

**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 23, 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 23, 2020 at 1:00 p.m.

1. [20-20905](#)-B-13 BEVERLY HAWKINS MOTION FOR RELIEF FROM
[BRL](#)-2 Gabriel E. Liberman AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
6-8-20 [[41](#)]

JI-LIANG WANN VS.

Final Ruling

Creditor Ji-Liang Wann having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

The court will issue an order.

June 23, 2020 at 1:00 p.m.

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2. [09-42713](#)-B-13 DAVID/KELLY SCOTT
[JBA](#)-2 Joseph Angelo

MOTION FOR CONTEMPT
5-12-20 [[84](#)]

CONTINUED TO 8/18/2020 AT 1:00 P.M. PER ORDER GRANTING STIPULATION TO CONTINUE HEARING.

Final Ruling

No appearance at the June 23, 2020, hearing is required. The court will issue an 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 grant the motion to extend stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on April 28, 2020, due to default in plan payments (case no. 17-23577, dkt. 75). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor asserts that she was unable to cure her plan payments due to the death of her father in the Philippines, which required her to pay for hospital bills, funeral expenses, and plane tickets for herself and two children. That, along with her husband's loss of income and Debtor's own reduced hours due to COVID-19, the Debtor was unable to get caught up with her own finances and bills. Debtor states that since the previous case was dismissed, her circumstances have changed. Her husband will be able to go back to work and Debtor will be able to work full-time at a second job.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

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

The court will issue an order.

4. [20-20939](#)-B-13 ANDREW HUNLEY
[DPC-1](#) Timothy J. Walsh

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
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). A / 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.

The meeting of creditors has been continued to June 25, 2020. Nonetheless, at a minimum the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$8,023.36, which represents approximately 2 plan payments. An additional payment of \$4,011.68 will be due by the date of the hearing on this matter. No response has been filed by the Debtor stating that he is current on plan payments. 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 February 20, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

5. [20-22040](#)-B-13 YVETTE LERMA
[LBJ](#)-1 Mark Shmorgon

AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY
CONSUMER PORTFOLIO SERVICES
4-21-20 [[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). 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 overrule the objection and confirm the plan.

Feasibility depends on the granting of a motion to value collateral of Consumer Portfolio Services ("Creditor"). The Debtor and Creditor entered into a stipulation regarding value and interest rate of the vehicle at issue. Dkts 33, 25. The court entered an order approving the stipulation on May 17, 2020.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed April 13, 2020, is confirmed.

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

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

6. [19-21543](#)-B-13 ESTER NINO
[AP-1](#) Nicholas Wajda

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-26-20 [[52](#)]

U.S. BANK NATIONAL
ASSOCIATION VS.

WITHDRAWN BY M.P.

Final Ruling

U.S. Bank National Association having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

The court will issue an order.

7. [20-22143](#)-B-13 JODI/ROBERT GALLAGHER OBJECTION TO CONFIRMATION OF
[DPC-1](#) Muoi Chea PLAN BY DAVID P. CUSICK
Thru #8 6-4-20 [[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). 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 overrule the objection and conditionally grant confirmation of the plan.

Feasibility depends on the granting of a motion to value collateral of Toyota Motor Credit Corporation. That motion is conditionally granted at Item #8, MC-2, and continued to July 7, 2020, at 1:00 p.m. Therefore, this objection will also be continued to the same date and time.

Provided that there is no opposition filed to the Debtor's motion to value collateral, the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed April 20, 2020, is conditionally confirmed.

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

IT IS FURTHER ORDERED that the plan is CONDITIONALLY CONFIRMED and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and, if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

8. [20-22143](#)-B-13 JODI/ROBERT GALLAGHER MOTION TO VALUE COLLATERAL OF
[MC-2](#) Muoi Chea TOYOTA MOTOR CREDIT CORPORATION
6-8-20 [[25](#)]

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 Toyota Motor Credit Corporation at \$18,716.00, and continue the hearing to July 7, 2020, at 1:00 p.m.

Debtors' motion to value the secured claim of Toyota Motor Credit Corporation

("Creditor") is accompanied by Debtors' declaration. Debtors are the owner 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. As the owner, Debtors' 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. 6-1 filed by Toyota Motor Credit Corporation is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on January 20, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$28,598.41. 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 \$18,716.00. 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 granted.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2) any party in interest shall have until 5:00 p.m. on June 30, 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 Debtors' attorney, the Chapter 13 Trustee, and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the 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 July 7, 2020, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on July 7, 2020, at 1:00 p.m.

The court will issue an order.

