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 20, 2018
CALENDAR: 1:00 P.M. CHAPTER 13

PLEASE REVIEW CAREFULLY AS THE COURT'S ORDER PREPARATION AND SUBMISSION PROCEDURE IN CHAPTER 13 CASES HAS CHANGED EFFECTIVE SEPTEMBER 3, 2018.

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 20, 2018 at 1:00 p.m.

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1. 18-26804-B-13 JUSTIN/MICHELE BROUSSARD — MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso — 11-6-18 [8]

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 grant the motion to extend automatic stay.

Debtors Justin and Michele Broussard ("Debtors") seek 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 Debtors' second bankruptcy petition pending in the past 12 months. Debtors' prior bankruptcy case was dismissed on November 7, 2018, due to Debtors' failure to cure defaulted payments through payment in full or through confirmation of a modified plan (case no. 14-31028, dkts. 86, 87). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtors 30 days after filing of the petition.

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 the debtor failed to perform under the terms of a confirmed plan, or 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)(II), (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).

Debtors assert that their prior bankruptcy failed because Mr. Broussard had a surgery with complications, which reduced the household income by $10,000.00 per month. Also, Debtors obtained full custody of their two sons, which increased their expenses, with no financial support to offset the new expenses. In addition, Debtors were not able to resolve their tax liabilities with the Internal Revenue Service and Franchise Tax Board after the prior case was dismissed, which resulted in wage garnishments and Debtors' vehicles being repossessed. Debtors also claim they acquired "new debt," but did not disclose the nature or amount of the new obligations. In total, because Mr. Broussard is working again, and there are no financed vehicles, Debtors believe their financial

and personal affairs have changed sufficiently to pursue a successful Chapter 13 plan. Dkt. 11, ¶¶ 2-4.

The Debtors have 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.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

2.	17-23520-B-13 KG-6	REV ANDERSON Kayla M. Grant	AMENDED MOTION TO MODIFY PLAN 10-3-18 [79]

No Ruling

3.	18-25527-B-13 JPJ-1	MARCIA SCHILLER Scott J. Sagaria	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 10-10-18 [20]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* LBR 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. LBR 9014-1(f)(2)(C). No written reply has been filed to the objection.

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

Trustee's Objection

On October 10, 2018, Jan Johnson, the Chapter 13 Trustee ("Trustee"), filed an objection to confirmation of debtor Marcia Schiller's ("Debtor's") proposed plan.

First, Debtor was delinquent to Trustee, in the amount of $327.00, which represents approximately 1 plan payment. 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, Debtor did not appear at the Meeting of Creditors on October 4, 2018, as required by 11 U.S.C. § 343. However, Trustee filed a report on November 1, 2018, which states that the continued Meeting of Creditors was held, Debtor appeared with counsel, and the meeting was concluded. Thus, this objection has been resolved.

Third, Trustee estimates that there is $18,608.66 in non-exempt property, while Debtor's plan only proposes to pay $12,226.59 to general unsecured creditors. Thus, the plan does not comply with 11 U.S.C. § 1325(a)(4).

Fourth, the plan payment in the amount of $327.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The plan does not comply with Section 5.2 of the mandatory form plan.

November 6, 2018 Hearing

At the hearing, counsel for Debtor represented that most of these objections have been resolved, and requested a continuance to resolve two remaining issues. First, Debtor and Trustee agree that the aggregate payment should be raised, and counsel for the Debtor estimates the correct amount is $417.00 per month. Second, Debtor is delinquent in her payments to Trustee because they were mailed to an incorrect address. Counsel for Debtor stated that the payments had been sent to Trustee's corrected address prior to the hearing, and should be received soon.

Discussion

Neither party has filed supplemental pleadings demonstrating that the remaining objections have been resolved since the last hearing.

