

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

August 14, 2018 at 1:00 p.m.

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1. [17-22400](#)-B-13 JAVIER/COURTNEY MARTINEZ MOTION TO MODIFY PLAN
[MRL](#)-1 Mikalah R. Liviakis 6-15-18 [[24](#)]

Final Ruling: No appearance at the August 14, 2018, hearing is required.

The Motion to Confirm Debtor's Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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 15, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

August 14, 2018 at 1:00 p.m.

Tentative Ruling: The Motion to Confirm 1st Amended Chapter 13 Plan Dated July 5, 2018, has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, Debtor is delinquent to the Chapter 13 Trustee in the amount of \$2,794.00, which represents approximately 2 plan payments. 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).

Second, the plan fails to specify a cure of the post-petition arrearage owed to Select Portfolio Servicing in Class 1 including a specific post-petition arrearage amount, interest rate, and monthly dividend. The Trustee is therefore unable to fully comply with § 3.07(b) of the plan.

Third, 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).

Fourth, 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).

Fifth, Debtor failed to disclose previous case number 17-27948. 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).

Sixth, the plan payment in the amount of \$1,397.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is \$1,652.75. This is due to the fact that the plan does not provide for the increased post-petition mortgage payment to Select Portfolio Services of \$862.00. See claim no. 2. The plan does not comply with Section 5.2 of the mandatory form plan.

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

The court will enter an appropriate minute order.

3. [17-27707](#)-B-13 ANTHONY SIPPPIO
[LBG](#)-5 Lucas B. Garcia

CONTINUED MOTION TO CONFIRM
PLAN
6-13-18 [[84](#)]

Tentative Ruling: The Motion to Confirm Second Amended Chapter 13 Plan Dated June [13], 2018, has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The matter will be determined at the scheduled hearing.

This motion was continued from July 31, 2018, to provide Debtor additional time to cure his delinquency in plan payments. If the delinquency is not cured by the date of the continued hearing, the plan filed June 13, 2018, will not be confirmed.

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)(4) & (d)(1) and 9014-1(f)(2). 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 meeting of creditors set for July 19, 2018, as required pursuant to 11 U.S.C. § 343.

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 is delinquent to the Chapter 13 Trustee in the amount of \$500.00, which represents approximately 1 plan payment. 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).

Fourth, the Debtor failed to list the correct value of property located at 446 Sector 21 Panchloulia, India. According to a Motion to Convert Case to a Chapter 7 (dkt. 60), which will be heard on August 28, 2018 (dkt. 79), a family law judge found the value of the property to be worth \$402,300.00 and states "[a] recent appraisal of the property suggests that it is currently worth over \$200,000.00." The property is not listed as exempt on Schedule C. The Debtor's plan proposes to pay only \$1.00 to the priority unsecured creditors and a 0% dividend to the nonpriority unsecured claims.

Fifth, the Debtor does not appear to be able to make the plan payments proposed. Section 7.02 of the Nonstandard provisions calls for "a \$30,000 lump sum in month 59 from the refinance of the residence." The Debtor has not provided any evidence that his residence will retain its equity for the next 59 months and, at this time, is too speculative to accurately predict equity so far out from the petition date. The Debtor has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed June 11, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

5. [18-23710](#)-B-13 DAVID/EMILINDA VERA OBJECTION TO CONFIRMATION OF
[DWE](#)-1 Julius J. Cherry PLAN BY FREEDOM MORTGAGE
[Thru #6](#) CORPORATION
7-27-18 [[20](#)]

Tentative Ruling: The Objection to Confirmation of 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)(4) & (d)(1) and 9014-1(f)(2). 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.

