

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

July 21, 2015 at 10:00 a.m.

1.	15-22805 -B-7	AHMED CHARTAEV	ORDER TO SHOW CAUSE - FAILURE
		Pro Se	TO PAY FEES
			6-11-15 [39]

CASE CONVERTED TO CHAPTER 7 ON 6/25/15

Final Ruling: No appearance at the July 21, 2015 hearing is required.

The case having been converted to one under chapter 7, the Order to Show Cause is discharged as moot.

2. [15-21906](#)-B-13 DARNELLA JONES
 Pro Se

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-15-15 [[36](#)]

CASE DISMISSED: 7/9/15

Final Ruling: No appearance at the July 21, 2015 hearing is required.

The case having previously been dismissed, the Order to Show Cause is discharged as moot.

3. [15-24206](#)-B-13 LEON DOBBINS
JPJ-1 Richard L. Jare

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-30-15 [[27](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor is delinquent to the Trustee in the amount of \$270.00, which represents approximately the first plan payment that was due June 25, 2015. Four days after this matter is heard, an additional plan payment in the amount of \$270.00 will also be due. The Debtor does not appear to be able to make the plan payments proposed. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, feasibility of the plan depends on the granting of a motion to value collateral for CU Factory Building Lending. The Debtor's motion to value collateral was heard and denied on June 17, 2015.

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

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

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

4. [15-24110](#)-B-13 SAMUEL GARCIA
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-30-15 [[14](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). The Debtor has filed a written reply to the objection.

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

The Trustee objects to confirmation on the ground that feasibility of the plan depends on the granting of a motion to value collateral for Franchise Tax Board ("FTB"). However, according to the FTB proof of claim (Claim #2), the entire claim is unsecured. Because the FTB does not have a secured claim, a motion to value is unnecessary at this time.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed May 21, 2015, is confirmed.

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

5. [15-24019](#)-B-13 ROY/CHERISE WHITAKER
JPJ-1 Pro Se
Thru #6

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-30-15 [[38](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtors are delinquent to the Trustee in the amount of \$517.00, which represents approximately the first plan payment that was due on June 25, 2015. Four days after this matter is heard, an additional plan payment in the amount of \$517.00 will also be due. The Debtors do not appear to be able to make plan payments proposed. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan will take approximately 79 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

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

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

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

6. [15-24019](#)-B-13 ROY/CHERISE WHITAKER
SW-2 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY ALLY FINANCIAL
6-24-15 [[24](#)]

Tentative Ruling: The Objection of Ally Financial Serviced By Ally Servicing LLC to Confirmation of Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection as moot based on the disposition of this matter as provided for in Item #5.

Ally Financial Serviced asserts that feasibility of the plan depends on the valuation of a 2011 Chevrolet Silverado (VIN ending -392477). The Debtors have filed, served, and set for hearing a motion to value the subject vehicle for August 19, 2015 at 10:00 a.m. However, based on the substantial defects noted in Item #5, even if the court were to grant the motion to value the Debtors' plan still would not be confirmed.

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

7. [15-24226](#)-B-13 RACHEL DIAZ
JPJ-1 Susan B. Terrado

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE JAN P. JOHNSON
AND/OR MOTION TO DISMISS CASE
6-30-15 [[16](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). The Debtor has filed a written reply to the objection.

The court's decision is to overrule the objection as moot and deny without prejudice the conditional motion to dismiss.

The Debtor filed a first amended plan on June 23, 2015, and a motion to confirm first amended plan on July 13, 2015. The confirmation hearing is set for September 2, 2015. Additionally, the Debtor has amended Form 22C-2 to correct the incorrect item on line 35 as identified by the Trustee.

Given that the Debtor filed a first amended plan on June 23, 2015, the Trustee's objection to the plan filed May 26, 2015, is overruled as moot and the conditional motion to dismiss is denied without prejudice.

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

8. [15-24131](#)-B-13 ANGELA FERREIRA
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-30-15 [[15](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor did not appear at the first meeting of creditors set for June 25, 2015, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor is delinquent to the Trustee in the amount of \$1,395.61, which represents the first plan payment that was due June 25, 2015. Four days after this matter is heard, an additional plan payment in the amount of \$1,499.00 will also be due. The Debtor does not appear to be able to make the plan payments proposed. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income includes an impermissible expense of \$801.00 for voluntary retirement contributions. The Debtor's voluntary post-petition retirement contributions are disposable income under 11 U.S.C. § 547(b)(7) and, therefore, such income must be applied to make plan payment under 11 U.S.C. § 1325(b)(1). *Parks v. Drummond (In re Parks)*, 475 B.R. 703 (9th Cir. BAP 2012). The court will follow *Parks*. Without the expense for voluntary retirement contributions, the Debtor's monthly disposable income is \$1,031.66 and the Debtor must pay no less than \$61,899.60 to unsecured creditors. The plan pays only \$13,143.06 to unsecured creditors.

