

**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: June 7, 2022

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

June 7, 2022 at 1:00 p.m.

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1. [22-20704](#)-B-13 KATHLEEN MAGANA OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Mark Shmorgon PLAN BY RUSSELL D. GREER
5-17-22 [[18](#)]

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.

The court's decision is to **continue the hearing to June 21, 2021, at 1:00 p.m.** to permit the Debtor to supplement the record and correct two minor issues that currently prevent confirmation.

First, the Debtor's Schedule I lists Debtor's employer as San Joaquin County of Education, however Debtor has admitted at her meeting of creditors that she will no longer be employed at San Joaquin County of Education and will begin a new job at the end of May 2022. Until Debtor files amended schedules I and J, it cannot be determined whether Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to Debtor's general unsecured creditors. 11 U.S.C. §§ 1325(a)(6) and 1325(b)(1).

Second, the plan payment in the amount of \$925.00 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 these monthly amounts plus Trustee's fees is \$951.37. The plan does not comply with Section 5.02 of the mandatory form plan.

Although the plan filed March 24, 2022, does not currently comply with 11 U.S.C. §§ 1322 and 1325(a), the Debtor shall have until June 14, 2022, to file and serve amended Schedules I and J to resolve the Trustee's first objection. Assuming amended schedules are timely filed and served, an adjustment to the plan payment of approximately \$26.37 may be made in the confirmation order to resolve the Trustee's second objection.

The hearing on confirmation and on the objection is ORDERED CONTINUED for reasons stated in the minutes.

The court will issue an order.

June 7, 2022 at 1:00 p.m.

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 was filed.

The court has 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). This matter will therefore be decided on the papers.

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

First, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) shows that the Debtor's monthly disposable income is \$830.17 and the Debtor must pay no less than \$49,810.20 to unsecured non-priority creditors, which would result in a 45% dividend to general unsecured creditors. The Debtor's plan does not propose to pay a dividend to unsecured non-priority creditors.

Second, line 23 of Debtors' Amended Form 122C-2 includes a deduction for optional telephone and telephone services in the amount of \$710.00. Dkt. 93. The expense is not reasonably necessary to be expended for the maintenance or support of the Debtors or a dependent of the Debtors, and, accordingly, is inappropriate. Unless Debtors' plan provides for the payment of this additional projected disposable income to Debtors' general unsecured creditors, the plan fails to comply with 11 U.S.C. § 1325(b). Additionally, the Trustee previously raised this same objection in his opposition to Debtor's previous motion to confirm plan. Dkt. 71. Debtors' motion was denied on March 8, 2022. Dkt. 76. Debtors have failed to amend their Form 22C, and further, Debtors have failed to submit any evidence with this motion explaining their failure to do so. Debtors' plan has not been proposed in good faith. 11 U.S.C. § 1325(a)(3).

Third, Debtors' motion fails to allege all significant factual matters under 11 U.S.C. § 1325(a)(1)-(9). The motion to confirm may not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion does not provide information that would be of use to the parties, such as a brief description of the plan, an explanation as to what has changed, and a summary of prior events that have brought the Debtor to a first amended plan. Instead, the Debtor requires all parties, including the court, to read and review all the documents filed previously and draw their own conclusions.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, 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. [20-24933](#)-B-13 THOMAS/RENEE IRELAND MOTION TO MODIFY PLAN
[BSH](#)-1 Brian S. Haddix 4-25-22 [[36](#)]

Final Ruling

The motion 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)(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 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). This matter will therefore be decided on the papers.

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

First, the Debtors are delinquent in the amount of \$225.00. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, Debtors' plan may not be feasible under 11 U.S.C. § 1325(a)(6). A motion to incur debt was heard and granted on May 24, 2022. Dkt. 54. Debtors' Schedule J at line 17a provides for a car payment of \$325.00. The declarations in support of the motion to incur debt indicate the new car payment would be \$517.90. Dkts. 44 and 46. However, without schedules that provide for the new accurate car payment following the court's granting of the motion to incur debt, it cannot be determined if Debtors' plan is 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.

4. [21-23755](#)-B-13 DONALD VUONG
[CDL](#)-41222 Colby D. LaVelle

MOTION TO CONFIRM PLAN
4-25-22 [[46](#)]

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 Debtor has 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.

