

**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 20, 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 20, 2021 at 1:00 p.m.

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1. [21-20402](#)-B-13 ALFONSO PULIDO MOTION TO VALUE COLLATERAL OF
[PGM](#)-2 Peter G. Macaluso PORTFOLIO RECOVERY ASSOCIATES,
LLC
3-19-21 [[31](#)]

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). 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 value the secured claim of Portfolio Recovery Associates, LLC at \$3,000.00.

Debtor moves to value the secured claim of Portfolio Recovery Associates, LLC ("Creditor"). Debtor is the owner of a 2014 Hyundai Sonata ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$3,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 8 filed by Portfolio Recovery Associates, 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 May 27, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$8,333.58. 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 \$3,000.00. 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 motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

April 20, 2021 at 1:00 p.m.

Final Ruling

The motion 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)(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 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 permit the requested modification and not confirm the modified plan.

First, all sums required by the plan have not been paid. 11 U.S.C. §1325(a)(2). Debtor is delinquent \$3,211.00 under the proposed plan. Section 7.01 of Debtor's plan provides for plan payments of \$3,211.00 beginning January 2021. Trustee records indicate Debtor failed to make a March 2021 plan payment. As such, she is \$3,211.00 delinquent under the proposed plan.

Second, Debtor's plan may not be feasible under 11 U.S.C. §1325(a)(6). Debtor's plan provides for "Post-Confirmation Plan Arrears" as a Class 1 creditor in the amount of \$16,422.00 to be paid a monthly dividend of \$195.50. It cannot be determined whether Debtor intends this to be post-petition arrears owed to Class 1 creditor Sun West Mortgage Company.

Third, Section 7.01 of Debtor's plan provides for a monthly plan payment of \$3,211.00 beginning in month 12 (January 2021) through month 59 (December 2024) and provides that in month 60, "debtor's payment shall be for the full balance remaining on the plan, unless she can refinance or modify the existing loan(s) secured by her primary residence prior to such time, or if unable, she sells her primary residence, then this plan shall be modified and paid in accordance with bankruptcy and non-bankruptcy law at such time." The debtor has failed to provide admissible evidence that the plan is mathematically feasible. Trustee's calculations indicate that as of this date, with the post-petition arrears of \$11,077.86, Debtor's plan payment in month 60 will need to be at least \$27,571.96 in order for Debtor's plan to be feasible as proposed paying general unsecured creditors 10%.

Fourth, Section 3.08 (A)(2) of Debtor's proposed plan adds OneMain as a Class 2 creditor (2003 Chevrolet Trailblazer) with a total claim amount of \$2,926.00 to be paid a dividend of \$34.83 per month. As of March 29, 2021, a separate claim from this creditor has not been filed. Trustee is unable to make separate disbursements to OneMain for this claim; however, Trustee acknowledges that creditor OneMain/Portfolio Recovery Associates LLC filed a timely proof of claim (3-1, item 9) on January 31, 2020 and listed two vehicles, a 2003 Chevy Trailblazer and 2005 Chevy Silverado as a description of the property under that claim.

Fifth, Debtor's plan proposes to reclassify Class 1 creditor, 1ST Security Bank of WA, as a Class 3 Surrender. This creditor has already received disbursements from the trustee. In the event that the motion to modify plan is granted, the trustee requests that the proposed order include the following language: "All previously disbursed amounts made to secured creditor, 1ST Security Bank of WA are allowed in the amount already paid by the trustee."

Sixth, Section 7.01 of Debtor's plan proposes a monthly payment of \$3,211.00 beginning January 2021 (month 12). Debtor has failed to file supplemental Schedules I and/or Schedule J to support the plan payment. Without the updated schedules, Trustee is unable to determine whether the proposed plan is feasible.

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

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

3. [16-25918](#)-B-13 MICHAEL SHELBY
[RAS](#)-1 Michael K. Moore

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
3-18-21 [[74](#)]

U.S. BANK NATIONAL
ASSOCIATION VS.

Final Ruling

This case was dismissed on April 8, 2021. Therefore, the motion for relief from stay is denied as moot.

The motion is ORDERED DENIED AS MOOT for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion 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)(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 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 permit the requested modification and not confirm the modified plan.

