

**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: November 23, 2021**

**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

**November 23, 2021 at 1:00 p.m.**

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1.	<u>21-23220</u> -B-13	HARDEEP SINGH	OBJECTION TO CONFIRMATION OF
	<u>RDG</u> -1	David C. Johnston	PLAN BY RUSSELL D. GREER
			10-29-21 [ <u>19</u> ]

CONTINUED TO 12/07/2021 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 12/01/2021.

**Final Ruling**

No appearance at the November 23, 2021, hearing is required. The court will issue an order.

**November 23, 2021 at 1:00 p.m.**

2. 11-24723-B-13 DANIEL/KELLY CABRAL  
MM-1 Michael S. Martin

MOTION TO COMPROMISE  
CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH BAYER ESSURE,  
INC.  
10-21-21 [148]

### **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 deny without prejudice the motion to compromise.

Debtors request that the court approve a compromise and settle competing claims and defenses with Bayer Essure, Inc. ("Bayer"). Joint Debtor previously had surgery utilizing Essure permanent birth control manufactured by Bayer. As a result of the Essure implant, Joint Debtor suffered physical damages and was part of a products liability case against Bayer. On February 25, 2011, Debtors filed the instant chapter 13 bankruptcy and they received a discharge on July 11, 2016. In January 2021, Joint Debtor signed a settlement acceptance letter in response to a settlement master's award letter, and received email confirmation stating that Joint Debtor was entitled to receive a gross recovery of \$45,000.00, and a net recovery of \$23,400.00 after deducting attorney's fees and judicial council coordination fees. Joint Debtor states that the settlement and release agreement is confidential, but that she can file or provide it to the court if required.

Joint Debtor and Bayer have resolved these claims and disputes, subject to approval by the court on terms and conditions summarized at *dk. 159*, *exhs. A, B*.

### **Discussion**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Although Debtors reference the four factors in their motion, they do not provide any analysis.

Additionally, without a copy of the settlement and release agreement, the court is unable to "articulate the factual basis for its ruling, without relying on hypothesis or conjecture." *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172,

1181 (9th Cir. 2006). Courts have long recognized a "general right to inspect and copy public records and documents, including judicial records and documents." *Id.* at 1178 (quoting *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978)). Nevertheless, this access to judicial records is not absolute. *Kamakana*, 447 F.3d at 1178. The court has recognized a category of documents that is not subject to the right of public access because the documents have "traditionally been kept secret for important policy reasons." *Times Mirror Co. v. United States*, 873 F.2d 1210, 1219 (9th Cir. 1989). However, where documents such as those presented here are accompanying a motion for resolution of disputes on the merits that "is at the heart of the interest in ensuring the public's understanding of the judicial process and of significant public events[,] compelling reasons must be shown to seal[.]" *Kamakana*, 447 F.3d at 1179 (internal quotations omitted). The Debtors have not articulated a compelling reason to keep the settlement and release agreement confidential, and the court is unable to determine whether the compromise is in the best interest of creditors and the estate. Therefore, the motion to compromise is denied without prejudice.

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

The court will issue an order.

3. 21-23226-B-13 ALICIA YASSIN  
RDG-1 David C. Johnston

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
10-29-21 [26]

CONTINUED TO 12/07/2021 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF  
CREDITORS SET FOR 12/01/2021.

**Final Ruling**

No appearance at the November 23, 2021, hearing is required. The court will issue an  
order.

4. 21-23144-B-13 RUPERTO IDEMNE AND  
EMM-1 JOSEPHINE MOMBAY  
Thru #5 W. Steven Shumway  
OBJECTION TO CONFIRMATION OF  
PLAN BY NEUBERGER BERMAN  
INVESTMENT ADVISERS LLC  
11-3-21 [22]

#### **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 the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). 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). This matter will therefore be decided on the papers.

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

Objecting creditor Neuberger Berman Investment Advisers LLC - Indiana Gen Invest Trust holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts \$88,434.88 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 full payment of the arrearage and 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 September 2, 2021, 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.