Objecting creditor Freedom Mortgage Corporation ("Creditor") holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts \$5,475.02 in pre-petition arrearages. The plan lists Creditor's claim in Class 4, which is reserved for secured claims that a debtor is current on and wants to pay directly to the creditor. However, there are arrearages on Creditor's claim and 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) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed June 14, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

6. [18-23710](#)-B-13 DAVID/EMILINDA VERA OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Julius J. Cherry PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-26-18 [[17](#)]

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)(4) & (d)(1) and 9014-1(f)(2). 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 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) shows that the Debtor's monthly disposable income is \$1,586.42 and the Debtor must pay no less than \$95,185.20 to unsecured non-priority creditors. The Trustee calculates that the plan will pay only \$23,243.20 to unsecured non-priority creditors.

Second, feasibility of the plan depends on the granting of motions to value collateral of Sacramento Credit Union, SAFE Credit Union, and USE Credit Union. To date, the Debtors have not filed, served, or set for hearing the valuation motions pursuant to Local Bankr. R. 3015-1(j).

The plan filed June 14, 2018, 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 60 days, the case will be dismissed on the Trustee's ex parte application.\

The court will enter an appropriate minute order.

7. [18-23214](#)-B-13 LUCILIA CLEARY MOTION TO CONFIRM PLAN
 [MDA](#)-1 Mary D. Anderson 6-29-18 [[13](#)]

Final Ruling: No appearance at the August 14, 2018, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Opposition to Debtor's Motion to Confirm First Amended Chapter 13 Plan Dated June 29, 2018, the objection 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.

There being no other objection to confirmation, the plan filed June 29, 2018, will be confirmed.

The court will enter an appropriate minute order.

8. [18-23816](#)-B-13 LISA SLEDGE
[MET](#)-2 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF
WELLS FARGO DEALER SERVICES
7-31-18 [[27](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Value Collateral of Wells Fargo Dealer Services 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.

The court's decision is to value the secured claim of Wells Fargo Dealer Services at \$3,000.00.

Debtor's motion to value the secured claim of Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Nissan Titan Crew CAB XE ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$3,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3-1 filed by Wells Fargo Dealer Services is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on April 30, 2011, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$9,373.07 according to Claim No. 3-1. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$3,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

9. [18-22724](#)-B-13 ANGELO NOLASCO AND DEBRA OBJECTION TO DEBTORS' CLAIM OF
[JPJ](#)-2 RODRIQUEZ-NOLASCO EXEMPTIONS
Peter G. Macaluso 7-11-18 [[24](#)]

Final Ruling: No appearance at the August 14, 2018, hearing is required.

The Trustee's Objection to Debtor's [sic] Claim of Exemption has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *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 *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The court's decision is to sustain the objection and the exemption is disallowed in its entirety.

The Trustee objects to the Debtors' use of California Code of Civil Procedure § 704.730 in the amount of \$175,000.00 to exempt their primary residence located at 1764 Allenwood Circle, Lincoln, California. The Debtors have not established that they are at least 65 years old or mentally or physically disabled or otherwise unable to engage in substantial gainful employment. The Debtors are entitled to an exemption on their residence of no more than \$100,000.00.

The Trustee's objection is sustained and the claimed exemption is disallowed.

The court will enter an appropriate minute order.

10. [18-20727](#)-B-13 GREGORY/KATHRYN
[MRL](#)-1 KLAGENBERG
Mikalah R. Liviakis

MOTION TO CONFIRM PLAN
7-10-18 [[23](#)]

Final Ruling: No appearance at the August 14, 2018, hearing is required.

The Motion to Confirm Debtor's Chapter 13 Plan 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 first 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 filed on July 10, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

11. [18-23633](#)-B-13 NICOLLETTE ZUPO
[JPJ](#)-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-26-18 [[18](#)]

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)(4) & (d)(1) and 9014-1(f)(2). 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 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 July 19, 2018. The confirmation hearing for the amended plan is scheduled for September 4, 2018. The earlier plan filed June 11, 2018, is not confirmed.

The court will enter an appropriate minute order.

12. [18-23641](#)-B-13 SIDNEY/CAROLINE JACKSON
[JPJ](#)-1 Stephen M. Brown

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-26-18 [[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)(4) & (d)(1) and 9014-1(f)(2). 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.

