

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY

DATE: September 4, 2018

CALENDAR: 1:00 P.M. CHAPTER 13

**PLEASE REVIEW CAREFULLY AS THE COURT'S ORDER PREPARATION AND SUBMISSION
PROCEDURE IN CHAPTER 13 CASES HAS CHANGED EFFECTIVE SEPTEMBER 3, 2018.**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

September 4, 2018 at 1:00 p.m.

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1. [18-22701](#)-B-13 MARCOS FLAVIO LOYOLA MOTION TO VALUE COLLATERAL OF
[RWC](#)-1 RAMIREZ AND RECHEL THE BANK OF NEW YORK MELLON
Thru #2 Rupert Corkill 7-13-18 [[39](#)]

Tentative Ruling

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

The court's decision is to value the secured claim of Bank of New York Mellon, as Indenture Trustee, on behalf of the holders of Terwin Mortgage, Trust, Asset-Backed Securities, Series 2006-6 at \$0.00.

Debtors' motion to value the secured claim of Bank of New York Mellon, as Indenture Trustee, on behalf of the holders of Terwin Mortgage, Trust, Asset-Backed Securities, Series 2006-6 ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owner of the subject real property commonly known as 2050 Button Place, Redding, California ("Property"). Debtors seek to value the Property at a fair market value of \$286,684.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

September 4, 2018 at 1:00 p.m.

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 5-1 filed by The Bank of New York Mellon Trustee c/o Specialized Loan Servicing LLC is the claim which may be the subject of the present motion.

Response

Creditor has filed a response stating that it has no opposition to Debtors' Motion as to the subject Property so long as the Debtors' Chapter 13 Plan is completed and the Debtors receive a Chapter 13 discharge.

Discussion

The first deed of trust secures a claim with a balance of approximately \$296,816.43. Creditor's second deed of trust secures a claim with a balance of approximately \$94,838.71. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

2.	18-22701 -B-13	MARCOS FLAVIO LOYOLA	MOTION TO CONFIRM PLAN
	RWC -2	RAMIREZ AND RECHEL	7-18-18 [44]
		Rupert Corkill	

No Ruling

3. [18-23905](#)-B-13 RICHARD/JULIA WADE
[JPJ](#)-1 Scott D. Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-8-18 [[22](#)]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection and motion, 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 other objection to confirmation, the plan filed June 21, 2018, will be confirmed.

**COUNSEL FOR THE DEBTORS SHALL PREPARE AN APPROPRIATE ORDER CONFIRMING,
WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.**

4. [18-23608](#)-B-13 RAJESH KAPOOR MOTION TO CONVERT CASE TO
[JPJ](#)-2 Richard L. Jare CHAPTER 7 AND/OR MOTION TO
7-27-18 [[72](#)] DISMISS CASE

Final

An order granting creditor Rashmi Sharma's motion to convert case from Chapter 13 to Chapter 7 was entered on August 30, 2018. See dkts. 114, 110. Therefore, this motion is dismissed as moot.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

5. [18-24911](#)-B-13 JEREMY/LINDSAY ARNOLD MOTION TO VALUE COLLATERAL OF
MS-1 Mark Shmorgon SCHOOLS FINANCIAL CREDIT UNION
Thru #6 8-6-18 [[8](#)]

Final Ruling

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

The court's decision is to value the secured claim of Schools Financial Credit Union at \$7,000.00.

Debtors' motion to value the secured claim of Schools Financial Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2006 Honda Accord EX-L Sedan 4D ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$7,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value is conclusive. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3-1 filed by Schools Financial Credit Union 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 December 7, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$8,617.24. 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 \$7,000.00. *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.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

6. [18-24911](#)-B-13 JEREMY/LINDSAY ARNOLD MOTION TO VALUE COLLATERAL OF
MS-2 Mark Shmorgon SCHOOLS FINANCIAL CREDIT UNION
8-6-18 [[12](#)]

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual

hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of Schools Financial Credit Union at \$6,000.00.

