

**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 11, 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 11, 2018 at 1:00 p.m.

1. [17-21810](#)-B-13 MONTE KLINKENBORG MOTION TO COMPROMISE
[LBG](#)-1 Mikalah R. Liviakis CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MONTE LEE
KLINKENBORG AND SARA
KLINKENBORG
8-27-18 [[89](#)]

No Ruling

2. [18-24417](#)-B-13 JUAN ANTONIO BENITES AND OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 ALMA LOZANO PLAN BY JAN P. JOHNSON AND/OR
Scott D. Hughes MOTION TO DISMISS CASE
8-23-18 [[13](#)]

Tentative Ruling

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

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

Debtors have failed to amend Schedules I, J, E/F, and the Creditor Matrix to list their two children and two grandchildren that reside with them, the payroll deductions from Joint Debtor's gross income, contributions they receive from their 19-year-old child, and the Internal Revenue Service as a creditor. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

The plan filed July 16, 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.

U.S. BANK, N.A. VS.

Tentative Ruling

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

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

U.S. Bank National Association as legal title trustee for Truman 2016 SC6 Title Trust ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1900 E Street, Rio Linda, California (the "Property"). Movant has provided the Declaration of Alejandro Lopez to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Declaration states that Movant is the legal owner of the property acquiring title at a trustee's foreclosure sale held February 13, 2018. Exh. 1, dkt. 17. An unlawful detainer action was filed in state court on April 5, 2018, and an unlawful detainer judgment against Debtor's non-filing spouse Yelena Markevich and all occupants was entered on July 18, 2018. Exh. 4, dkt. 17. A writ of possession was issued on July 18, 2018. Exh. 5, dkt. 17. Debtor filed for chapter 13 relief on August 8, 2018.

Additionally, Movant seeks relief under § 362(d)(4) due to Debtor's and Debtor's non-filing spouse's multiple prior bankruptcy filings:

Debtor's Prior Bankruptcy Filings - Eastern District of California

- Chapter 7 case no. 11-33551; filed 5/31/11 and dismissed 7/29/11
- Chapter 13 case no. 11-45876; filed 10/31/11 and dismissed 2/24/12
- Chapter 13 case no. 13-24017; filed 3/25/13 and dismissed 6/6/13
- present case filed 8/06/18

Yelena Markevich Bankruptcy Filings - Eastern District of California

- Chapter 13 case no. 11-41768; filed 9/08/11 and dismissed on 9/26/11
- Chapter 7 case no. 12-26036; filed 3/28/12 and case closed without discharge
- Chapter 13 case no. 14-30434; filed 10/22/14 and dismissed 12/22/14
- Chapter 13 case no. 18-20792; filed 2/13/18 and dismissed 4/23/18

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant has provided a properly authenticated/certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Exh. 1, dkt. 17. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief.

Finally, the court will grant relief under section 362(d)(4). Between the Debtor and Debtor's spouse, they have filed bankruptcy a total of eight (8) times. Movant contends that *in rem* relief pursuant to § 362(d)(4) is necessary and appropriate so that Movant can take possession of its property and its efforts to take possession will not be thwarted by the Debtor's non-filing spouse or anyone acting by or on behalf of the Debtor. The court finds that the Debtor's multiple bankruptcy filings were part of a scheme to delay, hinder, or defraud creditors from exercising their rights against the Property.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property.

Although requested by Movant, the 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

Attorneys' Fees Requested

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

No other or additional relief is granted by the court.

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

4. [18-24433](#)-B-13 THEODORE/LORI RAMIREZ
[JPJ](#)-1 Julius J. Cherry

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

Tentative Ruling

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

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

First, feasibility of the plan depends on the granting of a motion to value collateral of Wells Fargo Bank, N.A. To date, the Debtors have not filed, served, or set for hearing a valuation motion pursuant to Local Bankr. R. 3015-1(j).

Second, Debtors have not filed signed declarations from all family members stating their willingness and ability to contribute during the life of the plan as requested by the Trustee. See *In re Deutsch*, 529 B.R. 308 (Bankr. C.D. Cal. 2017). The Debtors have not complied with 11 U.S.C. § 521(a)(3).

