

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: April 13, 2021

CALENDAR: 1:00 P.M. CHAPTER 13

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

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

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

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

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

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

April 13, 2021 at 1:00 p.m.

1.	<u>21-20402</u> -B-13	ALFONSO PULIDO	OBJECTION TO CONFIRMATION OF
	<u>RAS</u> -1	Peter G. Macaluso	PLAN BY U.S. BANK N.A.
			3-16-21 [<u>26</u>]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

The court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to overrule the objection and confirm the plan.

Creditor U.S. Bank N.A. ("Creditor") objects to confirmation of the plan on grounds that it does not provide for the full pre-petition arrears as stated in the proof of claim no. 5.

The Debtor filed a response stating that he inadvertently underestimated the amount of pre-petition arrears owed to the Creditor. As such, Debtor requests the following language to be added to the order confirming to satisfy the Creditor's claim: "The Class 1 claim of U.S. Bank, N.A. secured by real property located at 622 N. Gertrude Ave., Stockton, CA 95215 shall receive post-petition monthly payments of \$1,211.26 with arrears in the amount of \$57,170.46, an interest rate on Arrears of 0.00%, and an arrearage dividend of \$960.00."

With the aforementioned addition, the plan filed February 3, 2021, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

The objection is ORDERED OVERRULED for reasons stated in the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

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2. [21-20409](#)-B-13 SHERMAN GRAY
Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY BRECKENRIDGE PROPERTY
FUND 2016, LLC
2-26-21 [[29](#)]

Thru #3

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

Breckenridge Property Fund 2016, LLC ("Movant") objects to confirmation of the plan on grounds that it allows for Debtor to reside at Movant's property located at 10769 Lake Boulevard, Felton, California, ("Property") after all rights to possession were terminated pre-petition. The plan also incorrectly represents the attorney for Movant as the creditor having a secured interest in the Property when this is false.

Movant separately filed a motion for relief from stay with respect to the Property. An order granting the motion was entered on March 18, 2021.

The plan filed February 16, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

3. [21-20409](#)-B-13 SHERMAN GRAY
[RDG-1](#) Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-23-21 [[40](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to overrule the objection as moot for reasons stated at Item #2.

The plan filed February 16, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The plan is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

4. [20-20117](#)-B-13 ANTONIA LOPEZ
[ALG](#)-1 Jeffrey M. Meisner

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
3-10-21 [[49](#)]

SUN WEST MORTGAGE COMPANY,
INC. VS.

Final Ruling

The motion has been set for hearing on 28-days notice. 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 was filed.

The court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to grant the motion for relief from stay.

Sun West Mortgage Company, Inc. ("Creditor") seeks relief from the automatic stay with respect to real property commonly known as 3530 Estate Drive, Stockton, California (the "Property"). Creditor has provided the Declaration of Jessie Gonzalez to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property. The Gonzalez Declaration states that post-petition payments are owed for the months of September 2020 through March 2021. The total default as of March 1, 2021, is \$13,395.11. Nothing in the Debtor's opposition, dkt. 61, or her declaration, dkt. 62, refute these facts.

Creditor also states that its interest is not adequately protected based on the existing insufficient equity cushion.

Opposition was filed by the Debtor stating that she and Creditor began a loan modification process as of March 26, 2021. Debtor requests that the motion be denied or continued to a date after the loan modification application is completed. Debtor also contends that there is a sufficient equity cushion in the Property since its value is as high as approximately \$450,000.00 based on Zillow.com.

Discussion

The Debtor's undisputed failure to make regular post-petition mortgage payments is cause for relief from the automatic stay of 11 U.S.C. § 362(a) under § 362(d)(1). *Dangcil v. JP Morgan Chase Bank, N.A. (In re Dangcil)*, 2017 WL 1075045 at *8 (9th Cir. BAP March 21, 2017). It is also cause for relief from the co-debtor stay of § 1301. See *In Re Amey*, 314 B.R. 864, 867 (Bankr. N.D. Ga. 2004) ("[T]he Court concludes that Movant has shown cause for the lifting of the automatic and codebtor stays, and the Court will, therefore, terminate them pursuant to 11 U.S.C. § 362(d) and § 1301(c).").

