

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

**December 16, 2015 at 10:00 a.m.**

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1.     [10-37001](#)-B-13   DUANE/MAUREEN MORLAN                   ORDER TO SHOW CAUSE - FAILURE  
                          Thomas B. Hjerpe                       TO PAY FEES  
  11-18-15 [[104](#)]

**Final Ruling:** No appearance at the December 16, 2015, hearing is required.

The Order to Show Cause was served by the Clerk of the Court on the Debtors, Trustee, and other parties in interest as stated on the Certificate of Service on December 18, 2015.

The court's tentative decision is to sustain the Order to Show Cause and order the below-referenced pleading stricken.

The Order to Show Cause was issued due to Wells Fargo Bank, N.A.'s failure to pay \$25.00 for filing docket 99 Transfer of Claim from ACS to Wells Fargo Education Financial Services. Payment has still not been made pursuant to 28 U.S.C. § 1930(b).

The court shall enter an appropriate civil minute order consistent with this ruling.

**December 16, 2015 at 10:00 a.m.**

2.     [15-28906](#)-B-13   SHELLY CLARK  
                              Scott J. Sagaria

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-30-15 [[10](#)]

**Final Ruling:** No appearance at the December 16, 2015, hearing is required.

The Order to Show Cause will be discharged and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$310.00 for filing a petition on November 16, 2015. The court's docket reflects that the default was cured on December 1, 2015.

The court shall enter an appropriate civil minute order consistent with this ruling.

3. [15-28207](#)-B-13 DAVID/DEANNA TIBBETT  
JPJ-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-24-15 [[25](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the plan payment in the amount of \$655.00 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 aggregate of the monthly amounts plus the Trustee's fee is \$666.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, due in part to the fact that the plan payment does not equal the aggregate amount of the monthly dividends, the plan will take approximately 93 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Third, feasibility depends on the granting of a motion to value collateral of JP Morgan Chase Bank for the 2nd deed of trust on the Debtors' residence. The court entered a minute order on December 4, 2015, granting the motion to value.

For the first and second reasons stated above, the plan filed October 21, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate civil minute order consistent with this ruling.

4. [15-27614](#)-B-13 STEPHEN/SANDRA DEGUIRE MOTION TO CONFIRM PLAN  
MF-1 Reno F.R. Fernandez 11-6-15 [[24](#)]

**Add Item #5**

**Final Ruling:** No appearance at the December 16, 2015, hearing is required.

CONTINUED TO 1/06/16 AT 10:00 A.M.

5.     [15-27615](#)-B-13   COREY DEGUIRE                   MOTION TO CONFIRM PLAN  
MF-1                 Reno F.R. Fernandez           11-6-15 [[25](#)]

**Final Ruling:** No appearance at the December 16, 2015, hearing is required.

CONTINUED TO 1/06/16 AT 10:00 A.M.

6. [14-31324](#)-B-13 WILLIAM ROBERTS AND OBJECTION TO CLAIM OF FRANCHISE  
JPJ-1 ROXANNE WHITE TAX BOARD, CLAIM NUMBER 13  
Scott J. Sagaria 10-27-15 [[36](#)]

**Final Ruling:** No appearance at the December 16, 2015, hearing is required.

The Trustee's Objection to Allowance of Claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim Number 13 of Franchise Tax Board, as filed by the Debtor's attorney Scott J. Sagaria, and disallow the claim in its entirety.

Jan P. Johnson ("Objector"), requests that the court disallow the claim of Franchise Tax Board, as filed by the Debtor's attorney Scott J. Sagaria, Claim Number 13. The claim is asserted to be priority in the amount of \$1,017.49. Objector asserts that the claim appears to be filed for post-petition taxes and was filed by Debtor's attorney. Pursuant to 11 U.S.C. § 1305(a)(1), only the entity that holds the claim, i.e. creditor Franchise Tax Board, may file a proof of claim for post-petition taxes.

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

The court finds that the proof of claim was filed by the Debtor's attorney and not by creditor Franchise Tax Board. Pursuant to 11 U.S.C. § 1305(a)(1), only the creditor holding the claim may file a proof of claim for post-petition taxes. Debtor's attorney is not the holder of the claim for post-petition taxes. Objector has satisfied its burden of overcoming the presumptive validity of the claim.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

**Tentative Ruling:** The Motion to Dismiss Chapter 13 Case by County of Placer, California, Secured Creditor has been set for hearing on the 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny without prejudice the motion to dismiss case. However, County Office of the Treasurer Taxing Authority shall be granted relief from stay to pursue collection.

According to Placer County Office of the Treasurer Taxing Authority ("Creditor"), the Debtors have not remitted \$6,813.67 in taxes for the 2014/2015 fiscal tax year for the real property commonly known as 3475 Pine Cone Lane, Meadow Vista, California ("Property"). Creditor asserts that the Debtors have not complied with Section 6.02 of the plan, which requires Debtors' financial affairs to be conducted in accordance with applicable non-bankruptcy law including the timely filing of tax returns and payment of taxes.