9. [20-21946](#)-B-13 SUE PIERCE
[DPC-1](#) Arete Kostopoulos
Thru #11

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
5-27-20 [[33](#)]

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

Second, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Third, the claim of Central Loan Admin & R/Lakeview Loan Servicing, LLC for real property at 46 Cabrilla Street, Moab, Utah, is misclassified in Class 1. Lakeview Loan Servicing, LLC, which holds the first deed of trust, has filed Claim No. 8-1 and supporting documents showing pre-petition arrearages of \$2,244.53 and a total monthly mortgage payment of \$2,051.12. Although Debtor states in the plan that "Debtor not on title to this property," the Debtor appears to be an obligor under the note and is obligated to cure the arrears and maintain ongoing not installments or surrender the real property. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B).

Fourth, the plan payment in the amount of \$2,743.32 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.

Fifth, feasibility depends on the granting of a motion to value collateral of Title Max. No motion to value has been filed, set for hearing, or served on the respondent creditor or the Trustee pursuant to Local Bankr. R. 3015-1(i).

Although the Trustee raises the issue of Debtor's failure to attend the first meeting of creditors, the Debtor did appear at the continued meeting of creditors held June 11, 2020, at it was concluded.

For the five reasons stated above, the plan filed April 16, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

10. [20-21946](#)-B-13 SUE PIERCE OBJECTION TO CONFIRMATION OF
[EAT-1](#) Arete Kostopoulos PLAN BY LAKEVIEW LOAN
SERVICING, LLC
5-27-20 [[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 overrule the objection as moot since the issues raised by Lakewview Loan Servicing, LLC have been addressed at Item #9, DPC-1. The plan is not confirmable for reasons stated at Item #9, DPC-1.

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

The court will issue an order.

11. [20-21946](#)-B-13 SUE PIERCE OBJECTION TO CONFIRMATION OF
[EAT-2](#) Arete Kostopoulos PLAN BY IMPAC MORTGAGE CORP.
5-27-20 [[30](#)]

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 IMPAC Mortgage Corp. dba Cashcall Mortgage holds a first priority deed of trust secured by the Debtor's residence located at 420 Sarah Way, Suisun City, California. The creditor has filed a timely proof of claim in which it asserts \$8,780.96 in pre-petition arrearages and an ongoing mortgage payment of \$1,183.95. 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 April 16, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

12. [17-23251](#)-B-13 STEPHAN/MARCIA ROTHSCHILD MOTION TO WAIVE SECTION 1328
[MJD](#)-3 Matthew J. DeCaminada CERTIFICATE
REQUIREMENT, CONTINUE CASE
ADMINISTRATION, SUBSTITUTE
PARTY, AS TO JOINT DEBTOR
5-20-20 [[40](#)]

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 substitute Debtor Stephan Rothschild to continue administration of the case, and waive the deceased Joint Debtor Marcia Rothschild's certification otherwise required for entry of a discharge.

Stephan Rothschild ("Debtor") gives notice of the death of his wife Marcia Rothschild ("Joint Debtor") and requests the court to substitute Debtor in place of Joint Debtor for all purposes within this Chapter 13 proceeding.

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].

In sum, the deceased debtor's representative or successor must file a motion to substitute in as a party to the bankruptcy case. The representative or successor may also request a waiver of the post-petition education, and a waiver of the certification requirement for entry of discharge "to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications." LBR 1016-1(b)(4).

Based on the evidence submitted, the court will grant the relief requested, specifically to substitute Debtor for Joint Debtor as successor-in-interest, and to waive the § 1328 and financial management requirements for Joint Debtor. 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 minutes.

The court will issue an order.

13. [19-20771](#)-B-13 MARTIN HERNANDEZ
[MWB](#)-2 Mark W. Briden

MOTION TO MODIFY PLAN
5-4-20 [[63](#)]

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.

Plan payments do not equal the aggregate of monthly amounts plus trustee's fees, the Debtor is delinquent in plan payments, plan payments in the Non-standard Provisions need clarification, and the mortgage arrears dividends do not match what has already been paid in the confirmed plan.

Although the Debtor filed a response, he only provides clarification as to what the \$6,000.00 balloon payment represents and how it should be distributed. The other issues raised by the Chapter 13 Trustee remain unresolved.

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

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

The court will issue an order.

14. [19-27971](#)-B-13 SEAN/CRYSTAL FAY
[MJD-2](#) Matthew J. DeCaminada

OBJECTION TO NOTICE OF
POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
5-22-20 [[55](#)]

Final Ruling

The objection has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

The court's decision is to sustain the objection.