5. [22-20260](#)-B-13 MELITA BELL
[RDG-1](#) Kathleen H. Crist

OBJECTION TO CLAIM OF WHEELS
FINANCIAL GROUP LLC, CLAIM
NUMBER 8
5-4-22 [[17](#)]

Final Ruling

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, parties in interest were not required to file a written response or opposition.

The court has 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). This matter will therefore be decided on the papers.

The court's decision is to conditionally sustain the objection to Claim No. 8-1 of Wheels Financial Group, LLC, and continue the matter to June 14, 2022 at 1:00 p.m.

The Chapter 13 Trustee requests that the court disallow the claim of Wheels Financial Group, LLC ("Creditor"), Claim No. 8-1. The claim is asserted to be unsecured in the amount of \$14,482.63. The Trustee asserts that the claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was April 14, 2022. The Creditor's claim was filed April 19, 2022.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety as untimely. The objection to the proof of claim is sustained.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on Friday, June 10, 2022, to file and serve an opposition or other response to the objection. See Local Bankr. R. 3007-1(b)(2). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on June 14, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the objection on June 14, 2022, at 1:00 p.m.

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 was filed.

The court has 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). This matter will therefore be decided on the papers.

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

First, Debtor includes a Section 7 Nonstandard Provisions in the plan but does not select Section 1.02 indicating that there is a nonstandard provision that should be given effect. Feasibility of the plan cannot be determined pursuant to 11 U.S.C. § 1325(a)(6). Additionally, the Trustee notes that if the Nonstandard Provisions are given effect, the Debtor is delinquent in the amount of \$20,435.00. The total due through April 2022 is \$32,685.00 and Debtor has paid \$12,250.00 through April 2022, and the last payment in the amount of \$450.00 was posted on April 25, 2022.

Second, 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 or a written statement that no such documentation exists. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(i).¹

Third, the Trustee was informed at the meeting of creditors that the non-filing spouse receives disability, social security, and VA award income, however Debtor's Amended Schedule I indicates \$2,997.00 as Debtor's non-filing spouse's Social Security income. It appears that the Amended Schedule I fails to provide for Debtor's total household income. 11 U.S.C. §§ 1325(a)(6) and 1325(b)(1).

Fourth, Debtor's Amended Schedule J at line 15b indicates a monthly expenses of \$707.00 for health insurance. Dkt. 26. Debtor admitted at the meeting of creditors that this expense is reimbursed by her employer. This reimbursement has not been provided for on Debtor's Amended Schedule I. Until an accurate Schedule I is filed, it cannot be determined if Debtor's plan is proposed in good faith and Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to Debtor's general unsecured creditors. 11 U.S.C. §§ 1325(a)(6) and 1325(b)(1).

Fifth, Debtor's motion fails to allege all significant factual matters under 11 U.S.C. § 1325(a)(1)-(9). The motion to confirm may not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion does not provide information that would be of use to the parties, such as a brief description of the plan, an explanation as to what has changed, and a summary of prior events that have

¹There is authority for the proposition that a trustee may not use § 521 to compel a debtor to turnover state income tax returns. See e.g., *Romeo v. Maney (In re Romeo)*, 2018 WL 1463850, *5-6 (9th Cir. BAP 2018). An objection that state income taxes have not been produced under § 521 may therefore not survive scrutiny. That said, withholding state income tax returns and thereby preventing the trustee from performing statutory duties may nevertheless be interpreted as bad faith conduct sufficient to warrant a denial of confirmation or even dismissal. The court need not reach this issue here because the Trustee's other objections, *infra*, is a sufficient basis on which confirmation may be denied.

brought the Debtor to a first amended plan. Instead, the Debtor requires all parties, including the court, to read and review all the documents filed previously and draw their own conclusions.

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

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

The court will issue an order.

7. [21-21095](#)-B-13 JESSE PERALTA
[MC-2](#) Muoi Chea

MOTION TO APPROVE CREATION OF
LLC ENTITY AND TRANSFER
PERSONAL PROPERTIES TO LLC.
5-3-22 [[30](#)]

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.

