

**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 10, 2019

CALENDAR: 1:00 P.M. CHAPTER 13

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

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

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

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

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

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

September 10, 2019 at 1:00 p.m.

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|----|--|---|
| 1. | <u>19-24300</u> -B-13 MARK/CANDY GRAY
<u>JPJ</u> -1 Mary Ellen Terranella | OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
8-21-19 [<u>15</u>] |
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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 and Joint Debtor failed to appear at the first meeting of creditors set for August 15, 2019. The meeting was continued to August 29, 2019, to allow the Debtor and Joint Debtor another opportunity to appear and be examined. The Debtor and Joint Debtor appeared as required by 11 U.S.C. § 343 and the meeting was concluded as to both individuals.

Second, 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 \$428.34. The Debtors must pay no less than \$25,700.40 to unsecured non-priority creditors. The plan pays only \$19,800.00 to unsecured non-priority creditors.

The plan filed July 9, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

September 10, 2019 at 1:00 p.m.

2. [18-23901](#)-B-13 DAN/MEGHAN MILLER
[PGM](#)-3 Peter G. Macaluso

CONTINUED MOTION TO MODIFY PLAN
4-1-19 [[51](#)]

No Ruling

3. [19-22310](#)-B-13 BONITA BROOKS
[SDH](#)-2 Scott D. Hughes

MOTION TO CONFIRM PLAN
7-29-19 [[32](#)]

Final Ruling

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

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

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

4. [19-24314](#)-B-13 CHRISTOPHER BAILEY
[JPJ](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
8-21-19 [[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 sustain the objection and deny confirmation of the plan.

First, the Debtor failed to appear at the first meeting of creditors set for August 15, 2019, and the continued meeting of creditors set for August 29, 2019, as required pursuant to 11 U.S.C. § 343.

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

The plan filed July 23, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

5. [19-22717](#)-B-13 SIGIFREDO SANCHEZ AND MOTION TO CONFIRM PLAN
 [TOG](#)-1 CONSUELO RAMIREZ 7-31-19 [[24](#)]
 Thomas O. Gillis

No Ruling

6. [19-20118](#)-B-13 ANDREW VOYEZ MOTION TO MODIFY PLAN
[GEL](#)-1 Gabriel E. Liberman 7-30-19 [[30](#)]

No Ruling

7. [19-24119](#)-B-13 SONDA CHARLTON OBJECTION TO CONFIRMATION OF
[ASW](#)-1 Peter G. Macaluso PLAN BY U.S. BANK NATIONAL
[Thru #8](#) ASSOCIATION
8-15-19 [[23](#)]

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).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the U.S. Bank National Association's objection, the Debtor filed an amended plan on September 4, 2019. The confirmation hearing for the amended plan is scheduled for October 15, 2019. The earlier plan filed July 10, 2019, is not confirmed.

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

The court will enter a minute order.

8. [19-24119](#)-B-13 SONDA CHARLTON OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Peter G. Macaluso PLAN BY JAN P. JOHNSON
8-21-19 [[27](#)]

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).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on September 4, 2019. The confirmation hearing for the amended plan is scheduled for October 15, 2019. The earlier plan filed July 10, 2019, is not confirmed.

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

The court will enter a minute order.

9. [18-27627](#)-B-13 CHRISTINE BENNETTS MOTION TO MODIFY PLAN
[MRL](#)-1 Mikalah R. Liviakis 8-2-19 [[25](#)]

No Ruling

10. [19-22529](#)-B-13 TINA ANDRADE
RK-[1](#) Richard Kwun

MOTION TO CONFIRM PLAN
7-29-19 [[23](#)]

No Ruling

11. [19-24235](#)-B-13 STEVEN/GINA WILLIAMS
[BLG](#)-1 Chad M. Johnson

MOTION TO VALUE COLLATERAL OF
TRAVIS CREDIT UNION
8-1-19 [[17](#)]

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 Travis Credit Union at \$16,500.00.

Debtors' motion to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2016 Chrysler 300 Limited ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$16,500.00 as of the petition filing date. As the owner, Debtors' 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 Travis 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 in November 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$29,698.09. 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 \$16,500.00. *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 motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

Tentative Ruling

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

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

First, the plan does not comply with 11 U.S.C. § 1325(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 \$644.87 and the Debtor must pay no less than \$38,692.20 to unsecured non-priority creditors. The Debtor's plan does not propose to pay a dividend to unsecured non-priority creditors.