5. 21-23144-B-13 RUPERTO IDEMNE AND  
RDG-1 JOSEPHINE MOMBAY  
W. Steven Shumway  
OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
11-1-21 [18]

#### **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 the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). 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). This matter will therefore be decided on the papers.

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

First, the Disclosure of Compensation of Attorney for Debtor at Line 6 states that the agreed upon fee of \$4,000.00 does not include judicial lien avoidances and relief from stay actions. This is contradictory to the Rights and Responsibilities signed by

Debtors. These services are included in the "No Look Fee" and should not be excluded. It is also a direct violation of Local Bankr. R. 2017-1(a)(1) which states that "[a]n attorney who is retained to represent a debtor in a bankruptcy case constitutes an appearance for all purposes in the case, including, without limitation, motions for relief from the automatic stay, motions to avoid liens[.]"

Second, the plan provides for total priority claims in the amount of \$1.00. The Internal Revenue Service has filed a Claim No. 8-1, 8-2, with a priority claim amount of \$120,398.87. Debtors' plan does not provide for the priority claim filed and accordingly fails to comply with 11 U.S.C. §1322(a)(2).

Third, Debtors' ability to make the plan payment of \$5,687.00 per month is contingent upon rents received in the amount of \$5,000.00 as indicated on Debtors' Schedule I. Debtors have failed to file declarations from Erwin Mombay, Kayla Idemne, and Charisse Idemne confirming the rental income paid to Debtors. The plan may not be feasible pursuant to 11 U.S.C. §1325(a)(6).

Fourth, the plan does not provide for all of Debtors' projected disposable income for the applicable commitment period under 11 U.S.C. § 1325(b). The Debtors have not included income earned from short-term rent through Airbnb, Debtor's pension or retirement income, and household support received from Debtors' family. Until the schedules have been amended to accurately reflect Debtors' current monthly income, it cannot be determined whether Debtor's projected disposable income to unsecured creditors is in accordance with 11 U.S.C. § 1325(b).

The plan filed September 2, 2021, 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. 13-25246-B-13 CORNELIUS/GLENDA MOTION TO VALUE COLLATERAL OF  
TAR-1 WESTBROOK NEW CENTURY MORTGAGE  
Chinonye Ugorji CORPORATION/HSBC MORTGAGE  
11-5-21 [131]

### **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 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). This matter will therefore be decided on the papers.

The court's decision is to deny without prejudice the motion to value collateral.

Debtors have filed a motion to value collateral of New Century Mortgage Corporation/HSBC Mortgage ("Creditor"). The motion relates to the court's order dated July 9, 2013, that granted Debtors' motion to value Creditor's claim, secured by a second deed of trust, at \$0.00 and completely under-collateralized. See dkt. 44. Debtors thereafter filed a notice of opportunity for hearing on final order, which was denied without prejudice on October 19, 2021. See dkt. 127.

The declarations and proof of service filed in support of the motion suggest that Debtors actually intend to avoid Creditor's lien rather than value its collateral. A debtor who seeks to avoid a second deed of trust in a Chapter 13 bankruptcy must file an adversary proceeding. Fed. R. Bankr. P. 7001(2). A creditor's lien is not void on the basis of whether it is secured under § 506(a), but on the basis of whether the underlying claim is allowed or disallowed. 4 COLLIER ON BANKRUPTCY 506.06[1][a] (Alan N. Resnick & Henry J. Sommer eds., 16th Ed.). See *Dewsnup v. Timm*, 502 U.S. 410, 417-18 (1992). The Creditor's deed of trust remains of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the Creditor will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(I).

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

The court will issue an order.



7. 20-25153-B-13 MICHAEL/JOLENE YATES  
CLH-4 Charles L. Hastings

CONTINUED MOTION TO CONFIRM  
PLAN  
7-6-21 [88]

**Final Ruling**

No appearance is necessary. The court entered an order on November 17, 2021, dkt. 134, resolving the motion to confirm and vacating the hearing scheduled for November 23, 2021, at 1:00 p.m.

