

**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: January 3, 2023

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

January 3, 2023 at 1:00 p.m.

1. [21-23801](#)-B-13 ROBERT MOLINA MOTION TO CONFIRM PLAN
[WLG](#)-4 Nicholas Wajda 11-15-22 [[119](#)]

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 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). This matter will therefore be decided on the papers.

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

First, Debtor's plan is delinquent \$11,294.04. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, Debtor and creditor Christina Molina reached a stipulated settlement in Adversary Proceeding 21-2087. The Stipulation for Entry of Judgment provides in part that the parties have agreed that the judgment shall be deemed satisfied by payment of \$51,000.00 in the following manner: (1) transfer of 401K Voya account's balance to Christina Molina with no less than \$25,000.00 and (2) payment of \$36,000.00 through equal plan payments. Debtor's plan does not provide for payment of the balance through the plan.

Third, Debtor's plan is not feasible. Paragraph 3.06 of the plan fails to state the monthly dividend payable for attorney fees. 11 U.S.C. § 1325(a)(6).

Fourth, Debtor's proposed plan payment for months 1 through 12 is \$1,040.00 per month but the total monthly payments owed to secured creditors plus the Chapter 13 Trustee's fees and expenses total \$1,389.07 per month. The plan is not feasible. 11 U.S.C. § 1325(a)(6).

Fifth, the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Debtor's projected disposable monthly income listed on Schedule J is \$1,040.32 but the proposed plan payment is \$1,600.00 beginning in December 2022.

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

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

The court will issue an order.

January 3, 2023 at 1:00 p.m.

Page 1 of 15

2. [20-21703](#)-B-13 HAROLD GRIGSBY
[JCK](#)-2 Kathleen H. Crist

MOTION TO MODIFY PLAN
11-15-22 [[29](#)]

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). 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 requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has 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.

The motion is ORDERED GRANTED for reasons stated in 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 issue an order.

3. [22-22607](#)-B-13 JONATHAN PINOS MONCAYO OBJECTION TO CONFIRMATION OF
[RDG](#)-1 Carl R. Gustafson PLAN BY TRUSTEE RUSSELL D.
Thru #4 GREER
12-6-22 [[22](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

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

Subsequent to the filing of the Chapter 13 Trustee's objection, the Debtor filed an amended plan on December 13, 2022. The confirmation hearing for the amended plan is scheduled for January 24, 2023. The earlier plan filed October 14, 2022, is not confirmed.

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

The court will issue an order.

4. [22-22607](#)-B-13 JONATHAN PINOS MONCAYO OBJECTION TO CONFIRMATION OF
[SKI](#)-1 Carl R. Gustafson PLAN BY MECHANICS BANK
11-10-22 [[15](#)]

Final Ruling

Creditor Mechanics Bank having filed a notice of withdrawal of 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 minutes.

The court will issue an order.

5. [20-22124](#)-B-13 ELIZABETH ROJAS
[GSJ](#)-2 Grace S. Johnson

MOTION TO MODIFY PLAN
11-2-22 [[29](#)]

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). 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 requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has 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.

The motion is ORDERED GRANTED for reasons stated in 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 issue an order.

6. [22-21927](#)-B-13 ORLANDO ANDRADE MOTION TO VALUE COLLATERAL OF
[FAT](#)-3 Flor De Maria A. Tataje HARLEY DAVIDSON CREDIT
11-25-22 [[41](#)]

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 deny without prejudice the motion to value collateral.

This is Debtor's second motion to value the collateral of Harley Davidson Credit ("Creditor"). Debtor is the owner of a 2020 Harley Davidson Road Glide Motorcycle "Vehicle". The Debtor seeks to value the Vehicle at a replacement value of \$18,400.00 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 7-1 filed by Harley-Davidson Credit Corp. is the claim which may be the subject of the present motion.

Discussion

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

Also problematic is that Debtor's valuation is a "trade-in value." The standard here must be a retail valuation taking into account the condition of the car. See 11 U.S.C. § 506(a). So even if the court considered the Debtor's opinion of value based on the Kelly Blue Book website construed as an authenticated market report, the Debtor's opinion is based on a valuation that is inconsistent with the applicable legal standard.

