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: March 12, 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

March 12, 2019 at 1:00 p.m.

1.	18-27809-B-13 JPJ-1	CHERI HOUGLAND Mark W. Briden	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 2-20-19 [29]

Tentative Ruling

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

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on March 6, 2019. No confirmation hearing for the amended plan has been scheduled. Nonetheless, the earlier plan filed December 27, 2019, is not confirmed.

THE COURT WILL ENTER A MINUTE ORDER.

2.	15-28611-B-13 JPJ-3	MARY COBOS Muoi Chea	MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 2-5-19 [89]

No Ruling

3.	19-20715-B-13 MJD-2	DANIEL/MICHELE MILLS Matthew J. DeCaminada	MOTION TO VALUE COLLATERAL OF ALTA VISTA CREDIT UNION 2-12-19 [18]

Final Ruling

The Debtors and creditor Alta Vista Credit Union entered into a stipulation valuing the collateral. An order approving stipulation was entered on February 26, 2019. The motion is denied as moot.

THE COURT WILL ENTER A MINUTE ORDER.

4. 18-24516-B-13 DEBRA CLARKE
RDW-1 Julius J. Cherry

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-22-19 [21]

SAFE AMERICA CREDIT UNION
VS.

Final Ruling

Safe America Credit Union failed to file a separate Relief from Stay Summary Sheet (Form EDC 3-468) as required by LBR 9014-1. As a result of this procedural defect, the motion is denied without prejudice. The matter is removed from calendar.

THE COURT WILL ENTER A MINUTE ORDER.

5.	18-25618-B-13 PGM-3	BENJAMEN VERMA Peter G. Macaluso	MOTION TO REFINANCE 2-11-19 [105]

No Ruling

6. 18-27019-B-13 PERLA ABACAN — MOTION TO CONFIRM PLAN
JOS-1 Jeanne Serrano — 1-22-19 [24]

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 Debtors 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 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.

7. 14-26022-B-13 CLH-3 FRANK/LORI HALVORSON
Charles L. Hastings

MOTION TO SELL AND/OR MOTION TO PAY
2-15-19 [75]

WITHDRAWN BY M.P.

Final Ruling

The Debtors having filed a notice of withdrawal 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 ENTER A MINUTE ORDER.

8. 17-28122-B-13 RIGBY LEIGHTON
MRL-2 Mikalah R. Liviakis

MOTION FOR SUBSTITUTION AS THE REPRESENTATIVE AND/OR MOTION FOR WAIVER OF THE CERTIFICATE REQUIREMENTS FOR ENTRY OF DISCHARGE
2-18-19 [31]

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 substitute Shawn Leighton to continue administration of the case, and waive the deceased Debtor's certification otherwise required for entry of a discharge.

Shawn Leighton gives notice of the death of her father Rigby Leighton and requests the court to substitute Shawn Leighton in place of Rigby Leighton for all purposes within this Chapter 13 proceeding. Ms. Leighton is one of four children and is the best person to serve as representative because she has access to a computer and has a flexible schedule to assist in the case. Ms. Leighton believes that further administration is in the best interest of the parties because payments can be issued to unsecured creditors that have filed claims and a discharge of remaining debts can then be issued. Additionally, further administration of this case is possible because 150 Pierpoint Circle Folsom, CA 95630 can be sold to generate funds to pay the Chapter 13 payments in this case. The property could generate as much as $265,000.

Discussion

Local Bankruptcy Rule 1016-1(b) allows the moving party to file a single motion, pursuant to Federal Rule of Civil Procedure 18(a) and Federal Rules of Bankruptcy Procedure 7018 and 9014(c), asking for the following relief:

> 1) Substitution as the representative for or successor to the deceased or legally incompetent debtor in the bankruptcy case [F ED. R. CIV. P. 25(a), (b); FED. R. BANKR. P. 1004.1 & 7025];
>
> 2) Continued administration of a case under chapter 11, 12, or 13 [FED. R. BANKR. P. 1016];
>
> 3) Waiver of post-petition education requirement for entry of discharge [11 U.S.C. §§ 727(a)(11), 1328(g)]; and
>
> 4) Waiver of the certification requirements for entry of discharge in a Chapter 13 case, to the extent that the representative for or successor to the deceased or incompetent debtor can demonstrate an inability to provide such certifications [11 U.S.C. § 1328].