The court will issue an order.

8. 16-25055-B-13 HANK WALTH  
HWW-11 Hank W. Walth

MOTION TO MODIFY PLAN  
10-14-21 [146]

WITHDRAWN BY M.P.

**Final Ruling**

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

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

The court will issue an order.

9. 21-22666-B-13 MELISSA BELONG MOTION TO CONFIRM PLAN  
RK-1 Richard Kwun 10-6-21 [20]

**Thru #10**

**Final Ruling**

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

The court has 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). This matter will therefore be decided on the papers.

The court's decision is to not confirm the plan.

The Chapter 13 Trustee objects to confirmation on grounds that feasibility depends on the sustaining of an objection to claim of Synchrony Bank, Claim No. 16, RK-1, and additional attorney's fees of \$27.72 being listed at Section 3.06 of the plan. The objection to claim is overruled at Item #10, RK-1, notwithstanding that the Debtor is amenable to the inclusion of a monthly dividend of \$27.72 at Section 3.06. The plan is not feasible. 11 U.S.C. 1325(a)(6).

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

The court will issue an order.

10. 21-22666-B-13 MELISSA BELONG OBJECTION TO CLAIM OF SYNCHRONY  
RK-1 Richard Kwun BANK, CLAIM NUMBER 16  
10-6-21 [26]

**Final Ruling**

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 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 overrule without prejudice the objection to Claim No. 16-1 of Synchrony Bank.

Debtor requests that the court disallow the claim of Synchrony Bank ("Creditor"), Claim No. 16-1. Creditor is a federally-insured depository institution. See <https://banks.data.fdic.gov/bankfind-suite/bankfind/details/27314>. Subject to certain exceptions not applicable here, that means it must be served by certified mail to the attention of an officer (and only an officer) of the institution. See Fed. R. Bankr. P. 7004(h). According to the proof of service, Creditor was served by first class mail and service was to the attention of a "bankruptcy department." See dkt. 30. Creditor was also not served at the additional address expressly requested by its agent. See dkt. 10. Service is therefore defective and the objection will be overruled without prejudice to being re-filed and properly served.

The objection is ORDERED OVERRULED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

11. 21-23068-B-13 SAUL/MARIA CABRALES  
APN-1 Kathleen H. Crist  
Thru #13

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY U.S.  
BANK NATIONAL ASSOCIATION  
10-12-21 [19]

**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). A written reply has been filed to the objection.

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). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and not confirm the plan.

Feasibility depends on the court sustaining the Objection to Claim of U.S. Bank National Association, Claim No. 1, JCK-1. That objection is overruled at Item #12, JCK-1. As a result, the plan does not satisfy 11 U.S.C. § 1325(a)(6).

The court is aware that in Debtors' response filed October 20, 2021, Debtors state that if their objection to claim is overruled, then the plan is confirmable provided that plan payment is \$225 for one month, \$680 for October 2021, and \$1,044 for the remaining 58 months since Debtor now has disability pay and Joint Debtor is now employed by Amazon. Additionally, all Class 7 general unsecured claims will be paid 100% plus interest at the Federal Judgment Rate of 0.07% since the value of Debtors' nonexempt assets exceeds the amount of general unsecured claims. Debtors state that these modifications are to be provided in an order confirming. However, these are significant modifications not appropriate for a confirmation order.

The plan filed August 30, 2021, 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.

12. 21-23068-B-13 SAUL/MARIA CABRALES  
JCK-1 Kathleen H. Crist

OBJECTION TO CLAIM OF U.S. BANK  
NATIONAL ASSOCIATION, CLAIM  
NUMBER 1  
10-13-21 [15]

**Final Ruling**

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, the claimant is not required to file written opposition to the objection.

The court has 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). This matter will therefore be decided on the papers.

