

**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: June 2, 2020

CALENDAR: 1:00 P.M. CHAPTER 13

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime

Bankruptcy Judge

Sacramento, California

June 2, 2020 at 1:00 p.m.

1. [20-20704](#)-B-13 BRIAN/TRACEE STACY MOTION FOR RELIEF FROM
[JCW](#)-1 David P. Ritzinger AUTOMATIC STAY
5-5-20 [[17](#)]

MATRIX FINANCIAL SERVICES
CORPORATION VS.

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). Response was filed by the Chapter 13 Trustee and opposition was filed by the Debtors.

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

The court's decision is to deny the motion for relief from stay without prejudice.

Matrix Financial Services Corporation ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 209 Glen Eagle Way, Vacaville, California (the "Property"). Movant has provided the Declaration of Mary Gracia to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Gracia Declaration states that there are two post-petition payments in default totaling \$3,985.36.

Movant values the Property at \$483,000 and states that it is owed \$348,153 on the note secured by its first deed of trust on the Property. As to Movant, there is \$134,847.00 available equity which translates to an equity cushion of nearly 28%.

A response was filed by the Chapter 13 Trustee stating the amount of funds on hand as of May 18, 2020, to disburse to Movant.

Debtors filed an opposition stating that they will provide the Trustee with sufficient funds to make all three post-petition payments that are owed to Movant by the date of the hearing on this matter.

The Ninth Circuit has held that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments. See *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1401 (9th Cir. 1984). As noted above, Movant enjoys an equity cushion of at least 28%. Movant is therefore adequately protected, at least for now.

June 2, 2020 at 1:00 p.m.

Page 1 of 42

Nevertheless, the Debtors have stated that by the motion hearing date they will have provided the Trustee with sufficient funds to allow the Trustee to make the two remaining defaulted payments (assuming, as the Trustee states, the Trustee made a disbursement on May 28, 2020) and thereby cure the existing default. If the Trustee has those funds on hand, the Trustee may disburse those funds to Movant to cure the existing default. Otherwise, Debtors shall have 60 days to confirm a modified plan that cures the existing default.

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

The court will enter an appropriate minute order.

2. [20-20905](#)-B-13 BEVERLY HAWKINS OBJECTION TO CONFIRMATION OF
[BRL](#)-1 Gabriel E. Liberman PLAN BY JI-LIANG WANN
Thru #3 and Add on #39 3-17-20 [[15](#)]

Final Ruling

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

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

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

Objecting creditor Ji-Liang Wang holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim. The creditor asserts that the Debtor is delinquent \$20,690.11 in pre-petition arrearages, the plan fails to pay back delinquent property taxes, and the refinance of Debtor's personal residence within six months from the filing of the case is speculative. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed February 18, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

3. [20-20905](#)-B-13 BEVERLY HAWKINS OBJECTION TO CONFIRMATION OF
[KMM](#)-1 Gabriel E. Liberman PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
4-28-20 [[27](#)]

Final Ruling

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

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

will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

Objecting creditor Toyota Motor Credit Corporation holds a security interest secured by a 2016 Toyota Avalon. The creditor has filed a timely proof of claim. The creditor asserts that the Debtor is delinquent \$1,354.30 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed February 18, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

4. [17-25411](#)-B-13 JAMES/LILLIE JOHNSON
[MET](#)-5 Mary Ellen Terranella

MOTION TO ALLOW FURTHER
ADMINISTRATION OF THE CASE
UNDER FRBP 1016
5-4-20 [[117](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion to continue administration of the case.

Joint Debtor Lille Johnson gives notice of the death of her husband Debtor James Johnson and requests the court to continue administration of the case pursuant to Local Bankr. R. 1016-1(b)(2).

Discussion

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].

Based on the evidence submitted, the court will grant the relief requested, specifically to continue administration of the case pursuant to Local Bankr. R. 1016-1(b)(2). The continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

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

The court will enter a minute order.

5. [20-20913](#)-B-13 KEITH ARCHIBALD
[DPC-1](#) Gary Ray Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-6-20 [[22](#)]

Final Ruling

The objection 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).

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on May 11, 2020. The confirmation hearing for the amended plan is scheduled for July 7, 2020. The earlier plan filed March 4, 2020, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

6. [20-20815](#)-B-13 KELLY MCKELLAR
[KMM](#)-2 Douglas B. Jacobs

OBJECTION TO CONFIRMATION OF
PLAN BY SPECIALIZED LOAN
SERVICING LLC
4-29-20 [[25](#)]

Final Ruling

The objection 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).

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

The confirmation hearing for the plan filed February 13, 2020, was held on May 5, 2020, and the plan was not confirmed. Therefore, this objection to confirmation of the plan filed February 13, 2020, is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

7. [20-20915](#)-B-13 VICTOR/IRMA JIMENEZ
[DPC-1](#) Len ReidReynoso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-29-20 [[17](#)]

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

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

Debtors are delinquent to the Chapter 13 Trustee in the amount of \$723.00, with an additional payment of \$723.00 due May 25, 2020.

Although Debtors' response states that the default of \$723.00 for April was cured, they make no mention of the additional payment of \$723.00 due May 25, 2020.

If the Debtors remain delinquent by the date of the hearing, the plan filed February 19, 2020, will be deemed not to comply with 11 U.S.C. §§ 1322 and 1325(a). The objection will be sustained and the plan will not be confirmed. If, on the other hand, the Debtors are current by the date of the hearing the plan will comply with §§ 1322 and 1325(a) in which case it may be confirmed.