Second, the plan payment in the amount of \$518.00 does not equal the aggregate of the Trustee's fees, the monthly payment for administrative expenses, and Class 2 secured claims. The aggregate of these monthly amounts plus Trustee's fees is \$657.61. The plan does not comply with Section 5.02 of the mandatory form plan.

Third, it does not appear that the Debtor is putting forth his best efforts to apply his available income toward plan payments. According to Schedules I and J, Debtor's monthly net income is \$700.00 but he is proposing plan payments of only \$518.00 and a 0% dividend to his non-priority unsecured creditors. The plan does not comply with 11 U.S.C. § 1325(a)(3) since it has not been proposed in good faith. Good faith depends on the totality of the circumstances including but not limited to the amount of the proposed payments and the amounts of the Debtor's surplus. See *In re Warren*, 89 B.R. (9th Cir. BAP 1988).

Fourth, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors may receive a higher distribution in a Chapter 7 proceeding. Debtor values his real property located at 3220 Lassen Way, Sacramento at \$320,000 after cost of sale and repairs. However, the Debtor does not provide a broker's price opinion to support the value or explain what repairs are necessary. According to the Trustee's preliminary investigation, the value of the property is approximately \$397,255.00. At this valuation, the total amount of non-exempt property in the estate is \$41,335.82 after a 8% cost-of-sale. The plan schedules \$15,256.00 in priority unsecured claims and is proposing to pay a 0% dividend to nonpriority unsecured claims.

The plan filed July 16, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

13. [19-20938](#)-B-13 REUBEN MOHAMMED MOTION TO CONFIRM PLAN
[DPB](#)-6 Douglas P. Broomell 8-5-19 [[101](#)]

No Ruling

14. [19-24338](#)-B-13 LASHRAY WRIGHT OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Peter G. Macaluso PLAN BY JAN P. JOHNSON
8-21-19 [[14](#)]

CONTINUED TO 10/01/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTOR'S
MOTION TO VALUE COLLATERAL OF SAFEAMERICA CREDIT UNION.

Final Ruling

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

Final Ruling

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

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

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

16. [19-24445](#)-B-13 DAN/KATHRYN BOHAN
[JPJ](#)-1 Timothy J. Walsh

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
8-21-19 [[16](#)]

Tentative Ruling

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

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

First, the Debtor and Joint Debtor failed to appear at the first meeting of creditors set for August 15, 2019. The meeting was continued to August 29, 2019, to allow the Debtor and Joint Debtor another opportunity to appear and be examined. The Debtor and Joint Debtor appeared as required by 11 U.S.C. § 343 and the meeting was concluded as to both individuals.

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

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

Fourth, the Debtors failed to provide the Trustee with declarations from their children demonstrating their willingness and ability to contribute funds to the Debtors totaling \$5,988.00 per month for the life of the plan. Schedule I states that the Debtors' only source of income is the \$5,988.00 contribution from their children.

The plan filed July 16, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

17. [19-23049](#)-B-13 CHRISTOPHER KELSO
[HDR-1](#) Harry D. Roth
Thru #18

OBJECTION TO CLAIM OF 4, CLAIM
NUMBER RESURGENT CAPITAL
SERVICES
7-24-19 [[26](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 4-1 of LVNV Funding LLC c/o Resurgent Capital Services and the claim is disallowed in its entirety.

Christopher Kelso ("Objector") requests that the court disallow the claim of LVNV Funding LLC c/o Resurgent Capital Services ("Creditor"), Claim No. 4-1. The claim is asserted to be in the amount of \$817.33. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about February 15, 2004, which is more than four years prior to the filing of this case. Hence, when the case was filed on May 13, 2019, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

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

The court will enter a minute order.

18. [19-23049](#)-B-13 CHRISTOPHER KELSO
[HDR-2](#) Harry D. Roth

OBJECTION TO CLAIM OF JEFFERSON
CAPITAL SYSTEMS, LLC, CLAIM
NUMBER 3
7-24-19 [[21](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 3-1 of Jefferson Capital

Systems, LLC and the claim is disallowed in its entirety.

Christopher Kelso ("Objector") requests that the court disallow the claim of Jefferson Capital Systems, LLC ("Creditor"), Claim No. 3-1. The claim is asserted to be in the amount of \$1,201.54. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about December 12, 2012, which is more than four years prior to the filing of this case. Hence, when the case was filed on May 13, 2019, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

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

The court will enter a minute order.

19. [19-23553](#)-B-13 SHAWN/HEATHER WHITNEY OBJECTION TO DEBTOR'S CLAIM OF
[LWA](#)-2 John G. Downing EXEMPTIONS
7-26-19 [[28](#)]

Final Ruling

No appearance at the hearing is required. The court entered an order approving the stipulation continuing the matter to September 10, 2019, at 2:00 p.m.