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

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

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

9. [15-24231](#)-B-13 ANDREW HILLMAN AND KELLY
JPJ-1 HEATH
Mikalah R. Liviakis
OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-30-15 [[19](#)]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

The Chapter 13 Trustee having filed a Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no objection to confirmation, the plan filed May 26, 2015, will be confirmed.

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

10. [15-22236](#)-B-13 ELAINE BROWN
SJS-2 Scott M. Johnson

MOTION TO CONFIRM PLAN
6-4-15 [[32](#)]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

The Debtor's Motion to Confirm First Amended Plan has been set for hearing on the 42-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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 first amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors 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 filed on June 4, 2014, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

11. [11-26340](#)-B-13 JANET TURK
BLG-2 Chad M. Johnson

MOTION TO MODIFY PLAN
6-9-15 [[33](#)]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

The Motion to Confirm First Modified Plan Filed on June 9, 2015 has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on June 9, 2015 complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

Tentative Ruling: The Motion to Confirm Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the amended plan filed June 8, 2015.

First, the Debtor is delinquent to the Trustee in the amount of \$1,200.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make the proposed plan payments. The Debtor has not carried his burden of showing that the plan filed June 8, 2015, complies with 11 U.S.C. § 1325(a)(6).

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) as unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. The total value of non-exempt property in the estate is \$5,138,261.24. According to the Trustee's opposition, the plan proposes payments of \$46,222.66 to unsecured creditors.

Third, the Debtor stated at the meeting of creditors that he had filed a 2014 tax return but the Debtor has not provided the Trustee with a copy of this tax return. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Fourth, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses as required by the Schedule I form.

Fifth, the Debtor has understated income in the amount of \$1,702.67 at Line 11 of the Means Test Part I and overstated deductions in the amounts of \$142.96 at Line 9c, \$509.67 at Line 16, and \$249.00 at Line 33 of the Means Test Part II. As a result, the Debtors monthly disposable income should be \$1,650.34 and the Debtor must pay no less than \$99,020.40 to general unsecured creditors. The plan, according to the Trustee's opposition, instead will only pay approximately \$37,534.66. Therefore, the plan filed June 8, 2015, does not comply with 11 U.S.C. § 1325(b)(1)(B).

Sixth, the plan filed June 8, 2015, does not appear to resolve the Trustee's previously raised concerns and, therefore, does not appear to be proposed in good faith as required by 11 U.S.C. § 1325(a)(3).

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

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

13. [15-24152](#)-B-13 DAVID SCHECTER
IJR-2 Eric John Schwab
Thru #14

OBJECTION TO CONFIRMATION OF
PLAN BY JEAN-PIERRE RUSHING
6-23-15 [[20](#)]

Tentative Ruling: The Opposition to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). The Debtor has filed a written reply to the objection.

The court's decision is to overrule the objections filed by this creditor. However, the plan is not confirmed for reasons stated in Item #14.

The Debtor makes the following assertions, which will resolve the issues raised by Jean-Pierre Rushing (d.b.a. Interwest Judgment Recovery) ("Creditor").

First, the Debtor will file an amendment to his petition to remove the name "Diane Duardo" as a Class 2 Creditor and replace it with "Jean-Pierre Rushing (d.b.a. Interwest Judgment Recovery)."

Second, the Debtor will file an amendment to his petition in order to reflect the Creditor's lien status as to each account and each real property affected by each corresponding lien.

Third, the Debtor has the power under 11 U.S.C. § 1303 to use, sale, or lease property as provided by 11 U.S.C. § 363.

Fourth, should the Debtor receive an offer on any parcel of real property, Debtor asserts that he will file the appropriate motion to sell real property of the estate pursuant to 11 U.S.C. § 363 and obtain court order authorizing the transaction. Additionally, the Debtor asserts that he will provide appropriate and corresponding exhibits.

Fifth, the Debtor will submit an order indicating that the Additional Provisions will be provided for on a separate page.

Sixth, the Debtor will submit an order indicating that the Creditor is entitled to \$89,318.62 and not \$84,165.00.

