

**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**

**DAY: TUESDAY**

**DATE: July 2, 2019**

**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

**July 2, 2019 at 1:00 p.m.**

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1. [19-22300](#)-B-13    LESLIE SAWYER    MOTION TO CONFIRM PLAN  
[DPB](#)-1    Douglas P. Broomell    5-20-19 [[15](#)]

**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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to 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 ruling appended to 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 enter a minute order.

2. [18-25209](#)-B-13 ROMANA HERRERA  
[TAG](#)-2 Ted A. Greene

MOTION TO INCUR DEBT  
6-14-19 [[30](#)]

**Final Ruling**

The motion to incur debt was filed pursuant to Local Bankruptcy Rule 9014-1(f)(2). However, there is no certificate of service indicating that the motion and supporting documents were served. See Local Bankr. R. 9014-1(d)(1), (e). Accordingly, the motion to incur debt is denied without prejudice.

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

The court will enter a minute order.

3. [19-22309](#)-B-13 LORNA TORRES-DEL VALLE OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Nima S. Vokshori PLAN BY JAN P. JOHNSON  
6-4-19 [[19](#)]

### **Tentative 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 sustain the objection and deny confirmation of the plan.

First, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A/B and C, the total value of non-exempt property in the estate is \$14,713.30. The total amount that would be paid to unsecured creditors is only \$4,800.00.

Second, the Debtor has not amended the Statement of Current Monthly Income (Form 122C-1) to reflect the correct household size of two people as requested by the Trustee. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Third, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,500.00, which represents approximately one plan payment. An additional payment of \$1,500.00 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed April 25, 2019, 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 ruling appended to the minutes.

The court will enter a minute order.

4. [19-22509](#)-B-13 ULISES MEZA  
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
6-4-19 [[12](#)]

### **Tentative 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 sustain the objection and deny confirmation of the plan.

First, the plan cannot be assessed for feasibility. According to Schedule I, the Debtor's net income from rental property and/or operation of a business is \$6,000.00. The Debtor failed to file a detailed statement showing gross receipts and ordinary and necessary expenses.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,600.00, which represents approximately one plan payment. An additional payment of \$1,600.00 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed April 22, 2019, 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 ruling appended to the minutes.

The court will enter a minute order.

**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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to 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 ruling appended to the minutes. Counsel for the Debtors 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 enter a minute order.

6. [19-22310](#)-B-13 BONITA BROOKS  
[JHW](#)-1 Scott D. Hughes

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-29-19 [[20](#)]

AMERICREDIT FINANCIAL  
SERVICES, INC. VS.

### **Final Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

Americredit Financial Services, Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Kia Forte (the "Vehicle"). The moving party has provided the Declaration of Aaron Rangel to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Rangel Declaration provides testimony that Debtor has not made 13 pre-petition payments, with a total of \$8,955.80 in pre-petition payments past due. The Declaration also provides evidence that there is 1 post-petition payments in default, with a post-petition arrearage of \$598.89. Furthermore, Debtor's plan provides for the surrender of the Vehicle to Movant.

### **Discussion**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

No opposition or showing has been made by the Debtor or the Trustee. Furthermore, the plan provides for the surrender of the Vehicle. The court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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

The court will enter a minute order.

7. [18-26312](#)-B-13 MELEA SHEPPARD MOTION TO MODIFY PLAN  
[EJS](#)-1 Eric John Schwab 5-16-19 [[17](#)]

**No Ruling**



8. [19-21313](#)-B-13 VASILIOS TSIGARIS  
[MAC](#)-1 Marc A. Caraska

MOTION TO CONFIRM PLAN  
5-17-19 [[37](#)]

**No Ruling**

9. [19-22513](#)-B-13 ELVIRA/JOSE LOPEZ  
[JPJ](#)-1 Pauldeep Bains  
**Thru #10** OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
6-3-19 [[20](#)]

#### **Tentative Ruling**

The objection and motion were 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 overrule the objection, deny the motion to dismiss, and confirm the plan.

Feasibility depends on the granting of a motion to value collateral for Real Time Resolutions, the holder of the second deed of trust on the Debtors' residence. That motion to value is heard at Item #10 and granted.

The plan filed April 22, 2019, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan is confirmed.

The objection is ORDERED OVERRULED and the motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtors 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 enter a minute order.

10. [19-22513](#)-B-13 ELVIRA/JOSE LOPEZ  
[PSB](#)-1 Pauldeep Bains  
MOTION TO VALUE COLLATERAL OF  
REAL TIME RESOLUTIONS, INC.  
5-29-19 [[13](#)]

#### **Final Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of Real Time Resolutions, Inc. at \$0.00.

Debtors' motion to value the secured claim of Real Time Resolutions, Inc. ("Creditor") is accompanied by the Declaration of Elvira Lopez. Debtors are the owners of the subject real property commonly known as 2009 Promenade Drive, Woodland, California ("Property"). Debtors seek to value the Property at a fair market value of \$610,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut.*

*Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that secures a claim is the first step, not the end result, of this motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

#### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 5 filed by Real Time Resolutions, Inc. is the claim which may be the subject of the present motion.