The court will enter a minute order.

20. [17-23854](#)-B-13 TIAJUANNA TOLES
[PGM](#)-4 Peter G. Macaluso

CONTINUED MOTION TO MODIFY PLAN
4-1-19 [[80](#)]

No Ruling

21. [18-23558](#)-B-13 ANDREW/MYRA SINGLETON MOTION TO MODIFY PLAN
[MRL](#)-1 Mikalah R. Liviakis 7-18-19 [[46](#)]

No Ruling

22. [19-22061](#)-B-13 JULIEANNE/RANDY PRICE
[MOH](#)-1 Michael O'Dowd Hays

CONTINUED MOTION TO CONFIRM
PLAN
6-17-19 [[34](#)]

No Ruling

23. [19-23262](#)-B-13 WILLIE CLARENCE III. AND MOTION TO CONFIRM PLAN
FI-[1](#) AMY BURNS 7-23-19 [[24](#)]
Fred A. Ihejirika

No Ruling

24. [19-24464](#)-B-13 ERNESTO MELENDRES AND OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 LINDA AVITIA PLAN BY JAN P. JOHNSON
Thomas O. Gillis 8-21-19 [[17](#)]

Tentative Ruling

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

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

First, the Debtor and Joint Debtor failed to appear at the first meeting of creditors set for August 15, 2019. The meeting was continued to August 29, 2019, to allow the Debtor and Joint Debtor another opportunity to appear and be examined. The Debtor and Joint Debtor appeared as required by 11 U.S.C. § 343 and the meeting was concluded as to both individuals.

Second, the Debtors have failed to fully and accurately provide all information required by the petition, schedules, and Statement of Financial Affairs. Specifically, the Debtors failed to disclose Debtor's \$1,257.00 in gambling winnings and Joint Debtor's \$1,500.00 in gambling winnings on the Statement of Financial Affairs. The plan has not been proposed in good faith as required by 11 U.S.C. § 1325(a)(3) and the Debtors have not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan filed July 16, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

25. [19-23272](#)-B-13 ALLEN FOWLER
[SS-4](#) Scott D. Shumaker

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 1
7-22-19 [[41](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. 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 objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 1-1 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Allen Fowler ("Objector") requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 1-1. The claim is asserted to be in the amount of \$54,436.45. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Creditor's proof of claim, the last payment was received on or about March 19, 2008, which is more than four years prior to the filing of this case. Hence, when the case was filed on May 22, 2019, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

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

The court will enter a minute order.

26. [18-20573](#)-B-13 JANAYA DUKE
[RJ-1](#) Richard L. Jare

MOTION TO MODIFY PLAN
8-7-19 [[25](#)]

Final Ruling

The motion has not 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). Only 34 days' notice was provided. Therefore, the motion to modify plan is denied without prejudice.

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

The court will enter a minute order.

27. [19-24475](#)-B-13 SEVIN PAULL
[JPJ](#)-1 Marc A. Caraska

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
8-21-19 [[15](#)]

Tentative Ruling

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

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

First, the Debtor did not appear at the meeting of creditors set for August 15, 2019, as required pursuant to 11 U.S.C. § 343.

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

Third, 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).

Fourth, the terms for payment of the Debtor's attorney's fees are unclear. The plan states that \$1,500.00 was paid prior to the filing of the petition and \$0.00 will be paid through the plan. The Rights and Responsibilities of the Chapter 13 Debtors and Their Attorneys, Question 16 of the Statement of Financial Affairs, and Disclosure of Compensation all state that the Debtor's attorney was paid \$0.00 prior to the filing of the petition.

The plan filed July 16, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

28. [19-24279](#)-B-13 ROBERT/BRENDA BARNES OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Seth L. Hanson PLAN BY JAN P. JOHNSON
Thru #29 8-21-19 [[22](#)]

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 and confirm the plan.

Feasibility depends on the granting of a motion to value collateral of Wells Fargo Bank, N.A. That motion is granted at Item #29 (DCN SLH-1).

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed July 8, 2019, is confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

29. [19-24279](#)-B-13 ROBERT/BRENDA BARNES MOTION TO VALUE COLLATERAL OF
[SLH](#)-1 Seth L. Hanson WELLS FARGO BANK, N.A.
8-6-19 [[14](#)]

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 Wells Fargo Bank, N.A. at \$9,800.00.

