

**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: November 6, 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

November 6, 2018 at 1:00 p.m.

-
1. [18-25801](#)-B-13 ROBERT/TRINITY KIRK AMENDED OBJECTION TO
Thru #2 Bruce Charles Dwiggins CONFIRMATION OF PLAN BY HOME
POINT FINANCIAL CORPORATION
10-18-18 [[25](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 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. LBR 9014-1(f)(2)(C). No written reply has been filed to the objection.

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

Objecting creditor Home Point Financial Corporation ("Creditor") holds a deed of trust secured by the residence of debtors Robert and Trinity Kirk ("Debtors"). Creditor has filed a timely proof of claim in which it asserts \$13,346.14 in pre-petition arrearages. POC 3, p. 2. The plan only proposes to cure \$9,000.00 in arrears to Creditor as a Class 1 claim, with dividends of \$150.00 per month over 60 months. Dkt. 8, p. 3. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

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

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

2. [18-25801](#)-B-13 ROBERT/TRINITY KIRK MOTION FOR RELIEF FROM
[PPR](#)-1 Bruce Charles Dwiggins AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
10-4-18 [[15](#)]

NASA FEDERAL CREDIT UNION
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

November 6, 2018 at 1:00 p.m.

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 grant the motion for relief from stay.

NASA Federal Credit Union, the moving creditor ("Movant"), seeks relief from the automatic stay with respect to an asset identified as a 2007 Toyota Tacoma, VIN 5TELU42N37Z439754 (the "Vehicle"). The moving party has provided the Declaration of Barry Henry, an employee of Movant, to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Henry Declaration provides testimony that there are 6 pre-petition payments in default, with a pre-petition arrearage of \$1,595.10. Dkt. 17, ¶ 11. Movant does not allege that there are post-petition payments in default, but notes that Movant's claim is being proposed as a Class 3 claim satisfied by the surrender of collateral in the debtor's proposed plan filed September 13, 2018. Dkt. 8, § 3.09. The Henry Declaration did not provide testimony that the document attached to the declaration as Exhibit E is authentic, nor did the motion provide a basis for considering the hearsay statements in that document. FED. R. EVID. 801, 901.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$8,272.21, as stated in the Henry Declaration, while the value of the Vehicle is determined to be \$8,000.00, as stated in Schedules A/B and D filed by Debtor. Compare dkt. 17, ¶ 9, and dkt. 1, p. 14.

Discussion

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). No opposition or showing having been made by the Debtor or the Trustee, and the Debtor having proposed a Chapter 13 plan that surrenders the Vehicle, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow NASA Federal Credit Union, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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

3. [18-25410](#)-B-13 NEAL/LOURDES BASSETT
[JPJ](#)-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
10-10-18 [[13](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 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. LBR 9014-1(f)(2)(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 filed by debtors Neal and Lourdes Bassett ("Debtors") depends on the court granting motions to value the claims of Santander Consumer USA and First Credit Union. To date, Debtors have not filed, served, or set for hearing these valuation motions pursuant to Local Bankruptcy Rule 3015-1(i).

Second, Jan Johnson, the chapter 13 trustee ("Trustee"), requested that Debtors amend their Schedule J because the current plan payments of \$2,630.00 per month are not feasible compared to the \$1,982.59 shown on Debtors' current Schedule J. A review of the court's docket shows no amended schedules have been filed, so Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed August 28, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

4. [17-25411](#)-B-13 JAMES/LILLIE JOHNSON CONTINUED MOTION TO CONVERT
[JPJ](#)-1 Mary Ellen Terranella CASE FROM CHAPTER 13 TO CHAPTER
[Thru #6](#) 7, MOTION TO DISMISS CASE
8-29-18 [[42](#)]

No Ruling

5. [17-25411](#)-B-13 JAMES/LILLIE JOHNSON MOTION TO MODIFY PLAN
[MET](#)-2 Mary Ellen Terranella 9-25-18 [[48](#)]

No Ruling

6. [17-25411](#)-B-13 JAMES/LILLIE JOHNSON MOTION TO APPROVE LOAN
[MET](#)-3 Mary Ellen Terranella MODIFICATION
9-25-18 [[57](#)]

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 for the trial period of October 2018 through December 2018.