Before the court is a motion filed by Debtor to approve creation of an LLC entity and transfer Debtor's personal properties to the LLC pursuant to Local Bankruptcy Rule 3015-1(b)(1).

The Debtor has filed a Declaration in support of his motion indicating that he is currently operating "Taste Buds BBQ" as a sole proprietorship, and that he intends to transform this sole proprietorship into a limited liability corporation titled "Taste Buds BBQ, LLC", assuming the name is available if and when the current motion is approved. Dkt. 33. In the event the name is unavailable, the Debtor will notify the Chapter 13 Trustee of the LLC's new name.

Debtor seeks to transfer his small smoker, Weber charcoal grill, three-burner propane stove, pots, pans, cooking utensils, eight propane tanks to the LLC business entity. All of these pieces of property are Debtor's personal property, and are worth no more than \$1,000.00, in Debtor's opinion. The personal properties are fully exempt under Cal. Civ. Proc. § 703.140(b)(6). There will be no cash proceeds from this transfer, and the Debtor will be the sole member and sole owner of the LLC. By creating this entity, the Debtor hopes to expand his business and generate more revenue which will benefit the bankruptcy estate and his creditors.

The value of the personal property which Debtor seeks to transfer to the LLC is less than \$1,000.00, and as such the transfer would not violate Local Bankruptcy Rule 3015-1(b)(1). Further, the Chapter 13 Trustee has not filed an opposition to Debtor's motion, and accordingly 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 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 was filed.

The court has 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). This matter will therefore be decided on the papers.

The court's decision is to deny the motion, not confirm the first amended plan, and continue this matter to **June 21, 2022, at 1:00 p.m.** to determine the order to show cause included below.

First, the Debtor is not eligible to be a debtor under 11 U.S.C. §109(e). A review of the claims filed to date indicates Debtor has noncontingent, liquidated, unsecured debts in the sum of \$7,289,498.31, which exceeds the eligibility limit for Chapter 13 of \$419,275.00

Second, the Debtor has failed to provide evidence that the plan is mathematically feasible. The plan provides a monthly payment of \$1,551.15 and a 100% dividend to general unsecured creditors. Debtor's plan provides for unsecured claims in the approximate amount of \$36,947.00 to receive no less than a 100% dividend. However, a review of the claims filed in Debtor's case indicates that general unsecured creditors have filed claims totaling \$7,289,498.31. Therefore, Debtor's plan is not feasible. 11 U.S.C. § 1325(a)(6).

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

Chapter 13 Eligibility and Order to Show Cause

The Debtor's chapter 13 eligibility is at issue. "The bankruptcy court has the inherent power to sua sponte dismiss a case if the debtor is not eligible for relief." *Guastella v. Hampton (In re Guastella)*, 341 B.R. 908, 917 (9th Cir. BAP 2006).

Chapter 13 eligibility is typically determined by reference to the schedules as filed. *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 982 (9th Cir. 2001). However, the omission of known creditors from the schedules and the undervaluation of known claims in the schedules raises the specter of a lack of good faith which permits the court to look beyond the schedules for purposes of determining the Debtor's chapter 13 eligibility. See *Guastella*, 341 B.R. at 918. And in so doing, the court considers the \$7,289,498.31 in filed unsecured claims. See Claims 1-1 to 6-1, 8-1, 9-1, 11-1, and 12-1. The court further considers the filed unsecured claims without regard to whether they may be adjusted by post-petition events. *In re Harwood*, 519 B.R. 535, 539-540 (Bankr. N.D. Cal. 2014).

Therefore, based on the foregoing, the **Debtor shall** - and any other **party in interest may** - show cause in writing filed and served by **June 14, 2022**, why this case should not be dismissed based on the Debtor's ineligibility under 11 U.S.C. § 109(e).

The motion is ORDERED DENIED and this matter is further continued to **June 21, 2022, at 1:00 p.m.** for a determination on the order to show cause and possible dismissal for reasons stated in the minutes.

The court will issue an order.

9. [21-24098](#)-B-13 JOHN FORDON
RJ-3 Richard L. Jare
Thru #10

MOTION TO CONFIRM PLAN
4-22-22 [[43](#)]

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 was filed.

The court has 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). This matter will therefore be decided on the papers.