Creditor is also not adequately protected.

Schedules are filed under penalty of perjury. See Fed. R. Bankr. P. 1008. Some courts treat schedules as evidentiary admissions under Federal Rule of Evidence 801(d)(2). *Heath v. American Express Travel Related Services Co., Inc. (In re Heath)*, 331 B.R. 424, 431 (9th Cir. BAP 2005). Others treat them as judicial admissions. *In re Roots Rents, Inc.*, 420 B.R. 28, 40 (Bankr. D. Utah). Whatever their status, schedules carry evidentiary weight. *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960,

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969-70 (9th Cir. 2012). Therefore, for purposes of this motion only, the court relies on Schedule A/B as the only evidence of the Property's value and values the Property at \$411,835.00.

The court does not give weight to Debtor's valuation of the Property at as much as \$450,000.00 since it is based on Zillow.com, a third-party industry source and therefore hearsay. Zillow is also inherently unreliable. See *In re Darosa*, 442 B.R. 173, 177 (Bankr. D. Mass. 2010); *In re Phillips*, 491 B.R. 255, 260 (Bankr. D. Nev. 2013); see also Fed R. Evid. 801-803. Moreover, the Debtor's declaration valuation directly contradicts Debtor's own schedules that she filed under penalty of perjury stating that the Property is worth \$411,835.00. Consequently, the Debtor's declaration is not credible.

The Ninth Circuit has held that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). Here, Creditor claims it is owed \$364,533.73. Based on the Property's \$411,835.00 value and Creditor's senior lien, that leaves equity of \$47,301.27, which in turn creates an equity cushion of 11.49%. Creditor is therefore not adequately protected, particularly in the absence of ongoing post-petition payments and the existing significant default.

The motion is ORDERED GRANTED and the automatic and co-debtor stays are terminated for the reasons stated in the minutes.

The court will issue an order.

5. [20-24822](#)-B-13 NORBERTO ROSARIO RIVERA MOTION TO CONFIRM PLAN
[JCK](#)-2 Gregory J. Smith 2-22-21 [[35](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. 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 complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

6. [21-20223](#)-B-13 BRANDON BRASFIELD
[RDG-1](#) Colby D. LaVelle
Thru #7

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-22-21 [[22](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

First, Debtor's plan provides for American Honda Finance in Class 2(B) with a claim amount of \$15,985.00 to be paid subject to a motion to value \$11,615.00 at 1.9% interest a monthly payment of \$197.26. Debtor's plan relies on a motion to value collateral being filed for American Honda Finance. To date, Debtor has failed to file a motion to value collateral. Since the motion to value is not filed, Debtor's plan does not have sufficient monies to pay the claim in full and therefore is not confirmable.

Second, Debtor's Schedule I includes a mandatory 401K loan repayment in the amount of \$543.42. Information as to when the loan will be paid in full is required. Schedule I also provides for a voluntary retirement contribution at (\$247.01). Information as to when this voluntary contribution has ceased is required, since this amount has been included in Debtor's monthly income.

Third, Debtor's Schedule J includes a monthly installment of \$197.00 for a 2016 Honda Accord despite Debtor's plan providing for its payment in Class 2. Therefore, the inclusion of this expense in Debtor's schedule is inappropriate. The Debtor is not paying all available income into the plan and the plan is not proposed in good faith. 11 U.S.C. § 1325(a)(3).

Fourth, the plan is not mathematically feasible. Debtor's plan provides for a monthly plan payment of \$672.62 for 60 months and no less than a 100% dividend to unsecured claims in the approximate amount of \$22,370.00. That total fails to account for the proposed unsecured portion of the claim of American Honda Finance, which is estimated at \$4,370.00 on Debtor's Schedule D. The debtor has failed to provide admissible evidence that their plan is mathematically feasible. Trustee's calculations indicate that Debtor's plan payment will need to be at least \$767.15 in order for Debtor's plan to be feasible as proposed paying unsecured creditors in the scheduled amount of \$26,740.00 no less than 100%. 11 U.S.C. § 1325(a)(6).