Debtors James and Lillie Johnson ("Debtors") seek court approval to incur post-petition credit. Deutsche Bank National Trust Company, through its loan servicer Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification that will reduce Debtors' mortgage payment from the current \$1,914.59 a month to \$1,541.54 a month. The loan modification is only for a trial period that covers payments for October 2018 through December 2018. Once the trial period payments are completed, Debtors foresee filing a motion to approve a Final Loan Modification for the court's approval. Dkt. 57.

The motion is supported by Debtors' Declaration. Dkt. 59. 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 Debtor's 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 for the trial period of October 2018 through December 2018.

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

7. [18-25314](#)-B-13 JON DAILEY
[JPJ](#)-1 Nicholas Wajda

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-10-18 [[15](#)]

No Ruling

8. [18-25617](#)-B-13 JOSE/JACQUELINE SEGURA
[JPJ](#)-1 Thomas O. Gillis

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
10-17-18 [[26](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 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. LBR 9014-1(f)(2)(C). Debtors filed a statement of non-opposition.

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

Jan Johnson, the Chapter 13 Trustee ("Trustee"), objects to confirmation because real property owned by debtors Jose and Jacqueline Segura ("Debtors"), commonly known as 95 Ledger Lane, Oroville, CA 95965, is undervalued. Trustee states that his preliminary investigation shows the property was worth \$70,000.00 in a 2013 sale, and may be worth \$140,000.00 currently. Debtors only placed a value of \$45,555.00 on their Schedule A/B. Trustee asserts that the actual value leaves non-exempt equity of \$73,841.64 to be distributed to general unsecured creditors, including 8% costs of sale, while the proposed plan provides \$0.00. Trustee requested further information from Debtors on valuation, but have not received anything to date. Thus, Debtors failed to comply with 11 U.S.C. § 521(a)(3), and the plan does not satisfy the "best interest of creditors" test under § 1325(a)(4).

Debtors filed a statement of non-opposition on October 30, 2018, which states that Debtors will file an amended plan to address these issues. Dkt. 35.

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

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

9. [18-25321](#)-B-13 VICTORIA BOONE
[AP-1](#) Stanley P. Berman
Thru #10 OBJECTION TO CONFIRMATION OF
PLAN BY WILMINGTON SAVINGS FUND
SOCIETY, FSB
10-11-18 [[28](#)]

Final Ruling

The court's decision is to dismiss this matter as moot, as the case was dismissed on October 30, 2018. Dkt. 32.

THE COURT WILL PREPARE A MINUTE ORDER.

10. [18-25321](#)-B-13 VICTORIA BOONE
[JPJ-1](#) Stanley P. Berman
OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
10-10-18 [[24](#)]

Final Ruling

The court's decision is to dismiss this matter as moot, as the case was dismissed on October 30, 2018. Dkt. 32.

THE COURT WILL PREPARE A MINUTE ORDER.

11. [13-30722](#)-B-13 CRAIG/CARLA EDWARDS
[KWS](#)-1 Kyle W. Schumacher

MOTION FOR WAIVER OF THE
CERTIFICATION REQUIREMENTS FOR
ENTRY OF DISCHARGE, MOTION FOR
EXEMPTION FROM FINANCIAL
MANAGEMENT COURSE AND/OR MOTION
TO CONTINUE ADMINISTRATION OF A
CASE UNDER CHAPTER 13
10-5-18 [[40](#)]

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 grant the motion for waiver of the financial management course requirement and certification requirement as to co-debtor Carla Jean Edwards, and continue administration of the case.