The objection is ORDERED CONDITIONALLY SUSTAINED for reasons stated in the ruling appended to the minutes.

Counsel for the Chapter 13 Trustee shall submit an appropriate order sustaining the objection if the Debtors remain delinquent and are not current at the time of the hearing.

Counsel for the Debtors shall submit an appropriate order overruling the objection (and shall transmit a separate confirmation order to the Trustee) if the Debtors are current at the time of the hearing.

8. [20-21418](#)-B-13 KAY MILLER OBJECTION TO CONFIRMATION OF
[DPC-1](#) Mary Ellen Terranella PLAN BY DAVID P. CUSICK
Thru #9 4-29-20 [[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). A written reply has been filed to the objection.

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

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

The Chapter 13 Trustee opposes confirmation on grounds that the Debtor is delinquent in the amount of \$2,162.79, which represents approximately 1 plan payment for April 2020. An additional payment of \$2,162.79 will be due by the date of the hearing on this matter. The Debtor filed a response stating that she has made the April payment. However, the Debtor makes not mention of whether the May 2020 payment was made.

Nonetheless, the plan filed March 10, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item 9, RAS-1. The objection is sustained and the plan is not confirmed. Moreover, even if the Debtor was current, confirmation would be denied for the reason stated in the ruling at Item #9. Dkt. 26, RAS-1.

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

The court will enter a minute order.

9. [20-21418](#)-B-13 KAY MILLER OBJECTION TO CONFIRMATION OF
[RAS-1](#) Mary Ellen Terranella PLAN BY THE BANK OF NEW YORK
MELLON
4-30-20 [[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.

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

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

Objecting creditor The Bank of New York Mellon ("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 \$27,008.72 in pre-petition arrearages.

Debtor filed a response stating that the pre-petition arrearage is incorrect because it includes a possible future escrow shortage that would more appropriately be addressed by the Creditor filing a Notice of Mortgage Payment Change in the event Debtor's impound account needs to be adjusted. Debtor argues that including a possible shortage in the pre-petition claim requires Debtor to pay for an arrearage that does not now exist and might not exist in the future. Debtor's counsel has contacted Creditor's counsel regarding this concern but has not received a response.

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). Here, the Debtor has not filed an objection to Creditor's proof of claim, thus the claim will be deemed allowed, in which case it must be dealt with as such.

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

The plan filed March 10, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

10. [20-21920](#)-B-13 LAMONT LEWIS AND CONTINUED MOTION TO VALUE
[CYB-1](#) DEEPANJALI SHANKAR LEWIS COLLATERAL OF CARMAX BUSINESS
Thru #11 Candace Y. Brooks SERVICES, LLC.
5-4-20 [[16](#)]

Final Ruling

This matter was continued to allow creditor Carmax Business Services, LLC to file any opposition. No opposition was filed. The motion is granted for reasons stated at dkt. 33.

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

The court will enter a minute order.

11. [20-21920](#)-B-13 LAMONT LEWIS AND CONTINUED MOTION TO VALUE
[CYB-2](#) DEEPANJALI SHANKAR LEWIS COLLATERAL OF CARMAX BUSINESS
Candace Y. Brooks SERVICES, LLC.
5-4-20 [[21](#)]

Final Ruling

This matter was continued to allow creditor Carmax Business Services, LLC to file any opposition. No opposition was filed. The motion is granted for reasons stated at dkt. 34.

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

The court will enter a minute order.

12. [20-20923](#)-B-13 SOPAWORN SAVEDRA OBJECTION TO CONFIRMATION OF
[DPC](#)-1 Gabriel E. Liberman PLAN BY DAVID P. CUSICK
[Thru #16](#) 4-29-20 [[23](#)]

Final Ruling

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

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

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

First, the plan will take approximately 160 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). The over-extension is due to the Internal Revenue Service's claim in the amount of \$450,355.37 of which \$447,322.16 is claimed as unsecured priority and \$3,033.21 as unsecured.

Second, the Debtor may not be able to make plan payments required under 11 U.S.C. § 1325(a)(6). Debtor's plan calls for payments of \$2,635.00 for 60 months. Debtor admitted at the meeting of creditors that she had to borrow money to make the plan payment and believes she can only afford \$1,800.00 per month.

The plan filed April 7, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

13. [20-20923](#)-B-13 SOPAWORN SAVEDRA MOTION TO VALUE COLLATERAL OF
[GEL](#)-1 Gabriel E. Liberman CAN CAPITAL MERCHANT SERVICES,
INC.
5-6-20 [[34](#)]

Final Ruling

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

The court's decision is to conditionally value the secured claim of CAN Capital

Merchant Services, Inc. at \$26,251.00 and continue the hearing to June 16, 2020, at 1:00 p.m.

Debtor's motion to value the secured claim of CAN Capital Merchant Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of various personal property in connection with her sole proprietorship business Sopa Thai Cuisine. The personal property consists of business checking accounts, an account receivables, liquor license, microwaves, desk, bar cooler, coffee maker, Chinese range, hood, ice machine, prep table, fryers, freezer, walk-in cooler, range, sink, bar sink, mop sink, silverware, and table settings (collectively "Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of \$26,251.00 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 9-1 filed by CAN Capital, Inc. is the claim which may be the subject of the present motion.

Discussion

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). The time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. See 11 U.S.C. § 1325(a).

The financing lien held by Creditor is \$131,276.26 as stated in Claim No. 9-1. Debtor asserts that the price a retail merchant would charge for the Personal Property is \$26,251.00. 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 \$26,251.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is conditionally granted.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2) Creditor shall have until 5:00 p.m. on June 9, 2020, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Debtor, the Chapter 13 Trustee, and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served Debtor's motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on June 16, 2020, at 1:00 p.m. will be vacated.