The plan filed January 25, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

7. [21-20223](#)-B-13 BRANDON BRASFIELD
[VVF](#)-1 Colby D. LaVelle

OBJECTION TO CONFIRMATION OF
PLAN BY AMERICAN HONDA FINANCE
CORPORATION
3-3-21 [[15](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to sustain the objection but deny confirmation of the plan for reasons supplemented at Item #6, RDG-1.

First, Debtor's plan relies on a motion to value collateral being filed for American Honda Finance ("Creditor"). To date, Debtor has failed to file a motion to value collateral. Since the motion to value is not filed, Debtor's plan does not have sufficient monies to pay the claim in full and therefore is not confirmable.

Second, the plan incorrectly states that Creditor's claim does not arise from a purchase money security interest. Debtor must amend the plan to designate Creditor's claim as a purchase money security interest.

The plan filed January 25, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

8. [21-20233](#)-B-13 EDISON REY PILAR
[RDG](#)-1 Arete Kostopoulos

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE RUSSELL D.
GREER
3-22-21 [[15](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on April 6, 2021. Although the confirmation hearing for the amended plan has not yet been scheduled, the earlier plan filed January 25, 2021, is nonetheless not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

9. [15-28661](#)-B-13 JOHN BROWN
[JAD](#)-2 Jessica A. Dorn

MOTION TO MODIFY PLAN
3-5-21 [[46](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

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

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

10. [20-23961](#)-B-13 PETER/MEGAN GALLEGOS OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Charles L. Hastings PLAN BY RUSSELL D. GREER
3-23-21 [[58](#)]

CONTINUED TO 4/20/21 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 4/14/21.

Final Ruling

No appearance at the April 13, 2021, hearing is required. The court will enter a minute order.

11. [20-20071](#)-B-13 KIM WALKER
[PLG](#)-5 Rabin J. Pournazarian

MOTION TO MODIFY PLAN
3-5-21 [[80](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

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

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

12. [21-20383](#)-B-13 JOHN SERNA OBJECTION TO CONFIRMATION OF
Thru #13 Len ReidReynoso PLAN BY U.S. BANK NATIONAL
ASSOCIATION
3-11-21 [[13](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

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

Subsequent to the filing of U.S. Bank National Association's objection, the Debtor filed an amended plan on March 23, 2021. The confirmation hearing for the amended plan is scheduled for May 11, 2021. The earlier plan filed February 1, 2021, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

13. [21-20383](#)-B-13 JOHN SERNA OBJECTION TO CONFIRMATION OF
[RDG-1](#) Len ReidReynoso PLAN BY RUSSELL D. GREER
3-22-21 [[16](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

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

Subsequent to the filing of U.S. Bank National Association's objection, the Debtor filed an amended plan on March 23, 2021. The confirmation hearing for the amended plan is scheduled for May 11, 2021. The earlier plan filed February 1, 2021, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

14. [21-20384](#)-B-13 RAYFORD/REGINA GRIFFIN OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Brian S. Haddix PLAN BY RUSSELL D. GREER
3-23-21 [[27](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

First, Debtors' Schedule E/F provides for the Internal Revenue Service with a priority amount of \$0.00. The Internal Revenue has filed a proof of claim no. 3 with a priority portion of \$13,924.58. Debtors' plan payment is insufficient to pay this claim.

Second, Debtors' plan is not feasible. Creditor Wyndham Resort Development Corporation filed a secured claim in the amount of \$15,296.28, proof of claim no. 1. Debtors' plan does not provide for this secured claim.

The plan filed February 1, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion has been set for hearing on the 35-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)(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 and a response were filed.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

The Chapter 13 Trustee ("Trustee") objects to confirmation on grounds that the claim for Santander Consumer USA ("Santander") for a 2016 Nissan Sentra should be listed as a Class 2 claim, which will mature before the plan is completed, and not a Class 4 claim, which will mature after the completion of the plan.