Debtors' Motion

Debtors Craig and Carla Edwards ("Craig" or "Carla" individually, or "Debtors" collectively) filed a petition for Chapter 13 relief on August 15, 2013. Dkt. 1. A plan was confirmed on October 23, 2018. Dkt. 33. Co-debtor Craig filed his Certificate of Debtor Education on July 26, 2018, and an 11 U.S.C. § 1328 Certificate on September 21, 2018. Dkts. 36, 39. On October 5, 2018, co-debtor Craig filed a Notice of Death of co-debtor Carla, who passed on June 15, 2017. Dkt. 43, Exh. A. Craig also filed a motion to waive the requirements of 11 U.S.C. § 1328 and for continued administration of the case. Dkt. 40.

Discussion

An overview of the relevant authority is warranted in this case.

11 U.S.C. § 1328(g)(1) requires a debtor seeking an order of discharge to file a certificate showing completion of a personal financial management course. However, this does not apply "with respect to a debtor who is a person described in section 109(h)(4) [.]"

11 U.S.C. § 109(h)(4) provides as follows:

The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and 'disability' means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

Federal Rule of Bankruptcy Procedure 1016 states, in relevant part:

If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

See also *Hawkins v. Eads*, 135 B.R. 380, fn. 3 (in regards to an adversary proceeding, "[a]lthough Rule 1016 is silent on the point, effective implementation of the rule necessitates a conclusion that all parties in interest have a *duty* to inform the court of the fact of death. It would be appropriate for a party to borrow from Rule 25 and file a suggestion of death on the record and ask that the court notice a hearing on the question of whether to dismiss or to proceed with the case.").

Local Bankruptcy Rule 1016-1(a) requires counsel for the debtor, or the party to be appointed as the representative or successor of the deceased debtor, to file a Notice of Death within 60 days of the death of the debtor. Subpart (a) references Federal Rule of Civil Procedure 25 and Federal Rule of Bankruptcy Procedure 7025. In reference to whether dismissal is mandatory, the Ninth Circuit has noted:

Rule 25(a)(1) uses the phrase "must be dismissed," but does not specify whether the dismissal "must" be with prejudice. Defendants insist that "must be dismissed" always means with prejudice, so the district court abused its discretion in permitting Zanowick to dodge the Rule 25 bullet through voluntary dismissal. Unfortunately for defendants, the "history of Rule 25(a) and Rule 6(b) makes it clear that the 90 day time period was not intended to act as a bar to otherwise meritorious actions, and extensions of the period may be liberally granted." *Cont'l Bank, N.A. v. Meyer*, 10 F.3d 1293, 1297 (7th Cir. 1993) (citation omitted); see also *United States v. Miller Bros. Constr. Co.*, 505 F.2d 1031, 1035 (10th Cir. 1974) (stating that under Rule 25, a "discretionary extension should be liberally granted absent a showing of bad faith on the part of the movant for substitution or undue prejudice to other parties to the action"); 7C Charles Alan Wright et al., *Federal Practice and Procedure* § 1955 (3d ed. 2017) ("Dismissal is not mandatory, despite the use of the word 'must' in the amended rule.").

Zanowick v. Baxter Healthcare Corp., 850 F.3d 1090, 1094 (9th Cir. 2017) (internal citations omitted).

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

- 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [Fed. R. Civ. P. 25(a), (b); Fed. R. Bankr. P. 1004.1 & 7025];
- 2) Continued administration of a case under chapter 11, 12, or 13 [Fed. R. Bankr. P. 1016];
- 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
- 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328].

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or

successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court makes two inferences to support granting the relief requested. First, the court infers that co-debtor Craig, the spouse of co-debtor Carla, is requesting to substitute as the representative or successor to co-debtor Carla as allowed by Local Bankruptcy Rule 1016-1(b)(1). Second, the court assumes that Carla did not complete the post-petition education requirement before her death on June 15, 2017, which justifies Craig's request for the waiver of the post-petition education requirement and the requirement to file a certificate for a discharge pursuant to subparts (b)(3) and (4). Making these inferences from the evidence submitted, and despite the notice of death being filed and served on the parties 487 days after Carla's date of death (dkt. 43, Exh. A, # 7), the court grants the relief requested. The continued administration of this case is in the best interests of all parties based on all plan payments being completed no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

The court will enter an order providing as follows:

1. Co-debtor Craig Allan Edwards, as a representative or successor to Carla Jean Edwards, will substitute as a party to this case and represent her interests;
2. The court will continue to administer the case under Chapter 13;
3. The requirement of filing a certificate of post-petition education prior to entry of an order granting discharge for Carla is waived; and
4. The requirement that co-debtor Carla file an 11 U.S.C § 1328 Certificate is waived.