Debtors object to the post-petition mortgage fee of \$1,200.00 charged by The Padgett Group ("Creditor") for its review of the Notice of Bankruptcy and Chapter 13 Plan that was mailed to it by the court. Debtors state that he was current on his mortgage payments when he filed the petition, properly classified Creditor's claim as a Class 4 claim to be paid directly by the Debtor outside of the plan, the Creditor filed no objection or response to the plan, and the plan was ultimately confirmed. Debtors assert that Creditor would have needed no more than 15 minutes to review the plan.

No response was filed by the Creditor.

The court finds that the Creditor has failed to explain the time spent by its counsel to review the plan and proof of claim, has not submitted any billing invoices, and has not identified any applicable hourly billing rate to establish or justify the reasonableness of fees requested. Consequently, Creditor has failed to satisfy its burden of demonstrating the fees requested, even if permitted, are reasonable. *See In re Scarlet Hotels, LLC*, 392 B.R. 698, 703 (6th Cir. BAP 2008). Therefore, the Debtors' objection is sustained and the fees are disallowed.

Based on the evidence before the court, the objection to the notice of mortgage payment change is sustained.

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

The court will enter a minute order.

15. [19-27174](#)-B-13 GREGORY BAKER
[DBJ-2](#) Douglas B. Jacobs

OBJECTION TO CLAIM OF DARYL
ELIZABETH BAKER, CLAIM NUMBER
8-1
5-6-20 [[21](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection to Claim No. 8-1 of Daryl Elisabeth Baker to the extent that the claim shall be treated as an unsecured, non-priority claim and not as a domestic support obligation.

Debtor Gregory Baker ("Objector") requests that the court disallow Claim No. 8-1 of his daughter Daryl Elisabeth Baker ("Creditor") to the extent that the \$31,612.25 be treated as an unsecured, non-priority claim and not as a domestic support obligation. Objector asserts that it should be treated as an unsecured, non-priority claim because Objector and his former spouse stipulated and agreed in their separation agreement that Objector had "borrowed money from custodial accounts established for the minor children Daryl Elisabeth Baker and Bryce Franklin Baker." Dkt. 23, exh. B, para. 10(d). Objector asserts that the money is not a debt owed to his child in the nature of maintenance or support.

Discussion

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

The court finds that the proof of claim to be an unsecured, non-priority claim and not a domestic support obligation. The claim relates to funds that both the Objector and his former spouse had agreed to was "borrowed money from custodial accounts" for their minor children. There is no evidence that the debt owed is in the nature of maintenance or support of a child. Creditor has not filed an objection. Objector has satisfied his burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, the Creditor's claim shall be treated as an unsecured, non-priority claim and not as a domestic support obligation. The objection to the proof of claim is sustained.

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

The court will issue an order.

16. [20-20675](#)-B-13 CHESTER KATZ
[DPC-1](#) Bruce Charles Dwigins

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
6-4-20 [[46](#)]

Final Ruling

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

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due 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 does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive a higher distribution in a chapter 7 proceeding. According to Schedules A/B and C, the total value of non-exempt property in the estate is \$952,440.87. The total amount that will be paid to unsecured creditors is only \$15,920.10.

Second, the plan will take approximately 66 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Third, the Debtor has failed to file the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Separately, the amount of attorneys fees is unclear. The plan calls for attorneys fees of \$4,000.00, dkt. 41, p. 2, but the amended Disclosure of Compensation of Attorney for Debtor(s), dkt. 40, and the Statement of Financial Affairs, dkt. 1, p. 36, both list an attorney fee amount of \$1,500.00.

The plan filed April 23, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

17. [20-22076](#)-B-13 PAMELA PORTER
[DPC-1](#) Timothy J. Walsh

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
6-4-20 [[14](#)]

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.

The plan will take approximately 75 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). Contributing to this is the fact that a proof of claim was filed by OneMain Financial Group showing a secured claim amount that is greater than that provided for in Debtor's plan, an unaccounted large tax refund that Debtor anticipates receiving but that is not scheduled or exempted, and real property located in Solano County that may or may not have a lien against it.

The plan filed April 15, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will issue an order.

18. [20-20286](#)-B-13 MARY CHADWICK
[AP-1](#) Pro Se

MOTION FOR CONSENT TO ENTER
INTO LOAN MODIFICATION
AGREEMENT
5-20-20 [[48](#)]

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 permit the loan modification.

Select Portfolio Servicing, Inc., servicer for Secured Creditor U.S. Bank Trust National Association, as Trustee for Towd Point Master Funding Trust 2019-PM8 ("Creditor") seeks court approval to enter into a loan modification with Debtor as to real property located at 5401 79th Street, Sacramento, California. The loan modification agreement provides for lower interest rate and the capitalization of arrears into the principal balance of the loan and/or deferred principal balance. The monthly payment including escrow impound is being reduced from \$664.95 to \$590.25.