Debtors' motion to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtor Robert Barnes' declaration. Debtors are the owners of a 2007 Toyota Tacoma ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$9,800.00 as of the petition filing date. As the owners, Debtors' 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. 22-1 filed by Wells Fargo Bank N.A., d/b/a Wells Fargo Auto 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 November 10, 2016, based on the attachment to Claim No. 22-1, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$13,589.57. 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 \$9,800.00. 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.

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

The court will enter a minute order.

30. [19-24584](#)-B-13 MONICA LAM
[SC-1](#) Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-13-19 [[18](#)]

BRECKENRIDGE PROPERTY FUND
2016, LLC VS.
DEBTOR DISMISSED: 08/22/2019

Final Ruling

The case having been dismissed on August 22, 2019, the motion for relief from stay is denied as moot.

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

The court will enter a minute order.

31. [19-22488](#)-B-13 BRENDA LEMMA
[JPJ](#)-1 Nikki Farris
Thru #32

CONTINUED MOTION TO CONVERT
CASE FROM CHAPTER 13 TO CHAPTER
7
7-10-19 [[35](#)]

No Ruling

32. [19-22488](#)-B-13 BRENDA LEMMA
[NF-2](#) Nikki Farris

MOTION TO CONFIRM PLAN
7-25-19 [[47](#)]

Tentative Ruling

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

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

The Trustee objects to confirmation of the plan on grounds that the plan contains neither the attorney's original wet signature nor the attorney's electronic signature.

Debtor filed a response stating that the Debtor and her attorney had signed the plan but that the attorney had failed to file the signed copy with the court. The Debtor has filed as an exhibit the signed plan at docket 63.

Provided that the Debtor files an identical plan including the wet signatures by the end of business day on September 11, 2019, as a docketed plan and not an exhibit, the amended plan will be deemed to comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

33. [14-31990](#)-B-13 DEBRA WARD
[AP-1](#) Mark A. Wolff

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY
8-12-19 [[51](#)]

WELLS FARGO BANK, N.A. VS.

Final Ruling

The motion has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the motion at the hearing. The court has also determined that oral argument is not necessary and will not assist in the resolution of the motion. See Local Bankr. R. 9014-1(h). The court therefore issues this decision as a Final Ruling.

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

Wells Fargo Bank, N.A. ("Creditor") seeks relief from the automatic stay with respect to real property commonly known as 12403 Tam O Shanter Lane, Auburn, California (the "Property"). Creditor has provided the Declaration of Rachel Love to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Love Declaration states that there are 20 post-petition payments in default totaling \$38,149.99.

Opposition has been filed by Debra Ward ("Debtor") asserting that relief from the automatic stay is not necessary because Debtor's confirmed plan filed March 15, 2016, and confirmed on April 26, 2016, provides for Creditor to be paid in Class 4. Debtors are correct. See dkts. 35 at 3-4, 41, and 42. In relevant part, § 2.11 of the Debtor's confirmed plan states as follows: "Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." In other words, the relief Creditor requests has already been granted, which means Creditor's present request for relief from the automatic stay is moot. Creditor's motion will therefore be denied.

That said, the Debtor's post-petition default on her direct pay mortgage debt may ultimately affect her ability to obtain a discharge in this Chapter 31 case. See 11 U.S.C. § 1328(a); *Derham-Burke v. Mrdutt (In re Mrdutt)*, 600 B.R. 72, 81-82 (9th Cir. BAP 2019).

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

The court will enter a minute order.

34. [17-25195](#)-B-13 JUSTINO SANCHEZ
[RJ-2](#) Richard L. Jare

MOTION TO MODIFY PLAN
8-7-19 [[44](#)]

Final Ruling

The motion has not 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). Only 34 days' notice was provided. Therefore, the motion to modify plan is denied without prejudice.

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

The court will enter a minute order.

35. [19-24235](#)-B-13 STEVEN/GINA WILLIAMS
[JPJ](#)-1 Chad M. Johnson
See Also #11

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
8-6-19 [[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 overrule the objection, deny the motion to dismiss, and confirm the plan.

Feasibility depends on the granting of a motion to value collateral for Travis Credit Union. That matter is heard at Item #11 (DCN BLG-1) and granted.

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 July 8, 2019, is confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

36. [19-22396](#)-B-13 RUMMY SANDHU
[JPJ](#)-1 Peter G. Macaluso

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

Tentative Ruling

This matter was continued from August 6, 2019, and again from September 3, 2019, to provide the Debtor additional time to cure delinquency in plan payments. The issue regarding feasibility depending on the granting of motions to avoid lien held by American Express and Capital One Bank (USA), N.A. were resolved on August 6, 2019.

The matter will be determined at the scheduled hearing.