The plan filed July 16, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). Nevertheless, the court notes that on September 5, 2018, the Debtors filed a motion to value the collateral of Wells Fargo Bank, N.A., dkt. 21, which is set for hearing on October 23, 2018, at 1:00 p.m. Therefore, the court will continue the confirmation hearing to October 23, 2018, so that the plan may be considered in conjunction with the motion to value. If the motion is granted, the appropriate declarations are filed, and the Debtors are current on plan payments, the plan may be confirmed. Otherwise, the objection will be sustained, the motion to dismiss conditionally denied, the plan not confirmed, and the Debtors given 60 days thereafter to confirm a plan, in the absence of which the case may be dismissed on the Trustee's ex parte application.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER CONTINUING THIS MATTER TO OCTOBER 23, 2018, AT 1:00 P.M. WITHIN SEVEN (7) DAYS.

5. [17-22634](#)-B-13 RANDY RICHARDSON AND CONTINUED MOTION TO CONVERT
[JPJ](#)-1 JACQUELYN CASE AND/OR MOTION TO DISMISS
Thru #7 W. Steven Shumway CASE
3-30-18 [[86](#)]

Final Ruling

CONTINUED TO 10/16/18 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTORS' MOTION TO CONFIRM THIRD MODIFIED PLAN.

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

6. [17-22634](#)-B-13 RANDY RICHARDSON AND MOTION TO APPROVE LOAN
[WSS](#)-7 JACQUELYN MODIFICATION
W. Steven Shumway 7-24-18 [[113](#)]

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 permit the loan modification requested.

Debtors seek court approval to incur post-petition credit. Selene Finance, LP, as attorney in fact for Wilmington Savings Fund Society, FSB, doing business as Christiana Trust, not in its individual capacity, but solely as trustee for BCAT 2015-14BTTUS ("Creditor"), whose claim the plan filed September 5, 2018, provides for in Class 4, has agreed to a loan modification that will bring the loan current, add the past due interest and escrow advances to the balance of Debtors' loan, and re-amortize the loan over 40 years at a fixed interest rate of 4.50%. The Debtors' new principal, interest, taxes, and insurance payment will be \$1,105.67 per month. This is a reduction from \$1,352.00 per month that Debtors paid under the terms of the plan filed August 17, 2017, and confirmed on October 21, 2017.

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

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtors' 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 DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

7. [17-22634](#)-B-13 RANDY RICHARDSON AND MOTION TO MODIFY PLAN
[WSS](#)-8 JACQUELYN 7-24-18 [[118](#)]
W. Steven Shumway

Final Ruling

The Debtors having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

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

8. [13-23840](#)-B-13 TROY NELSON
[JAD](#)-2 Jessica A. Dorn

MOTION TO DETERMINE FINAL CURE
AND MORTGAGE PAYMENT RULE
3002.1
7-27-18 [[46](#)]

No Ruling

Tentative Ruling

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

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

The motion seeks permission to purchase real property as a primary residence commonly known as 4444 Dolores Drive, Woodland, California. Debtors state that they have been pre-approved for a loan amount of \$435,000.00. The mortgage loan is a 30-year fixed rate loan with interest at 4.875% and monthly payments of \$2,950.00.

Chapter 13 Trustee Jan Johnson opposes the motion on grounds that the Debtors have failed to file amended Schedules I and J or other evidence of their ability to pay the new mortgage amount in addition to the monthly plan payments of \$1,455.00 through February 2019 and then \$1,705.00 from March 2019 through the remaining duration of the plan. According to Debtors' Schedule J filed March 31, 2015, their monthly expense for rent was \$1,875.00. The new mortgage payment of \$2,950.00 is \$1,075.00 higher than their previous rent expense. Debtors' motion states only that they are employed with the same companies but gives no indication of any increase in income, and the Debtors state they will adjust their expenses without specifying which expenses will be adjusted and the amount of those adjustments.

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).

