil minute order consistent with this ruling.

11. 15-22255-B-13 MANPREET/GURPREET LAKHAT — OBJECTION TO CLAIM OF CAVALRY SPV II, LLC, CLAIM NUMBER 1
JPJ-2 — Peter G. Macaluso — 12-23-15 [94]
Thru #12

Final Ruling: No appearance at the February 17, 2016, hearing is required.

The Trustee's Objection to Allowance of Claim of Cavalry SPV II, LLC 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. 1-1 of Cavalry SPV II, LLC and the claim is disallowed in its entirety.

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV II, LLC ("Creditor"), Claim No. 1-1. The claim is asserted to be in the amount of $1,351.99. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the documents attached to the proof of claim, the last payment was received on or about October 2, 2008, which is more than four years prior to the filing of this case. Hence, when the case was filed on March 20, 2015, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court shall issue an appropriate civil minute order consistent with this ruling.

12. 15-22255-B-13MANPREET/GURPREET LAKHAT — OBJECTION TO CLAIM OF MIDLAND CREDIT MANAGEMENT, INC., CLAIM NUMBER 5
JPJ-3 Peter G. Macaluso — 12-23-15 [98]

Final Ruling: No appearance at the February 17, 2016, hearing is required.

The Trustee's Objection to Allowance of Claim of Midland Credit Management, Inc. 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. 5-1 of Midland Credit Management, Inc. and the claim is disallowed in its entirety.

Jan P. Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Midland Credit Management, Inc.("Creditor"), Claim No. 5-1. The claim is asserted to be in the amount of $1,680.70. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the documents attached to the proof of claim, the last payment was received on or about August 28, 2008, which is more than four years prior to the filing of this case. Hence, when the case was filed on March 20, 2015, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

The court shall issue an appropriate civil minute order consistent with this ruling.

13. 16-20568-B-13 NATALIE PELTON — MOTION TO VALUE COLLATERAL OF AMERICAN HONDA FINANCE
RJ-1 Richard L. Jare — 2-3-16 [10]

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

The court's decision is to value the secured claim of American Honda Finance at $11,250.00.

The motion filed by Debtor to value the secured claim of American Honda Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Civic LX ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $11,250.00 as of the petition filing date. The Debtor's valuation is based on the numerous repairs needed for the Vehicle, including new tires, a broken mirror, and hubcap damage. As the owner, Debtor's opinion of value is some 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 Proof of Claim No. 1 filed by American Honda Finance 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 July 8, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $19,030.19 (claim no. 1). 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 $11,250.00. *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 shall issue an appropriate civil minute order consistent with this ruling.

14. 15-29573-B-13 SAUNDRA BATTAGLIA
JPJ-1 Steven A. Wolvek
Thru #15

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
1-28-16 [26]

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, feasibility cannot be determined until the Debtor has attended the continued 341 meeting of creditors scheduled for February 18, 2016, and provided the Trustee with copies of her last 4 years of tax returns to review. 11 U.S.C. § 1308.

Second, feasibility cannot be fully assessed because 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. 11 U.S.C. § 521(e)(2)(A)(I).

Third, feasibility cannot be determined because the Debtor has not provided the Trustee with evidence of pay stubs for wages earned during the 60-day period preceding the filing of the case as well as evidence of income received during that time period related to the Debtor's interest in mineral rights. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv) and § 521(a)(3).

Fourth, feasibility cannot be determined since the Debtor has failed to amend Schedules A, B, C, and I to list certain assets in land in Utah and income related to these assets.

Fifth, the Debtor has not amended the Statement of Financial Affairs Questions #4 and #5. Question #4 does not disclose any income earned in year 2013. Question #5 does not include income earned in 2015, 2014, or 2013 related to her interest in mineral rights.

Sixth, the plan does not comply with 11 U.S.C. § 1325(a)(4) as the unsecured creditors would receive a higher distribution in a chapter 7 proceeding.

Seventh, the Debtor's plan proposes monthly payments of $1,972.00 for a duration of 10 months and does not propose to pay all unsecured creditors in full, which violates Section 1.03 of the form plan itself. The plan does not appear to be proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3).