While the Creditor's objection is overruled, the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated in Item #14. Therefore, the plan is not confirmed. The court also will not confirm a plan unless and until the Debtor complies with his representations stated above and makes the necessary corrections and/or amendments.

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

14. [15-24152](#)-B-13 DAVID SCHECTER
JPJ-1 Eric John Schwab

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
6-30-15 [[28](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor did not appear at the first meeting of creditors set for June 25, 2015, as required pursuant to 11 U.S.C. § 343. The § 341 meeting has been continued to July 23, 2015, at 8:30 a.m. The court will not confirm a plan prior to the continued § 341 meeting.

Second, the Debtor is delinquent to the Trustee in the amount of \$600.00, which represents the first plan payment that was due on June 25, 2015. Four days after this matter is heard, an additional plan payment in the amount of \$600.00 will also be due. The Debtor does not appear to be able to make the plan payments proposed. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

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

15. [15-23855](#)-B-13 LORRAINE HOLFORD
JPJ-1 Pro Se
Thru #16

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-30-15 [[24](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor is delinquent to the Trustee in the amount of \$300.00, which represents the first plan payment due June 25, 2015. Four days after this matter is heard, an additional plan payment in the amount of \$300.00 will also be due. The Debtor does not appear to be able to make plan payments as proposed. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Third, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Fourth, although the Debtor filed Schedule I on May 26, 2015, the Debtor did not utilize the mandatory Official Bankruptcy Forms 6I and 6J effective December 1, 2013.

Fifth, the plan is incomplete as it fails to specify a monthly dividend to be paid to Class 2A creditors.

Sixth, treatment of Bank of New York Mellon and Bank of America cannot be determined as they are listed in both Class 2A and Class 3 of the plan.

Seventh, the plan does not specify the minimum dividend to Class 7 general unsecured creditors.

Eighth, the claims of Capital One Credit Card are mis-classified as Class 5 claims. The Debtor has not provided evidence that these claims are entitled to priority pursuant to 11 U.S.C. § 507.

Ninth, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtor's projected disposable income is not being applied to make payment to unsecured creditors. The Calculation of Disposable Income shows that the Debtor's monthly disposable income is \$1,180.00 and the Debtor must pay no less than \$70,800.00 to general unsecured creditors. The Trustee calculates that the plan will pay only \$0.00 to Class 7 general unsecured creditors.

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

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

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

16. [15-23855](#)-B-13 LORRAINE HOLFORD
KAZ-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY THE BANK OF NEW YORK
MELLON
7-2-15 [[28](#)]

Tentative Ruling: The Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the plan does not provide for pre-petition arrearages owed to Bank of New York Mellon ("Creditor"). To cure the pre-petition arrearages of \$2,380.80 over the term of the plan within 60 months, the Creditor must receive a minimum payment of \$39.68 per month from the Debtor through the plan. The Debtor has not provided sufficient funds to cure the arrears over the term of the plan.

Second, treatment of Bank of New York Mellon and Bank of America cannot be determined. A claim identified as "BofA Mortgage No. xxxxx5244," which matches Creditor's account number, is listed in Class 2 and Class 4. "BofA Outstanding Payments, Fees and Charges" is also listed in Class 3. It cannot be determined how Debtor intends to treat Creditor's claim.

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

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

17. [15-23758](#)-B-13 SCOTT/KATHLEEN PHILLIPS OBJECTION TO CONFIRMATION OF
JPJ-1 Mikalah R. Liviakis PLAN BY JAN P. JOHNSON
Thru #19 6-30-15 [[33](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtors are delinquent to the Trustee in the amount of \$495.00, which represents the first plan payment that was due June 25, 2015. Four days after this matter is heard, an additional plan payment in the amount of \$495.00 will also be due. The Debtors do not appear to be able to make the plan payments proposed. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) as unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. Although the Debtors have amended their schedules on July 14, 2015, to reflect a homestead exemption of \$100,000.00, the Debtors current plan pays unsecured creditors only \$26,000.00. The total value of non-exempt property in the estate is \$35,375.00.

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

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

18. [15-23758](#)-B-13 SCOTT/KATHLEEN PHILLIPS CONTINUED MOTION TO AVOID LIEN
MRL-1 Mikalah R. Liviakis OF CIT SMALL BUSINESS LENDING
CORPORATION
6-1-15 [[14](#)]

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

This matter was originally heard on June 17, 2015, and continued to July, 21, 2015, to allow CIT Small Business Lending Corporation ("Creditor") to obtain an appraisal and, if warranted, file an opposition to the motion to value. Opposition was filed on July 2, 2015. Debtors were required to file any reply by July 16, 2015. As of July 17, 2015, no reply appears on the docket.