#### **Discussion**

The first deed of trust secures a claim with a balance of approximately \$834,781.43. Creditor's second deed of trust secures a claim with a balance of approximately \$136,249.11 according to Claim No. 5. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.

11. [19-22719](#)-B-13 JOSEPH HYLER AND ANDREA  
[JPJ](#)-1 GERBER  
Rabin J. Pournazarian  
OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
6-12-19 [[13](#)]

**Tentative Ruling**

The objection and motion were 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 overrule the objection, deny the motion to dismiss, and confirm the plan.

The Chapter 13 Trustee objects to confirmation on grounds that Schedule A/B does not reflect Debtors' interest in Apple stock. The Debtors filed amended Schedule A/B on June 14, 2019.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed April 30, 2019, is confirmed.

The objection is ORDERED OVERRULED and the motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtors 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 enter a minute order.

12. [19-22420](#)-B-13 JORUNE JONIKAS  
[JPJ](#)-1 Kristy A. Hernandez

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
6-11-19 [[14](#)]

### **Tentative Ruling**

The objection and motion were 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 sustain the objection and conditionally deny the motion to dismiss.

The Debtor failed to submit proof of social security number to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

The plan filed April 18, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

13. [19-22821](#)-B-13 GLEN CASILLAS  
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
6-11-19 [[20](#)]

CONTINUED TO 7/09/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTION TO  
VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION.

**Final Ruling**

No appearance at the hearing is necessary. The court will enter a minute order.

14. [19-22526](#)-B-13 KENNETH/ANN VALLIER  
[JPJ](#)-1 Matthew J. DeCaminada

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
6-4-19 [[22](#)]

### **Tentative Ruling**

The objection and motion were 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 sustain the objection and conditionally deny the motion to dismiss.

First, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) contains several deduction amounts that are incorrect at Lines 9b, 12b, 16, 33b, and 33d. The correct amount of the Debtors' total deductions is \$6,485.96 and the correct amount of the Debtors' monthly disposable income is \$506.90. The Debtors must pay no less than \$30,414.00 to unsecured non-priority creditors. The plan pays only \$10,061.11 to unsecured non-priority creditors.

Second, the Debtors failed to disclose on their Statement of Financial Affairs, Question 20, that a bank account was closed within the one-year period prior to the filing of this petition. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtors have not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

Third, the Debtors have failed to file an amended Schedule J to remove the improper expense at Line 17 for a car payment. The Debtors' plan already provides for treatment of the car loan in Class 2A. The Debtors have failed to comply with 11 U.S.C. § 521(A)(3).

The plan filed April 23, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

15. [18-27132](#)-B-13 STUART KOPPLE  
Pro Se

CONTINUED MOTION TO CONFIRM  
PLAN  
5-3-19 [[94](#)]

**No Ruling**



### **Tentative Ruling**

The objection and motion were 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 sustain the objection and conditionally deny the motion to dismiss.

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 includes an impermissible deduction at Line 41 for voluntary retirement contributions and/or repayment of retirement loans. The Debtor's voluntary post-petition retirement contributions are disposable income under 11 U.S.C. § 541(b)(7) and therefore such income must be applied to make payments under 11 U.S.C. § 1325(b)(1). *Parks v. Drummond (In re Parks)*, 475 B.R. 703 (B.A.P. 9th Cir. 2012). Additionally, the Debtor receives annual bonuses. Taking into account the additional income, the correct amount of the Debtor's total monthly income is \$11,132.01 and the correct amount of the Debtor's total monthly deductions is \$10,114.62. The correct amount of the Debtor's monthly disposable income would be \$1,017.39 and the Debtor must pay no less than \$61,043.40 to unsecured non-priority creditors. The plan pays \$0.00 to unsecured non-priority creditors. The court notes that the Debtor filed an amended Statement of Current Monthly Income (Form 122C-1) and Calculation of Disposable Income (Form 122C-2) on June 12, 2019.

Second, the Debtor has not provided the Trustee with a copy of the federal income tax return of the most recent tax year a return was filed. The Debtor has failed to comply with 11 U.S.C. § 521(e)(2)(A)(I).