The motion is ORDERED CONDITIONALLY GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

Final Ruling

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

The court's decision is to conditionally value the secured claim of DMKLA LLC dba The Smarter Merchant at \$0.00 and continue the hearing on the motion to June 16, 2020, at 1:00 p.m.

Debtor's motion to value the secured claim of DMKLA LLC dba The Smarter Merchant ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of various personal property in connection with her sole proprietorship business Sopa Thai Cuisine. The personal property consists of business checking accounts, an account receivables, liquor license, microwaves, desk, bar cooler, coffee maker, Chinese range, hood, ice machine, prep table, fryers, freezer, walk-in cooler, range, sink, bar sink, mop sink, silverware, and table settings (collectively "Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of \$26,251.00 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).

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

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). The time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. See 11 U.S.C. § 1325(a).

The financing lien held by Creditor is \$63,000.00 as stated in the Debtor's declaration. Debtor asserts that the price a retail merchant would charge for the Personal Property is \$26,251.00. A senior lien against the Personal Property exceeds Creditor's claim. 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 \$0.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is conditionally granted.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2) Creditor shall have until 5:00 p.m. on June 9, 2020, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Debtor, the Chapter 13 Trustee, and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served Debtor's motion will be deemed

granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on June 16, 2020, at 1:00 p.m. will be vacated.

The motion is ORDERED CONDITIONALLY GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

15. [20-20923](#)-B-13 SOPAWORN SAVEDRA MOTION TO VALUE COLLATERAL OF
[GEL-3](#) Gabriel E. Liberman RIVER VALLEY COMMUNITY BANK
5-6-20 [[43](#)]

Final Ruling

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

The court's decision is to conditionally value the secured claim of River Valley Community Bank at \$0.00 and continue the hearing on the motion to June 16, 2020, at 1:00 p.m.

Debtor's motion to value the secured claim of River Valley Community Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of various personal property in connection with her sole proprietorship business Sopa Thai Cuisine. The personal property consists of business checking accounts, an account receivables, liquor license, microwaves, desk, bar cooler, coffee maker, Chinese range, hood, ice machine, prep table, fryers, freezer, walk-in cooler, range, sink, bar sink, mop sink, silverware, and table settings (collectively "Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of \$26,251.00 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).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 4-1 filed by River Valley Community Bank is the claim which may be the subject of the present motion.

Discussion

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). The time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. See 11 U.S.C. § 1325(a).

The financing lien held by Creditor is \$31,100.00 as stated in the Debtor's declaration. Debtor asserts that the price a retail merchant would charge for the Personal Property is \$26,251.00. Two senior liens against the Personal Property exceeds Creditor's claim. 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 \$0.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is conditionally granted.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2) Creditor shall have until 5:00 p.m. on June 9, 2020, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Debtor, the Chapter 13 Trustee, and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served Debtor's motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on June 16, 2020, at 1:00 p.m. will be vacated.

The motion is ORDERED CONDITIONALLY GRANTED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

16. [20-20923](#)-B-13 SOPAWORN SAVEDRA MOTION FOR RELIEF FROM
[JHK-1](#) Gabriel E. Liberman AUTOMATIC STAY
4-30-20 [[27](#)]
DAIMLER TRUST VS.

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 Trustee's response merely provided information and status on the case. The matter will be resolved without oral argument. No appearance at the hearing is required.

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

Daimler Trust ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Mercedes Benz GLE50W4 (the "Vehicle"). The moving party has provided the Declaration of Anita Walter to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor. The Walter Declaration states that the Vehicle is a lease, that the Debtor is in default for a total of \$4,499.94, and that the Debtor intends to surrender the Vehicle. The plan provides for the Vehicle's surrender in Class 3.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, 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). Indeed, the Vehicle is listed in Class 3 of the plan to be surrendered.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, 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.

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

The court will enter a minute order.

17. [20-21425](#)-B-13 DYLAN ANDERSON
[DPC-1](#) Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-6-20 [[21](#)]

Final Ruling

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

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

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

First, the Debtor does not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective November 9, 2018.

Second, the plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's plan fails to list a percentage dividend and total amount to unsecured creditors, and Debtor has non-exempt equity in property such as \$25,000 in kayaks and other equipment and \$50,000 in South by Southwest Adventures LLC.

Third, the Debtor may be unable to make plan payments as required under 11 U.S.C. § 1325(a)(6). Debtor admitted at the meeting of creditors held April 30, 2020, that he had been laid off and is currently seeking unemployment benefits. It is therefore uncertain whether Debtor has the financial ability to fund a plan.

The plan filed March 24, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

18. [20-21232](#)-B-13 MARY GIVENS-SNEAD
[DPC-1](#) Fred A. Ihejirika

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-6-20 [[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). No written reply has been filed to the objection.

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

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

The Debtor is delinquent to the Chapter 13 Trustee in the amount of \$195.03, which represents approximately 1 plan payment. An additional payment of \$195.03 will be due by the date of the hearing on this matter. The 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).

The plan filed March 2, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed. If, on the other hand, the Debtors are current by the date of the hearing the plan will comply with §§ 1322 and 1325(a) in which case it may be confirmed.

The objection is ORDERED CONDITIONALLY SUSTAINED for reasons stated in the ruling appended to the minutes.

Counsel for the Chapter 13 Trustee shall submit an appropriate order sustaining the objection if the Debtor remains delinquent and is not current at the time of the hearing.