The court finds that the proposed credit is not reasonable. Debtors provide no evidence of their ability to pay the monthly mortgage payment that is substantially higher than their monthly rent expense. Therefore, the motion is denied without prejudice.

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

10. [18-24346](#)-B-13 MIKE/DEBORAH ARROYO
[JPJ](#)-1 Ashley R. Amerio

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-23-18 [[13](#)]

Tentative Ruling

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

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

The Chapter 13 Trustee objects to confirmation on grounds that Joint Debtor's new salary provides an increase in Debtors' monthly disposable income and that the monthly disposable income is or should be \$604.51.

Debtors filed a response acknowledging that Joint Debtor obtained a new job post-petition but disagree as to the amount of Debtors' monthly disposable income. Debtors argue that the increase in income came about one month after the filing of the bankruptcy case and that the Debtors have not yet experienced a full month with the increase in income. Because of this, Debtors request that the plan payment for month 1 be set at the original amount of \$400.00. Debtors also contend that the increase in monthly disposable income for months 2-60 should not be \$604.51 as stated by the Trustee but rather higher at \$639.00. Debtors propose to add the below language in the order confirming:

Notwithstanding the terms of the Chapter 13 Plan filed on July 11, 2018, the monthly plan payments outlined in Section 2.01 of the Chapter 13 Plan shall be (i) \$400.00 per month for Month 1, and (ii) \$639.00 per month for Months 2 - 60. Debtors shall remit any federal and state tax refunds (if any) to the Chapter 13 trustee within 60-days of receipt thereof.

Provided that this language is included in the order confirming, the plan filed July 11, 2018, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection will be overruled, the motion to dismiss will be denied, and the plan will be confirmed.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER OVERRULING THE OBJECTION AND DENYING THE MOTION TO DISMISS WITHOUT PREJUDICE WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

11. [18-23154](#)-B-13 JAIME GUEVARA MOTION TO CONFIRM PLAN
[JMM](#)-1 Jeffrey M. Meisner 7-27-18 [[20](#)]
Thru #12

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.

12. [18-23154](#)-B-13 JAIME GUEVARA OBJECTION TO CLAIM OF
[JMM](#)-2 Jeffrey M. Meisner DEPARTMENT OF TREASURY -
INTERNAL REVENUE SERVICE, CLAIM
NUMBER 3
7-27-18 [[25](#)]

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 objection to Claim No. 3-1 of the Internal Revenue Service and disallow the claim in its entirety.

Jaime Guevara ("Objector") requests that the court disallow the claim of the Internal Revenue Service ("IRS"), Claim No. 3-1. The claim is asserted to be priority in the amount of \$7,992.00. Objector asserts that the claim should be disallowed because he was a victim of identity theft. Objector states that the IRS Claim is based on unreported income of an individual unknown to Debtor who was employed in the construction industry in Texas during the 2016 tax year and used Debtor's social security number without his knowledge, authorization, or consent. Debtor contends that neither he nor his wife have ever lived or worked in the State of Texas. During 2016 tax year, Debtor and his spouse filed their 2016 California state and federal tax returns reflecting Debtor's full-time W-2 wages from his employment with the State of

California. Debtor states that his prior residence in Colorado was burglarized in December 2006 and that he filed a police report on December 29, 2006, listing his personal income tax return as one of the items stolen. On or about May 25, 2018, Debtor submitted an identity theft affidavit with the IRS and the IRS acknowledged receipt of the Debtor's IRS dispute on or about July 3, 2018.

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the Objector has provided evidence of probative force equal to that of the IRS's proof of claim. Objector has submitted as exhibits his 2016 tax return, a police report with the Aurora Police Department of Aurora, Colorado, an identity theft affidavit to the IRS, and the IRS acknowledgment letter of receipt. Objector has satisfied its burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety. The objection to the proof of claim is sustained.

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

13. [14-30557](#)-B-13 NIKOLAY/LILIYA DROBKOV MOTION TO APPROVE LOAN
[RMP](#)-1 Mark Shmorgon MODIFICATION
8-15-18 [[49](#)]

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.