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

12. [18-25527](#)-B-13 MARCIA SCHILLER
[JPJ](#)-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
10-10-18 [[20](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 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. LBR 9014-1(f)(2)(C). No written reply has been filed to the objection.

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

First, debtor Marcia Schiller ("Debtor") is delinquent to Jan Johnson, the Chapter 13 Trustee ("Trustee"), in the amount of \$327.00, which represents approximately 1 plan payment. Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, Debtor did not appear at the Meeting of Creditors on October 4, 2018, as required by 11 U.S.C. § 343. However, Trustee filed a report on November 1, 2018, which states that the continued Meeting of Creditors was held, Debtor appeared with counsel, and the meeting was concluded, thus resolving this objection.

Third, Trustee estimates that there is \$18,608.66 in non-exempt property, while Debtor's plan only proposes to pay \$12,226.59 to general unsecured creditors. Thus, the plan does not comply with 11 U.S.C. § 1325(a)(4).

Fourth, the plan payment in the amount of \$327.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The plan does not comply with Section 5.2 of the mandatory form plan.

The plan filed August 31, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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.

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.

14. [18-25236](#)-B-13 VICTORIA JIMENEZ
[JPJ](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-10-18 [[21](#)]

No Ruling

15. [17-21139](#)-B-13 ELIZABETH EIDE
[RAS](#)-1 Pauldeep Bains

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
9-5-18 [[59](#)]

CHAMPION MORTGAGE COMPANY
VS.

No Ruling

16. [18-26240](#)-B-13 ROSA FERREIRA MOTION TO AVOID LIEN OF
[TLA](#)-1 Thomas L. Amberg DISCOVER BANK
[Thru #17](#) 10-5-18 [[11](#)]

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 grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Discover Bank ("Creditor") against debtor Rosa Ferreira's ("Debtor's") real property commonly known as 16910 Mattie Street, Esparto, California 95627 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$18,012.79. An abstract of judgment was recorded with Yolo County on April 6, 2009, which encumbers the Property. All other liens recorded against the Property total \$243,378.73.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$264,930.00 as of the date of the petition. Dkt. 1, p. 11. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$75,000.00 on Schedule C. *Id.* at p. 17.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided in its entirety subject to 11 U.S.C. § 349(b)(1)(B).

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

17. [18-26240](#)-B-13 ROSA FERREIRA MOTION TO AVOID LIEN OF
[TLA](#)-2 Thomas L. Amberg AMERICAN EXPRESS BANK, FSB
10-5-18 [[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 grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of American Express Bank, FSB ("Creditor") against debtor Rosa Ferreira's ("Debtor's") real property commonly known as 16910 Mattie Street, Esparto, California 95627 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$40,624.73. An abstract of judgment was recorded with Yolo County on May 10, 2010, which encumbers the Property. All other liens recorded against the Property total \$220,766.79.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$264,930.00 as of the date of the petition. Dkt. 1, p. 11. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$75,000.00 on Schedule C. *Id.* at p. 17.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided in its entirety subject to 11 U.S.C. § 349(b)(1)(B).

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

18. [18-25455](#)-B-13 GWENDOLYN/HORACE SIMPSON OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Peter G. Macaluso PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-10-18 [[17](#)]

No Ruling

19. [18-23472](#)-B-13 JERIMIAH CANNADAY
[WSS](#)-2 W. Steven Shumway

MOTION TO CONFIRM PLAN
9-18-18 [[41](#)]

Final Ruling

This matter is dismissed as moot, as the case was dismissed on October 24, 2018. Dkts. 58, 59.

THE COURT WILL PREPARE A MINUTE ORDER.

