UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: November 5, 2019
CALENDAR: 1:00 P.M. CHAPTER 13

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

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

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

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

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

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

November 5, 2019 at 1:00 p.m.

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1. 18-27211-B-13 ROBERT/KELLY ROCHA — MOTION TO INCUR DEBT
LBG-2 Lucas B. Garcia — 10-23-19 [46]

Final Ruling

The motion was not set for the minimum 14-days' notice required by Local Bankruptcy Rule 9014-1(f)(2). Additionally, the motion was not set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Therefore, the motion is denied without prejudice.

The motion is ORDERED DENIED for reasons stated on the record in open court.

The court will enter a minute order.

2. 19-24313-B-13 ANN CONRAD
JHW-2 Travis E. Stroud

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
10-3-19 [40]

SANTANDER CONSUMER USA INC.
VS.

Final Ruling

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

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

Santander Consumer USA Inc. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Ford Focus (the "Vehicle"). The moving party has provided the Declaration of Gary Esparza to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Esparza Declaration states that there is 1 pre-petition payment in default totaling $495.22. Additionally, there are 2 post-petition payments in default totaling $990.44.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $20,723.08 as stated in the Esparza Declaration. The value of the Vehicle is not provided by the Movant, and Schedules C and D list the value as "Unknown" and that "debtor has no interest in this vehicle" because it is allegedly "[o]wned by [non-filing] co-debtor."

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). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

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

The request for relief from stay as to non-filing co-debtor Michael Davis Hydorn, who

is liable on such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).

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.

3. 19-26313-B-13 CHRISTOPHER BAILEY
Pro Se

MOTION TO EXTEND AUTOMATIC STAY
10-22-19 [13]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to deny without prejudice the motion to extend automatic stay.

Debtor Christopher Bailey ("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 September 25, 2019, due to failure to pay filing fee (case no. 19-24314, dkt. 51, 53). 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).

An opposition was filed by creditor Steven Gimenez ("Creditor") stating that the Debtor has not paid rent for approximately 5 months. It is Creditor's belief that the Debtor has not paid his filing fee installments, has not made plan payments to the Trustee, and is simply working the bankruptcy system to avoid an unlawful detainer action.

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 does not explain why the previous plan failed and what has changed so the present plan will succeed. The Debtor simply states that he is taking his bankruptcy case seriously, is not attempting to avoid responsibility, and needs additional time to complete the filing without having creditors contacting him about their individual debts. Because the Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case, the automatic stay will not be extended beyond 30 days.

The motion is denied without prejudice and the automatic stay is not extended for all purposes and parties.

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

The court will enter a minute order.

4. 19-20715-B-13 DANIEL/MICHELE MILLS — MOTION TO INCUR DEBT
MJD-5 Matthew J. DeCaminada — 10-10-19 [65]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

The motion seeks permission to purchase a 2020 Toyota Corolla SE ("Toyota Corolla"), the total purchase price of which is $23,943.60, with monthly payments of $515.94 and an interest rate of 15.49%. At the time of filing, Debtors owned two vehicles: a 2007 Chevrolet Suburban 1500 ("Chevrolet Suburban") and a 2017 Kia Optima ("Kia Optima"). The Toyota Corolla is to replace the Kia Optima that Debtors had surrendered through their confirmed plan filed February 7, 2019. Debtors state that the Kia Optima, had it been kept and paid through Class 2A of the plan, would have had a monthly payment of $634.80 and an interest rate of 12.45%, therefore suggesting that the monthly payment and interest rate of the brand new Toyota Corolla may not be unreasonable.

Furthermore, Debtors state that to support the new auto payment, they intend to reduce their food and housekeeping supplies from $1,000.00 to $700.00 per month. This will be done by eating out less often, buying food in bulk and on sale, and buying store brands whenever possible. Debtors state that they will also reduce their clothing and laundry budget from $150.00 to $75.00 per month by buying clothes when on sale and creating larger laundry loads. Debtors contend that they will also reduce their entertainment budget from $100.00 to $50.00 per month by partaking in free or low-cost events for their family. Lastly, Debtors have decreased their transportation budget from $520.00 to $430.00 per month by carpooling whenever possible and reducing the number of errands they run each weak.

Based on the above reductions, the court calculates that the Debtors will have an additional $515.00 in monthly disposable income.

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 Debtors contend that they can decrease their monthly expenses to cover the cost of the Toyota Corolla, the Debtors' additional monthly disposable income of $515.00 is not sufficient to cover the monthly car payment of $515.94. Even if the Debtors can cover this new expense, the transaction is not in the best interest of the Debtors. The loan calls for a substantial interest charge of 15.49%. A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a brand new vehicle – when they already have a Chevrolet Suburban and surrendered the Kia Optima because of its expense – and attempt to borrow money at a 15.49% interest rate.

The motion is denied without prejudice.

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

The court will enter a minute order.

5.	19-22618-B-13 MMM-1	RANDY WHITE Mohammad M. Mokarram	MOTION TO APPROVE LOAN MODIFICATION 10-21-19 [25]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to not permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. Bank of America, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification with a principal and interest payment of $2,002.24 plus estimated escrow of $685.25 for a total of $2,687.49 per month. According to the confirmed plan filed May 1, 2019, Debtor's currently monthly contract installment with Creditor is $2,575.00.

Supporting the motion is the Declaration of Randy White. The White Declaration is nearly verbatim to the motion and does not state why this modification is in his best interest given that the monthly payment is more than what is currently listed in his confirmed plan, or his ability to make the new monthly payments.

