

**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 COVER SHEET

DAY: TUESDAY

DATE: October 20, 2020

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

October 20, 2020 at 1:00 p.m.

1. [17-20401](#)-B-13 ROBERTO SAMPERA MOTION TO MODIFY PLAN
[JCK](#)-6 Gregory J. Smith 9-2-20 [[79](#)]

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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

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

The motion is ORDERED GRANTED for reasons stated in 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 issue an order.

October 20, 2020 at 1:00 p.m.

2. [20-24202](#)-B-13 EVERLENA JONES
[SS-1](#) Scott D. Shumaker

MOTION TO VALUE COLLATERAL OF
U.S. BANK, NATIONAL ASSOCIATION
10-6-20 [[20](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to value the secured claim of U.S. Bank, National Association at \$0.00.

Debtor moves to value the secured claim of second deed of trust holder U.S. Bank, National Association ("Creditor") pursuant to 11 U.S.C. § 506(a). Debtor is the owner of the subject real property commonly known as 2453 Belair Street, Stockton, California ("Property"). Debtor seeks to value the Property at a fair market value of \$225,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as 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. No proof of claim has been filed by Creditor for the claim to be valued. Claim 1-1 filed by U.S. Bank, N.A., successor trustee of Select Portfolio Servicing, Inc., is the first deed of trust holder and not the Creditor whose interest is at issue here.

Discussion

The first deed of trust secures a claim with a balance of approximately \$262,351.79. Creditor's second deed of trust secures a claim with a balance of approximately \$39,000.00. 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.

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

The court will issue an order.

3. [20-20610](#)-B-13 JOSHUA/AMANDA GOMEZ
[JCK](#)-3 Gregory J. Smith

MOTION TO MODIFY PLAN
9-3-20 [[43](#)]

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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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.

The motion is ORDERED GRANTED for reasons stated in the minutes. 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 issue an order.

4. [19-22519](#)-B-13 CURTIS/BIANCA PERNICE MOTION TO MODIFY PLAN
[JCK](#)-4 Gregory J. Smith 9-3-20 [[74](#)]

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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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.

The motion is ORDERED GRANTED for reasons stated in the minutes. 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 issue an order.

5. [20-23741](#)-B-13 ARNOLD GIULIERI OBJECTION TO CONFIRMATION OF
[ASW](#)-1 Pro Se PLAN BY BUDGET FUNDING I, LLC
Thru #6 9-29-20 [[29](#)]

Final 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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to sustain the objection and deny confirmation of the plan for reasons stated at Item #6, RDG-1.

The plan filed August 13, 2020, 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 minutes.

The court will issue an order.

6. [20-23741](#)-B-13 ARNOLD GIULIERI OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Pro Se PLAN BY RUSSELL D. GREER
9-24-20 [[23](#)]

Final 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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

First, the Debtor has not filed a certificate of completion from an approved nonprofit budget and credit counseling agency. The Debtor has not complied with 11 U.S.C. § 521(b)(1) and is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h).

Second, the plan is not feasible under 11 U.S.C. § 1325(a)(6). Debtor's Schedule I and

J show a monthly net income of -\$2,301.09, plan payments will need to be at least \$6,271.00 to be feasible as proposed paying unsecured creditors 100% plus the federal judgment interest rate of 0.15%, Section 3.07 of the plan fails to state an arrearage dividend to pay the Class 1 creditor arrears or approximately \$50,000 at an annual interest rate of 10.45%, and the plan does not provide for the Claim 2-1 of the Franchise Tax Board.

Third, the housing expense listed on Schedule J is inappropriate.

Fourth, 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 or a written statement that no such documentation exists. The Debtor has not complied with 11 U.S.C. § 521(e) (2) (A) (I).

Fifth, 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 August 13, 2020, 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 minutes.

The court will issue an order.

7. [20-23544](#)-B-13 CIPRIANO SULAMO
[RDG](#)-1 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
9-14-20 [[32](#)]

Final Ruling

The objection has been set for hearing on at least 28-days the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the 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 has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to overrule the objection.

The Chapter 13 Trustee objects to the Debtor's use of the California § 704.730 to claim an exemption of \$100,000.00 in property located at 920 J Street, Sacramento, California. That section provides an exemption for a homestead. The property at J Street is not Debtor's residence.

Debtor filed a response stating the property at J Street is his residence and has filed an amended voluntary petition to reflect this. The address used when Debtor originally filed his petition was that of his mother's where he had been receiving mail since becoming separated from his former wife.

The Trustee's objection is overruled and the claimed exemption is allowed.

The objection is ORDERED OVERRULED and the claimed exemption ALLOWED for reasons stated in the minutes.

The court will issue an order.

8. [20-22147](#)-B-13 ZARAH GARCIA
[JCK](#)-4 Gregory J. Smith

MOTION TO ALLOW ACQUISITION OF
2011 FREIGHTLINER
9-14-20 [[56](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion to allow acquisition of a 2011 Freightliner.