Third, the Debtor failed to disclose her annual income for 2018 on the Statement of Financial Affairs. Dkt. 1. The court notes that an amended Statement of Financial Affairs was filed on June 21, 2019 (dkt. 22), that includes income for 2018. However, the incomes for 2017 and from January 1, 2019, through the date the bankruptcy was filed are not consistent with dkt. 1. The Debtor has failed to fully and accurately provide all information required by the petition, schedules, and Statement of Financial Affairs. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan filed April 26, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

17. [19-22538](#)-B-13 AARON THAO AND MALIA YANG OBJECTION TO CONFIRMATION OF  
[APN](#)-1 Thomas L. Amberg PLAN BY TOYOTA MOTOR CREDIT  
CORPORATION  
6-13-19 [[16](#)]

**Tentative 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's decision is to overrule the objection and confirm the plan.

Objecting creditor Toyota Motor Credit Corporation, which holds a security interest against a 2017 Toyota Highlander, objects to confirmation of the plan on grounds that the proposed interest rate of 0.90% is less than the guidelines provided in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), and because the monthly adequate protection payment of \$561.00 is insufficient to protect it from the rate of depreciation of the vehicle.

Debtors filed a response stating that they and the creditor have reached an agreement to keep the interest rate at 0.90% but increase the monthly dividend paid to the creditor to \$589.00 per month. Debtors state that the increased dividend is accomplished by lowering the attorney's fees from \$100.00 per month to \$80.00 per month. Debtors request that these changes be made in the order confirming.

Provided that the increase in the monthly adequate protection payment resolves the objection, the plan filed April 24, 2019, will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a). The objection will be overruled and the plan will be confirmed.

The objection is ORDERED OVERRULED for reasons stated in the ruling appended to 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 enter a minute order.

18. [19-22839](#)-B-13 RAYMOND/CAROLE CLOUTIER OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Mary Ellen Terranella PLAN BY JAN P. JOHNSON  
6-11-19 [[23](#)]

**Final Ruling**

The Chapter 13 Trustee having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed May 2, 2019, will be confirmed.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtors 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 enter a minute order.

19. [19-20845](#)-B-13 RAYMOND CORREA  
[TBK](#)-4 Taras Kurta

MOTION TO CONFIRM PLAN  
5-21-19 [[48](#)]

**No Ruling**

20. [19-23245](#)-B-13 MARY LE-GRAND-SAWYER MOTION TO CONFIRM PLAN  
[DSH](#)-2 Dennise S. Henderson 6-4-19 [[12](#)]

DEBTOR DISMISSED: 06/05/2019

**Final Ruling**

The case was dismissed on June 5, 2019. The motion to confirm plan is denied as moot.

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

The court will enter a minute order.

21. [18-25046](#)-B-13 LORENZO/CORRINA AGUILAR MOTION TO MODIFY PLAN  
[CYB](#)-1 Candace Y. Brooks 5-28-19 [[23](#)]

**No Ruling**

22. [19-21347](#)-B-13 FELICIA HUDSON  
[PGM](#)-2 Peter G. Macaluso

MOTION TO CONFIRM PLAN  
5-28-19 [[36](#)]

**No Ruling**

23. [19-22857](#)-B-13 LAURA KEISTER  
[AP-1](#) Len ReidReynoso

OBJECTION TO CONFIRMATION OF  
PLAN BY QUICKEN LOANS, INC.  
6-6-19 [[15](#)]

### **Tentative 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 sustain the objection and deny confirmation of the plan.

Objecting creditor Quicken Loans, Inc. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$7,719.94 in pre-petition arrearages as provided in amended Claim No 3-3. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed May 3, 2019, 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 ruling appended to the minutes.

The court will enter a minute order.



### **Tentative Ruling**

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to deny without prejudice the motion to incur post-petition debt.

The motion seeks permission to incur student loan debt in order for Debtor to obtain a master's degree through the University of Denver, Daniels College of Business. The loan amount is \$16,920.00 and is a Direct Unsubsidized Loan. The Declaration of Richard Camillieri states that the interest rate being offered is 6.6% and that the Debtor will not be required to make payments until after he has completed his education, which will occur after the plan completes and this case is closed. However, Debtor's exhibits do not provide any indication of the interest rate offered. The promissory note, filed as Exhibit B, dkt. 40, includes only pages 8 through 11, which state general information regarding Direct Subsidized Loans and Direct Unsubsidized Loans and not the specific terms of Debtor's student loan.

### **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).

Without the promissory note in its entirety, the court cannot determine whether the proposed credit is reasonable. Accordingly, the motion is denied without prejudice.

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

The court will enter a minute order.

25. [19-22359](#)-B-13 JUAN/ESMERALDA PONCE MOTION TO CONFIRM PLAN  
[SLE](#)-2 Steele Lanphier 5-14-19 [[23](#)]

**No Ruling**

26. [19-22559](#)-B-13 BRENDA MURPHY  
[JPJ](#)-1 Candace Y. Brooks

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON  
6-12-19 [[16](#)]

### **Tentative 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 sustain the objection and deny confirmation of the plan.