Counsel for the Debtor shall submit an appropriate order overruling the objection (and shall transmit a separate confirmation order to the Trustee) if the Debtor is current at the time of the hearing.

19. [20-20939](#)-B-13 ANDREW HUNLEY
[DPC-1](#) Timothy J. Walsh
Thru #20

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-29-20 [[24](#)]

CONTINUED TO 6/23/2020 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF
CREDITORS SET FOR 6/18/2020.

Final Ruling

No appearance at the June 2, 2020, hearing is necessary. The court will enter a minute
order.

Final Ruling

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

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

Debtors' motion to value the secured claim of Toyota Motor Credit Corporation ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2017 Toyota Prius Prime Premium Hatchback ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$18,716.00 as of the petition filing date based on the Kelley Blue Book and Debtors' own opinion. As the owner, Debtor's opinion of value is some 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 6-1 filed by Toyota Motor Credit Corporation is the claim which may be the subject of the present motion.

Discussion

The court finds issue with the Debtors' valuation. The declaration states that the valuation of the Vehicle is based on a Kelley Blue Book printout but this is a third party industry source and, therefore, Debtors' opinion of value is based on hearsay. Fed R. Evid. 801-803; see also *In re Guerra*, 2008 WL 3200931, *2 n.4 (Bankr. E.D. Cal. 2008) ("Filed with Guerra's declaration was an unauthenticated document titled: 'Edmonds.com True Market Value Pricing Report.' The court has not considered this attachment in that it is inadmissible hearsay[.]").

In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a) (2).

The Debtors have not persuaded the court regarding their position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

The court will enter a minute order.

21. [20-21346](#)-B-13 BENJAMIN/MELISSA RINGER OBJECTION TO CONFIRMATION OF
[DPC-1](#) Stephen M. Reynolds PLAN BY DAVID P. CUSICK
Thru #22 4-29-20 [[24](#)]

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).

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

The Debtors filed an amended plan on April 24, 2020, which has not been set for a confirmation hearing and which the Chapter 13 Trustee states it has not yet reviewed. The earlier plan filed March 6, 2020, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

22. [20-21346](#)-B-13 BENJAMIN/MELISSA RINGER OBJECTION TO CONFIRMATION OF
[KMM-1](#) Stephen M. Reynolds PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
4-22-20 [[16](#)]

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).

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

The Debtors filed an amended plan on April 24, 2020, which has not been set for a confirmation hearing and which was filed after Toyota Motor Credit Corporation's objection to confirmation. The earlier plan filed March 6, 2020, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

23. [20-20054](#)-B-13 DAVID/LISA EUFEMIA
[HDP-3](#) CARLSON
Thru #24 Robert P. Huckaby
TITLE HOLDING SERVICES CORP.
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-5-20 [[91](#)]

Final Ruling

Introduction

The court has before it a renewed motion for relief from the automatic stay of 11 U.S.C. § 362(a) filed by Title Holding Services Corp. ("Creditor"). Dkt. 91. The motion is opposed by David and Lisa Carlson ("Debtors"). Dkt. 104. Creditor filed a reply. Dkt. 114.

The court has reviewed the motion, opposition, reply, and all related declarations and exhibits. The court has reviewed and takes judicial notice of the docket in this case. See Fed. R. Evid. 201(c)(1).

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

The court's decision is to conditionally deny the motion.

Discussion

This is Creditor's renewed motion for relief from the automatic stay. Creditor's prior motion was denied without prejudice because, despite the Debtors' substantial failure to make pre- and post-petition payments, the court found that Creditor was adequately protected by an equity cushion of 21.59%. See dkts. 86, 87. The factual background stated in the civil minutes related to the prior motion are incorporated herein by this reference. Dkt. 86.

Creditor's current motion for relief from stay states that it still has not received any payments since the case was filed. That includes no payments following the denial of Creditor's prior motion. Creditor also states that there are accruing late fees, interest, and attorney's fees that continue to increase the Debtors' obligations under the applicable note and deed of trust.

Independently, the court notes this case was filed on January 6, 2020, and, to date, no plan has been confirmed. Objections to the Debtors' initial plan filed on January 19, 2020, were sustained and confirmation of the initial plan was denied on March 17, 2020. See dkts. 64-66, 68-69. Since then, the Debtors have done nothing to further prosecute this case. Debtors apparently mistook court's ruling on Creditor's prior motion as a license to make no payments and to do nothing in furtherance of this case.

The court adopts its prior ruling and holds that the Debtors' failure to make post-petition payments is cause for relief from the automatic stay of § 362(a) under § 362(d)(1). The Debtors' continued failure to make any post-petition payments to Creditor and their failure to properly prosecute this case after confirmation of the initial plan was denied is also unreasonable delay prejudicial to creditors that adversely affects Creditor's equity cushion. Therefore, in light of these changed and deteriorating circumstances, Creditor's motion will be conditionally denied as follows:

- (1) the Debtors shall have until August 4, 2020, to confirm an amended plan that provides for Creditor's secured claim and, in particular, provides for a cure of all pre- and post-petition arrears owed Creditor; and

(2) if the Debtors fail to confirm an amended plan by August 4, 2020, then, on August 5, 2020, Creditor's motion shall be deemed granted without further notice or hearing and Creditor may submit an order that (i) terminates the automatic stay in its entirety, (ii) permits Creditor to enforce its state law and contractual rights, and (iii) waives the 14-day stay of Bankruptcy Rule 4001(a)(3).

All other relief in Creditor's motion is denied without prejudice.

The motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

24. [20-20054](#)-B-13 DAVID/LISA EUFEMIA MOTION TO DISMISS CASE
[HDP](#)-4 CARLSON 5-5-20 [[95](#)]
Robert P. Huckaby

Final Ruling

The Motion to Dismiss filed by Title Holding Services Corp., dkt. 95, HDP-004, is denied without prejudice for the reasons stated in the ruling at Item No. 23, dkt. 91, HDP-003.

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

The court will enter a minute order.

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion to compromise.

Debtor Stacy Savoca ("Debtor") requests that the court approve a compromise and settle competing claims and defenses with Terri Kohnke ("Ms. Kohnke"), who was in an automobile accident that injured. The settlement requires Debtor to release Ms. Kohnke from further claims related to the automobile accident in exchange for Ms. Kohnke's insurance limits of \$15,000. Debtor will not be releasing the claim for under-insured coverage from her own auto insurance. From the settlement, Debtor anticipates \$5,250 in fees and \$4,369.80 in costs to be paid as attorney's fees after mediation, medical liens of Kaiser (Equian) in the amount of \$4,443, and a lien of Healing Touch Chiropractic in the amount of \$2,000.

Debtor and Ms. Kohnke have resolved these claims and disputes, subject to approval by the court on terms and conditions summarized at dkt. 56.

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).

Movant argues that the four factors have been met:

Probability of Success

Debtor asserts that she is unlikely to obtain more than the insurance limits from Ms. Kohnke. The settlement is the result of mediation after substantial discovery.

Difficulties in Collection

Recovery will be collected through insurance and is more or less straight forward.

Expense, Inconvenience and Delay of Continued Litigation

The parties have already engaged in mediation and no trial date has been set. A trial would only result in additional costs, inconvenience, and delay.

Paramount Interest of Creditors

Settlement is in the paramount interests of both parties because the compromise provides a sufficient payout to reimburse the Debtor for most of her medical bills and administrative expenses. It will also end the dispute.

Upon weighing the factors outlined in *A & C Properties* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the estate. The motion is granted.

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

The court will enter a minute order.

26. [20-20756](#)-B-13 TIMOTHY BROWN AMENDED OBJECTION TO
[APN](#)-1 Chinonye Ugorji CONFIRMATION OF PLAN BY WELLS
Thru #29 FARGO BANK, N.A.
5-19-20 [[47](#)]

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.

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

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

Confirmation of Debtor's amended plan filed April 13, 2020, depends on the granting of a motion to value collateral at Item #29, NUU-2. That motion has been denied. Therefore, the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained as to the plan being unconfirmable but not as to the value of the collateral, the amount of adequate protection payments, or the interest rate.

The objection is ORDERED SUSTAINED IN PART for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

27. [20-20756](#)-B-13 TIMOTHY BROWN CONTINUED OBJECTION TO
[DPC](#)-1 Chinonye Ugorji CONFIRMATION OF PLAN BY DAVID
P. CUSICK
4-14-20 [[31](#)]

Final Ruling

The Chapter 13 Trustee states that its objection should be overruled as moot in light of the Debtor filing an amended plan, which is heard at Item #28, NUU-1. See dkt. 49, para. 1. Therefore, this objection is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

28. [20-20756](#)-B-13 TIMOTHY BROWN MOTION TO CONFIRM PLAN
[NUU](#)-1 Chinonye Ugorji 4-13-20 [[23](#)]

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

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

First, the plan payment in the amount of \$820.20 for months 1-5 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 these monthly amounts plus Trustee's fees (calculated using 10%) is \$985.32. The plan does not comply with Section 5.02 of the mandatory form plan.

Second, feasibility depends on the granting of a motion to value collateral at Item #29, NUU-2. That motion has been denied.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

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

The court will enter a minute order.

29. [20-20756](#)-B-13 TIMOTHY BROWN MOTION TO VALUE COLLATERAL OF
[NUU-2](#) Chinonye Ugorji WELLS FARGO DEALER SERVICES
4-13-20 [[27](#)]

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). Opposition was filed.

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

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

Debtor's motion to value the secured claim of Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Dodge Challenger ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$14,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is

some 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 has filed an opposition asserting the value of the Vehicle to be \$20,441.67. This valuation is based on the appraisal of Adam Zacher ("Mr. Zacher"), who performed an appraisal of the Vehicle utilizing information derived from Debtor's declaration of the miles on the Vehicle and online ads including Kelley Blue Book, Craigslist, AutoNation, and NADA Guides. Mr. Zacher states that the Vehicle was not made available to him and that he was not able to conduct an in-person inspection of the Vehicle.

The Chapter 13 Trustee filed a response stating that Debtor's Schedule D notes the 80,000 miles and some body damage on the Vehicle. The Trustee also states that Creditor's Claim No. 5-1 indicates a valuation of the Vehicle at \$20,350.00.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 5-1 filed by Wells Fargo Bank N.A., d/b/a Wells Fargo Auto is the claim which may be the subject of the present motion.

Discussion

In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The value offered by the Creditor cannot be relied upon by the court. First, the valuation of \$20,441.67 contradicts that provided in Creditor's objection to confirmation of plan at Item #26, which valued the Vehicle at \$20,350.00 despite being filed the same day as its opposition to Debtor's motion to value. See dkt. 47. Second, Creditor's appraiser admits that he was not able to conduct an in-person inspection of the Vehicle but instead had to rely on Kelley Blue Book, Craigslist, AutoNation, and NADA Guides, which are third-party industry sources, before adjusting the value based on the Vehicle's mileage. The Creditor did not make any adjustment for body damage as noted in Schedule D.