20. [18-24576](#)-B-13 ALAIN KOZIK AND JON BECK MOTION TO CONFIRM PLAN
[PSB](#)-1 Pauldeep Bains 9-25-18 [[22](#)]

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. Debtors Alain Kozik and Jon Beck ("Debtors") have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

21. [18-25377](#)-B-13 ROSA PELAYO
[JPJ](#)-1 Peter G. Macaluso
Thru #22

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-10-18 [[18](#)]

No Ruling

22. [18-25377](#)-B-13 ROSA PELAYO
[PGM](#)-1 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF
CITIZENS ONE AUTO FINANCE
10-6-18 [[13](#)]

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 Citizens One Auto Finance at \$15,000.00.

Debtor Rosa Pelayo's ("Debtor's") motion to value the secured claim of Citizens One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Nissan Pathfinder ("Vehicle"). Dkt. 15, ¶ 2. The Debtor seeks to value the Vehicle at a replacement value of \$15,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No 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.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on February 10, 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 \$27,123.38. Dkt. 1, p. 20, ln. 2.1. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$15,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

23. [18-25780](#)-B-13 TIFFANY MILLER
[MMM](#)-1 Mohammad M. Mokkarram

MOTION TO VALUE COLLATERAL OF
CONSUMER PORTFOLIO SERVICES,
INC.
10-19-18 [[16](#)]

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. Consumer Portfolio Services, Inc. Filed an opposition on November 2, 2018. If any other 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 further opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to value the secured claim of Consumer Portfolio Services, Inc. at \$15,615.00.

Debtor's Motion to Value

Debtor Tiffany Miller ("Debtor") filed a motion to value the secured claim of Consumer Portfolio Services, Inc. ("Creditor"), which is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Ford Fusion ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$12,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See FED. R. EVID. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor's Opposition

Creditor filed an opposition on November 2, 2018. Dkt. 20.

Creditor presents a Kelley Blue Book Quick Values Report ("KBB report") for the Vehicle under the "market report" exception to the hearsay rule. FED. R. EVID. 803(17); dkt. 20, p. 3; dkt. 22, Exh. C. The declaration of Jaiden Stewart was filed to authenticate the KBB report. Dkt. 21, ¶ 5. Based on the KBB report, Creditor asserts the Vehicle has a replacement value of \$15,615.00 after accounting for the mileage reported by Debtor and optional features included with the Vehicle.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2 filed by Consumer Portfolio Svc 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 January 31, 2016 (POC 2, part 4, p. 1), which is more than 910 days prior to filing of the petition on September 12, 2018 (dkt. 1), to secure a debt owed to Creditor with a balance of approximately \$25,845.11. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. Based on the evidence presented by both parties, Creditor's secured claim is determined to be in the amount of \$15,615.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

24. [18-25185](#)-B-13 KIM CLARK
[JPJ](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-10-18 [[23](#)]

No Ruling

25. [18-25385](#)-B-13 VILIAMI/PATRICIA FONUA
[JPJ](#)-1 Mohammad M. Mokkarram

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
10-10-18 [[12](#)]

WITHDRAWN BY M.P.

Tentative Ruling

Jan Johnson, the Chapter 13 Trustee ("Trustee"), having filed a notice of withdrawal of its objection and motion, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041.

Despite the Trustee withdrawing his objection, the plan is not confirmable as it does not comply with 11 U.S.C. §§ 1322 and 1325. See *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367, 1380-1 (2010) (explaining that bankruptcy courts have an obligation to review a chapter 13 plan to ensure that it complies with all applicable provisions of the Bankruptcy Code).

The court's review of the plan filed August 27, 2018 ("Plan"), reveals at least three concerns. First, the proof of claim filed by the Franchise Tax Board ("FTB") does not claim a secured or priority unsecured debt owed. POC 3. This contradicts the Plan, which proposes to pay FTB \$284.62 per month starting in month 10, for a total of \$3,700.00 as a Class 2 secured claim. Dkt. 4, p. 4, Class 2(A)(2). Thus, the Plan does not comply with 11 U.S.C. § 1322(a)(3) & (b)(1).