The plan filed August 31, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

4. 16-26328-B-13 LAURA/SANDRA FACINO — MOTION TO MODIFY PLAN
ALF-2 Ashley R. Amerio — 10-12-18 [41]

Final Ruling

The motion has been set for hearing on the 35 days' notice required by Local Bankruptcy Rule 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). 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's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors Laura and Sandra Facino have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

5.	16-25429-B-13 JPJ-5 **Thru #7**	JANET/ROBERT FAWCETT Steele Lanphier	OBJECTION TO CLAIM OF NAVIENT SOLUTIONS INC, CLAIM NUMBER 20 10-5-18 [45]

Final Ruling

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th 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. 20 of Navient Solutions Inc, and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Navient Solutions Inc ("Creditor"), Proof of Claim No. 20 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $26,381.09. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was December 14, 2016. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed August 29, 2018.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." FED. R. BANKR. P. 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason

that would permit the court to allow its late-filed proof of claim.

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

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

6.	16-25429-B-13 JPJ-6	JANET/ROBERT FAWCETT Steele Lanphier	OBJECTION TO CLAIM OF NAVIENT SOLUTIONS INC, CLAIM NUMBER 19 10-5-18 [49]

Final Ruling

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th 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. 19 of Navient Solutions Inc, and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Navient Solutions Inc ("Creditor"), Proof of Claim No. 19 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $8,247.40. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was December 14, 2016. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed August 29, 2018.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." FED. R. BANKR. P. 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them.

> Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

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

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

7.	16-25429-B-13 JPJ-7	JANET/ROBERT FAWCETT Steele Lanphier	OBJECTION TO CLAIM OF NAVIENT SOLUTIONS INC, CLAIM NUMBER 18 10-5-18 [53]

Final Ruling

The objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th 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. 18 of Navient Solutions Inc, and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Navient Solutions Inc ("Creditor"), Proof of Claim No. 18 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $11,540.82. Objector asserts that the Claim has not been timely filed. *See* FED. R. BANKR. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was December 14, 2016. Notice of Bankruptcy Filing and Deadlines, dkt. 9. The Creditor's proof of claim was filed August 29, 2018.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." FED. R. BANKR. P. 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." *See* 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those

circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

> Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v. Barker (In re Barker)*, 839 F.3d 1189, 1197 (9th Cir. 2016): "[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is 'rigid' and the bankruptcy court lacks equitable power to extend this deadline after the fact."

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

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

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

8. 18-26744-B-13 VIKASH SHARMA — MOTION TO EXTEND AUTOMATIC STAY
SLE-1 Steele Lanphier — 11-6-18 [9]

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. Opposition was filed on November 14, 2018.

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

Debtor's Motion

Debtor Vikash Sharma ("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 Debtor's second bankruptcy petition pending in the past 12 months. Debtor's prior bankruptcy case was dismissed on October 19, 2018, due to Debtor's failure to propose a confirmable plan within a reasonable time (case no. 18-21064, dkt. 88 Notice of Entry of Dismissal). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor 30 days after filing of the petition.

Creditor's Opposition

Creditor The Socotra Opportunity Fund, LLC ("Creditor") filed an opposition on November 13, 2018. The opposition asserts that the Debtor has not overcome the presumption that this case was not filed in good faith because there are no changed circumstances between the prior and present cases. The court agrees.

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 the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse; a substantial excuse does not include mere inadvertence or negligence, unless the dismissal was caused by the negligence of the debtor's attorney. *Id.* at § 362(c)(3)(C)(i)(II)(aa). 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).

Debtor asserts that the previous case was dismissed due to delays in confirming a plan, primarily due to confusion of Debtor and Debtor's attorney over the proper classification of Creditor's claim. Dkt. 11, lns. 8-16.