Nor has the Debtor proven to the court's satisfaction the replacement value of the Vehicle. Evidence from the Debtor on this point is not reliable or probative. Debtor's declaration merely states an unspecified value of the Vehicle of \$14,000. The standard is how much a retail merchant would sell this particular Vehicle.

While neither parties have persuaded the court regarding their position of the value of the Vehicle, the Debtor has the burden of proof. Therefore, the motion will be denied without prejudice.

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

The court will enter a minute order.

30. [20-21256](#)-B-13 SIDNEY/ANGELA MOORE
[DPC-1](#) Scott D. Shumaker

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-6-20 [[45](#)]

Final Ruling

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

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

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

First, due to the plan providing for \$0.00 in plan payments for the first two months, the Trustee lacked funds to pay Select Portfolio Servicing post-petition contract installments for the months of April 2020 and May 2020. The Trustee is unable to fully comply with § 3.07(b) of the plan and the Debtor is therefore delinquent \$4,482.00 in mortgage payments.

Second, the Debtors have not provided the Trustee with requested copies of certain items in connection with businesses Moore Park Enterprises, Workflow Lounge, and Beyond the Village including, but not limited to, a completed business examination checklist, income tax returns for the 2-year period prior to the filing of the petition, bank account statements for the 6-month period prior to the filing of the petition, and proof of all required insurance or permits. It cannot be determined whether the business is solvent and necessary for reorganization. The Debtors have not complied with 11 U.S.C. § 521.

Third, it is unclear if the Debtors will be able to make proposed plan payments due to their business not currently operating due to the COVID-19 pandemic. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed March 31, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

31. [17-25168](#)-B-13 THOMAS/JEANNINE HOFFMAN MOTION TO MODIFY PLAN
[LBG-1](#) Lucas B. Garcia 4-20-20 [[22](#)]

Final Ruling

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

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

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

The total paid into the plan is incorrectly stated.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. However, if the Debtor and Trustee can agree on the correct amount paid into the plan that amount may be stated in a confirmation order in which case the modified plan will comply with §§ 1322 and 1325(a). If this matter is resolved in the confirmation order, Debtors shall submit to the court an order overruling the Trustee's objection within seven (7) days and a separate confirmation order to the Trustee for review and signature.

The motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

32. [20-20970](#)-B-13 LESLIE BAKER
[RAS](#)-1 Marc Voisenat

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK NATIONAL
ASSOCIATION
4-6-20 [[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).

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

Subsequent to the filing of the U.S. Bank National Association's objection, the Debtor filed an amended plan on April 29, 2020. The confirmation hearing for the amended plan is scheduled for June 9, 2020. The earlier filed plans not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

33. [19-21082](#)-B-13 RONDELL DANIEL
[PGM-1](#) Peter G. Macaluso

MOTION TO CONFIRM PLAN
4-27-20 [[76](#)]

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).

Although opposition was filed by the Chapter 13 Trustee, there is no certificate of service indicating that the opposition and supporting documents were served. See Local Bankr. R. 9014-1(d)(e).

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

Final Ruling

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

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

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

First, the plan payment in the amount of \$3,032.00 for months 15-84 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 these monthly amounts plus Trustee's fees is \$3,136.67. The plan does not comply with Section 5.02 of the mandatory form plan.

Second, while the Debtor has a right to modify his plan under 11 U.S.C. § 1329(d)(1) in response to a COVID-19 hardship, the Debtor has not explained in his declaration or provided any evidence to show why he needs an additional two years, or a total of 84 months, to repay his debts. The Debtor has not filed amended Schedules I and J,¹ has not provided any evidence that he had sought or received any forbearance from his mortgage company or other creditors, and is already delinquent \$11,635.00 in plan payments or approximately 4 months.

While the court is sympathetic to the Debtor in light of the unique circumstances related to COVID-19, additional information in the form of admissible evidence to substantiate a COVID-19 material financial hardship is necessary for the modified plan to be confirmable. In other words, although Congress has provided debtors with a unique opportunity to extend a chapter 13 plan by two years for material financial hardship caused by COVID-19 the Debtor here has not cited - and the court is not aware of - anything that alters the traditional burden of proof allocated to the proponent of a plan modification. See *In re Villegas*, 573 B.R. 844, 848 (Bankr. W.D. Wa. 2017); *In re Wood*, 543 B.R. 915 (Bankr. D. Idaho 2016). Thus, in order to obtain the additional two years, or up to a total of 84 months, a debtor who moves to modify a plan under 11 U.S.C. § 1329(d) must still produce some admissible evidence from which the court may find that the debtor has experienced or is experiencing "material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID-19) pandemic[.]" 11 U.S.C. § 1329(d)(1)(A). Indeed, that an extension under § 1329(d)(1) is not obtained simply by requesting it on the basis of a mere representation alone, and that

¹Amended Schedules I and J were filed on April 24, 2020. Amended Schedule I shows the same income as stated on the initial Schedule I filed on July 8, 2019. Compare Sch. I, dkts. 1 and 59. Amended Schedule J actually shows a decrease in monthly expenses and an increase in monthly net income between July 1, 2019, and April 24, 2020. Compare Sch. J, dkts. 1 and 59. Debtor fails to explain how an increase in monthly net income qualifies as a "material financial hardship" related to COVID-19 or otherwise.

some form of evidentiary submission consistent with the debtor's burden as the proponent of modification remains necessary, is reinforced by § 1329(d)(3) which makes §§ 1322(a), 1322(b), 1323(c), and 1325(a)(1) applicable to the § 1329(d)(1) request. In other words, just as there must be an evidentiary basis on which the court conclude the latter requirements are satisfied there must also be an evidentiary basis that establishes a "material financial hardship." And on the record before the court, that basis does not exist particularly in light of the *increase* in monthly net income shown in amended Schedule J.