Second, the proof of claim filed by the Internal Revenue Service ("IRS") asserts a secured claim of \$12,341.00, a priority claim of \$78,538.87, and a general unsecured claim of \$261,170.87. POC 1. This contradicts with the Plan which proposes to pay IRS \$284.62 per month starting in month 10, for a total of \$3,700.00 as a Class 2 secured claim, and up to \$265,000.00 as a priority unsecured claim. Dkt. 4, p. 4, Class 2(A)(3), and p. 5, Class 6. Therefore, the Plan does not comply with 11 U.S.C. § 1325(a)(1).

Third, the Plan proposes to pay \$265,000.00 of priority claims, of which IRS holds \$78,538.87. Taken on its own, the IRS is entitled to payment in full for the priority unsecured portion of its debt over the 60 month commitment period, which results in payments of \$1,308.98 just to the IRS. However, the plan only proposes payments of \$1,100.00 for 12 months, then payments of \$1,300.00 for the remaining 48 months. Dkt. 4, p. 7, Section 7. Debtors did not present evidence that IRS consented to less than full payment, and Debtors are not proposing a plan that surrenders property in satisfaction of IRS's claim. Thus, the plan does not comply with 11 U.S.C. §§ 1322(a)(2) & (4) and 1325(a)(6).

On these grounds, while the Trustee's objection is overruled without prejudice as moot based on his voluntary withdrawal, the plan is not confirmable for the reasons stated above. Because the plan is not confirmable, Debtors will be given a further opportunity to confirm a plan. But, if 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 be cause for dismissal. If Debtors have not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

THE COURT WILL PREPARE A MINUTE ORDER.

26. [18-23191](#)-B-13 MELINDA MARTINEZ
[JPJ](#)-3 Peter L. Cianchetta

MOTION TO CONVERT CASE TO
CHAPTER 7 AND/OR MOTION TO
DISMISS CASE
9-28-18 [[54](#)]

Final Ruling

The motions have 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 matters will be resolved without oral argument.

The court's decision is to grant the motion to convert and deny the motion to dismiss as moot.

Trustee's Motion to Dismiss and/or Convert

Jan Johnson, the Chapter 13 Trustee ("Trustee"), filed the motion to convert and/or dismiss this case for two reasons. First, debtor Melinda Martinez ("Debtor") is delinquent approximately 1 plan payment of \$2,181.52. Second, Debtor's motion to confirm an amended plan was denied August 14, 2018, and Debtor has not filed, served, and set a new amended plan for hearing. Dkt. 48.

Discussion

Questions of conversion or dismissal must be dealt with through a two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

A review of the Debtor's filed schedules shows that there is likely the following non-exempt equity:

<u>Property</u>	<u>FMV (Am. Sch. A/B)</u>	<u>Secured Claims (Sch. D)</u>	<u>Exemptions (Am. Sch. C)</u>	<u>Non-Exempt Equity</u>
-----------------	---------------------------	--------------------------------	--------------------------------	--------------------------

8364 Cutler Way, Sacramento, CA 95828	\$280,000.00	\$229,298.00	\$50,702.00	\$0.00
Bank Account ending in 4739	\$4,145.43	\$0.00	\$0.00	\$4,145.43
Bank Account ending in 4558	\$7,592.18	\$0.00	\$0.00	\$7,592.18
Two Vanguard 401(k) Accounts	\$28,524.17	\$0.00	\$28,524.17	\$0.00
AAA House Fire Claim	\$50,000.00	\$0.00	\$0.00	\$50,000
Total				\$61,737.61

Dkts. 13 (Sch. D), 42 (Am. Schs. A/B, C).

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c) because Debtor is delinquent by 1 plan payment and has diligently prosecuted this case. Conversion is in the best interests of creditors because it will allow distribution of any non-exempt equity by a Chapter 7 trustee. The motion to convert is granted, the case is converted to a case under Chapter 7, and the motion to dismiss is denied without prejudice as moot.