A review of the docket from case no. 18-21064 shows that the case was filed February 26, 2018. Case no. 18-21064, dkt. 1. Debtor proposed a plan on March 26, 2018, and the objections raised by Jan Johnson, the Chapter 13 trustee ("Trustee"), were sustained. *Id.* at dkts. 20, 39. Debtor proposed a first amended plan on May 22, 2018, and the objection of Creditor was sustained in part and overruled in part based on the improper classification and treatment of Creditor's claim, as Debtor addresses in the current motion. *Id.* at dkts. 46, 65. No further amended plan was filed until three months later, when Debtor filed a second amended plan on September 1, 2018. *Id.* at dkt. 76. The motion to confirm the September 1, 2018 plan was dismissed as moot after the case was dismissed on October 16, 2018 on Trustee's motion due to the delay in

proposing a confirmable plan. *Id.* at dkts. 85, 87, 94.

The Debtor has not demonstrated "by clear and convincing evidence" any "substantial change in the financial or personal affairs of the debtor" in the seven days between the dismissal of the prior Chapter 13 case on October 19, 2018, and the filing of the petition that commenced this Chapter 13 case on October 26, 2018. The only "change" cited by the Debtor is some purported confusion over the classification of Creditor's claim in the prior Chapter 13 case. But that confusion occurred *before* the Debtor's prior Chapter 13 case was dismissed. *Compare* dkts. 20, 33, 46 & 76, case no. 18-21064. And it apparently was resolved *during* the Debtor's prior Chapter 13 case. *See* dkt. 30, ¶ 2.

In short, the Debtor has not demonstrated any changed circumstances at all, much less substantial change by clear and convincing evidence. That means the Debtor has not rebutted the presumption that this Chapter 13 case was not filed in good faith. That also means the automatic stay of § 362(a) will not be extended beyond the date that is 30 days from the October 26, 2018, petition date, at which point the automatic stay will terminate as to all creditors and for all purposes. *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362, 373 (B.A.P. 9th Cir. 2011).

In *Reswick*, the bankruptcy appellate panel considered the interpretation of § 362(c)(3)(A) and the extent to which the automatic stay terminates in a debtor's second bankruptcy case filed within a year of the dismissal of a prior bankruptcy case, noting both a majority and a minority view. *Id.* at 366. The majority view holds that under § 362(c)(3)(A) the automatic stay of § 362(a) terminates after thirty days in a second bankruptcy case filed within one year only as to the debtor and the debtor's property but not as to the estate's interest in such property. *Id.* Courts that follow the majority view look to the phrase "with respect to the debtor" in § 362(c)(3)(A) in isolation to define - and thence limit - the effective reach of § 362(c)(3)(A) and the extent of the automatic stay termination. *Id.* The minority view, on the other hand, holds that the phrase "with respect to the debtor" must be read and analyzed in the context of § 362(c)(3) as a whole and what Congress sought to accomplish in BAPCPA through its limitation of the automatic stay in the second bankruptcy case. *Id.*

The bankruptcy appellate panel in *Reswick* found the minority view to be more persuasive and adopted it. *Id.* at 366–69. It concluded that the minority view better comports with principles of statutory construction, does not make § 362(c)(3)(A) internally inconsistent by rendering its reference to "or property securing such debt or with respect to any lease" meaningless, recognizes that the phrase "with respect to the debtor" distinguishes between the debtor and a debtor's spouse consistent with the "single or joint" case reference in the beginning of § 362(c)(3), and does not render § 362(c)(3)(A) difficult to reconcile with § 362(c)(3)(B) which permits any party in interest (and not just the debtor) to move to extend the automatic stay and thence recognizes that property other than the debtor's is subject to stay termination.

The bankruptcy appellate panel continues to adhere to *Reswick*, recognizing that under § 362(c)(3)(A) the automatic stay terminates in its entirety after thirty days. *See Fareed Sepehry-Fard v. U.S. Bank, N.A. (In re Sepehry-Fard)*, 2018 WL 2709718, *4 (B.A.P. 9th Cir. 2018); *Ortola v. Ortola (In re Ortola)*, 2011 WL 7145793 (B.A.P. 9th Cir. 2011). Decisions of the bankruptcy appellate panel carry considerable weight. *See State Compensation Ins. Fund v. Hoffmeier (In re Silverman)*, 616 F.3d 1001, 1005 (9th Cir. 2010).