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 ruling appended to the minutes.

The court will enter a minute order.

35. [20-21689](#)-B-13 ROSEMARIE HIGGS-SILER
[PGM-1](#) Peter G. Macaluso
Thru #36

MOTION TO VALUE COLLATERAL OF
MAIN STREET LAUNCH
4-30-20 [[15](#)]

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). Opposition was filed.

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

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

Debtor moves to value the secured claim of Main Street Launch ("Creditor"), who holds a second deed of trust, pursuant to 11 U.S.C. § 506(a). Debtor is the owner of the subject real property commonly known as 1255 Foushee Road, Ramseur, North Carolina ("Property"). Debtor seeks to value the Property at a fair market value of \$46,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some 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).

Opposition

The Chapter 13 Trustee opposes the Debtor's valuation on two grounds. First, the Debtor appears to claim this property as her primary residence in her declaration but this contradicts the petition. Second, there appears to be equity in the property based on the Trustee's assessment of the Randolph County Tax Department's assessed value of the Property at \$84,030.00, which would be sufficient to secure a portion of Creditor's second deed of trust.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3-1 filed by Main Street Launch is the claim which may be the subject of the present motion.

Discussion

The issues raised by the Trustee are well taken. The Property is situated in North Carolina and does not appear to be the Debtor's primary residence. Additionally, the Trustee has provided as an exhibit evidence that values the Property higher than that asserted by the Debtor, thus leaving sufficient equity to secure a portion of Creditor's second deed of trust.

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

The court will enter a minute order.

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). Opposition was filed.

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

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

Debtor moves to value the claim secured by a judgment lien of Bank of America, N.A. ("Creditor") pursuant to 11 U.S.C. § 506(a). Debtor is the owner of the subject real property commonly known as 1255 Foushee Road, Ramseur, North Carolina ("Property"). Debtor seeks to value the Property at a fair market value of \$46,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some 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).

Opposition

The Chapter 13 Trustee opposes the Debtor's valuation on the ground that the Debtor appears to claim this property as her primary residence in her declaration, which contradicts the petition.

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 issues raised by the Trustee are well taken. The Property is situated in North Carolina and does not appear to be the Debtor's primary residence.

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

The court will enter a minute order.

37. [12-32391](#)-B-13 ROBERT/STEPHANIE TYLER
[PSB-3](#) Pauldeep Bains

CONTINUED MOTION TO AVOID LIEN
OF CITIBANK, N.A.
4-10-20 [[42](#)]

Final Ruling

This matter was continued from May 12, 2020, to provide Debtors the opportunity to reserve Citibank, N.A. by certified mail addressed to an officer of the institution. The Debtors did this as evidenced in their proof of service filed May 12, 2020. Dkt. 49.

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

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Citibank N.A. ("Creditor") against the Debtors' property commonly known as 1788 Tatiana Street, Roseville, California ("Property").

A judgment was entered against Debtor Robert Tyler in favor of Creditor in the amount of \$25,879.15. An abstract of judgment was recorded with Placer County on February 21, 2012, which encumbers the Property. All other liens recorded against the Property total \$341,017.00 from a first and second deed of trust.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$281,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1,000.00 on Schedule C.

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 Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will enter a minute order.

DEBTOR DISMISSED: 05/10/2020

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f); see also *Coss v. Caliber Homes, Inc./Fidelity*, 2019 WL 1460251, *1 (D. Ariz. 2019) (oral argument not mandatory before ruling on motion to reconsider). Further briefing is not necessary to permit the court to render a decision. See Local Bankr. R. 9014-1(f)(2)(C).

The court's decision is to deny the motion to vacate dismissal of case.

This case was dismissed by an order entered on May 11, 2020, for failure to timely file missing documents after Debtor Amanda Shriner ("Debtor") was previously granted an extension to file missing documents. Dkt. 31. Debtor filed the motion to vacate the dismissal order on May 19, 2020. The Chapter 13 Trustee ("Trustee") filed an opposition. Dkt. 40.

As a condition of an extension to file the missing documents, the Debtor was ordered to file, set, and serve a motion to confirm the Chapter 13 plan before April 20, 2020. Dkt. 17. The Debtor failed to do this and the case was dismissed on the Trustee's ex parte application. Dkt. 31.

The court has reviewed the motion, opposition, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket in this case. See Fed. R. Evid. 201(c)(1).

Discussion

Debtor moves for relief under the wrong standard. Debtor moves for relief under Federal Rule of Civil Procedure 60(b)(1) and (b)(6) applicable by Federal Rule of Bankruptcy Procedure 9024. However, filed within 14 days of the entry of the dismissal order, the Debtor's motion is actually governed by Civil Rule 59(e) applicable by Bankruptcy Rule 9023. *First Ave. West Building, LLC v. James (In re Onecast Media, Inc.)*, 439 F.3d 558, 561-62 (9th Cir. 2006); *In re Zinnel*, 2012 WL 8022513, *1-2 (Bankr. E.D. Cal. 2012). There are four grounds on which a Civil Rule 59(e) motion may be granted: (1) to correct manifest errors of law or fact upon which the judgment rests; (2) to present newly discovered or previously unavailable evidence; (3) to prevent manifest injustice; or (4) if amendment is justified by an intervening change in controlling law. *Allstate Ins. Co. v. Herron*, 634 F.3d 1101, 1111 (9th Cir. 2011). Relief under Civil Rule 59(e) is "an extraordinary remedy which should be used sparingly." *Id.*

The second and fourth grounds are inapplicable. The Debtor presents no newly discovered evidence or intervening change in controlling law.