Debtors filed a response on December 9, 2015, objecting to the dismissal of the case and instead requesting that the Creditor be granted relief from stay to pursue collection. Debtors assert that they are in the process of a short sale on the Property and have an offer pending. The Debtors state that they are in the process of getting lender approval in order to file a motion to approve sale with this court. According to the Debtors, the property taxes will be satisfied with the sale of the property and dismissal of this case is not in the best interest of all creditors. Debtors state that they have completed 57 months of a 60-month plan.

Given the unique circumstances, cause does not exist to dismiss this case. The motion is denied without prejudice and the Creditor shall be granted relief from stay to pursue collection.

The court shall enter an appropriate civil minute order consistent with this ruling.

8. [15-26339](#)-B-13 WILLIAM/NANCIE DUNHAM  
Catherine King

AMENDED OBJECTION TO  
CONFIRMATION OF PLAN BY OCWEN  
LOAN SERVICING, LLC.  
11-6-15 [[50](#)]

**Tentative Ruling:** The Objection to Confirmation of Chapter 13 Plan 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). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

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

Subsequent to the filing of the Ocwen Loan Servicing, LLC's objection, the Debtors filed a second amended plan on November 16, 2015. The confirmation hearing for the second amended plan is scheduled for January 6, 2016. The earlier plan filed September 30, 2015, is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.



9. [15-28140](#)-B-13 WILLIAM KANE  
JPJ-1 Anthony O. Egbase

OBJECTION TO CONFIRMATION OF  
PLAN BY TRUSTEE JAN P. JOHNSON  
AND/OR MOTION TO DISMISS CASE  
11-24-15 [[17](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection and deny the motion to dismiss provided that the Debtor file a notice of conversion to Chapter 7, as stated in Debtor's opposition to the Trustee's objection and motion by 5:00 p.m. on Friday, December 18, 2015. If a notice of conversion is not filed by this date, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate civil minute order consistent with this ruling.

10. [15-27843](#)-B-13 TARILYN ELLIOTT OBJECTION TO CONFIRMATION OF  
Thru #11 Michael David Croddy PLAN BY OCWEN LOAN SERVICING,  
LLC  
11-6-15 [[14](#)]

**Tentative Ruling:** The Objection to Confirmation of the Chapter 13 Plan 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The objecting creditor Ocwen Loan Servicing, LLC holds a deed of trust secured by the Debtor's residence. Although the creditor has not filed a proof of claim, it asserts \$13,375.26 in pre-petition arrearages. In contrast, the plan proposes to cure \$12,000.00 in pre-petition 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)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed October 6, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

11. [15-27843](#)-B-13 TARILYN ELLIOTT CONTINUED OBJECTION TO  
JPJ-1 Michael David Croddy CONFIRMATION OF PLAN BY JAN P.  
JOHNSON AND/OR MOTION TO  
DISMISS CASE  
11-10-15 [[16](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was continued from December 2, 2015, in order to be heard in conjunction with the Objection to Confirmation of Chapter 13 Plan by Ocwen Loan Servicing, LLC.

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

Although the Debtor has filed an amended petition on November 12, 2015, to disclose the prior bankruptcy in 2014 (case number 14-20874 and not 14-20620) filed within the last 8 years, the Debtor is delinquent to the Trustee by 1 plan payment as stated by the Trustee on the record in open court on December 2, 2015.

The plan filed October 6, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate civil minute order consistent with this ruling.

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given, the Trustee's Motion to Dismiss Case is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further.

The court's decision is to dismiss the case.

First, the Debtor is not eligible for relief under the United States Bankruptcy Code pursuant to 11 U.S.C. § 190(h) because the certificate of completion was not received during the 180-day period preceding the date of the filing of the petition.

Second, the Debtor has not provided the Trustee with a copy of her tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Third, the Debtor has not provided the Trustee with a copy of her 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).

Fourth, the Debtor has not filed, set for hearing, and served a motion to confirm the plan as required pursuant to Local Bankr. R. 3015-1(c)(3). The 45-day deadline to hold a confirmation hearing pursuant to 11 U.S.C. § 1324 will expire on January 3, 2016, and the Debtor cannot provide the required 42 days' notice pursuant to Fed. R. Bankr. P. 2002(b) and Local Bankr. R. 9014-1(f)(1)(B). Thus, a timely confirmation hearing cannot be conducted.

Fifth, the plan filed November 10, 2015, is incomplete. The Debtor did not list a monthly payment amount at Section 1.10, a plan duration at Section 1.03, a dividend at Section 2.15, or attach Additional Provisions to the plan as instructed by the plan form.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

The court shall enter an appropriate civil minute order consistent with this ruling.