The claim of Ford Motor Credit Company, LLC is misclassified as a Class 4 claim. The claim is for a 2015 Ford Edge and the loan will mature in 2023, which is before the time the plan will complete in 2024. Therefore, the claim of Ford Motor Credit Company, LLC should be in Class 2 instead of Class 4.

The plan filed April 24, 2019, 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 ruling appended to the minutes.

The court will enter a minute order.

27. [19-21864](#)-B-13 IMELDA DEL ROSARIO  
[JCW](#)-1 Dale A. Orthner

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-31-19 [[36](#)]

U.S. BANK NATIONAL  
ASSOCIATION VS.

### **Tentative Ruling**

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

The court's decision is to deny without prejudice the motion for relief from stay.

U.S. Bank National Association ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 2046 Nicklaus Circle, Roseville, California (the "Property"). Movant has provided the Declaration of Chastity Wilson to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Wilson Declaration and supporting documents state that there are 9 pre-petition payments in default totaling \$13,878.00. Additionally, there are 2 post-petition payments in default totaling \$3,945.24.

Opposition has been filed by Debtor Imelda Del Rosario ("Debtor"). Debtor states that she had filed her plan by herself and failed to list Movant's claim 4-1, a mortgage with arrears, in the plan as a Class 1 creditor. Debtor has since retained an attorney who has filed a first amended plan, the confirmation hearing of which is scheduled for August 6, 2019. Debtor states that the first amended plan proposes to pay Movant's claim in full, including the \$23,351.01 in arrearages that existed at the time of filing, the ongoing monthly payments, and the shortages created by the very low first three plan payments. Debtor will start paying \$4,505.00 per month to Trustee, starting with the July 25 (fourth) payment, and continuing through the end of the five year plan. Debtor contends that there is no basis to grant Movant's motion for relief under 11 U.S.C. § 362(d)(1).

### **Discussion**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause does not exist for terminating the automatic stay since the Debtor has filed an amended plan that provides for Movant's claim.

The court shall not issue an order terminating and vacating the automatic stay.

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

The court will enter a minute order.

28. [19-20665](#)-B-13 SHARON OPINALDO  
[EWV](#)-225 Eric W. Vandermey

MOTION TO CONFIRM PLAN  
5-20-19 [[43](#)]

**No Ruling**

29. [18-27966](#)-B-13 YVONNE RICHARDS OBJECTION TO CONFIRMATION OF  
Thru #30 Ronald R. Roundy PLAN BY JPMORGAN CHASE BANK,  
NATIONAL ASSOCIATION  
6-11-19 [[81](#)]

**No Ruling**

30. [18-27966](#)-B-13 YVONNE RICHARDS MOTION TO CONFIRM PLAN  
[TAG](#)-1 Ronald R. Roundy 5-28-19 [[70](#)]

**No Ruling**

31. [17-22467](#)-B-13 SCOTT/DAWN SMITH  
[MJG](#)-1 Matthew J. Gilbert

MOTION TO WAIVE SECTION 1328  
CERTIFICATE  
REQUIREMENT, CONTINUE CASE  
ADMINISTRATION, SUBSTITUTE  
PARTY, AS TO JOINT DEBTOR  
6-18-19 [[31](#)]

### **Tentative Ruling**

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to substitute Debtor Scott Smith to continue administration of the case.

Debtor Scott Smith gives notice of the death of his wife Joint Debtor Dawn Smith and requests the court to substitute Scott Smith in place of Dawn Smith for all purposes within this Chapter 13 proceeding.

### **Discussion**

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

- 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [F ED. R. CIV. P. 25(a), (b); FED. R. BANKR. P. 1004.1 & 7025];
- 2) Continued administration of a case under chapter 11, 12, or 13 [FED. R. BANKR. P. 1016];
- 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
- 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328].

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case.

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Scott Smith for Dawn Smith as successor-in-interest. The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

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

The court will enter a minute order.

32. [19-22973](#)-B-13 JOSEPHINE WILLIAMS OBJECTION TO CONFIRMATION OF  
[JPJ](#)-1 Kristy A. Hernandez PLAN BY JAN P JOHNSON AND/OR  
MOTION TO DISMISS CASE  
6-11-19 [[16](#)]

CONTINUED TO 7/16/19 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF  
CREDITORS SET FOR 7/11/2019.

**Final Ruling**

No appearance at the hearing is necessary. The court will enter minute order.



33. [19-22875](#)-B-13 DANIEL DRESEN  
[JPJ](#)-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P JOHNSON AND/OR  
MOTION TO DISMISS CASE  
6-12-19 [[17](#)]

**Tentative Ruling**

The objection and motion were 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).