Debtors' motion to value the secured claim of Schools Financial Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2008 Honda Pilot EX Sport Utility 4D ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$6,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value is conclusive. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2-1 filed by Schools Financial Credit Union 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 August 18, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$8,249.70. 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 \$6,000.00. 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.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

7. [16-22412](#)-B-13 DANIEL/EVE DINEEN
[TAG](#)-3 Aubrey Jacobsen

MOTION TO MODIFY PLAN
7-13-18 [[70](#)]

No Ruling

8. [18-24113](#)-B-13 WAYNE ROSEMOND
[AP-1](#) Pro Se
Thru #10, Add on #48

OBJECTION TO CONFIRMATION OF
PLAN BY THE BANK OF NEW YORK
MELLON
8-16-18 [[30](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to overrule the objection but deny confirmation of the plan for reasons stated at Item #9, JPJ-2, and Item #10, MEL-1.

The Bank of New York Mellon holds a deed of trust secured by the Debtor's residence. The creditor asserts \$22,906.30 in pre-petition arrearages but has not yet filed a proof of claim. The creditor provides no evidence to support the amount of claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, the plan filed July 13, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled but the plan is not confirmed.

THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.

9. [18-24113](#)-B-13 WAYNE ROSEMOND
[JPJ-2](#) Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
8-14-18 [[21](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, Debtor 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, Debtor is delinquent to the Chapter 13 Trustee in the amount of \$419.95, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment will also be due. 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).

Third, Debtor does not appear to be able to make the plan payments proposed. Debtor testified at the meeting of creditors that his business license has expired and that he is unable to operate his business or receive income from the business. The Statement of Financial Affairs, question 27, shows that the business closed on June 29, 2018. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fourth, the Debtor testified at the meeting of creditors that the sale of real property

located at Cassieri Circle, Sacramento, California is pending. However, the Debtor has not obtained the court's approval of the sale as required by Local Bankr. R. 3015-1(h) (1) (D).

The plan filed July 13, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

10. [18-24113](#)-B-13 WAYNE ROSEMOND OBJECTION TO CONFIRMATION OF
[MEL](#)-1 Pro Se PLAN BY BANK OF AMERICA, N.A.
8-16-18 [[34](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c) (4) & (d) (1) and 9014-1(f) (2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f) (1) (C). No written reply has been filed to the objection.

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

Bank of America, N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$22,800.32 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. 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.

Additionally, Debtor lacks the monthly disposable income to fund the plan, as stated at Item #9, dkt. 21, JPJ-2, and by extension creditor's claim.

The plan filed July 13, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

COUNSEL FOR CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

11. [18-23816](#)-B-13 LISA SLEDGE OBJECTION TO CONFIRMATION OF
[APN](#)-1 Mary Ellen Terranella PLAN BY WELLS FARGO BANK, N.A.
Thru #12 8-9-18 [[34](#)]

Final

CONTINUED TO 9/18/18 AT 1:00 P.M. *SEE* DKT. 41.

COUNSEL FOR CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

12. [18-23816](#)-B-13 LISA SLEDGE OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Mary Ellen Terranella PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-8-18 [[31](#)]

Final

CONTINUED TO 9/18/18 AT 1:00 P.M. *SEE* DKT. 41.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

13. [18-24217](#)-B-13 VICTOR CATANZARO
[JPJ](#)-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-13-18 [[22](#)]

Tentative Ruling

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the meeting of creditors was continued to August 16, 2018, to provide Debtor additional time to submit proof of his social security number and be examined under oath. The meeting was held, the Debtor and counsel of record appeared, and the meeting was concluded as to Debtor.

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

Third, the debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to Debtor's non-filing spouse's rental property and/or the operation of a business.