Federal National Mortgage Association c/o Seterus, Inc. ("Movant") requests an order approving the loan modification agreement entered into with Debtors. The modification will reduce Debtors' interest rate on their home from 6.875% to 4.625% fixed. Monthly mortgage payments will increase slightly from \$1,707.29 to \$1,709.83 (principal and interest of \$1,263.67 and escrow of \$446.16). Movant asserts that the loan modification will assist Debtors in making the payments due under the deed of trust, will cure arrearages, and will allow Debtors to keep their property and continue with their Chapter 13 reorganization.

The motion is supported by the Declaration of Renee M. Parker, counsel of record for Movant. The Declaration acknowledges the Debtors' economic hardship and affirms Debtors' desire to obtain the post-petition financing.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtors' 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 DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

14. [17-27762](#)-B-13 RICHARD MYHRE CONTINUED MOTION TO CONVERT
[JPJ](#)-2 Pro Se CASE AND/OR MOTION TO DISMISS
Thru #15 CASE
5-8-18 [[62](#)]

Final Ruling

The case having been dismissed on September 4, 2018, the motion to convert case to a Chapter 7 or in the alternative dismiss case is dismissed as moot.

THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.

15. [17-27762](#)-B-13 RICHARD MYHRE MOTION TO MODIFY PLAN
[JPJ](#)-2 Pro Se 7-10-18 [[74](#)]

Final Ruling

The case having been dismissed on September 4, 2018, the motion to modify plan is dismissed as moot.

THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.

16. [18-24368](#)-B-13 LASONJA PORTER OBJECTION TO CONFIRMATION OF
[BDA](#)-1 Julius J. Cherry PLAN BY EXETER FINANCE, LLC
Thru #17 8-23-18 [[19](#)]

Tentative Ruling

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

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

Objecting creditor Exeter Finance, LLC holds a security interest in a 2013 Nissan Sentra Sedan 4D S I4 ("Vehicle"). The Vehicle was purchased on February 21, 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. 3-1. The creditor has filed a timely proof of claim in which it asserts \$1,076.28 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 July 12, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is denied, and the plan is not confirmed.

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

17. [18-24368](#)-B-13 LASONJA PORTER OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Julius J. Cherry PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-23-18 [[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, Section 7.05 of the Nonstandard Provisions of Debtor's plan is confusing and appears to unfairly discriminating among unsecured creditors in violation of 11 U.S.C. § 1322(b)(1). Debtor's attorney agreed that this language is confusing and should be stricken.

Second, the Debtor has failed to amend the Statement of Financials Affairs, question #9, and provide a copy of her current business license as requested by the Trustee at the first meeting of creditors. The Debtor has failed to comply with 11 U.S.C. § 521(a)(3).

The plan filed July 12, 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.

18. [18-24576](#)-B-13 ALAIN KOZIK AND JON BECK OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Pauldeep Bains PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-23-18 [[13](#)]

No Ruling

19. [18-24377](#)-B-13 PETE GARCIA
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
8-23-18 [[26](#)]

Final Ruling

MATTER CONTINUED TO 9/25/18 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF
CREDITORS SET FOR 9/20/18.

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

20. [17-25090](#)-B-13 MARTHA RAMIREZ
[PGM](#)-5 Peter G. Macaluso

OBJECTION TO CLAIM OF CITIBANK,
N.A., CLAIM NUMBER 6
7-25-18 [[104](#)]

Final Ruling

MATTER CONTINUED TO 9/25/18 AT 1:00 P.M.

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

21. [17-23125](#)-B-13 ANTHONY/GRACE MAGNESI
[MS-1](#) Mark Shmorgon

CONTINUED MOTION TO INCUR DEBT
8-12-18 [[20](#)]

No Ruling

22. [18-21193](#)-B-13 FERNANDO ROJAS
[RJ-2](#) Richard L. Jare

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

No Ruling

23. [18-24097](#)-B-13 PETER CASILLAS
[JPJ](#)-2 Peter G. Macaluso

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
8-9-18 [[22](#)]

No Ruling