The court's decision is to overrule the objection to Claim No. 1-1 of U.S. Bank National Association.

Debtors requests that the court disallow the claim of U.S. Bank National Association

("Creditor"), Claim No. 1-1. The claim is asserted to be secured in the amount of \$45,377.91 and that the amount necessary to cure any default as of the date of the petition is \$28,077.10. Debtors and Creditor had entered into a home equity line of credit agreement in September 2005 that provided Debtors with an original loan amount of \$70,000.00.

Debtors state in their objection and supplemental objection that their plan provides for Creditor in the amount of \$30,000.00, and that this amount is fair and reasonable given that they received a Debt Validation Notice listing a default amount of \$28,577.13. See dkt. 15, p. 3, para. 4. Debtors further state that they had filed for chapter 7 relief in January 2011, received a discharge in May 2011, and never received any correspondence or contact from Creditor until they learned that a foreclosure process had started in 2021.

## **Discussion**

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

The court finds that Debtors have not presented a substantial and factual basis to overcome the prima facie validity of the proof of claim. Debtors argue that providing Creditors with \$30,000.00 through the plan is reasonable because it is already "over inclusive" when the Debt Validation Notice listed a default amount of \$28,577.13. However, that same notice<sup>1</sup> also states that "[t]he amount will increase daily until the debt has been paid in full." Debtors provide no explanation as to why the interest rate is unreasonable. Thus, there is insufficient evidence to overcome the presumptive validity of the claim. Local Bankr. R. 3007-1(a) ("A mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim."). The Debtors have also failed to demonstrate how Creditor's mortgage summary attached to its proof of claim defeats the claim's prima facie validity. See *Heath v American Express Travel Related Svc. Co., (In re Heath)*, 313 B.R. 424, 432-433 (9th Cir. BAP 2005).

Based on the evidence before the court, the Creditor's claim is not disallowed.

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

The court will issue an order.

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<sup>1</sup>The court notes that only page 1 of the Debt Validation Notice was filed and not the entire notice.

13. 21-23068-B-13 SAUL/MARIA CABRALES  
RDG-1 Kathleen H. Crist

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY RUSSELL  
D. GREER  
10-14-21 [26]

**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). A written reply has been filed to the objection.

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). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and not confirm the plan.

Feasibility depends on the court sustaining the Objection to Claim of U.S. Bank National Association, Claim No. 1, JCK-1. That objection is overruled at Item #12, JCK-1. As a result, the plan does not satisfy 11 U.S.C. § 1325(a)(6).

The court is aware that in Debtors' response filed October 20, 2021, Debtors state that if their objection to claim is overruled, then the plan is confirmable provided that plan payment is \$225 for one month, \$680 for October 2021, and \$1,044 for the remaining 58 months since Debtor now has disability pay and Joint Debtor is now employed by Amazon. Additionally, all Class 7 general unsecured claims will be paid 100% plus interest at the Federal Judgment Rate of 0.07% since the value of Debtors' nonexempt assets exceeds the amount of general unsecured claims. Debtors state that these modifications are to be provided in an order confirming. However, these are significant modifications not appropriate for a confirmation order.

The plan filed August 30, 2021, 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. 19-20973-B-13 ALBERT/MARY HAYNES  
JGL-2 Jennifer G. Lee

MOTION TO MODIFY PLAN  
10-8-21 [46]

**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 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). This matter will therefore be decided on the papers.

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

Debtors' plan does not provide for the correct amount of pre-petition arrears and post-petition ongoing mortgage payment owed to Wilmington Savings Funds Society FSB ("Creditor"), as successor in interest to Wells Fargo Home Mortgage, which is provided for in Class 1 and Section 7 Nonstandard Provisions. The plan also does not clearly state whether Debtors intend to enter into a trial loan modification with Creditor effective December 1, 2021, through February 1, 2022, in the amount of \$2,067.17 per month. The Debtors have not yet signed in writing the trial loan modification agreement.

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.