Fourth, the plan does not comply with 11 U.S.C. § 1322(b)(2) because it does not provide for the actual contract installment amount of Ocwen Loan Servicing, the holder of the first deed of trust on Debtor's principal residence. No evidence has been presented that the lender has consented to or is considering a loan modification. If the modification has not been expressly agreed to by the creditor, the plan may not impose it on the creditor.

Fifth, the plan payment in the amount of \$4,280.00 for the first 12 months does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims.

The plan filed July 5, 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 CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

14. [16-21821](#)-B-13 LAUREN CHERWIN
[EAS](#)-2 Edward A. Smith

MOTION TO MODIFY PLAN
7-26-18 [[37](#)]

No Ruling

15. [18-21221](#)-B-13 JEFFREY/LORNA FUKUSHIMA
[PGM](#)-5

MOTION TO CONFIRM PLAN
7-30-18 [[50](#)]

No Ruling

16. [18-24222](#)-B-13 ATTILA MESKO
[JPJ](#)-1 Timothy J. Walsh

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE JAN P. JOHNSON
AND/OR MOTION TO DISMISS CASE
8-14-18 [[17](#)]

Final

CONTINUED TO 9/18/18 AT 1:00 P.M.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

Tentative Ruling

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

The court's decision is to deny the motion to incur debt.

The motion seeks permission to purchase a 2015 Nissan Altima 2.5S, which the Debtors are currently leasing at \$309.30 per month. The lease is scheduled to mature on September 12, 2018. The total purchase price is \$14,078.40 with monthly payments of \$318.61 for 72 months. The interest rate will be 16.95%.

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

Here, although the proposed financing terms increases Debtors' monthly payments by only \$9.31, the loan calls for a substantial interest charge of 16.95%. The court is not persuaded that this transaction is in the best interest of the Debtors. Therefore, the motion to incur debt is denied without prejudice.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

18. [18-23928](#)-B-13 REX MORRISON
[JPJ](#)-1 L. Rodkey

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
8-8-18 [[18](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor did not appear at the meeting of creditors set for August 2, 2018, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$1,823.40, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment will be due. 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).

Third, the plan cannot be effectively administered because the Debtor failed to make timely plan payments under the terms of the plan and the Trustee was therefore unable to pay the post-petition contract installments to Dovenmuehle Mortgage for the month of July.

Fourth, 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 21, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

19. [18-24228](#)-B-13 STEPHEN/YVONNE JACOBS
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-14-18 [[19](#)]

Tentative Ruling

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

An amended Statement of Financial Affairs disclosing Social Security Income was filed on August 30, 2018.

The plan filed July 6, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER OVERRULING THE OBJECTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

Tentative Ruling

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

The court's decision is to permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. Caliber Home Loans ("Creditor") has agreed to a loan modification that will reduce Debtor's mortgage payment from the \$1,565.45 a month, as stated in Class 1 of the plan filed December 11, 2015, and confirmed on February 23, 2016, to \$1,420.10 a month. The modification is filed as exh. A, dkt. 198.

The motion is supported by the Declaration of Wagma Safi. The Declaration affirms the Debtor's desire to obtain the post-petition financing. Although the Declaration does not state the Debtor's ability to pay this claim on the modified terms, the court finds that the Debtor will be able to pay this claim since it is a reduction from the Debtor's current monthly mortgage payments.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

21. [18-23729](#)-B-13 JUAN/CONNIE VELAZQUEZ
[JPJ](#)-1 Seth L. Hanson

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
8-8-18 [[17](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). A written reply has been filed to the objection.

The court's decision is to overrule the objection and confirm the plan provided that the Debtors have cured their delinquency and the administrative fees are specified at \$650.00 per month in the order confirming.