13. [15-28151](#)-B-13 DOROTHY PEARSON  
BF-5 David P. Ritzinger  
**Thru #14** OBJECTION TO CONFIRMATION OF  
PLAN BY CALIBER HOME LOANS,  
INC.  
11-10-15 [[19](#)]

**Tentative Ruling:** Caliber Home Loans, Inc.'s Objection to Confirmation of Chapter 13 Plan 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The objecting creditor Caliber Home Loans, Inc. holds a deed of trust secured by the Debtor's residence. Although the creditor has not filed a proof of claim, it asserts \$49,559.40 in pre-petition arrearages. In contrast, the plan proposes to cure \$47,384.78 in pre-petition 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)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed October 19, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

14. [15-28151](#)-B-13 DOROTHY PEARSON  
JPJ-1 David P. Ritzinger  
OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-24-15 [[22](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the plan payment in the amount of \$2,871.51 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 aggregate of the monthly amounts plus the Trustee's fee is \$3,003.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses related to Debtor's operation of a tutoring business. Feasibility cannot be properly assessed pursuant to 11 U.S.C. §§ 1325(a)(3) or (6).

Third, the Debtor has understated her income at Line 11, overstated her tax deductions at Line 16, and overstated her charitable contributions at Line 31 of Form 22C. Based on the amounts listed, Debtor's monthly disposable income at Line 45 of Form 22C should

be \$606.16 and the Debtor should pay no less than \$36,369.60 to the general unsecured creditors. The plan filed October 19, 2015, will only pay \$2,143.49 to general unsecured creditors.

The plan filed October 19, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate civil minute order consistent with this ruling.

15. [15-27954](#)-B-13 TERRY/TAMITRICE MITCHELL  
JPJ-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-24-15 [[21](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, it is unclear if the Debtors are paying all of their disposable income into the plan. The Debtors list business income in Form 22C and the Statement of Financial Affairs but do not account for this income in Schedules I and J filed on October 12, 2015.

Second, the Debtors have understated their gross monthly income on Form 22C and overstated their deductions at Lines 33d, 43b, and 30 of Form 22C. Based on the amounts listed, Debtors' monthly disposable income at Line 45 of Form 22C should be \$1,697.91 and the Debtors should pay no less than \$101,874.60 to the general unsecured creditors. The plan filed October 19, 2015, will only pay \$0.00 to general unsecured creditors.

The plan filed October 12, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate civil minute order consistent with this ruling.

16. [15-27957](#)-B-13 DANIELLE KRANZLER-CONYERS OBJECTION TO CONFIRMATION OF  
JPJ-1 AND KENNETH CONYERS PLAN BY JAN P. JOHNSON  
Peter G. Macaluso 11-24-15 [[14](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan 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). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, although the Debtors appeared at the continued meeting of creditors held on December 3, 2015, the meeting of creditors was continued to December 17, 2015, at 8:30 a.m. Debtors must be thoroughly examined under oath as required pursuant to 11 U.S.C. § 343.

Second, the Debtors have not provided the Trustee with a Broker's Price Opinion (BPO) or appraisal of the real property located at 5500 Adobe Springs Way. Without review of the requested document, it cannot be determined whether the plan complies with 11 U.S.C. § 1325(a)(4).

Third, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. The Trustee's preliminary investigation shows that the total amount of non-exempt property in the estate is \$13,796.60 (after 8% cost of sale of the real property located at 5500 Adobe Springs Way and deduction of liens and available exemptions). The plan only pays unsecured creditors a total of \$3,000.00.

The plan filed October 12, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

17. [15-27966](#)-B-13 MARY MACDONALD  
JPJ-1 Ronald W. Holland

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-24-15 [[28](#)]

**Final Ruling:** No appearance at the December 16, 2015, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, 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. The matter is removed from the calendar.

The Plan filed October 15, 2015, was confirmed by civil minute order entered on December 8, 2015.

The court shall enter an appropriate civil minute order consistent with this ruling.



18. [15-23473](#)-B-13 RODNEY/CHRISTINE HOLLAND CONTINUED MOTION TO CONFIRM  
BLG-4 Pauldeep Bains PLAN  
10-6-15 [[58](#)]

**Tentative Ruling:** The court issues no tentative ruling.

The Motion to Confirm Second Amended Plan Filed on October 6, 2015, has been set for hearing on the 42-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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The motion will be determined at the scheduled hearing.

19. [15-27280](#)-B-13 ROSEANNE MEEHAN  
Scott D. Shumaker

ORDER TO SHOW CAUSE - FAILURE  
TO PAY FEES  
11-20-15 [[20](#)]

**Final Ruling:** No appearance at the December 16, 2015, hearing is required.

The Order to Show Cause will be discharged and the case will remain pending.