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) includes an expense under Line #19 for court ordered payments in the amount of \$359.75. This expense is to listed on Schedule I or J. Additionally, Debtors testified at their July 19, 2018, meeting of creditors that they thought this expense may have been for a wage garnishment that ended in June 2018 and testified that no such court ordered payment exist. With this added overstated expense, the Debtors' monthly disposable income changes from \$1,105.98 to \$1,465.73. This means Debtors must pay no less than \$87,943.80 to their unsecured, non-priority creditors. The Debtors' plan will pay only \$67,281.84 to unsecured, non-priority creditors. Section 3.14 of the Debtors' plan states that the total of unsecured, non-priority creditors is \$83,064.00. Based on this amount, Debtors' plan must be increased to 100% repayment of their unsecured, non-priority creditors.

The plan filed June 11, 2018, 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 Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

13. [18-23743](#)-B-13 REUBEN MOHAMMED
[JPJ](#)-1 Douglas P. Broomell

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-26-18 [[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)(4) & (d)(1) and 9014-1(f)(2). 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 plan payment in the amount of \$951.00 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. The aggregate of the monthly amounts plus the Trustee's fee is \$2,558.26. Also the post-petition monthly payment to Deutsche Bank National Trust Company, as Trustee, is \$1,475.27 per month based on claim number 3-1. The plan does not comply with Section 5.2 of the mandatory form plan.

Second, Consumer Portfolio is misclassified as a Class 4 claim. Section 3.10 of the pre-written language of the form plan defines Class 4 debts as claims that "mature after the completion of this plan, are not in default, and are not modified by this plan." Pursuant to claim number 1-1 filed by Consumer Portfolio, the final payment due on the 2013 Chevy Silverado is on January 10, 2020. The Debtor's petition filed June 14, 2018, proposes a 60-month term, which has a final payment on June 25, 2023. Therefore, Consumer Portfolio is not a Class 4 claim.

Third, 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).

The plan filed June 14, 2018, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

14. [18-23646](#)-B-13 JENNIFER DOW
[JPJ](#)-1 Michael Benavides

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-26-18 [[21](#)]

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)(4) & (d)(1) and 9014-1(f)(2). 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 plan filed June 26, 2018, does not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective December 1, 2017.

Second, the claim of US Dept of Ed is misclassified as a Class 5 debt. The debt is for a student loan and is not entitled to a priority unsecured status pursuant to 11 U.S.C. § 507.

The plan filed June 26, 2018, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

15. [16-24249](#)-B-13 LAWRENCE/ROBERTA CURTIS MOTION TO MODIFY PLAN
[DBJ](#)-2 Douglas B. Jacobs 6-25-18 [[54](#)]

Final Ruling: No appearance at the August 14, 2018, hearing is required.

The Motion to Modify Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 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 5, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

16. [16-24559](#)-B-13 STEVEN SIPE
[LES](#)-1 Lucas B. Garica

CONTINUED STATUS CONFERENCE RE:
MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY
4-17-18 [[94](#)]

JAMES/JUDITH CARTER VS.

Tentative Ruling: The court will set an evidentiary hearing.

The court provided Debtor Steven Craig Sipe ("Debtor") and James A. and Judith M. Carter, Trustees Revocable Trust Agreement of May 23, 1996 ("Carters"), with an opportunity to resolve their dispute over the removal of the Debtor's personal property from the Carters' land by providing the Debtor with unfettered access to that property and the Carters' land over the past few months. Despite apparent efforts, very little has been removed and a significant amount of the Debtor's personal property remains on the Carters' land.

The court has already determined that the Debtor's personal property on the Carters' land is property of the estate. See dkt. 110, 111. That determination was not appealed, it is now final, and it is applicable here.

Inasmuch as the Debtor's personal property on the Carters' land is property of the estate, § 542(a) applies. Section 542(a) requires an entity, other than a custodian, in possession, custody, or control of property of the estate to deliver it to the trustee, or in this Chapter 13 case the Debtor, and account for it or its value unless the property is of inconsequential value or benefit to the estate. See 11 U.S.C. §§ 542(a), 1303, 1306.