Provided that the two issues are resolved, the plan filed June 14, 2018, will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a). The objection will be overruled and the plan will be confirmed.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER OVERRULING THE OBJECTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

23. [18-23936](#)-B-13 LYUDMILA POKATILOV
[JPJ](#)-1 Harry D. Roth

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
8-8-18 [[18](#)]

Final

CONTINUED TO 9/18/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 9/13/18.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the plan cannot be effectively administered because the Debtor failed to make timely plan payments under the terms of the plan and the Trustee was therefore unable to pay the post-petition contract installments to Nationstar/Mr. Cooper for the month of July.

Second, 11 U.S.C. § 1308(a) requires a Chapter 12 debtor to file all required tax returns for the four-year period prior to the filing of the petition and that the returns must be filed no later than the day before the date on which the meeting of creditors is first scheduled to be held. The proof of claim filed by the Franchise Tax Board states that the Debtor has not filed all income tax returns for the four-year period prior to the filing of the petition. The deadline for the Debtor to file delinquent tax returns expired on August 1, 2018. Although the Trustee received a handwritten copy of the Debtor's 2017 tax returns for both the IRS and FTB, it is unclear whether these tax returns were actually filed. The Debtor has not complied with § 1325(a)(1).

The plan filed June 22, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

Final Ruling

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

The court's decision is to value the secured claim of Ford Motor Credit at \$16,277.80 and to treat the remaining, non-purchase money security interest of \$8,222.20 as an unsecured claim.

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). See 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

Here, the Debtor acknowledges that the 2017 Ford Fusion Titanium Sedan 4D ("Vehicle") is collateral outside the scope of the hanging paragraph since it was purchased on January 28, 2017, which is within the 910-day period preceding the date of the petition filing. However, the Debtor also argues that a portion of Ford Motor Credit's claim resulted from financing for the negative-equity portion of the vehicle traded-in at the time of the Debtor's purchase of the present collateral. The Vehicle is currently encumbered with a secured lien in the amount of \$24,500.00.

The Ninth Circuit has held "that a creditor does not have a purchase money security interest in the 'negative equity' of a vehicle traded in during a new vehicle purchase." *In re Penrod*, 611 F.3d 1158, 1164 (9th Cir. 2010). Because of this, the portion of an automobile lender's claim attributable to negative-equity financing is not secured by a purchase money security interest (PMSI).

The court adopts the pro-rata approach supported by the cases under which the percentage of the total amount originally financed that was secured by a PMSI is multiplied by the present balance of the debt owed to creditor on its claim. The non-PMSI portion of the claim may be treated as unsecured so long as the value of the collateral does not support it.

The total amount of the original financing for the subject collateral was \$34,171.18. The non-PMSI amount that financed negative equity on the trade-in vehicle was \$10,074.00. There were also non-purchase money inclusions: theft deterrent devices express systems for \$199.00, surface protection product *cilajet* for \$395.00, and debt cancellation agreement for \$800.00. Thus, the total non-purchase money inclusions totaled \$11,468.00. It follows that 33.56% is the non-PMSI amount.

Multiplying 33.56% by the present claim amount of \$24,500.00 equals \$8,222.20, which is the non-PMSI portion of the present claim held by creditor. The negative equity portion of the present claim may be treated as an unsecured claim if it is uncollateralized. It follows that the creditor's secured purchase money security interest is \$16,277.80.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

26. [18-24153](#)-B-13 GERALDINE BAUGHMAN OBJECTION TO CONFIRMATION OF
[APN](#)-1 Michael O'Dowd Hays PLAN BY GLOBAL LENDING
Thru #27 SERVICES, LLC
7-27-18 [[18](#)]

Final

CONTINUED TO 9/18/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 9/13/18.