The court's decision is to deny the motion to avoid judicial lien.

This motion requests an order avoiding Creditor's judicial lien on property of Scott Phillips and Kathleen Phillips ("Debtors") commonly known as 269 American River Canyon Drive, Folsom, California ("Property").

A judgment was entered against the Debtors and in favor of Creditor in the amount of \$208,119.76. An abstract of judgment was recorded with Sacramento County on October 28, 2013, which encumbers the Property. Creditor asserts that since the entry of the judgment on July 19, 2013, post-judgment interest has accrued at the rate of 10% per annum. Therefore, as of May 8, 2015, the date Debtors filed their petition, Creditor held a secured judgment lien against Debtors' Property in the amount of \$245,638.33 (daily interest in the amount of \$57.0191 x 658 days = \$37,518.57 accrued interest).

Pursuant to the Debtors' Schedule A, the Debtors claim that the Property has an approximate value of \$472,000.00 as of the petition date. The Debtors offer no explanation as to how they arrived at that value and rely exclusively on their Schedules. Creditor, on the other hand, has obtained and submitted an appraisal valuing the Property at \$610,000.00. The court accepts the Creditor's appraisal and valuation of the Property for purposes of the Debtors' motion.

The Debtors also appear to have overstated their claimed homestead exemption of \$134,375 in the Property. Creditor asserts that the Debtors' homestead exemption is limited to \$100,000 under C.C.P. § 704.730(a)(2). Because that assertion is supported by competent, admissible evidence in the form of the Debtors' testimony and Schedules it is sufficient (and timely under Fed. R. Bankr. Proc. 4003(b)(1)) to rebut the Debtors' higher-claimed exemption and thereby overcome any improper exemption by default under § 522(1). In re Tallerico, ___ B.R. ___, 2015 WL 4077219 at *6 (Bankr. E.D. Cal. 2015). The burden is on the Debtors to prove they are entitled to the higher-claimed exemption. In re Pashenee, 531 B.R. 834 (Bankr. E.D. Cal. 2015); Tallerico, 2015 WL 4077219 at *7-8. Debtors instead elected to amended Schedule C on July 14, 2015, to reflect a homestead exemption of \$100,000. The Debtors' amendment to Schedule C followed both Creditor's opposition and an objection to the exemption by the Trustee filed on July 8, 2015. Nevertheless, there is now no question that the Debtors' homestead exemption in the Property is limited to \$100,000.

Now the mathematical formula required by § 522(f)(2)(A):

"The Lien" (§ 522(f)(2)(A)(I)):	\$245,638.33
"All Other Liens" (§ 522(f)(2)(A)(ii)):	\$337,625.00
"The Exemption" (§ 522(f)(2)(A)(iii)):	<u>\$100,000.00</u>
	\$683,263.33
Less Appraised Value:	<u>\$610,000.00</u>
Extent of Impairment:	\$ 73,263.33

Because a judicial lien may be avoided only to the extent of impairment, the court subtracts \$73,263.33 from the Creditor's lien as of the petition date of \$245,638.33 which leaves \$172,375.00 in equity available to support Creditor's judicial lien.

Therefore, for the reasons explained above, the Debtors' motion to avoid Creditor's judicial lien is denied and the Creditor's lien is not avoided.

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

19. [15-23758](#)-B-13 SCOTT/KATHLEEN PHILLIPS OBJECTION TO CONFIRMATION OF
SBL-3 Mikalah R. Liviakis PLAN BY CIT SMALL BUSINESS
LENDING CORPORATION
7-2-15 [[41](#)]

Tentative Ruling: CIT Small Business Lending Corporation's Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

reasons stated in Item #18.

In light of the court's decision to deny the Debtors' motion to avoid this creditor's lien, the plan violates 11 U.S.C. § 1325(a)(5) because (1) this creditor has not accepted it, (2) the plan does not provide for this creditor to retain its lien securing the claim until payment of the debt, discharge under § 1328, or dismissal or conversion of the case, and (3) the value of the property to be distributed to this creditor under the plan (\$0) is less than the amount of the creditor's secured claim (at least \$172,375).

Therefore, for the reasons stated, confirmation of the plan is denied.

20. [15-22361](#)-B-13 LISA THOMPSON
Peter G. Macaluso

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-29-15 [[51](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law.

The court's tentative decision is to sustain the Order to Show Cause and order the case dismissed.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due on June 23, 2015. The court's docket reflects that, as of July 17, 2015, the default has not been cured.