The Order to Show Cause was issued due to Debtor's failure to pay \$76.00 due November 16, 2015. The court's docket reflects that the default was cured on December 9, 2015. The payment also reflects that the final installment due December 15, 2015, was paid.

The court shall enter an appropriate civil minute order consistent with this ruling.

20. [15-28282](#)-B-13 RONNARD/DEBORAH WROTEN  
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-25-15 [[17](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

Due to the Debtors' increased income and overstated involuntary deductions, Debtors' monthly disposable income at Line 45 of Form 22C should be \$358.00 and the Debtors should pay no less than \$21,480.00 to the general unsecured creditors. The plan filed October 26, 2015, will only pay \$16,204.50 to general unsecured creditors.

The plan filed October 26, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate civil minute order consistent with this ruling.

21. [15-22784](#)-B-13 JOSEPH/HEATHER ADKINS COUNTER MOTION TO DISMISS CASE  
BB-4 Bonnie Baker 12-2-15 [[126](#)]  
**Thru #22**

**Tentative Ruling:** The motion will be conditionally denied.

Because the plan proposed by the Debtors is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate civil minute order consistent with this ruling.

22. [15-22784](#)-B-13 JOSEPH/HEATHER ADKINS MOTION TO CONFIRM PLAN  
BB-4 Bonnie Baker 10-30-15 [[103](#)]

**Tentative Ruling:** The Motion to Confirm Amended Plan has been set for hearing on the 42-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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the amended plan filed October 30, 2015.

First, the Debtors are delinquent to the Trustee in the amount of \$64.00, which represents approximately 1/3 of one plan payment under the terms of the plan filed October 30, 2015. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan does not provide clear and concise information as to the duration of the plan payments.

Third, the plan payment in the amount of \$206.00 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 aggregate of the monthly amounts plus the Trustee's fee is \$212.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Fourth, feasibility of the plan depends on the court's disposition of the Motion to Reconsider filed by Tri Counties Bank. Tri Counties Bank has indicated that it will withdraw its objection to confirmation if the court reaffirms its earlier decision on the Debtors' motion to value real property. The court has issued a memorandum decision on December 14, 2015, reaffirming its earlier decision and denying the Motion to Reconsider.

For the first through third reasons stated above, the amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

MOTION TO CONFIRM PLAN  
10-23-15 [[42](#)]

The court's decision is to confirm the amended plan provided that the order properly account for all payments made by the Debtor to date by stating the following: The Debtor has paid a total of \$2,180.00 to the Trustee through November 25, 2015. Commencing December 25, 2015, monthly plan payments shall be \$382.00 for the remainder of the plan.

The court shall enter an appropriate civil minute order consistent with this ruling.

24. [15-28095](#)-B-13 PAVEL KARAMALAK  
JPJ-1 Peter G. Macaluso  
**Thru #25**

OBJECTION TO CONFIRMATION OF  
PLAN BY JAN P. JOHNSON AND/OR  
MOTION TO DISMISS CASE  
11-24-15 [[15](#)]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, feasibility depends on the granting of a motion to avoid lien held by Midland Funding. To date, the Debtor has not filed, set for hearing, and served on the respondent creditor and the Trustee a stand-alone motion to avoid lien as required pursuant to Local Bankr. R. 3015-1(j).

Second, the plan does not provide for Bank of America's first deed of trust on Debtor's residence pursuant to 11 U.S.C. § 1325(a)(6). The plan does not provide treatment for Bank of America's secured debt that is either acceptable to the creditor or which results in payment in full with a market rate interest. The plan does not comply with 11 U.S.C. §§ 1325(a)(5)(A) or (B).

The Debtor has filed a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2) on December 2, 2015.

The plan filed October 16, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate civil minute order consistent with this ruling.

25. [15-28095](#)-B-13 PAVEL KARAMALAK  
MJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY THE BANK OF NEW YORK  
MELLON  
11-25-15 [[18](#)]

**Tentative Ruling:** The Objection to Confirmation of Chapter 13 Plan 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The objecting creditor Bank of New York Mellon, fka The Bank of New York, through its servicing agent Bank of America, N.A. ("Creditor") holds a deed of trust secured by the Debtor's residence. The Creditor has filed a timely proof of claim in which it asserts \$506.22 in pre-petition arrearages. The plan does not propose to cure these

arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed October 16, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate civil minute order consistent with this ruling.

26. [12-36599](#)-B-7      BRANTLEY/ERIN GARRETT      CONTINUED MOTION FOR STAY  
[12-2719](#)      WSS-1      PENDING APPEAL  
DAILY ET AL V. GARRETT ET AL      12-1-15 [[242](#)]

**Tentative Ruling:** This matter was continued from December 15, 2015, to allow Brantley Garrett dba Garrett Construction to dismiss its appeal.

The motion will be determined at the scheduled hearing.