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

The Chapter 13 Trustee filed an opposition to modification of the plan based on several grounds. The first issue which Trustee noted was that the feasibility of Debtor's plan relies on a motion to value collateral of Wheels Financial Group, LLC, dba 800 LoanMart. The court has granted Debtor's motion to value collateral at Item #10, RJ-4. This alleviates the basis for this issue to confirm Debtor's plan noted by Trustee.

The Chapter 13 Trustee's next issue with confirming Debtor's plan is that the Debtor has failed to provide admissible evidence that the Plan is mathematically feasible. Trustee's calculations indicate that at the current compensation rate of 8.70%, Debtor's average plan payment will need to be at least \$5,937.80 in order for Debtor's plan to be feasible as proposed, paying unsecured creditors a 0% dividend. However, Debtor's plan provides for an average monthly payment of \$5,264.63. 11 U.S.C. § 1325(a)(6). Additionally, Debtor's plan provides that for the first 14 months of the plan, the average monthly payments total \$3,117.97 without Trustee compensation and expense, and with Trustee compensation and expense, total \$3,415.08 per month. Debtor's plan payment is only \$3,407.00 per month for the first 14 months of the plan.

Debtor filed a response to Trustee's motion requesting that the order amending the plan increase the payment to satisfy the Trustee's concerns over feasibility of the plan. The Debtor requests that the court amends the plan as follows: Debtor shall pay \$3,415.08 for each of the first 14 months, and thereafter pay \$6002.00 per month. However, Debtor's Schedule J reflects that Debtor's monthly net income is \$3,400.00. Dkt. 21. Debtor's monthly net income is only \$15.08 less than the proposed monthly payment plan for the first 14 months of the plan, yet it is \$2,602.00 less than the monthly payment for months 15-60 of the plan. The Debtor has not filed Schedules indicating that he has the ability to make this increased payment (and it appears that he may not have that ability which raises a significant feasibility issue).

Until Debtor demonstrates that he has the ability to fund the plan beyond month 14, it cannot be determined whether Debtor can make the required plan payments. Accordingly, the plan does not comply with 11 U.S.C. § 1325(a)(6) and is not confirmed.

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

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

The court will issue an order.

10. [21-24098](#)-B-13 JOHN FORDON
[RJ-4](#) Richard L. Jare

MOTION TO VALUE COLLATERAL OF
WHEELS FINANCIAL GROUP, LLC
5-17-22 [[52](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has 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). This matter will therefore be decided on the papers.

The court's decision is to value the secured claim of Wheels Financial Group, LLC, at \$2,100.00.

Discussion

Debtor moves to value the secured claim of Wheels Financial Group, LLC, ("Creditor"). Debtor is the owner of a 2007 Mercedes C230 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$2,100.00 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. 10-1 filed by Wheels Financial Group, LLC, is the claim which may be the subject of the present motion.

The lien on the Vehicle's title does not secure a purchase-money loan and instead was a lien against the Vehicle in exchange for a loan of \$3,732.51. Because of this, the requirement that the loan be incurred more than 910 days prior to filing of the petition is not applicable. 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 \$2,100.00. 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.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, June 10, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on June 14, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on June 14, 2022, at 1:00 p.m.

11. [22-20214](#)-B-13 ALBERT EGU
[RDG](#)-1 Jennifer G. Lee

CONTINUED MOTION TO DISMISS
CASE
5-13-22 [[22](#)]

Final Ruling

This matter was continued from May 31, 2021, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, June 3, 2021. Debtor filed a timely response and a first amended plan with a scheduled confirmation hearing date of July 12, 2022, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 26 and the continued hearing on June 7, 2021, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.

12. [21-23531](#)-B-13 DIANA QUIROGA
[RDG](#)-2 Richard L. Jare

MOTION TO DISMISS CASE
5-13-22 [[70](#)]

Final Ruling

This matter was continued from May 31, 2021, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, June 3, 2021. Debtor filed a timely response and a first amended plan with a scheduled confirmation hearing date of July 19, 2022, at 1:00 p.m. This resolves the basis for dismissing the case at this time.

Therefore, the court's conditional ruling at dkt. 74 and the continued hearing on June 7, 2021, at 1:00 p.m. are vacated. The motion to dismiss case is denied without prejudice.

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

The court will issue an order.