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

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

The court will issue an order.

7. [22-20534](#)-B-13 JESUS GARCIA-GURROLA MOTION TO CONFIRM PLAN
[ES-5](#) Eric L. Seyvertsen 11-26-22 [[48](#)]

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). 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 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 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 issue an order.

8. [20-22646](#)-B-13 ROSEMARY JACKSON
[CLB](#)-1 Peter G. Macaluso

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-5-22 [[36](#)]

MORTGAGE ASSETS MANAGEMENT,
LLC VS.

Final Ruling

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

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

Mortgage Assets Management ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 521 W. 5th Street, Stockton, California (the "Property"). Movant has provided the Declaration of Solivan to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Solivan Declaration states that the Debtor passed away on May 22, 2022. Pursuant to the loan, Movant may require immediate payment in full of all outstanding principal and accrued interest if a borrower dies and the property is not the principal residence of at least one surviving borrower. Here, the Debtor is the sole borrower on the loan. As such, the outstanding amounts owed are now due in full.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$360,527.17 as stated in the Solivan Declaration. The value of the Property is determined to be \$300,000.00 as stated in Schedules A/B and D filed by 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, including defaults in post-petition payments which have come due. 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, it appears that there is no equity in the Property. Moreover, the Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012). [This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

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

The court will issue an order.

9. [22-20050](#)-B-13 SERENA TURCHIE
[PGM](#)-1 Peter G. Macaluso

MOTION TO MODIFY PLAN
11-15-22 [[45](#)]

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). 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 requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has 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.

The motion is ORDERED GRANTED for reasons stated in 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 issue an order.

10. [22-22551](#)-B-13 PAUL/VICKI MAINS
[RDG](#)-1 Eric L. Seyvertsen

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
12-6-22 [[15](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

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

Subsequent to the filing of the Chapter 13 Trustee's objection, the Debtors filed an amended plan on December 18, 2022. The confirmation hearing for the amended plan is scheduled for February 7, 2023. The earlier plan filed October 6, 2022, is not confirmed.

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

The court will issue an order.

11. [22-22690](#)-B-13 DENISE REES
[PGM](#)-2 Eric L. Seyvertsen

MOTION TO AVOID LIEN OF UNIFUND
CCR, LLC
11-21-22 [[31](#)]

Final Ruling

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

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

This is a request for an order avoiding the judicial lien of Unifund CCR, LLC ("Creditor") against the Debtor's property commonly known as 24390 North Jack Tone Road, Acampo, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$7,158.52. An abstract of judgment was recorded with San Joaquin County on January 4, 2021, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of \$800,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$626,400.00 on Schedule C. The first deed of trust is in the amount of \$389,513.45.

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 subject to 11 U.S.C. § 349(b)(1)(B).

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

The court will issue an order.

12. [22-22493](#)-B-13 BERNARDO DE GUZMAN
[RDG-1](#) Simran Singh Hundal

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
11-21-22 [[16](#)]

Thru #13

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 the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

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

The Chapter 13 Trustee objects to confirmation of the plan on the basis that it is not proposed in good faith as required by 11 U.S.C. § 1325(a)(3) and it fails the liquidation analysis of 11 U.S.C. § 1325(a)(4). Common to both issues are a number of prepetition loan payments by the Debtor which the Debtor admits are preferential transfers. The Trustee notes that there is no mention of any recovery of the payments and, if recovered, the payments would result in distributions to creditors in excess of the 1.17% proposed in the plan.

The Debtor's response addresses only the liquidation analysis objection. The Debtor asserts that the plan satisfies the liquidation analysis because creditors will receive additional payments after a 401(k) loan is repaid during the plan term. The response is silent with regard to the good faith objection.