Reswick has also been followed by at least two district courts in the Ninth Circuit, including our own. *Vitalich v. Bank of New York Mellon*, 569 B.R. 502, 509–10 (N.D. Cal. 2016); *Vassallo v. Naiman*, 2012 WL 691783, *2 (E.D. Cal. 2012); *United States v. Weldon*, 2011 WL 13247437, *3 (E.D. Cal. 2011). Numerous bankruptcy courts within the Ninth Circuit also follow *Reswick's* conclusion that after thirty days, under § 362(c)(3)(A) the automatic stay terminates in its entirety and not just as to the debtor. *See e.g., In re Bishop*, 2017 WL 1788412, *1 (Bankr. C.D. Cal. 2017); *In re Wilson*, 2016 WL 3751620, *3 n.6 (Bankr. E.D. Wa. 2016); *In re Whitescorn*, 2013 WL 1121393, *2 (Bankr. D. Ore. 2013); *In re Smith*, 481 B.R. 633, 636 n.4 (Bankr. D. Nev. 2012); *In re Jackola*, 2011 WL 2518930, *3 (Bankr. D. Haw. 2011).

The court is also aware of at least one very recent convert from the majority to the minority view. After an exhaustive review and consideration of several U.S. Supreme Court decisions interpreting BAPCPA provisions, case law developed over the years since § 362(c)(3)(A) was added to the Bankruptcy Code, and scholarly articles about § 362(c)(3)(A) the bankruptcy court in *In re Goodrich*, 587 B.R. 829 (Bankr. Vt. 2018), reconsidered and changed its earlier position from the majority to the minority view.

The court recognizes that at least two bankruptcy courts within the Ninth Circuit have declined to follow *Reswick*. *See In re Rinard*, 451 B.R. 12 (Bankr. C.D. Cal. 2011); *In re Alvarez*, 432 B.R. 839, 842-843 (Bankr. S.D. Cal. 2010). However, neither are persuasive. *Rinard* has not been cited favorably on the automatic stay issue by any court in the Ninth Circuit, and the district court for the Northern District of California recently declined to follow it. *See Vitalich*, 569 B.R. at 507-08. A different judge from the same court where *Rinard* originated also recently declined to follow it. *See Bishop*, 2017 WL 1788412 at *1. *Alvarez* pre-dates *Reswick*, and it too has not been cited by any other court in the Ninth Circuit.

Therefore, for the foregoing reasons, the motion is denied without prejudice and the automatic stay is not extended for all purposes and parties.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

9. 16-24249-B-13 LAWRENCE/ROBERTA CURTIS MOTION TO REFINANCE
DBJ-3 Douglas B. Jacobs 10-18-18 [66]

Final Ruling

Debtors Lawrence and Roberta Curtis having filed a notice of withdrawal of their 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 COURT WILL PREPARE A MINUTE ORDER.

10. 17-20155-B-13 RUMMY SANDHU
PGM-8 Peter G. Macaluso
Thru #11

MOTION TO AVOID LIEN OF AMERICAN EXPRESS TRAVEL RELATED SERVICES
10-20-18 [129]

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 to avoid judicial lien.

Debtor Rummy Sandhu ("Debtor") filed this request for an order avoiding the judicial lien of American Express Travel Related Services ("Creditor") against real property commonly known as 130 Trident Court, Vallejo, California 94591 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $14,566.33. An abstract of judgment was recorded with Solano County on September 27, 2010, which encumbers the Property. All other liens recorded against the Property total $524,454.69.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $325,000.00 as of the date of the petition. Dkt. 1, p. 11. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $26,800.00 on Amended Schedule C. Dkt. 141, p. 2.