First, Debtors' plan fails to provide for post-petition arrears totaling \$3,686.98 to Class 1 Creditor, Select Portfolio Servicing, Inc., representing the months of February and March 2021. Without providing for these post-petition arrears, Trustee is unable to determine whether the Debtors' plan is feasible. 11 U.S.C. §1325(a)(6).

Second, the Nonstandard Provisions of Debtors' plan at Section 7.02 states that Debtors shall pay the Trustee a total of \$30,652.00 through month 12. Debtors have paid \$27,772.00 through month 12 of the plan. The last payment in the amount of \$2,880.00 was posted on April 5, 2021, month 13, of Debtors' plan. 11 U.S.C. §1325(a)(6).

Third, the Nonstandard Provisions of Debtors' plan at Section 7.08 state that the Debtors will pay the Internal Revenue Service directly \$1,500.00 per month in months 11-14 for the 2018 and 2019 priority tax debt as there was no timely proof of claim filed. Debtors' Amended Schedule J fails to provide for the \$1,500.00 payment. Debtors' plan is not feasible. 11 U.S.C. §1325(a)(6).

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

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

5. [18-21253](#)-B-13 INGRID CONTRERAS MOTION TO MODIFY PLAN
[MSN](#)-3 Mark S. Nelson 3-11-21 [[93](#)]
Thru #6

Final Ruling

The motion 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)(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 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 permit the requested modification and confirm the modified plan.

Feasibility depends on the granting of a motion to incur debt. That matter is heard and granted at Item #6, MSN-4.

The modified 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. [18-21253](#)-B-13 INGRID CONTRERAS MOTION TO INCUR DEBT
[MSN](#)-4 Mark S. Nelson 3-17-21 [[98](#)]

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). 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 grant the motion to incur debt.

The motion seeks permission to withdraw a 401(k) loan in the amount of \$14,000.00 to pay off the bankruptcy case in month 36. The Debtor is currently in month 36 and current on plan payments. Debtor seeks to take out the 401(k) loan because she believes it is in her best interest to complete her plan now since she is uncertain of the possibility of losing her job at any time due to the COVID-19 pandemic. If the motion is approved, Debtor will receive \$13,950.00 after taxes. She will pay back the loan over 36 months at 4.250% interest with payments of \$207.28 every two weeks.

Discussion

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the withdrawal of the 401(k) loan, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). 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 has also determined that further briefing is unnecessary because the motion cannot be granted. See Local Bankr. R. 9014-1(f)(2)(C).

The court's decision is to deny the motion.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 7 filed by Franchise Tax Board is the claim which may be the subject of the present motion.

Discussion

Debtors Michael And Jolene Yates ("Debtors") move to value the secured claim of California Franchise Tax Board ("Creditor") at \$0.00 pursuant to 11 U.S.C. § 506(a). Creditor's claim is secured by a tax lien on the Debtors' real property located at 932 Interlake Drive, Lodi, California ("Property"). Creditor's tax lien was recorded on February 18, 2020.

Debtors are the owners of the Property and seek to value it at a fair market value of \$450,000.00 as of the petition filing date. As the owner, 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). Debtors' opinion of value is also consistent with an appraisal of the Property's value near the Chapter 13 petition date. The court therefore values the Property at \$450,000.00 for purposes of this motion.

There is an evidentiary discrepancy regarding liens on the Property senior to Creditor's tax lien. More precisely, the discrepancy concerns the debt secured by the 2004 and 2005 Yates deeds of trust.

According to the motion, the liens senior to Creditor's tax lien are as follows:

\$ 187,204.52	1st DOT
\$ 30,000.00	12/17/04 DOT
\$ 35,000.00	9/20/05 DOT
<u>\$ 199,148.95</u>	<u>7/14/14; 12/26/17; 10/9/18; 1/14/20 IRS liens</u>
\$ 451,353.47	

Dkt. 70 at 2:1-9 (emphasis added).

The court also notes that the Yates secured debts are scheduled at \$30,000.00 and \$35,000.00, respectively. See dkt. 1, sch. D, at 2.6 and 2.7. Schedules are signed under penalty of perjury. See Fed. R. Bankr. P. 1008. As such, they have evidentiary value. See *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969 (9th Cir. 2012).