The motion is not supported by any declaration. However, the Creditor does submit exhibits showing the reduced monthly payment and reduced interest rate that will benefit the Debtor.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

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

The court will issue an order.

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 confirm the amended plan.

The Chapter 13 Trustee objects to confirmation on grounds that the Debtor is delinquent \$1,700.00, which represents approximately 1 plan payment. The Debtor filed a response stating that he remitted payment on June 9, 2020, and is current on plan payments. Therefore, the issue is resolved.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

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

The court will issue an order.

20. [20-21689](#)-B-13 ROSEMARIE HIGGS-SILER CONTINUED OBJECTION TO
[DPC-1](#) Peter G. Macaluso CONFIRMATION OF PLAN BY DAVID
Thru #21 P. CUSICK
5-13-20 [[29](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). 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.

Feasibility depends on the granting of a motion to value collateral of Main Street Launch (PGM-1). That motion is heard at Item #21 and is denied without prejudice.

The plan filed March 20, 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 OVERRULED for reasons stated in the minutes.

The court will issue an order.

21. [20-21689](#)-B-13 ROSEMARIE HIGGS-SILER CONTINUED MOTION TO VALUE
[PGM-1](#) Peter G. Macaluso 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 by the Chapter 13 Trustee and Main Street Launch. The court will address the merits of the motion at the hearing.

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

Debtor moves to value the secured claim of Main Street Launch ("Creditor"), holder of 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 objects to Debtor's valuation of the Property on grounds that it is listed as Debtor's primary residence, which is contrary to the petition. Dkt. 18, p. 2, ll. 3-4. Additionally, the Trustee's review of the Randolph County Tax Department's online records shows that the assessed value of the Property is greater at \$84,000.00. With this valuation, equity exists in the property for Creditor's second deed of trust to attach.

Creditor also objects Debtor's valuation and states that the property has a value of \$107,000.00 based on an exterior-only appraisal. The Declaration of Robert J. McManus filed in support of the motion states that the occupant of the Property refused the appraiser's request to inspect the interior of the home and the appraiser had to make the assumption that the interior of the home is in average condition. Nonetheless, based on the exterior-only inspection, Creditor valuation of the property also leaves equity for its second deed of trust to attach.

Proof of Claim Filed

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

Discussion

The Trustee and Creditor have each produced evidence indicating that the value of the home is greater than that asserted by the Debtor. The Trustee based its valuation on the Randolph County Tax Department property summary and the Creditor based its valuation on an exterior-only appraisal of the Property. The court finds the evidence by both the Trustee and Creditor to be more convincing than the Debtor's opinion of value, which does not make any attempt to justify a lower value by pointing to the condition of the property or providing expert opinion assessing the home or other sales.

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 for reasons stated in the minutes.

Debtor is FURTHER ORDERED to make the Property available to Creditor's appraiser for inspection. Debtor shall not re-file any motion to value the Property unless and until Creditor's appraiser is granted access to inspect the interior of the Property should Creditor's appraiser elect to perform an interior inspection.

The court will issue an order.

22. [18-25494](#)-B-13 NICHOLAS/REBECCA
[PSB-1](#) HENDRICKS
Pauldeep Bains

MOTION TO INCUR DEBT
6-5-20 [[44](#)]

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 grant the motion to incur debt.

The motion seeks permission to purchase a 2019 Nissan Altima, the total purchase price of which is \$16,130.26, with monthly payments of \$360.45 and an interest rate of 16.90%. Debtors contend that they have applied for a vehicle on approximately 10 occasions but were denied approximately eight of those times due to the pending bankruptcy. Debtors state that a replacement vehicle is necessary since the two that they currently have are broken down and the Debtors do not have the funds to repair them. The Debtors will nonetheless keep their existing vehicles because there is some equity in them.

Discussion

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Although the interest rate is higher than what the court generally deems reasonable, the court finds that the proposed credit is reasonable based on the unique facts and circumstances that the Debtors have applied for a vehicle on 10 occasions and were unsuccessful in obtaining a lower interest rate. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

The court will issue an order.

23. [20-21929](#)-B-13 THOMAS/LAURETTA HALL
[CYB](#)-1 Candace Y. Brooks

CONTINUED MOTION TO VALUE
COLLATERAL OF CITI BANK, N.A.
5-26-20 [[19](#)]

Final Ruling

This matter was continued from June 9, 2020, to allow Citi Bank, N.A. to file any opposition to Debtors' motion to value its collateral. See dkt. 31. No opposition was timely filed by the creditor. Therefore, the conditional order granting Debtors' motion shall become the court's final decision. The June 23, 2020, hearing is vacated.

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

The court will issue an order.