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on June 17, 2019. The confirmation hearing for the amended plan is scheduled for July 23, 2019. The earlier plan filed May 3, 2019, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT and the motion is ORDERED DISMISSED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

34. [19-20077](#)-B-13 JOHN JAMES  
[PGM](#)-2 Peter G. Macaluso

MOTION TO MODIFY PLAN  
5-20-19 [[43](#)]

**No Ruling**

35. [19-22877](#)-B-13 SARA PURDY  
[AP-1](#) Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF  
PLAN BY QUICKEN LOANS INC.  
6-13-19 [[17](#)]

### **Tentative 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 sustain the objection and deny confirmation of the plan.

Objecting creditor Quicken Loans Inc. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$988.47 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. And because there is a prepetition default the claim is also improperly classified as a Class 4 claim when it should be in Class 1. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages and improperly classifies the mortgage claim, the plan cannot be confirmed.

The plan filed May 3, 2019, 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 ruling appended to the minutes.

The court will enter a minute order.

36. [18-27978](#)-B-13 ROMULO/GENEVIEVE CALICDAN MOTION TO CONFIRM PLAN  
[NF-1](#) Nikki Farris 5-13-19 [[39](#)]

### **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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to 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 ruling appended to the minutes. Counsel for the Debtors 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 enter a minute order.

### **Tentative Ruling**

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

The court's decision is to grant the motion subject to the inclusion of the Chapter 13 Trustee's additional order provisions.

Debtor seeks to modify his mortgage through Caliber Home Loans, Inc. on real property located at 2860 La Colina Way, Carmichael, California. The terms of the proposed mortgage provide for a 30-year fixed mortgage of \$284,900 with a 4.5% interest rate. Monthly payments on the new mortgage are to be \$1,443.55, which includes a principal and interest. The pre-approval from Caliber Home Loans, Inc. and proposed financing contract are filed as exhibits at docket 62.

The Trustee has filed a response and, while not opposing the motion, requests that the following provisions be included in the order approving the sale of real property:

1. The Trustee must approve any title company used in connection with the escrow.
2. The escrow is not permitted to close without the Trustee submitting a demand to the title company that complies with the Chapter 13 plan, or waives this right in writing.
3. The Debtor is required to provide the Trustee with all of the contact information for the title company upon opening of escrow.
4. The Trustee must approve the final closing statement prior to any close of escrow.
5. If any of these conditions are not met or the Trustee cannot participate in the escrow in a way that complies with the Chapter 13 plan, the Trustee can submit an ex parte application to the court explaining the issues and requesting that the motion to sell be denied.

The repayment of the new loan does not appear to unduly jeopardize the Debtor's performance of the plan filed January 9, 2019. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion will be granted.

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

IT IS FURTHER ORDERED that the order confirming include the Chapter 13 Trustee's additional provisions as stated at dkt. 65.

The court will enter a minute order.

DEBTOR DISMISSED: 05/14/2019

### **Final Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

Debtor Jessica Keller ("Debtor") moves for reconsideration of the order dismissing her Chapter 13 case. The reconsideration motion was filed on May 30, 2019. Dkt. 49. The motion does not state the basis on which relief is requested. Nevertheless, the court construes the motion as one for relief based on excusable neglect under Fed. R. Civ. P. 60(b)(1) applicable by Fed. R. Bankr. P. 9024.

The Debtor's case was dismissed on May 14, 2019, for failure to timely pay filing fee installments. Dkt. 44. This was after the court issued an order on May 4, 2019, conditionally denying an order to show cause to dismiss the case but requiring future installments to be received by their due date or the case would be dismissed without further notice or hearing. Dkt. 41.

The Debtor states that she did not understand that court's May 4, 2019, order. The court does not believe the Debtor. This is the Debtor's second Chapter 13 case in which she has had a fee installment order, and the prior case was dismissed three weeks before this one was filed. *See* case no. 18-24211. The Debtor therefore knows or should have known how to comply with a fee installment order and that timely compliance is required.

In any case, the Debtor also states that she had focused her funds on plan payments to the Chapter 13 Trustee ("Trustee") instead, primarily, because Debtor's boyfriend and contributing roommate had a temporary lapse in employment. Debtor's counsel also states that he was out of the area attending to personal family matters from April 21, 2019, through May 9, 2019, and therefore was unable to schedule an appointment with the Debtor to review matters until after the dismissal had already occurred.

Debtor has paid the two filing fee installments. She also asserts that her boyfriend/roommate has resumed employment and his ability to contribute as stated in the schedules. Notably, the Debtor also paid the final installment on May 21, 2019, and did so without any guarantee the dismissal order would be vacated.