Debtor filed a response stating that the claim was listed as Class 4 because Debtor is current on payments and seeks to pay the creditor directly outside of the Chapter 13 plan. There are no pre-petition arrears listed in Santander's proof of claim no. 3 filed on February 24, 2021. Debtor's fear is that if Santander's claim were treated as a Class 2 claim and paid through the plan, should the bankruptcy case be dismissed for any reason in the future, Debtor's payments to Santander would immediately be in default and put the vehicle at risk for repossession.

The court agrees with the Trustee.

The United States Bankruptcy Court for the Eastern District of California has adopted a uniform claim classification structure applicable in all Chapter 13 cases. General Order 18-03 adopts Form EDC 3-080, the standard form Chapter 13 plan, and Local Rule 3015-1(a) makes use of the Form EDC 3-080 standard form Chapter 13 plan mandatory in all Chapter 13 cases.¹

The mandatory form Chapter 13 plan classifies claims that will mature before the plan is completed as Class 2 claims paid by the Trustee. EDC 3-080, § 3.08. Claims that mature after the plan is completed may be classified in Class 4, provided they are not in default when the petition is filed, and paid directly by the debtor. EDC 3-080, § 3.10.

The Debtor does not dispute that Santander's claim will mature before her plan is completed. She also does not dispute that such claims fall under Class 2 of the form Chapter 13 plan. Nevertheless, as noted above, the Debtor seeks to place Santander's claim in Class 4 rather than Class 2 so that she may pay Santander directly.

It is true that the Bankruptcy Code does not prohibit Chapter 13 debtors from making

¹Local Bankruptcy Rule 3015-1(a) states as follows:

(a) Mandatory Form Plan. All chapter 13 debtors, as well as the trustee and holders of unsecured claims, when proposing a plan pursuant to 11 U.S.C. §§ 1321, 1323, and 1329(a), shall utilize Form EDC 3-080, the standard form Chapter 13 Plan.

post-petition payments directly to creditors. See *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40, 46-47 (9th Cir. BAP 2007), adopted and affirmed, 550 F.3d 1202 (9th Cir. 2008) (discussing § 1326(c)). However, it is equally true that the right to make direct payments is not absolute and the bankruptcy court may, in its discretion, condition the circumstances under which direct payments may be made by local rule or general order. *Id.* at 46-47, 53; *Geisbrecht v. Fitzgerald (In re Geisbrecht)*, 429 B.R. 682, 685 & 690-91 (9th Cir. BAP 2010). The Eastern District of California Bankruptcy Court has done precisely that through both a local rule and general order which establish the Class 2 and Class 4 classification structure, *i.e.*, (1) claims that mature before plan completion are Class 2 and paid by the Trustee; and (2) claims that mature after plan completion and not in default when the petition is filed may be Class 4 and paid by debtors directly.

Notably, the Debtor does not dispute the court's authority to establish criteria for the classification of claims in the standard form Chapter 13 plan or the classification structure adopted in this district. Rather, the Debtor merely seeks to deviate from the mandatory classification structure in this case.

It may be possible, in an appropriate case and under appropriate circumstances, to confirm a plan that provides for direct payments to a creditor other than through Class 4 or to include a claim that otherwise would fall under a different classification in Class 4. Indeed, Local Bankruptcy Rule 1001-1(f) states that the court "may sua sponte or on motion of a party in interest for cause, modify the provisions of these Rules in a manner not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding."

Here, however, the Debtor has not shown that this is an appropriate case to depart from the mandatory Class 2 and Class 4 classification structure. In fact, the Debtor's desire to deviate from the classification structure is based solely on the unsupported and unsubstantiated statement by her attorney in the response that in the absence of direct payments the Debtor fears her car *may* be repossessed *if* her case is dismissed. Not only is the attorney's statement speculative, but, it is not even evidence of anything much less of what it purports to assert. *Singh v. I.N.S.*, 213 F.3d 1050, 1054 n.8 (9th Cir. 2000). The amended plan with an incorrect classification of the Santander claim will therefore not be confirmed.

The court finds that the amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and will not be confirmed.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.