Section 542(a) imposes an affirmative obligation on the party holding estate property to turn it over. *In re Rutheford*, 329 B.R. 886, 892 (Bankr. N.D. Ga. 2005). That affirmative obligation is self-executing and does not require a hearing or an order. *In re Prince*, 2012 WL 1095506, *9 (Bankr. E.D. Tex. 2012) (citing *Knaus v. Concordia Lumber Co. (In re Knaus)*, 889 F.2d 773, 775 (8th Cir. 1989); *Boyer v. Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A. (Matter of USA Diversified Products, Inc.)*, 100 F.3d 53, 56 (7th Cir. 1996)). However, as the statute states, the affirmative obligation to turn over estate property does not apply if the property is of inconsequential value or benefit to the estate. And therein lies the dispute.

According to the Debtor, his personal property on the Carters' land is of value or benefit to the estate. Dkts. 101, 102. According to the Carters' attorney, that personal property is junk. Dkts. 976, 106.

Because the parties are unable to resolve their dispute amicably or agree on the removal of the Debtor's personal property from the Carters' land, the court will resolve this matter through an evidentiary hearing. The sole issue to be determined through that evidentiary hearing will be the value or benefit to the estate of the Debtor's personal property that remains on the Carters' land. If it is determined that personal property has value or benefit to the estate, the Carters' will have an affirmative obligation to turn it over to the Debtor and will be ordered to do so. If it is determined that personal property is of inconsequential value or benefit to the estate, the Debtor will have a short period of time to remove it from the Carters' land after which the automatic stay will be terminated and the Carters' permitted to dispose of the property.

An evidentiary hearing is set for Monday, September 17, 2018, at 9:30 a.m. Local Bankr. R. 9017-1 applies. No continuances will be granted absent exceptional circumstances.

The court will enter an appropriate minute order.

17. [18-23760](#)-B-13 BRIAN/MICHELLE BERENDSEN OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Thomas L. Amberg PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-26-18 [[32](#)]

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)(4) & (d)(1) and 9014-1(f)(2). 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 overrule the objection as moot and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on July 25, 2018. The confirmation hearing for the amended plan is scheduled for September 4, 2018. The earlier plan filed June 15, 2018, is not confirmed.

The court will enter an appropriate minute order.

18. [14-23765](#)-B-13 JOAQUIN MOQUETTE
[JMC](#)-4 Joseph M. Canning

MOTION TO MODIFY PLAN
6-27-18 [[53](#)]

Tentative Ruling: The Motion to Confirm First Modified Plan Filed on June 27, 2018, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

The Trustee filed an objection and the Debtor filed a response acknowledging that he had submitted two plans that each included errors. Debtor stated that he will refile a plan using the standard form required pursuant to Local Bankr. R. 3015-1(a).

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

The court will enter an appropriate minute order.

19. [18-22770](#)-B-13 GREGORY HUTCHINSON
[JPJ](#)-1 Seth L. Hanson

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
6-13-18 [[12](#)]

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)(4) & (d)(1) and 9014-1(f)(2). 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). A 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 objections raised by the Chapter 13 Trustee have been resolved. The Debtor appeared at the continued meeting of creditors on August 9, 2018, and the meeting concluded as to the Debtor, the Debtor provided the Trustee with the Domestic Support Obligation Checklist, and the Debtor filed the Spousal Waiver of Right to Claim Exemptions on July 31, 2018.

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 May 3, 2018, is confirmed.

The court will enter an appropriate minute order.

20. [18-20871](#)-B-13 VICTORIA RUGG MOTION TO CONFIRM PLAN
[DBJ](#)-2 Douglas B. Jacobs 6-19-18 [[25](#)]

Final Ruling: No appearance at the August 14, 2018, hearing is required.

The Debtor having filed a Notice of Withdrawal of its Motion to Amend Plan, the motion 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.

The court will enter an appropriate minute order.