The court has considered the applicable excusable neglect factors and finds they weigh in favor of relief.<sup>1</sup>

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<sup>1</sup>The relevant factors are: (1) the danger of prejudice to any non-moving party if the dismissal is vacated; (2) the length of delay and the potential impact of that delay on judicial proceeding; (3) the reason for the delay, including whether the delay was within the reasonable control of the movant; and (4) whether the debtor's conduct was in good faith. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997).

Although the circumstances of dismissal were not entirely outside the Debtor's control, the Debtor moved quickly to have the dismissal order vacated, *i.e.*, within two weeks.

The Debtor could have lessened any prejudice to creditors by setting the motion for hearing under Local Bankr. R. 9014-1(f)(2) rather than under Local Bankr. R. 9014-1(f)(1). However, less than two months have elapsed between the time of dismissal and the time the order dismissing will be vacated. Prejudice to any creditor who acted in reliance on termination of the automatic stay of § 362(a), and any co-debtor stay of § 1301, upon dismissal may be further alleviated by reviving the automatic stay so that it is effective in the reinstated case only as of the date the order vacating the dismissal order is entered. See *State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-80 (10th Cir. 1996).

The court perceives no bad faith by the Debtor.

Therefore, for the foregoing reasons, the Debtor's motion is GRANTED and the order dismissing this case entered on May 14, 2019, Dkt. 44, is VACATED.

The automatic stay of § 362(a), and any co-debtor stay of § 1301, are revived effective as of the date the order granting this motion and vacating the dismissal order is entered on the docket.

IT IS FURTHER ORDERED that as a condition of vacating the dismissal order and reinstating this case, the Debtor shall have 60 days from the entry of the order granting this motion and vacating the dismissal order to confirm a plan otherwise the case may be dismissed on the Trustee's ex parte application.

The court will enter a minute order.

39. [19-22183](#)-B-13 VALENTIN HERNANDEZ MOTION TO CONFIRM PLAN  
[FF-2](#) ENRIQUEZ AND MARIA GARCIA 5-20-19 [[35](#)]  
Gary Ray Fraley

### **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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to 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 ruling appended to the minutes. Counsel for the Debtors 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 enter a minute order.



40. [19-22793](#)-B-13 ROGER/TENILLE JONES  
[JPJ](#)-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
6-12-19 [[27](#)]

CONTINUED TO 7/09/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTION TO  
CONFIRM CHAPTER 13 PLAN FILED ON 5/22/19.

**Final Ruling**

No appearance at the hearing is necessary. The court will enter minute order.

41. [18-23795](#)-B-13 DENNIS GARRETT  
[BB](#)-13 Bonnie Baker  
**Thru #43**

CONTINUED MOTION TO APPROVE  
LOAN MODIFICATION  
4-1-19 [[203](#)]

**Tentative Ruling**

This matter was continued from June 18, 2019. The court deemed this the final continuance since this case has been pending for over one year without a confirmed plan. The continued failure and/or inability to confirm a plan may result in dismissal or conversion. See 11 U.S.C. § 1307(c)(1), (c)(5).

The matter will be determined at the scheduled hearing.

**Continued Motion to Approve Loan Modification and Continued Motion to Confirm Plan**

Permanent loan modification documents were not timely-filed to permit review prior to continued June 18, 2019, hearing. The loan modification agreement filed on June 14, 2019, dkt. 250, was not signed by the lender. To the extent the third amended plan filed by Debtor Dennis Garrett ("Debtor"), dkt. 210, relies on an approved loan modification, it cannot be confirmed without evidence of the lender's consent to the modification. Therefore, the court continued the hearing on the motion to approve loan modification, dkt. 203, and the hearing on the motion to confirm the third amended plan, dkt. 208, to July 2, 2019, at 1:00 p.m.

Fully-executed loan modification documents were required to be filed no later than June 25, 2019, to permit sufficient time for the court and the Chapter 13 Trustee ("Trustee") to review. No fully-executed loan modification documents were filed.

By June 25, 2019, the Debtor was required to file a supplemental feasibility analysis that addresses whether the proposed monthly plan payment of \$1,886.00 will permit the third amended plan to complete within the requisite 60-month period if, assuming they are approved and allowed, the \$39,000.00 in attorney's fees requested, dkt. 235, are paid through the third amended plan as proposed, dkt. 210 at \$ 3.05. The analysis should also take into account the proposed monthly plan payment in relation to the aggregate of payments to be made monthly through the third amended plan, including the Chapter 13 Trustee's compensation. Debtor's counsel filed a declaration on June 25, 2019, detailing feasibility of the third amended plan.

Any further objections to confirmation may be filed by June 25, 2019. No objections were filed.