Eighth, the plan does not provide for treatment of secured creditors Bank of New York Mellon and John Roth III that is either acceptable to the creditors or which will result in payment in full with a market rate interest. The plan does not comply with 11 U.S.C. §§ 1325(a)(5)(A) or (B).

The plan filed December 28, 2015, 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 shall issue an appropriate civil minute order consistent with this ruling.

15. 15-29573-B-13SAUNDRA BATTAGLIA
MJ-1 Steven A. Wolvek

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON
1-28-16 [22]

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 overrule the objection but deny confirmation of the plan for reasons stated at Item #14.

The objecting creditor Bank of New York Mellon ("Creditor") holds a deed of trust secured by the Debtor's residence. The Creditor asserts $222,691.51 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 basis for the claimed pre-petition arrears. The Creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records. The Creditor only provides as an exhibit Debtor's Schedules I and J and argues that the Debtor does not have sufficient funds to cure the arrears. Without a proof of claim or evidence to support its assertion, the Creditor's objection is overruled.

Nevertheless, the plan filed December 28, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #14. The plan is not confirmed.

The court shall issue an appropriate civil minute order consistent with this ruling.

16. 15-29773-B-13 CHARLES HUGHES AND VIRA EISON
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
1-28-16 [20]

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, feasibility depends on the granting of a motion to value collateral of Carmax for a 2002 Lexus. To date, the Debtors have not filed, set for hearing, and served on the creditor and the Trustee a motion to value the collateral.

Second, feasibility depends on the granting of a motion to value collateral of Carfinance for a 2002 Volvo. To date, the Debtors have not filed, set for hearing, and served on the creditor and the Trustee a motion to value the collateral.

Third, the Debtors have failed to file the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. As such, no attorney's fees or costs can be approved in connection with confirmation of a plan and counsel must proceed to obtain approval of his attorney's fees and costs by separate motion pursuant to 11 U.S.C. § 330.

The plan filed December 22, 2015, 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 shall issue an appropriate civil minute order consistent with this ruling.

17. 15-29588-B-13 BEVERLY HARRIS — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Matthew J. DeCaminada — 1-28-16 [16]
Thru #18

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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, feasibility cannot be assessed since the Debtor has not provided the Trustee with copies of her most recent pay stubs from employment that began in December 2014.

Second, the Debtor has not provided the Trustee with copies related to Debtor's self-employed business, which include but are not limited to a completed business examination checklist, bank account statements and profit and loss statements for the 6-months period prior to the filing of the petition, proof of all required insurance, and proof of required licenses and/or permits. The Debtor has not complied with 11 U.S.C. § 521.

Third, the Debtor has not amended her petition to disclose her previous filed chapter 7 case (case no. 11-30064).

Fourth, the petition is missing several pages, specifically Schedules I, and J, the Statement of Current Monthly Income, and the Statement of Financial Affairs. It cannot be determined whether the plan is proposed in good faith, whether unsecured creditors will receive an amount comparable to what they would receive in a chapter 7 proceeding, or whether the Debtor is able to fund the proposed plan payments. Further, it cannot be assessed whether the Debtor is paying all disposable income to general unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B).

Fifth, the Debtor is delinquent to the Trustee in the amount of $5,000.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed December 11, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall issue an appropriate civil minute order consistent with this ruling.

18. 15-29588-B-13 BEVERLY HARRIS — OBJECTION TO CONFIRMATION OF PLAN BY TECHNOLOGY CREDIT UNION
RDW-1 Matthew J. DeCaminada — 1-28-16 [20]

Tentative Ruling: The Objections to Confirmation of 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 sustain the objection and deny confirmation of the plan.

The Technology Credit Union ("Creditor") holds a deed of trust secured by the Debtor's residence. Although the Creditor has not yet filed a proof of claim, the Creditor provides the Declaration of Josefina Lopez, who is the custodian of records and most familiar with this case and its facts. The Lopez Declaration states that there are $35,374.58 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed December 11, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall issue an appropriate civil minute order consistent with this ruling.