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

27. [18-21994](#)-B-13 ALVIN CATLIN
[LBG](#)-201 Lucas B. Garcia

MOTION TO CONFIRM PLAN
9-26-18 [[63](#)]

No Ruling

28. [18-25599](#)-B-13 RICHARD/RACHEL ALLEN
[AP-1](#) Pro Se
Thru #29

OBJECTION TO CONFIRMATION OF
PLAN BY PNC BANK, N.A.
10-18-18 [[18](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 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. LBR 9014-1(f)(2)(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, creditor PNC Bank, N.A. ("Creditor") argues that the plan filed September 4, 2018 ("Plan") does not distribute the allowed amount of Creditor's secured claim. Creditor filed Proof of Claim No. 4 asserting a secured interest in real property with a balance of \$197,241.84 with 4.25% fixed interest per annum, and a pre-petition arrearage of \$19,118.49. Creditor asserts its claim will mature June 1, 2057, which is beyond the 60 month period of the Plan. However, the Plan mis-classifies Creditor's claim as a Class 2 claim, proposes to pay only \$178,000.00 over the course of the Plan, and does not propose to cure the arrears owed. In addition, the Plan proposes monthly dividends of only \$1,200.00 per month, which would distribute only \$72,000.00 over the 60 month commitment period. Thus, the Plan does not comply with 11 U.S.C. § 1325(a)(5)(B)(II).

Second, Creditor argues that the Plan improperly modifies its rights as the holder of a secured claim in real property that is the debtor's principal residence. The Plan would require Creditor to accept only \$72,000.00 over 60 months, then to release its lien at the end of the Plan term. Thus, the Plan does not comply with 11 U.S.C. § 1322(b)(2).

Third, Creditor argues that the interest provided on its claim through the Plan is insufficient. However, Creditor only proposes to present expert testimony on the appropriate interest rate, and does not state what interest rate is appropriate compared to the 4.25% fixed rate in its proof of claim.

The court takes judicial notice of the prime rate of interest as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., November 2, 2018, http://online.wsj.com/mdc/public/page/mdc_bonds.html. The current prime rate is 5.25%. Here, the plan proposes a 0% interest rate.

Fourth, Creditor objects to confirmation because the Plan is not feasible. Debtors filed Schedule I that relies on income from two businesses. However, the Debtors failed to provide a detailed statement of business income as required by Official Form 106I. Dkt. 1, p. 32, ln. 8a. Thus, Debtors have not met their burden to establish that the Plan is feasible as required by 11 U.S.C. § 1325(a)(6).

The plan filed September 4, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

29. [18-25599](#)-B-13 RICHARD/RACHEL ALLEN
[JPJ-1](#) Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
10-17-18 [[15](#)]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See LBR 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. LBR 9014-1(f)(2)(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, debtors Richard and Rachel Allen ("Debtors") did not appear at the Meeting of Creditors on October 11, 2018, as required pursuant to 11 U.S.C. § 343.

Second, Jan Johnson, the Chapter 13 Trustee ("Trustee") requested a completed business examination checklist, income tax returns for the two-years prior to filing the petition, six months of bank account statements, proof of insurance, and proof of licenses and permits from debtor Richard Allen's business, Richard Allen Construction. These same documents were requested for debtor Rachel Allen's business, Affordable Events. No evidence was submitted to show that Debtors provided these documents to Trustee. Thus, Debtors have not complied with 11 U.S.C. § 521.

Third, Trustee argues the claim of PNC Bank Mortgage Services is mis-classified as a Class 2 creditor because its claim will not mature until June 1, 2057, which is after the proposed plan will be completed. Thus, the Plan does not comply with 11 U.S.C. § 1325(a)(6).

Fourth, Trustee argues that the monthly dividend to Class 2A creditor Wells Fargo Home Mortgage ("Creditor") is too low to complete the plan within 60 months. Based on the \$43,000.00 claim filed by Creditor, the proposed \$400.00 dividend per month will take 107.5 months to satisfy this claim. Thus, the plan does not comply with the commitment periods required by 11 U.S.C. §§ 1322(d) and 1325(b)(4).

The plan filed September 4, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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