COUNSEL FOR CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

27. [18-24153](#)-B-13 GERALDINE BAUGHMAN OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Michael O'Dowd Hays PLAN BY JAN P. JOHNSON
8-16-18 [[23](#)]

Final

CONTINUED TO 9/18/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 9/13/18.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

29. [17-26363](#)-B-13 MICHAEL SCHOOL
[JPJ](#)-1 Pauldeep Bains
Thru #30

CONTINUED MOTION TO DISMISS
CASE
7-5-18 [[45](#)]

No Ruling

30. [17-26363](#)-B-13 MICHAEL SCHOOL
[PSB](#)-2 Pauldeep Bains

MOTION BY PAULDEEP BAINS TO
WITHDRAW AS ATTORNEY
8-15-18 [[53](#)]

Tentative Ruling

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

The court's decision is to grant the motion.

Pauldeep Bains ("Movant"), attorney for Debtor, moves to withdraw as attorney on the basis that the Debtor's failure to respond to advice of counsel has made it unreasonably difficult for counsel to carry out the employment effectively, and because Debtor has mentioned multiple times that he has "fired" counsel.

Local Bankruptcy Rule 2017-1(e) provides: "Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

"The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." *American Economy Ins. Co. v. Herrera*, No. 06CV2395-WQH, 2007 WL 3276326, at *1 (S.D. Cal. Nov. 5, 2007) (quoting *Irwin v. Mascott*, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing *Washington v. Sherwin Real Estate, Inc.*, 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Herrera*, at *1 (citing *Irwin*, 2004 U.S. Dist. LEXIS 28264 at 4).

California Rule of Professional Conduct 3-700 provides for permissive withdrawal of an attorney from representation. Withdrawal is permitted in various circumstances including where the client renders it unreasonably difficult for the member to carry out the employment effectively or the client knowingly and freely assents to termination of the employment. Rule 3-700(C)(1)(d), (C)(5).

The Movant asserts that Debtor's failure to respond to advice of counsel has made it unreasonably difficult for counsel to carry out the employment effectively, and because Debtor has mentioned multiple times that he has "fired" counsel. These are cause for permitting the Movant's withdrawal pursuant to California Professional Conduct Rule 3-700(C)(1)(d) and (C)(5).

The court will permit the Movant's withdrawal from this bankruptcy case. The motion will be granted. The Movant shall mail the Debtor his case file within seven (7) days of the hearing on this motion, at the last known address of the Debtor.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

31. [18-24169](#)-B-13 DANNY ROQUE OBJECTION TO CONFIRMATION OF
AP-1 Carl R. Gustafson PLAN BY DEUTSCHE BANK TRUST
Thru #32 COMPANY
8-7-18 [[15](#)]

FINAL

Case converted to a Chapter 7 on August 24, 2018. Objection overruled as moot.

THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.

32. [18-24169](#)-B-13 DANNY ROQUE OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Carl R. Gustafson PLAN BY JAN P. JOHNSON
8-8-18 [[18](#)]

FINAL

Case converted to a Chapter 7 on August 24, 2018. Objection overruled as moot.

THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.

33. [16-20573](#)-B-13 FELICIANO RIOS
[PPR-1](#) Mary Ellen Terranella

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-3-18 [[82](#)]

CARRINGTON MORTGAGE
SERVICES, LLC VS.

FINAL

Matter resolved by stipulation filed on August 28, 2018, and stipulation approved by order filed August 29, 2018. Matter removed. No appearance necessary.

34. [18-23176](#)-B-13 PEDRO AVINA
[BSH-1](#) Brian S. Haddix
Thru #35

MOTION TO CONFIRM PLAN
7-24-18 [[17](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

35. [18-23176](#)-B-13 PEDRO AVINA
[BSH-1](#) Brian S. Haddix

MOTION TO CONFIRM PLAN
7-25-18 [[28](#)]

DUPLICATE FILING

SEE ITEM #34, DKT. 17, BSH-1.

THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.

36. [18-24377](#)-B-13 PETE GARCIA
[TGM](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
7-25-18 [[12](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Objecting creditor Wells Fargo Bank, N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$49,632.36 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). The plan also misclassifies creditor's claim in Class 4 as a claim not in default.