Tentative Ruling: The Motion to Confirm Debtors' First Amended Chapter 13 Plan has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on August 7, 2018. The court notes, however, that it appears the Debtors again filed two plans. See dkts. 58, 59. Also a confirmation hearing date was not set and the deadline to confirm a plan must be extended.

Nonetheless, the earlier plan filed June 29, 2018, is not confirmed.

The court will enter an appropriate minute order.

22. [18-23472](#)-B-13 JERIMIAH CANNADAY
[JPJ](#)-2 W. Steven Shumway
See Also #28

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
7-16-18 [[21](#)]

Tentative Ruling: The Trustee's Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to overrule the objection and allow the claimed exemptions.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140(a)(2). California Code of Civil Procedure §703.140(a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal waiver was filed on August 8, 2018. The Trustee's objection is overruled and the claimed exemptions are allowed.

The court will enter an appropriate minute order.

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)(4) & (d)(1) and 9014-1(f)(2). 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 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).

Second, feasibility of the plan depends on the granting of a motion to value collateral of American Credit Acceptance. To date, the Debtor has not filed, served, or set for hearing a valuation motion pursuant to Local Bankr. R. 3015-1(j).

Third, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) shows that the Debtor's monthly disposable income is \$4,926.39. This means that Debtor must pay no less than \$295,583.40 to her unsecured, non-priority creditors. The Debtor's plan proposes to pay 0% to unsecured, non-priority creditors. Section 3.14 of the Debtor's plan states that the total of unsecured, non-priority creditors is \$41,563.00. Based on this amount, Debtor's plan must be increased to 100% repayment of her unsecured, non-priority creditors.

Fourth, the plan payment in the amount of \$4,105.00 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 and the monthly dividend on Class 2 claims. The aggregate of the monthly amounts plus the Trustee's fee is \$4,779.93. The plan does not comply with Section 5.2 of the mandatory form plan.

Fifth, the Debtor has not filed an amended Statement of Financial Affairs clarifying the pre-petition payment for attorney's fees and how much was paid for court costs. The Debtor also has not filed an amended Schedule H to add her non-filing spouse as a co-debtor on American Credit Acceptance for a 2015 Audi. The Debtor has not cooperated with the Trustee as necessary to enable the Trustee to perform his duties. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed June 13, 2018, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

24. [18-23481](#)-B-13 MARICELA/JUAN CARRANZA
[JPJ](#)-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
7-26-18 [[35](#)]

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)(4) & (d)(1) and 9014-1(f)(2). 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, feasibility of the plan depends on the granting of a motion to value collateral of Internal Revenue Service. To date, the Debtors have not filed, served, or set for hearing a valuation motion pursuant to Local Bankr. R. 3015-1(j).

Second, the Debtors have not provided the Trustee with requested copies of certain items related to the operation of Carranza Court Reporting. Specifically, a completed business examination checklist and copy of Debtor's current business license have not been provided to the Trustee. It cannot be determined if the business is solvent and necessary for reorganization. The Debtor has not complied with 11 U.S.C. § 521.

The plan filed June 15, 2018, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

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)(4) & (d)(1) and 9014-1(f)(2). 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, feasibility depends on the granting of a motion to avoid lien of Selena Ramos. That motion was heard and denied on August 2, 2018, due to insufficient service. See dkts. 44, 49.

Second, feasibility depends on the granting of a motion to avoid lien of Sierra Sharks Swim Team. That motion was dismissed on August 2, 2018, after Debtors' attorney made an oral motion at the hearing on the record in open court to withdraw the motion. See dkts. 43, 48.

Third, feasibility depends on the granting of a motion to value collateral of Exeter Finance LLC. That motion was denied on August 2, 2018. See dkts. 46, 51.