However, according to the Debtor's declaration filed in support of the motion and the

exhibits, liens senior to Creditor's tax lien are as follows:

\$ 187,204.52	1st DOT
\$ 20,000.00	12/17/04 DOT
\$ 25,000.00	9/20/05 DOT
\$ 199,148.95	<u>7/14/14; 12/26/17; 10/9/18; 1/14/20 IRS liens</u>
\$ 431,353.47	

Dkt. 72 at 2:3-7 (emphasis added); see also dkt. 73, ex. B at 1 (2004 DOT @ \$20,000.00) and ex. C at 1 (2005 DOT @ \$25,000.00).

If the motion and Schedule D accurately reflect the Yates secured debt, then it would appear there is no equity in the Property to which Creditor's tax lien could attach. But the motion is not supported by Schedule D. It is supported by the Debtors' declaration and exhibits. And if the Debtors' declaration and exhibits accurately reflect the Yates secured debt, then it would appear there is equity in the Property to which Creditor's tax lien will attach.

The conflicting evidence regarding the amount of the Yates secured debt means the Debtors have not carried their burden of demonstrating that Creditor's collateral should be valued at \$0.00. That also means the Debtors' motion will be denied without prejudice.

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

The court will issue an order.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). 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 has also determined that further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C).

The court's decision is to grant the motion to extend the automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on February 19, 2021, due to failure to make plan payments (case no. 19-21036, dkt. 120). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor asserts that the previous case failed due to not being able to afford plan payments that accounted for both his debts and that of his ex-wife's. Since the previous case was filed, Debtor's circumstances have changed since he is now filing bankruptcy individually and will only have to pay his portion of debt. Debtor states that can afford plan payments since he is working full time and has moved to new residence where rent is less.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay will be extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The motion is ORDERED GRANTED for the reasons stated in the minutes.

The court will issue an order.

Final Ruling

This matter was continued from April 13, 2020, to be heard after the continued meeting of creditors, which has been concluded. 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.

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.

Although the Debtors have resolved some issues, including filing an amended Rights and Responsibilities and Disclosure of Compensation of Attorney for Debtors, other issues remain outstanding.

First, Section 7 of Debtors' plan provides that secured creditors in Class 2 shall be paid commencing in month 3 (April 2021) after the payment of Debtors' attorney fees. Section 3.05 and Section 3.06 of Debtors' plan provides that the balance of \$1,500.00 for the attorney fees shall be paid a monthly dividend of \$25.00. The attorney fees will take 60 months to pay in full (\$1,500.00 divided by \$25.00). Accordingly, the Chapter 13 Trustee is unable disburse the entire balance of the attorney fees in months 1 and 2 (February 2021 and March 2021), before the Class 2 creditors.

Second, Debtors' plan fails the liquidation test of 11 U.S.C. §1325(a)(4). Debtors' schedules list non-exempt assets totaling \$14,155.89, and unsecured priority claims totaling \$0.00. Accordingly, there are non-exempt assets available for distribution to Debtors' general unsecured creditors of \$14,155.89 (\$14,155.89 minus \$0.00). Trustee estimates, based on a review and analysis of Debtors' schedules, that Debtors have non-priority general unsecured claims totaling \$110,702.91. Accordingly, in order to meet the liquidation test of 11 U.S.C. §1325(a)(4), Debtors' plan must pay 12.79% to Debtors' general unsecured creditors. Debtors' plan only pays 1%, and, accordingly, it fails the liquidation test.

Third, Debtors' plan is not proposed in good faith under 11 U.S.C. §1325(a)(3). Section 7 of Debtors' plan provides that the plan payments will increase upon payment in full of Debtors' National Life Group 403(b) loan payments. Debtors' amended Schedule I, line 5d, indicates retirement loan payments of \$113.19 and \$183.04. Debtors' plan fails to specify when these loans pay in full and when the plan payments are to increase. Additionally, Debtors' plan misclassifies the National Life Group/403(b) claims in paragraph 3.10 as Class 4 claims. Class 4 includes all secured claims paid directly by Debtor or third party. The National Life Group/403(b) claims are not secured and therefore are improperly classified in Class 4 and improperly listed on Debtors' Schedule D as secured claims.

Fourth, Debtors' plan payment is \$633.50 per month. Debtors' Amended Schedule I and J (DN 24) show that Debtors have a monthly net income of \$868.14 per month, and, accordingly, Debtors have not proposed to pay all available income into the plan.

The plan filed February 4, 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.