The plan filed July 13, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

COUNSEL FOR CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

37. [18-23279](#)-B-13 ROBERT/JENNIFER PAINTER MOTION TO CONFIRM PLAN
[PLG](#)-1 Rabin J. Pournazarian 7-23-18 [[21](#)]

No Ruling

38. [18-23980](#)-B-13 LAURA/DONALD ENGLAND
[JPJ](#)-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-8-18 [[23](#)]

Tentative Ruling

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the 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).

Second, feasibility depends on the granting of motions to avoid lien of the following creditors: Cach, LLC; Chase Bank USA, N.A.; Dickinson Financial, LLC; Employment Development Department; GCFS, Inc.; Household Finance Corp.; Kelkris Associates, Inc. To date, the Debtors have not filed, set for hearing, and served on the respective creditors and the Trustee a stand-alone motion to avoid lien. See Local Bankr. R. 3015-1(I).

The plan filed June 25, 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 CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

39. [18-23983](#)-B-13 SHARON LOCKETT
[JPJ](#)-1 Richard L. Jare

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-8-18 [[30](#)]

Final

CONTINUED TO 9/18/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET
FOR 9/13/18.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7)
DAYS.**

40. [18-23886](#)-B-13 MARILYN WALKER
[JPJ](#)-1 Bruce Charles Dwiggin

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
8-16-18 [[15](#)]

Final

CONTINUED TO 9/18/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET
FOR 9/13/18.

**THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7)
DAYS.**

41. [18-23787](#)-B-13 SONYA EVETTE MORRIS
[CAS](#)-1 George T. Burke
Thru #42

OBJECTION TO CONFIRMATION OF
PLAN BY EXETER FINANCE, LLC
8-9-18 [[24](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Objecting creditor Exeter Finance, LLC holds a security interest in a 2016 Dodge Dart Sedan 4D SE I4 ("Vehicle"). The Vehicle was purchased on January 14, 2017, which is less than 910 days from the filing of the petition date, and therefore not subject to the cram down valuation of § 1325(a)(9). See Claim No. 10-1. The creditor has filed a timely proof of claim in which it asserts \$1,222.47 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Additionally, the plan does not provide creditor with the appropriate prime interest rate per *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004).

The plan filed June 29, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

COUNSEL FOR CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

42. [18-23787](#)-B-13 SONYA EVETTE MORRIS
[JPJ](#)-1 George T. Burke

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-8-18 [[21](#)]

Tentative Ruling

The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

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

Second, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because 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 \$385.29 and the Debtor must pay no less than \$23,117.40 to unsecured non-priority creditors. The plan pays only \$11,600.00 to unsecured non-priority creditors.

The plan filed June 29, 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 CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

43. [18-23887](#)-B-13 TIMOTHY NEHER
[JPJ](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
8-16-18 [[61](#)]

Final

CONTINUED TO 9/18/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF CREDITORS SET FOR 9/13/18.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

Final Ruling

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

The court's decision is to value the secured claim of Santander Consumer USA, Inc. at \$3,800.00.

Debtor's motion to value the secured claim of Santander Consumer USA, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2007 Dodge Charger ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$3,800.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1-1 filed by Santander Consumer USA, Inc. 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 in May 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$10,507.60. 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 \$3,800.00. *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.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

45. [18-21193](#)-B-13 FERNANDO ROJAS
[RJ-2](#) Richard L. Jare

CONTINUED MOTION TO CONFIRM
PLAN
5-17-18 [[36](#)]

No Ruling

Final Ruling

The motion 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 complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

47. [18-24097](#)-B-13 PETER CASILLAS
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
8-8-18 [[19](#)]

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(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.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER DISMISSING THE OBJECTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

48. [18-24113](#)-B-13 WAYNE ROSEMOND
[JPJ](#)-1 Peter G. Macaluso
Add on #8-10

CONTINUED MOTION TO DISMISS
CASE
8-14-18 [[25](#)]

No Ruling