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

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

continued administration of this case is in the best interests of all parties and no opposition being filed by the Chapter 13 Trustee or any other parties in interest.

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

9. 17-20923-B-13 JEFFREY/DONNA OZUR — MOTION TO INCUR DEBT
TAG-4 Ronald R. Roundy — 2-20-19 [56]

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 and authorize the Debtors to incur post-petition debt.

The motion seeks permission to purchase a used 2018 Ford Fusion, the total purchase price of which is $30,064.32. Of this amount, $21,868.39 is financed, $1,500.00 is the down payment, monthly payments will be $417.56 for a duration of 71 months, and the interest rate will be 10.95%. Debtors state that a second vehicle is necessary because both Debtors are unable to get to work with just one vehicle. Additionally, Debtor Jeffrey Ozur drives to different locations in Sacramento, El Dorado, and Yolo counties in the course of his employment.

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).

While the court understands that having a second vehicle would allow both Debtors to separately commute to work, the Debtors do not address the reasonableness of incurring a debt of $30,064.32 to purchase this particular vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. Therefore, the motion is denied without prejudice.

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

10. 17-21423-B-13 LAYDEAN WEARY — MOTION TO MODIFY PLAN
MAC-2 Marc A. Carpenter — 1-31-19 [40]

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. 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.

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.

11.	18-24424-B-13 RWH-2	SULLAY DIN GABISI Ronald W. Holland	MOTION TO CONFIRM PLAN 1-24-19 [51]

No Ruling

12. 18-25025-B-13 CHANEL WILLIS
CAS-1 James P. Mootz

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-13-19 [35]

CAPITAL ONE AUTO FINANCE VS.

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 for relief from stay.

Capital One Auto Fiance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Volkswagen Passat 1.8T S Sedan 4D (the "Vehicle"). The moving party has provided the Declaration of LeTesha Lawson to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Lawson Declaration provides testimony that Debtor has not made 5 post-petition payments, with a total of $1,969.10 in post-petition payments past due. The Declaration also provides evidence that there are 5 pre-petition payments in default, with a pre-petition arrearage of $1,969.10.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $14,618.16, as stated in the Lawson Declaration. Movant values the Vehicle at $7,305.00; however, this is based on hearsay due to Movant's reliance on the Kelley Blue Book. The Vehicle does not appear in Debtor's Schedule A/B.

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.

Attorneys' Fees Requested

Though requested in the motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this motion. Movant is not

awarded any attorneys' fees.

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 CREDITOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS.

13.	18-27525-B-13 BLG-2	TERENCE CAMPOLIETI Chad M. Johnson	OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1 1-22-19 [23]

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. 1-1 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Terence Campolieti, the Debtor ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 1-1. The claim is asserted to be in the amount of $839.20. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about August 13, 2012, which is more than four years prior to the filing of this case. Hence, when the case was filed on December 1, 2018, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety.

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

14.	15-21526-B-13 PSB-2	DEE LINDERER Pauldeep Bains	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT 2-4-19 [75]

No Ruling

15. 19-20126-B-13 BRENDA KIRN
MJD-4 Matthew J. DeCaminada

MOTION TO AVOID LIEN OF LEASECOMM CORPORATION
2-22-19 [42]

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 avoid judicial lien.

This is a request for an order avoiding the judicial lien of Leasecomm Corporation ("Creditor") against the Debtor's property commonly known as 1382 Sundance Drive, Plumas Lake, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $9,325.07. An abstract of judgment was recorded with Yuba County on March 5, 2007, which encumbers the Property. All other liens recorded against the Property total $420,975.29.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $431,628.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $28,102.41 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

16. 18-20729-B-13 MRL-3 — STEVEN PROTOPAPPAS AND JOSEPHINE RAMIREZ — Mikalah R. Livikis — MOTION TO SELL — 2-18-19 [49]

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 sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors propose to sell the property described as a 9000 Pinto Canyon Way, Roseville, California ("Property").

Proposed purchasers Manuel and Helena Pepuenza have agreed to purchase the Property for $605,000.00. Real estate agent commission of $30,250.00 will be paid through escrow from the proceeds of the sale. Bayview Loan Servicing, LLC will be paid approximately $292,500.94 from the sale for a first mortgage. SN Servicing Corporation will be paid approximately $125,767.00 from the sale for a second mortgage. Other closing costs to be paid through escrow of approximately $4,136.99 include a home warranty, property taxes, utilities, notary fees, title and escrow fees, repairs and transfer tax. Debtor anticipates 100% payment of all claims remaining in the case and the Debtor expects to receive approximately $152,345.07 in net proceeds from the sale.