19. 11-43491-B-13 DAVE/KARON GILLILAND
JPJ-1 Mark Wolff
Thru #20

CONTINUED MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
12-3-15 [97]

Tentative Ruling: The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case was continued from January 13, 2016, to be heard in conjunction with Debtors' Motion to Confirm First Modified Chapter 13 Plan. As stated at Item #20, the Chapter 13 Trustee has agreed to the modified plan, provided that the order confirming properly account for all payments made by the Debtors to date.

The modified plan having been confirmed at Item #20, the motion to convert or in the alternative to dismiss case is denied as moot.

The court shall issue an appropriate civil minute order consistent with this ruling.

20. 11-43491-B-13 DAVE/KARON GILLILAND MOTION TO MODIFY PLAN
WW-6 Mark Wolff 1-5-16 [106]

Tentative Ruling: The Motion to Confirm First Modified Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 permit the requested modification and confirm the modified plan provided that the order confirming properly account for all payments made by the Debtors to date by stating the following: The Debtors have paid a total of $48,152.00 to the Trustee through January 25, 2016. Commencing February 25, 2016, monthly plan payments shall be $50.00 for the remainder of the plan.

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue an appropriate civil minute order consistent with this ruling.

21. 15-27491-B-13 SALLY YATES
RLC-4 Stephen Reynolds

MOTION TO EXTEND TIME
1-22-16 [46]

Final Ruling: The court will grant this motion. The debtors shall have sixty (60) days from the February 16, 2016, hearing date to confirm a Plan. See Fed. R. Bankr. P. 9006(b)(1). Otherwise, the case may be dismissed on the Trustee's ex parte application.

22. 15-28095-B-13 PAVEL KARAMALAK — MOTION TO CONFIRM PLAN
PGM-1 — Peter G. Macaluso — 1-6-16 [31]

Final Ruling: CONTINUED TO 3/02/15 AT 10:00 A.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO AVOID LIENS OF MIDLAND FUNDING AND CITIBANK, N.A./HUNT & HENRIQUES.

23. 15-29496-B-13 ANTHONY/HELEN CASACLANG — OBJECTION TO CONFIRMATION OF PLAN BY CENLAR FSB
BF-6 W. Scott de Bie — 1-27-16 [13]
Thru #24

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 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 overrule the objection but deny confirmation of the plan for reasons stated at Item #24.

The objecting creditor Cenlar FSB ("Creditor") holds a deed of trust secured by the Debtors' residence. The Creditor asserts $35,234.99 in pre-petition arrearages but has not filed a proof of claim to support the basis for the claimed pre-petition arrears. Additionally, 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.

Nevertheless, the plan filed December 8, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #24. The plan is not confirmed.

The court shall issue an appropriate civil minute order consistent with this ruling.

24. 15-29496-B-13ANTHONY/HELEN CASACLANG — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 W. Scott de Bie — 1-28-16 [16]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 dismiss the objection as moot, the Debtors having filed a reply accepting denial of confirmation of their plan and accepting a 75-day deadline to confirm a plan.

The plan filed December 8, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The plan is not confirmed.

The court shall issue an appropriate civil minute order consistent with this ruling.

25. 15-27752-B-13 JOSE CURIEL
JPJ-1 Michael O'Dowd Hays

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-15-15 [28]

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 overrule the objection and deny the motion to dismiss, subject to confirmation that the objections below have been satisfied.

First, the Debtor did not initially appear at the continued meeting of creditors held on January 14, 2016. The meeting was continued again to February 11, 2015, in order for the Trustee to thoroughly examine the Debtor under oath. The Trustee shall confirm the debtor's appearance.

Second, the plan payment in the amount of $228.00 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 $232.00. The plan does not comply with Section 4.02 of the mandatory form plan. However, as stated on the record, the difference of approximately $4.00 per month may be adjusted and accounted for in the confirmation order.

The plan filed October 1, 2015, 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 shall issue an appropriate civil minute order consistent with this ruling.