This post-petition financing is not consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. The motion is denied without prejudice.

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

The court will enter a minute order.

6. 19-24119-B-13 SONDA CHARLTON
STH-1 Peter G. Macaluso

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-30-19 [77]

U.S. BANK NATIONAL ASSOCIATION VS.

Final Ruling

This motion was set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). However, the motion was not served on debtor Sonda Charlton's counsel Peter G. Macaluso and Successor Chapter 13 Trustee David Cusick. Therefore, the court's decision is to deny the motion without prejudice.

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

The court will enter a minute order.

7. 19-24635-B-13 LISA FREITAS MOTION TO CONFIRM PLAN
LBG-1 Lucas B. Garcia 9-23-19 [12]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. 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.

8.	19-24237-B-13 PGM-1	ELENA PEREZ GONZALEZ Peter G. Macaluso	MOTION TO CONFIRM PLAN 9-19-19 [52]

No Ruling

9.	19-23359-B-13 MEV-1	JOSE CASTRO Marc Voisenat	MOTION TO CONFIRM PLAN 9-16-19 [31]

No Ruling

10. 18-24064-B-13 ALFREDO/LINDA DUENAS — MOTION FOR COMPENSATION FOR GERALD L. WHITE, DEBTORS ATTORNEY(S)
GW-1 Gerald L. White — 9-20-19 [22]

Final Ruling

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

The court's decision is to grant the motion for compensation.

Fees and Costs Requested

Gerald L. White ("Applicant"), the attorney to Chapter 13 Debtors, makes an interim request for the allowance of $5,760.00 in fees and $310.00 expenses. Applicant states that he has been paid a pre-petition retainer in the amount of $3,310.00 and that the balance due is $2,760.00. Applicant requests that this balance be paid from a separate retainer of $3,500.00 paid through the plan held in trust. The Debtors have opted out of the Guidelines. Dkt. 1, p. 63. The period for which the fees are requested is for June 20, 2018, through August 30 2019.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 26.

Statutory Basis for Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (I) unnecessary duplication of services; or
> (ii) services that were not--
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Debtors and bankruptcy estate and reasonable.

Applicant is allowed the following amounts as compensation to this professional in this case:

Pre-petition retainer	$3,310.00
Fees and costs from retainer held in trust	$2,760.00

The motion is ORDERED GRANTED.

The court will enter a minute order.

11. 19-23669-B-13 LBG-2 **Thru #12**

JACK/MARYANNE JODOIN
Lucas B. Garcia

CONTINUED MOTION TO CONFIRM PLAN
9-9-19 [36]

No Ruling

12. 19-23669-B-13 LBG-3

JACK/MARYANNE JODOIN
Lucas B. Garcia

CONTINUED MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP, LLC
9-9-19 [42]

Tentative Ruling

This matter was continued from October 15, 2019, in light of the representation made on the record in open court that debtors Jack Jodoin and Maryanne Jodoin and creditor Wheels Financial Credit Group, LLC reached a stipulated agreement as to the value of the 2006 Toyota Tacoma. An order on the stipulation was entered on October 27, 2019. Therefore, the motion to value is denied as moot.

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

The court will enter a minute order.

13. 19-24669-B-13 RAMON CAPARAS
JPJ-2 Arasto Farsad

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-25-19 [61]

WITHDRAWN BY M.P.

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection, the objection 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 objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

14. 16-23970-B-13 RUSSELL/VICTORIA THOMPSON — OBJECTION TO CLAIM OF GLENNORA THOMPSON, CLAIM NUMBER 13-1
WW-3 Mark A. Wolff — 9-9-19 [50]

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 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 13-1 of 13-1 and disallow the claim in its entirety as to Victoria Thompson.

Debtor Victoria Thompson ("Objector") requests that the court disallow the claim of Glennora Thompson ("Creditor"), Claim No. 13-1. The claim is asserted to be a domestic support obligation in the amount of $42,000.00. Objector asserts that this claim stems from a family law case where Glennora Thompson is the petitioner and Russell Thompson was the respondent. Objector was not a party in that case and does not owe Glennora Thompson spousal support. The bankruptcy case as to only Russell Thompson was dismissed on August 2, 2019. *See* dkt. 44.

Discussion

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

The court finds that the proof of claim is not allowed as to Objector. The claim stems from a domestic support obligation owed by Russell Thompson, who is no longer a debtor in this bankruptcy case. Objector has satisfied its burden of overcoming the presumptive validity of the claim.

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

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

The court will enter a minute order.

15. 19-24481-B-13 KIMBERLY BIGGS-JORDAN
FF-1 Gary Ray Fraley

MOTION TO CONFIRM PLAN
9-18-19 [26]

No Ruling

16. 17-21387-B-13 JENNIFER CARRASCO
STH-1 Mary Ellen Terranella

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
9-27-19 [21]

VW CREDIT LEASING, LTD. VS.

Final Ruling

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

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

VW Credit Leasing, Ltd ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2016 VW GTI ATB 4DR (the "Vehicle"). The moving party has provided the Declaration of Jennifer to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Jennifer Declaration states that there is a post-petition delinquency in the amount of $22,054.82. This amount is the payoff amount since the Vehicle is a lease and the lease matured on June 5, 2019.

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). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow 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.	18-26598-B-13 MS-2	JOE/JENITSA CHAVEZ Mark Shmorgon	MOTION TO MODIFY PLAN 10-1-19 [37]

No Ruling