**Continued Motion for Compensation**

The motion for compensation, dkt. 235, is also continued to July 2, 2019, at 1:00 p.m., to be considered with the motion to approve loan modification and motion to confirm the third amended plan.

42. [18-23795](#)-B-13 DENNIS GARRETT  
[BB](#)-14 Bonnie Baker

CONTINUED MOTION TO CONFIRM  
PLAN  
4-9-19 [[208](#)]

**No Ruling**

*See Item \$41.*

43. [18-23795](#)-B-13 DENNIS GARRETT  
[BB](#)-16 Bonnie Baker

CONTINUED MOTION FOR  
COMPENSATION FOR BONNIE BAKER,  
DEBTORS ATTORNEY(S)  
5-21-19 [[235](#)]

**No Ruling**

*See Item #41.*

44. [19-22195](#)-B-13 JASON MARCO  
[JHW](#)-1 Dale Orthner

CAB WEST, LLC VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR RELIEF FROM CO-DEBTOR STAY  
5-23-19 [[21](#)]

CASE DISMISSED: 6/25/2019

**Final Ruling**

The case was dismissed on June 25, 2019. The motion for relief from automatic stay is denied as moot.

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

The court will enter a minute order.

45. [19-22396](#)-B-13 RUMMY SANDHU  
[JPJ](#)-1 Peter G. Macaluso  
**Thru #48**

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
5-22-19 [[20](#)]

### **Tentative Ruling**

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

Feasibility depends on the granting of motions to avoid lien held by American Express and Capital One Bank (USA), N.A. Those motions are denied without prejudice at Items #46 and #47.

The plan filed April 17, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

46. [19-22396](#)-B-13 RUMMY SANDHU  
[PGM](#)-2 Peter G. Macaluso

MOTION TO AVOID LIEN OF  
AMERICAN EXPRESS  
5-23-19 [[24](#)]

### **Final Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to deny without prejudice the motion to avoid judicial lien.

This is a request under 11 U.S.C. § 522(f)(1) for an order avoiding the judicial lien of American Express ("Creditor") against the Debtor's property commonly known as 130 Trident Court, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$14,566.33. An abstract of judgment was recorded with Solano County on September 27, 2010, which encumbers the Property. A first deed of trust and second deed of trust recorded against the Property total \$626,654.84.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$475,000.00 as of the date of the petition. Although Debtor's motion elects a homestead exemption of \$100,000.00, Debtor's Schedule C does not reflect any claimed homestead exemption. See dkt. 1, 32. The Debtor has, therefore, failed to establish an element of lien avoidance under § 522(f)(1). See *Green v. Hapo Community Credit Union*, 2013 WL 4055846, \*4 (9th Cir. BAP 2013) (identifying one of four elements necessary for relief under § 522(f)(1) as "the property must be listed on the debtor's schedules and claimed as exempt").

Avoiding the judicial lien requires that there is no equity in Debtor's property after accounting for the mortgage liens and homestead exemption. The Debtor has not claimed the homestead exemption in his schedules. The judicial lien is therefore not avoided.

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

The court will enter a minute order.

47.	<a href="#">19-22396</a> -B-13 <a href="#">PGM</a> -3	RUMMY SANDHU Peter G. Macaluso	MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A. 5-23-19 [ <a href="#">30</a> ]
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#### **Final Ruling**

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to deny without prejudice the motion to avoid judicial lien.

This is a request under 11 U.S.C. § 522(f)(1) for an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against the Debtor's property commonly known as 130 Trident Court, Vallejo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$3,966.07. An abstract of judgment was recorded with Solano County on November 23, 2010, which encumbers the Property. A first deed of trust and second deed of trust recorded against the Property total \$626,654.84.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$475,000.00 as of the date of the petition. Although Debtor's motion elects a homestead exemption of \$100,000.00, Debtor's Schedule C does not reflect any claimed homestead exemption. See dkt. 1, 32. The Debtor has, therefore, failed to establish an element of lien avoidance under § 522(f)(1). See *Green v. Hapo Community Credit Union*, 2013 WL 4055846, \*4 (9th Cir. BAP 2013) (identifying one of four elements necessary for relief under § 522(f)(1) as "the property must be listed on the debtor's schedules and claimed as exempt").

Avoiding the judicial lien requires that there is no equity in Debtor's property after accounting for the mortgage liens and homestead exemption. The Debtor has not claimed

the homestead exemption in his schedules. The judicial lien is therefore not avoided. The motion is ORDERED DENIED for reasons stated in the ruling appended to the minutes. The court will enter a minute order.

48. [19-22396](#)-B-13 RUMMY SANDHU MOTION TO VALUE COLLATERAL OF  
[PGM](#)-4 Peter G. Macaluso EMC MORTGAGE  
5-28-19 [[36](#)]

### Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of EMC Mortgage at \$0.00.