The motion seeks permission to purchase a 2011 Freightliner, in lieu of a prior lease, between Zarah Garcia ("Debtor") and Transport Direct ("Creditor"). Debtor, who is now a full-time employee trucker, seeks the flexibility of being an owner/operator going forward and the ability to increase her income. The parties agree to Creditor being paid \$352.00 for months July and August 2020, and thereafter being provided for in the plan as a Class 2 creditor with an amount claimed at \$18,666.00 and 5.00% interest. This is a slight deviation from the amounts listed in the first amended plan's Nonstandard Provisions, Section 7.04. See dkt. 45. Confirmation of the Debtor's first amended plan is heard at Item #8, JCK-2. Debtor contends that this agreement will not be detrimental to Class 7 claimants as the original Chapter 13 Plan listed a dividend of 0.00% for general unsecured creditors.

Discussion

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 Debtor filed a purchase agreement as Exhibit A, docket 59. The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

The court will issue an order.

9. [19-25659](#)-B-13 KATHY KENOLY
[JCK](#)-6 Gregory J. Smith

MOTION TO MODIFY PLAN
9-2-20 [[72](#)]

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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

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

The motion is ORDERED GRANTED for reasons stated in 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 issue an order.

10. [19-24171](#)-B-13 DAVID GONZALES AND
MC-1 MELISSA LEMA
Muoi Chea

MOTION TO MODIFY PLAN
9-13-20 [[39](#)]

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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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.

The motion is ORDERED GRANTED for reasons stated in the minutes. 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 issue an order.

11. [19-24371](#)-B-13 SHAWNTE/MONIQUE
[WLG](#)-1 LIVINGSTON
Nicholas Wajda

MOTION TO MODIFY PLAN
9-14-20 [[25](#)]

Final Ruling

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

Debtors' plan is not feasible under 11 U.S.C. §1325(a)(6). The Nonstandard Provisions of Debtors' plan proposes to suspend payments in months 11 through 12 (June 2020 through July 2020) to all claims in paragraph 3.07 and 3.08 of the plan. This includes all Class 1 and Class 2 claims. Trustee is unable to retroactively administer this provision of Debtors' plan as these creditors have already received disbursements in June 2020 and July 2020.

Separately, Debtors filed a declaration on September 29, 2020, stating that a copy of a modified plan is filed as an exhibit. The Debtors also state in the declaration that the plan is extended to 62 months. There is no plan filed that shows a 62-month duration and, even if there was, Debtors provide no explanation or supporting case law for why the court should extend the plan beyond 60 months.

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

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

The court will issue an order.

12. [20-20071](#)-B-13 KIM WALKER
[PLG](#)-4 Rabin J. Pournazarian

MOTION TO APPROVE LOAN
MODIFICATION
10-6-20 [[71](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to grant the motion to approve loan modification.

Debtor seeks court approval to incur post-petition credit. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 1, has agreed to a loan modification that will reduce Debtor's mortgage payment from the current \$2,405.00 a month to \$2,264.07 a month. In addition to a reduction in monthly mortgage payment, the modification agreement will cure the default and add any outstanding arrears to the modified principal loan balance. The Debtor is current on her plan payments.

The motion is supported by the Declaration of Kim L. Walker. 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.

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

The court will issue an order.

13. [20-23782](#)-B-13 LAWRENCE/JENNY BOLDON
[EAT](#)-1 Brian S. Haddix
Thru #15

OBJECTION TO CONFIRMATION OF
PLAN BY AJAX MORTGAGE LOAN
TRUST 2018-C
9-28-20 [[46](#)]

Final 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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

Objecting creditor AJAX Mortgage Loan Trust 2018-C holds a deed of trust secured by the Debtor's residence. The creditor has filed timely proof of claim 23-1 in which it asserts \$17,216.12 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) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed August 2, 2020, 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 minutes.

The court will issue an order.

14. [20-23782](#)-B-13 LAWRENCE/JENNY BOLDON
[KMM](#)-1 Brian S. Haddix

OBJECTION TO CONFIRMATION OF
PLAN BY HARLEY-DAVIDSON CREDIT
CORP.
9-1-20 [[31](#)]

Final 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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion.

See Local Bankr. R. 9014-1(h), 1001-1(f).

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

Objecting creditor Harley-Davidson Credit Corp. objects to confirmation to the extent that it incorrectly sets forth the amount of its secured claim as being \$10,262.11 when it is in fact \$15,649.13 based on proof of claim 10-1. The creditor's objection is sustained.

The plan filed August 2, 2020, 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 minutes.

The court will issue an order.

15. [20-23782](#)-B-13 LAWRENCE/JENNY BOLDON OBJECTION TO CONFIRMATION OF
[RDG-1](#) Brian S. Haddix PLAN BY RUSSELL D. GREER
9-28-20 [[42](#)]

Final 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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

First, the plan is not feasible pursuant to 11 U.S.C. § 1325(a)(6). Debtors' proposed monthly plan payments of \$2,170.00 is insufficient.

Second, the monthly dividend proposed for Class 2 claim of Ally Financial must be increased to pay the claim in full at 5.25% interest within Debtor's 60-month plan term.