The court may consider prepetition conduct in its Chapter 13 good faith analysis. 550 *West Ina Road Trust v. Tucker (In re Tucker)*, 989 F.2d 328, 330 (9th Cir. 1993); see also *Cook v. Cook (In re Cook)*, 74 Fed.Appx. 725, 726 n.1 (9th Cir. 2003) (citing *Tucker*). By ignoring the Trustee's lack of good faith objection as it pertains to the prepetition loan payments, the Debtor seeks to ratify admitted preferential transfers through the confirmation process. In other words, the Debtor seeks to use the confirmation process to validate and excuse several admitted violations of 11 U.S.C. § 547. That constitutes a lack of good faith under 11 U.S.C. § 1325(a)(3).¹ The Trustee's objection under 11 U.S.C. § 1325(a)(3) will therefore be sustained, confirmation will be denied, and the plan will not be confirmed.

The plan filed October 14, 2022, 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.

¹Some arrangement must be made for the preferential transfers. The Debtor does not just get to completely ignore and excuse the payments.

13. [22-22493](#)-B-13 BERNARDO DE GUZMAN
[SSH](#)-1 Simran Singh Hundal

MOTION TO VALUE COLLATERAL OF
ONEMAIN FINANCIAL GROUP, LLC
11-22-22 [[20](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined 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). This matter will therefore be decided on the papers.

The court's decision is to value the secured claim of OneMaine Financial Group, LLC at \$14,912.00.

Debtor moves to value the secured claim of OneMaine Financial Group, LLC ("Creditor"). Debtor is the owner of a 2015 Toyota Sienna ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$14,912.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 7-1 filed by OneMain is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title does not secure a purchase-money loan and instead was a lien against the Vehicle in exchange for a loan of \$22,910.24. Because of this, the requirement that the loan be incurred more than 910 days prior to filing of the petition is not applicable. 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 \$14,912.00. 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.

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

The court will issue an order.

14. [18-25195](#)-B-13 DANNY/CHERYL PHIPPS
[APN](#)-1 Michael K. Moore

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-25-22 [[31](#)]

THE MONEY SOURCE INC. VS.

Final Ruling

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

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

The Money Source Inc. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 1463 Summerwind Lane, Manteca, California (the "Property"). Movant has provided the Declaration of Clark to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Clark Declaration states that there are three post-petition payments in default totaling \$4,483.48.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$293,336.80 as stated in the Clark Declaration and Schedule D filed by the Debtors. The value of the Property is determined to be \$389,492.00 as stated in Schedules A/B and D filed by Debtors.

Discussion

The existence of defaults in post-petition payments by itself does not guarantee Movant obtaining relief from the automatic stay. In this case, the equity cushion in the Property for Movant's claim provides adequate protection at this time. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). Movant has not sufficiently established an evidentiary basis for granting relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1).

Creditor stated in its motion that the property's value is \$389,492.00. This is the same value stated in Debtors' Schedules A/B. Schedules are filed under penalty of perjury. See Fed. R. Bankr. P. 1008. Some courts treat schedules as evidentiary admissions under Federal Rule of Evidence 801(d)(2). *Heath v. American Express Travel Related Services Co., Inc. (In re Heath)*, 331 B.R. 424, 431 (9th Cir. BAP 2005). Others treat them as judicial admissions. *In re Roots Rents, Inc.*, 420 B.R. 28, 40 (Bankr. D. Utah). Whatever their status, schedules carry evidentiary weight. *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969-70 (9th Cir. 2012). Therefore, for purposes of this motion only, the court relies on Schedule A/B as the only evidence of the Property's value and values the Property at \$389,492.00.

The Ninth Circuit has held that an equity cushion of 20% provides sufficient adequate protection, even in the absence of ongoing payments. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984). Here, Creditor claims it is owed \$293,336.80. Based on the Property's \$389,492.00 value, that leaves equity of \$96,155.20, which in turn creates an equity cushion of 24.69%. Creditor is therefore adequately protected, even in the absence of post-petition payments.

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

The court will issue an order.

15. [20-21269](#)-B-13 NICOLE HOLLOWAY
[RDG](#)-2 Robert W. Fong

CONTINUED MOTION TO DISMISS
CASE
12-6-22 [[52](#)]

Final Ruling

This matter was continued from December 20, 2022, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, December 23, 2022. Nothing was filed. Therefore, the court's conditional ruling at dkt. 56, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on January 3, 2023, at 1:00 p.m. is vacated.

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

The court will issue an order.