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

21. [15-23262](#)-B-13 GEORGE ALLEN
Mohammad M. Mokarram

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-26-15 [[23](#)]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on the Debtor, Trustee, and other such other parties in interest as stated on the Certificate of Service on June 26, 2015.

The court's decision is to discharge the Order to Show Cause, and the case shall proceed in this court.

The Order to Show Cause was issued due to Debtor's failure to pay \$77.00 due on June 22, 2015. The court's docket reflects that the default has been cured, the Debtor having paid \$76.00 on July 6, 2015, and the remaining \$1.00 having been accounted for from the excess payment made on May 27, 2015.

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

22. [14-32364](#)-B-13 MICHAEL/PAULA RHOADES MOTION TO CONFIRM PLAN
PLC-3 Peter L. Cianchetta 6-8-15 [[77](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the July 21, 2015 hearing is required.

The Debtors having filed a Request to Drop Hearing on Motion to Confirm Chapter 13 Plan, the request being consistent with any opposition filed to the Motion, the court interpreting the request to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion to Confirm Amended Plan is dismissed without prejudice.

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

23. [15-24077](#)-B-13 ZAK VOGLER AND MICHELLE
JPJ-1 MARTINEZ-VOGLER
Gordon G. Bones
OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-30-15 [[14](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the attorney did not appear at the first meeting of creditors set for June 25, 2015, so the Debtors were not examined under oath.

Second, the Debtors' attorney's fees in the amount of \$4,500.00 exceed the maximum fee that may be charged pursuant to Local Bankr. R. 2016-1. The maximum fee that may be charged in nonbusiness cases is \$4,000.00 and in business cases \$6,000.00.

Third, the Debtors have not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtors have not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Fourth, the Debtors have not provided the Trustee with copies of payment advices or other evidence of income received within the 60 day period prior to the filing of the petition. The Debtors have not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Fifth, the Debtors have not provided the Trustee with a Class 1 Checklist and Authorization to Release. The Debtors have not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-(c)(3).

Sixth, the plan does not specify whether Debtors' attorney shall seek approval of fees by either complying with Local Bankr. R. 2016-1(c) or by filing and serving a motion under 11 U.S.C. §§ 329 and 330, Fed. R. Bankr. P. 2002, 2016, and 2017.

Seventh, the plan payment in the amount of \$1,291.14 does not equal the aggregate of the Trustee's fees and monthly post-petition contract installments due on Class 1 claims. The aggregate of monthly amounts plus the Trustee's fee is \$2,607.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Eighth, the plan is incomplete as it lists the amount of arrears and arrearage dividends for Class 1 creditors at \$0.00.

Ninth, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Debtors' monthly disposable income is \$188.22 and the Debtors must pay no less than \$11,293.20 to general unsecured creditors. The plan will pay only \$0.00 to Class 7 general unsecured creditors.

Tenth, the plan will take approximately 601+ months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Eleventh, the Debtors are delinquent to the Trustee in the amount of \$1,281.14, which represents approximately the first plan payment that was due June 25, 2015. Four days after this matter is heard, an additional plan payment in the amount of \$1,281.14 will also be due. The Debtors do not appear to be able to make plan payments proposed. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

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

24. [13-27583](#)-B-13 ANDREW LUU
JPJ-4 Richard Kwun

MOTION TO DISMISS CASE
7-2-15 [[90](#)]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of Trustee's Motion to Dismiss Case, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar and the case will proceed in this court.

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

25. [11-32395](#)-B-13 DONALD/DYANNA DAVIS
JPJ-3 Timothy H. Stearns

NOTICE OF DEFAULT AND MOTION TO
DISMISS CASE FOR FAILURE TO
MAKE PLAN PAYMENTS
5-27-15 [[161](#)]

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

The court's decision is to deny without prejudice the motion to dismiss case, subject to the Trustee's confirmation that the Debtors are current on all payments due under the plan.

The Debtors assert that they are current on all plan payments and that they have turned over their 2014 tax refunds to the Trustee. Additionally, the Debtors have filed second modified plan and motion to confirm the second modified plan, which is scheduled to be heard on September 2, 2015.

Cause does not exist to dismiss this case. The motion is denied without prejudice and the case is not dismissed.

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

26. [14-23998](#)-B-13 SERGEY CHERNYSHOV AND
NATALYA CHERNYSHOVA
Mark Shmorgon

MOTION TO MODIFY PLAN
6-9-15 [[20](#)]

Final Ruling: No appearance at the July 21, 2015 hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits debtors to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on June 9, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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