Third, the monthly dividend proposed for Class 2 claim of Harley Davidson Credit Corp. must be increased to pay the claim in full at 5.25% interest within Debtor's 60-month plan term.

Fourth, the monthly dividend proposed for Class 2 claim of OneMain Financial Group LLC must be increased to pay the claim in full at 5.25% interest within Debtor's 60-month plan term.

Fifth, the plan relies on a motion to value collateral of Synchrony Bank/Kawasaki. This was denied on October 13, 2020.

Sixth, the plan does not provide for the secured claim 6-1 of Quantum3-Aqua Finance Secured Claim.

The plan filed August 2, 2020, 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 minutes.

The court will issue an order.

16. [20-23784](#)-B-13 MARK/TRACY WEBSTER
[AP-1](#) Mark J. Hannon

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
8-31-20 [[15](#)]

Final 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.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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 timely proof of claim 9-1 in which it asserts \$16,519.77 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) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed August 3, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.¹

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

The court will issue an order.

¹The court's docket shows an amended plan filed on September 25, 2020, and a confirmation hearing set for October 20, 2020, at 10:30 a.m. in Modesto, California. Debtors' attorney did not submit an amended notice of hearing to correct the hearing time and courtroom location as required per docket 26. Therefore, that amended plan and associated oppositions and responses are not considered by the court.

17. [20-20387](#)-B-13 PABLO/TERESA CHAGOYA
[RDG-2](#) Charles L. Hastings

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
9-14-20 [[53](#)]

Final Ruling

The objection has been set for hearing on at least 28-days the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the 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 has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to sustain the objection.

The Chapter 13 Trustee objects to the Debtor's use of the California § 704.010 to claim an exemption of \$500.00 in a 1983 Seaswirl boat. That section exempts interest in a motor vehicle and therefore the Debtors' use of that code section is inappropriate.

Debtors filed a response stating that they have remedied the Trustee's objection by filing amended Schedules A/B. See dkt. 48. However, the Debtors have not filed an amended Schedule C, which is where exemptions are claimed.

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

The objection is ORDERED SUSTAINED and the claimed exemption DISALLOWED for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

Creditor Wilmington Savings Fund Society, FSB ("Creditor"), is the holder of a lien on the real property described as 1012 Douglas Road, Stockton, California. Creditor's claim is provided for in Class 1 and in Section 7 Nonstandard Provisions of the proposed modified plan.

Creditor objects to confirmation of the plan on grounds that Debtors' income is speculative and because the Creditor will receive delayed pre- and post-petition arrearage payments. The modified plan proposes to begin pre-petition arrearage payments in October 2021 (which is 13 months into the plan) and post-petition arrearage payments in February 2021 (which is 5 months into the plan).

Debtors respond stating that their income is not speculative. Debtor works for a construction company that consistently offers him overtime hours that exceed what is described in Schedule I. Joint Debtor makes at least \$600.00 net per month in sales but she can also make more, and Schedule I shows just an average. Furthermore, in the unlikely event that Joint Debtor's income decreases, Debtor can work more overtime since he can work up to 12-hour shifts per day and up to 6 days per week.

With regard to the delayed pre- and post-petition arrearage payments, Debtors contend that this is permitted pursuant to *In re Blevins*, 2006 Bankr. LEXIS 2422 (Bankr. E.D. Cal. 2006). The *Blevins*' bankruptcy court held that the phrase "equal monthly amounts" in § 1325(a)(5)(B) did not require that the equal payments be made over the life of the plan, but only required that payments, whenever such payments commenced or concluded, be in equal monthly amounts. *Id.* at 6.

Furthermore, the bankruptcy court in *In re Lee*, 2007 Bankr. LEXIS 3993 (Bankr. E.D. Cal. 2007), adopted the reasoning in *In re Blevins* that the Bankruptcy Code does not require payments to begin in the first month of the plan, only that they be in equal monthly payments. *In re Lee*, 2007 Bankr. LEXIS 3993, at *2.

Nevertheless, the court agrees with Creditor that, under the facts of this case, the Debtors' proposed cure of pre- and post-petition arrears is not reasonable as § 1322(b)(5) requires with regard to the cure payments. See *In re Hence*, 358 B.R. 294, 303 (Bankr. S.D. Tex. 2006) ("Virtually all authorities agree that a bankruptcy court exercises its discretion in light of each case's unique facts to determine whether a given plan's cure terms are 'reasonable' within § 1322(b)(5)'s meaning."). A two-year delay in payment of any pre-petition arrears, i.e., the non-payment of pre-petition arrears from the inception of the case forward, and a nearly six-month delay in the payment of post-petition arrears, i.e., payments that were supposed to be ongoing monthly mortgage payments so that attorney's fees may be paid first, is, in this

court's view, not reasonable as § 1322(b)(5) requires. Therefore, the modified plan fails on that basis.¹

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

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

¹That also creates another problem for the Debtors. To the extent that § 1322(b)(5) excepts reasonable cure payments from the anti-modification provision of § 1322(b)(2), and to the extent the court has determined the proposed cure of pre- and post-petition arrears in this case is not reasonable, it would appear that the modified plan also violates § 1322(b)(2).