The first ground is inapplicable. The Debtor cites no manifest error of law or fact upon which the dismissal order rests and the court concludes there are none. At a very minimum, as a condition of allowing the Debtor to file required documents late, the Debtor was ordered to file, set, and serve motion to confirm her plan. She did not. The Debtor was also given notice that if she failed to comply with the order to file, set, and serve a motion to confirm her plan the case would be dismissed. When the Debtor failed to comply, the case was dismissed.

That leaves the third ground, manifest injustice. As one court explained:

The manifest injustice contemplated by Rule 59(e) is an amorphous concept with no hard line definition. The movant must show an error that is direct, obvious and observable. A showing of manifest injustice requires that there exists a fundamental flaw in the court's decision that without correction would lead to a result that is both inequitable and not in line with applicable policy.

In re Wahlin, 2011 WL 1063196, *3 (Bankr. D. Idaho 2011) (internal citations and quotations omitted). The standard is a stringent one. *Sciara v. Campbell*, 2020 WL 248653, *3 (D. Nev. 2020).

As stated above, the court perceives no fundamental flaw in the dismissal of the case because the Debtor failed to meet the conditions of an order extending her time to file missing documents. Vacating the dismissal order is therefore not necessary to prevent an inequitable result or one that is not in line with applicable policy.

In short, the Debtor has not demonstrated that extraordinary relief under Civil Rule 59(e) is warranted. The result is no different under Civil Rule 60(b), to the extent it is applicable.

Civil Rule 60(b)(1) permits the court to relieve a party from a final judgment or order for "mistake, inadvertence, surprise, or excusable neglect[.]" Fed. R. Civ. P. 60(b)(1); Fed. R. Bankr. P. 9024. Debtor relies on excusable neglect which is governed by the *Pioneer-Briones* factors, i.e., (1) the danger of prejudice to any non-moving party if the dismissal is vacated; (2) the length of delay and the potential impact of that delay on judicial proceeding; (3) the reason for the delay, including whether the delay was within the reasonable control of the movant; and (4) whether the debtor's conduct was in good faith. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 381 (9th Cir. 1997). The Debtor fails to analyze the *Pioneer-Briones* factors. Nevertheless, based on the court's independent evaluation of the factors, the court concludes that relief for excusable neglect is not warranted.

As to the first factor, the automatic stay terminated when this case was dismissed and it has now been terminated for over three weeks. Once terminated the automatic stay can only be reimposed through an adversary proceeding. *Canter v. Canter (In re Canter)*, 299 F.3d 1150, 1155 n.1 (9th Cir. 2002); see also *Ramirez v. Whelen (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) (Klein, J., concurring). Even assuming the automatic stay is revived if an order that caused it to terminate is vacated, see *State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-80 (10th Cir. 1996), doing so here would result in confusion and undue prejudice to creditors who may not comprehend the legal implications of reinstating the bankruptcy case or who may have acted in reliance on dismissal and termination of the automatic stay. This factor weighs against relief.

As to the second factor, delay is minimal. Debtor filed her motion to vacate eight days after the case was dismissed. This factor is neutral.

As to the third factor, Debtor's attorney states that he believed a motion to confirm did not need to be filed, set, or served based largely on a prior conversation with the Trustee in a different bankruptcy. However, Debtor's attorney has not explained why he failed to comply with an otherwise clear and unambiguous order that required a motion to confirm as a condition of the extension. This factor weighs against relief.

As to the fourth factor, there is an element of bad faith. The Debtor is a serial bankruptcy filer of non-productive bankruptcy cases. This is the Debtor's seventh case in past twelve years. Four of those cases (including this one) have been dismissed in the last three years. This factor weighs against relief.

In short, the foregoing reasons, the court concludes that the *Pioneer-Briones* factors weigh against relief under Civil Rule 60(b)(1) for excusable neglect. Relief under Civil Rule 60(b)(6) is also not warranted.

Civil Rule 60(b)(6) is a catch-all provision that allows a court to grant relief from a final judgment, order, or proceeding for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). Relief sought under Rule 60(b)(6) "must be for some reason other than the five reasons preceding it under the rule." *Gant v. Vanderpool*, 529 Fed.Appx. 852, 853 (9th Cir. 2013) (citing *Lyon v. Augusta S.P.A.*, 252 F.3d 1078, 1088 (9th Cir. 2001)). In other words, as she does here, the Debtor cannot rely on excusable neglect as a basis for relief under Civil Rule 60(b)(6).

Conclusion

For all the foregoing reasons, the Debtor's motion to vacate the order dismissing this Chapter 13 case will be denied.

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

The court will prepare a minute order.

39. [20-20905](#)-B-13 BEVERLY HAWKINS
[DPC-1](#) Gabriel E. Liberman

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-29-20 [[31](#)]

See also #2-3

Final Ruling

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

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

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$942.00, which represents approximately 1 plan payment. An additional payment of \$471.00 will be due by the date of the hearing on this matter. The 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, the Nonstandard Provisions in Debtor's plan proposes to refinance her personal residence, which has sufficient equity to pay both secured creditors County Tax Collector and Ji Liang Wann in full on or before August 31, 2020. However, based on Debtor's income in Schedule I, it is unclear if Debtor will be eligible to refinance her personal residence.

The plan filed February 18, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.