Fourth, according to the Trustee, Debtor Dennis Boston owes a total of \$430,459.07 as the sum of non-contingent, liquidated unsecured debts listed as "Debtor 1 only" and "Debtor 1 and 2 only" based on Schedule E/F filed June 15, 2018. Therefore, Mr. Boston owes more than \$394,725.00 in non-contingent, liquidated, unsecured debts and is not eligible for Chapter 13 relief pursuant to 11 U.S.C. § 109(e). However, according to the court's calculation of the debts on Schedule E/F listed as "Debtor 1 only" and "Debtor 1 and 2 only" the amount of debt totals \$356,855.82 and therefore is within the statutory limit for Chapter 13 eligibility

For the first through third reasons stated above, the plan filed June 15, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

26. [18-23191](#)-B-13 MELINDA MARTINEZ
[JPJ](#)-2 Peter L. Cianchetta
Thru #27

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
7-13-18 [[31](#)]

Tentative Ruling: The Trustee's Objection to Debtor's Claim of Exemptions has been set for hearing on at least 28-days the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *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 overrule the objection as moot.

The Trustee objects to the Debtor's use of California Code of Civil Procedure § 704.140 to claim her interest in "Aaa House Fire Claim." Section 704.140 allows the Debtor to exempt personal injury causes of action, settlements, or awards. The cause of action, any damages or settlement are exempt to the extent necessary for support of the Debtor and her dependents. The claim described in Debtor's Schedule C filed June 4, 2018, does not appear to meet the definition of a personal injury cause of action under the Personal Injury Code, and the Debtor has not provided any evidence that she would be entitled to take this exemption for this property.

The Debtor filed a response stating that she will file an amended Schedule C to remove the exemption. Amended Schedule C was filed on August 1, 2018, and her claimed interest in "Aaa House Fire Claim" was removed.

The Trustee's objection is overruled as moot.

The court will enter an appropriate minute order.

27. [18-23191](#)-B-13 MELINDA MARTINEZ
[PLC](#)-1 Peter L. Cianchetta

MOTION TO CONFIRM PLAN
7-6-18 [[22](#)]

Tentative Ruling: The Motion to Confirm Chapter 13 Plan has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, Debtor is delinquent to the Chapter 13 Trustee in the amount of \$2,048.20, which represents approximately 1 plan payment. 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).

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) because 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 \$61,987.61. The total amount that will be paid to unsecured creditors is only \$0.00.

Third, the plan cannot be assessed for feasibility. The Debtor has not amended her voluntary petition to correct the spelling of her maiden name. Although Debtor filed a response on July 27, 2018, stating that her name is listed in the voluntary petition as "AKA Moede" and "FKA Moad," FKA does not appear in Debtor's voluntary petition,

schedules, and Statement of Financial Affairs (dks. 13, 20) that were filed in this case. 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)(3).

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

The court will enter an appropriate minute order.

28. [18-23472](#)-B-13 JERIMIAH CANNADAY
[JPJ](#)-1 W. Steven Shumway

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
7-12-18 [[18](#)]

And #22

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)(4) & (d)(1) and 9014-1(f)(2). 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 has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. Debtor acknowledges that he has supplied only the 2015 tax return and is working to complete his 2016 and 2017 tax returns. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Second, feasibility of the plan depends on the granting of a motion to value collateral of Jeff Garcia. To date, the Debtor has not filed, served, or set for hearing a valuation motion pursuant to Local Bankr. R. 3015-1(j).

Third, the Debtor has not filed an amended Statement of Financial Affairs for Individuals Filing for Bankruptcy to correct the attorney fees that were paid prior to the filing of the voluntary petition. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The remaining objections raised by the Trustee appear to be resolved.

First, although the Debtor did not appear at the meeting of creditors set for July 5, 2018, the Debtor did appear at the continued meeting of creditors held August 9, 2018, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor 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 complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Third, the Debtor served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Fourth, the Debtor provided the Trustee with copies of pay advices and that the Trustee is therefore able to assess whether Form 122C-1 is filled out correctly.

Fifth, the Debtor filed a spousal waiver of right to claim exemptions on August 8, 2018.

Nonetheless, the plan filed June 1, 2018, 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 60 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.