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

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

11. 17-20155-B-13 RUMMY SANDHU
PGM-9 Peter G. Macaluso

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
10-20-18 [123]

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 to avoid judicial lien.

Debtor Rummy Sandhu ("Debtor") filed this request for an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against the Debtor's property commonly known as 130 Trident Court, Vallejo, California 94591 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,966.07. An abstract of judgment was recorded with Solano County on September 27, 2010, which encumbers the Property. All other liens recorded against the Property total $535,054.95.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $325,000.00 as of the date of the petition. Dkt. 1, p. 11. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of $26,800.00 on Amended Schedule C. Dkt. 141, p. 2.

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

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

12. 18-26958-B-13 ANTHONY/NANCI FAULCONER MOTION TO EXTEND AUTOMATIC STAY
MRL-1 Mikalah R. Liviakis 11-6-18 [8]

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 grant the motion to extend automatic stay.

Debtors Anthony and Nanci Faulconer ("Anthony" or "Nanci" separately, "Debtors" collectively) seek 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 Debtors' second bankruptcy petition pending in the past 12 months. Debtors' prior bankruptcy case was dismissed on October 11, 2018, due to delinquent plan payments (case no. 17-23085, dkt. 34, Notice of Entry of Dismissal). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

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 the debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). 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).

Debtors assert that the reduction in income due to 8 weeks of furlough in the prior case made the Chapter 13 plan unfeasible. However, Debtors have reduced their plan payments compared to the prior case, from $431.25 for the first 12 months and $730.00 for the remaining 44 months in the prior case to $460.00 for the first 12 months and $570.00 for the remaining 48 months in the current case. In addition, Anthony has a new job at Union Pacific, and is eligible to receive unemployment if his hours are cut, whereas his position in the prior case did not have that protection for any furlough periods.

Debtors have 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.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

13. 18-24762-B-13 KIMBERLY O'BRYAN MOTION TO CONFIRM PLAN
MMM-1 Mohammad M. Mokkaram 10-16-18 [18]

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. Debtor Kimberly O'Bryan 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.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

14.	18-23165-B-13 SLE-3	AREN JACKSON Steele Lanphier	MOTION TO CONFIRM PLAN 10-5-18 [36]

No Ruling

15. 18-23467-B-13 PAUL BRUNO
Pro Se

MOTION TO REOPEN CHAPTER 13 BANKRUPTCY CASE
11-5-18 [59]

CASE CLOSED: 06/26/2018

Final Ruling

The hearing on this matter was vacated by the court's order dated November 7, 2018. Dkt. 63.

THE COURT WILL PREPARE A MINUTE ORDER.

16. 18-20871-B-13 DBJ-5 — VICTORIA RUGG, Douglas B. Jacobs — CONTINUED MOTION TO CONFIRM PLAN, 8-16-18 [51]

No Ruling

17. 18-24377-B-13 JPJ-2
PETE GARCIA
Peter G. Macaluso
MOTION TO DISMISS CASE
11-6-18 [65]
Thru #18

No Ruling

18. 18-24377-B-13 PGM-2
PETE GARCIA
Peter G. Macaluso
MOTION TO CONFIRM PLAN
10-16-18 [52]

No Ruling

19.	18-25377-B-13 JPJ-1	ROSA PELAYO Peter G. Macaluso	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 10-10-18 [18]

No Ruling

20. 18-25679-B-13 JOSHUA/JENNIFER WENSMANN — MOTION FOR RELIEF FROM AUTOMATIC STAY
APN-1 Mikalah R. Liviakis — 10-22-18 [16]

TOYOTA MOTOR CREDIT CORPORATION 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.

Creditor Toyota Motor Credit Corporation ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2015 Toyota Sienna, VIN 5TDKK3DC5FS670769 ("Vehicle"). The moving party has provided the Declaration of Rahnae Spooner, a Supplier Management Administrator employed by Movant, to introduce into evidence the documents upon which it bases the claim and the obligation owed by debtors Joshua and Jennifer Wensmann ("Debtors").