Debtor's motion to value the secured claim of EMC Mortgage ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 130 Trident Court, Vallejo, California ("Property"). Debtor seeks to value the Property at a fair market value of \$475,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that secures a claim is the first step, not the end result, of this motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

### **No Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

### **Discussion**

The first deed of trust secures a claim with a balance of approximately \$520,162.84. Creditor's second deed of trust secures a claim with a balance of approximately \$106,492.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.



49. [19-22297](#)-B-13 ABEL RUSFELDT  
AP-1 W. Steven Shumway  
**Thru #51**

OBJECTION TO CONFIRMATION OF  
PLAN BY DEUTSCHE BANK NATIONAL  
TRUST COMPANY  
6-4-19 [[36](#)]

**Tentative 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 sustain the objection and deny confirmation of the plan.

First, Deutsche Bank National Trust Company holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$11,898.38 in pre-petition arrearages. The plan does not propose to cure the full of these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Second, the Debtor has failed to provide any evidence of his ability to make the plan payment in full each month. Debtor's monthly net income according to Schedules I and J is only \$3,003.00 and the plan proposes a monthly plan payment of \$3,500.00. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed April 26, 2019, 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 ruling appended to the minutes.

The court will enter a minute order.

50. [19-22297](#)-B-13 ABEL RUSFELDT  
GB-2 W. Steven Shumway

OBJECTION TO CONFIRMATION OF  
PLAN BY CERTIS PN 1, LLC  
6-6-19 [[39](#)]

**Tentative 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 overrule the objection but deny confirmation of the plan for reasons stated at Items 49 and 51.

Objecting creditor Certis PN 1, LLC holds a deed of trust secured by the Debtor's residence. The creditor asserts \$39,805.13 in pre-petition arrearages but has not yet filed a proof of claim. The creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, the plan filed April 26, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Items 49 and 51. The objection is overruled but the plan is not confirmed.

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

The court will enter a minute order.

51. [19-22297](#)-B-13 ABEL RUSFELDT  
[JPJ](#)-1 W. Steven Shumway

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
6-3-19 [[31](#)]

### **Tentative Ruling**

The objection and motion were 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 sustain the objection and conditionally deny the motion to dismiss.

First, feasibility depends on the granting of a motion to value collateral for Chrysler Capital pursuant to Local Bankr. R. 3015-1(I). To date, the Debtor has failed to file, set for hearing, and serve on the respondent creditor and the Trustee a stand-alone motion to value the collateral.

Second, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Third, the Debtor failed to submit proof of social security number to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Fourth, the Debtor has failed to provide any evidence of his ability to make the plan payment in full each month. Debtor's monthly net income according to Schedules I and J is only \$3,003.00 and the plan proposes a monthly plan payment of \$3,500.00. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fifth, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$3,500.00, which represents approximately 1 plan payment. An additional payment of \$3,500.00 will be due by the date of the hearing on this matter. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Sixth, the Debtor has failed to fully and accurately provide all information required by the petition, schedules and Statement of Financial Affairs. The Debtor failed to disclose case no. 13-28581 filed on June 27, 2013. Additionally, Debtor misstated the filing date of another previous case, no. 17-22866. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

Seventh, the Debtor failed to disclose his spouse's income on Schedule I or the Chapter 13 Statement of Current Monthly Income (Form 122C-1). The Debtor has failed to fully and accurately provide all information required by the petition, schedules and

Statement of Financial Affairs. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

Eighth, the plan payment in the amount of \$3,500.00 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 plan does not comply with Section 5.02 of the mandatory form plan.

The plan filed April 26, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

52. [19-22099](#)-B-13 ELDRIDGE JACKSON  
[TJS](#)-1 Lucas B. Garcia

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION ,  
MOTION FOR RELIEF FROM  
CO-DEBTOR STAY  
6-14-19 [[30](#)]

SHELTER FINANCIAL SERVICES  
VS.

### **Tentative Ruling**

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Shelter Financial Services ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 Freightline Casadia (the "Vehicle"). The moving party has provided the Declaration of Wayne Allen to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Allen Declaration states that there are 2 post-petition payments in default totaling \$3,625.00. Additionally, Debtor intends to surrender the Vehicle, which is in his sister's or father's possession but the whereabouts of which is unknown. See dks. 11, 12.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$26,625.01, as stated in the Allen Declaration, while the value of the Vehicle is determined to be \$16,000.00, as stated in Schedule D filed by Debtor.

### **Discussion**

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, and the Debtor's plan providing for the surrender of the Vehicle, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The request for relief from stay as to any non-filing co-debtor, who is liable on such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).

Although requested in the motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this motion. Movant is not awarded any attorneys' fees.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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

The court will enter a minute order.