The Spooner Declaration provides testimony that Debtor has not made 1 post-petition payments, with a total of $682.89 in post-petition payments past due. There are no pre-petition defaults presented.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $30,497.57, as stated in the Spooner Declaration, while the value of the Vehicle is determined to be $24,470.00, as stated in Schedules A/B and D filed by Debtor. Dkt. 18, ln. 17, and dkt. 1, p. 10.

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 Debtors 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 Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtors or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case. Further, the court entered an order confirming Debtors' plan, which surrenders the Vehicle to Movant as a Class 3 claim. Dkts. 2, p. 4, and 22.

The court shall issue an order terminating and vacating the automatic stay to allow Toyota Motor Credit Corporation, 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.

COUNSEL FOR THE MOVANT SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

21. 18-24684-B-13 STEVEN/SUSAN GARDNER MOTION TO CONFIRM PLAN
NF-1 Nikki Farris 10-8-18 [20]

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. Debtors Steven and Susan Gardner have 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.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING, WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

22. 15-22255-B-13 MANPREET/GURPREET LAKHAT MOTION TO INCUR DEBT O.S.T.
PGM-6 Peter G. Macaluso 11-7-18 [108]

Tentative Ruling

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Dkt. 114. Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The court's decision is to deny nunc pro tunc approval but grant the motion and authorize the Debtors to incur post-petition debt.

Debtors' Motion

Manpreet and Gurpreet Lakhet, the debtors ("Debtors"), filed this motion for permission to purchase a 2018 Nissan Altima, the total purchase price of which is $17,048.10 over 72 months at 8.95% interest, with monthly payments of $301.00. This request is for "Nunc Pro Tunc" authorization, because Debtors already "have possession of a 2018 Nissan Altima and were not aware that we needed Court permission to purchase a vehicle before we actually took the vehicle which is based on a "conditional" contract which requires permission of this court before the contract is formed." Dkt. 111, ¶ 2. Debtors seek to purchase the vehicle because:

> The two other cars that are in our case are not reliable and we have had many issues with them. We need this car to support my wife's new promotion which is allowing us to afford this vehicle and increase our plan payments to $1,875.00 [sic] per month for the remainder of our plan, starting November 25, 2018.

Id. at ¶ 3. The court notes that Debtors did list a third vehicle on their Schedule A/B, but it is listed as "Poor condition" because it "needs major work." Dkt. 13, p. 13.

Discussion

As an initial matter, Debtors seek relief "nunc pro tunc," but this label does not appear to match the relief sought. The Ninth Circuit has noted that *nunc pro tunc* approval is not the proper name for seeking retroactive authorization of actions in a bankruptcy case. *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 515 n. 4 (9th Cir. 2007). *Nunc pro tunc* amendments are typically to correct errors in the record and are extremely limited in scope. The Ninth Circuit noted that, while it is more accurate to call after-the-fact authorizations "retroactive approvals," it is customary, but not necessarily correct, to refer to them generically as *nunc pro tunc* in bankruptcy practice. *Id.* In addition, Debtors submitted a copy of the Approved CPS Application from Future Nissan that states that the contract "NEED[S] AUTHORIZATION LETTER FROM TRUSTEE OR JUDGE TO INCUR NEW DEBT." Dkt. 112, exh. A, p. 2. Thus, it appears Debtors have possession of the vehicle prior to approval of the contract by this court, and thus retroactive approval is not necessary. Dkt. 111, ¶ 2.

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).

Absent any opposition by a party in interest at the hearing, the court finds that, based on the unique facts and circumstances of this case, the terms of the proposed

credit are reasonable and the transaction is in the best interest of Debtors.

Nunc pro tunc approval is denied and motion is granted on a prospective basis only.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.