At the time of the hearing the court will announce the proposed sale and request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS. THE FORM OF ORDER SHALL BE REVIEWED AND APPROVED BY THE TRUSTEE.

17. 17-24431-B-13 MARY PITMAN MOTION TO MODIFY PLAN
TAG-2 Aubrey L. Jacobsen 1-25-19 [40]

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. 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.

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.

18.	18-27131-B-13 MET-2	STEPHEN/SUSAN JOHNSON Mary Ellen Terranella	MOTION TO CONFIRM PLAN 1-22-19 [27]

No Ruling

19. 18-27132-B-13 STUART KOPPLE
Pro Se

MOTION TO VALUE COLLATERAL OF UNITED AUTO CREDIT CORPORATION
2-11-19 [58]

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 deny the motion to value without prejudice.

Debtor's motion to value the secured claim of United Auto Credit Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Acura MDX ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $366.00 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). However, in this case, the Debtor's opinion is not credible and the Debtor was previously informed as much. More precisely, the court denied the Debtor's prior motion in which he similarly sought to value this vehicle at $366.00 on the basis that "[t]he debtor's opinion of value stated in his declaration is also 5% of the value asserted in the creditor's proof of claim and therefore is not credible." Dkt. 66 at 12:9-11. The Debtor has not addressed that credibility issue in his present motion by, for example, providing an independent appraisal to substantiate his opinion.

The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

THE COURT WILL ENTER A MINUTE ORDER.

20.	18-23936-B-13 HDR-1	LYUDMILA POKATILOV Harry D. Roth	MOTION TO CONFIRM PLAN 1-25-19 [46]

No Ruling

21. 18-26638-B-13 GREGOIRE TONOUKOUIN — MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso — 2-5-19 [27]
Thru #22

No Ruling

22. 18-26638-B-13 GREGOIRE TONOUKOUIN — MOTION TO VALUE COLLATERAL OF FAST AUTO LOANS, INC.
PGM-2 Peter G. Macaluso — 2-10-19 [35]

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 value the secured claim of Fast Auto Loans, Inc. at $4,800.00.

Debtor's motion to value the secured claim of Fast Auto Loans, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 BMW 5-Series ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $4,800.00 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. It appears that Claim No. 7-1 filed by Fast Auto Loans, Inc. 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 8,899.08. 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 $4,800.00. *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.

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

23. 19-20938-B-13 REUBEN MOHAMMED MOTION TO EXTEND AUTOMATIC STAY
DPB-1 Douglas P. Broomell 2-26-19 [15]

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.

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 October 23, 2018, due to failure to provide a confirmable plan within the 60-day deadline (case no. 18-23743, dkt.26). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A) the provisions of the automatic stay end as to the Debtor 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 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 states that the previous and present cases were filed to save his home from foreclosure. Debtor asserts that his circumstances have changed because he and his ex-wife have agreed on a settlement amount of Debtor's child support arrears and because he has an increase in self-employment income from $951.00 per month to approximately $3,679.56 per month.

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

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

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

24. 19-20648-B-13 STEVEN-ANDREW FACTEAU
BLG-1 Chad M. Johnson

AMENDED MOTION TO SET ASIDE DISMISSAL OF CASE, AMENDED MOTION TO EXTEND DEADLINE TO FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION
2-25-19 [24]

DEBTOR DISMISSED: 02/22/2019

No Ruling

25.	18-24150-B-13 PGM-4	STEVEN ADAMS Peter G. Macaluso	MOTION TO CONFIRM PLAN 2-5-19 [93]

No Ruling

26. 19-20050-B-13 JJC-1 **Thru #27 And #42**

RONALD BROWN
Julius J. Cherry

MOTION TO VALUE COLLATERAL OF ALLY BANK
2-25-19 [17]

Final Ruling

Debtor Ronald Brown has filed a motion to value the secured claim of Ally Bank. Dkt. 17. For the reasons explained below, the motion will be continued (in lieu of denied without prejudice) to permit proper service.

Ally Bank is an insured depository institution which means, absent exceptions not applicable here, it must be served "by certified mail addressed to an officer of the institution[.]" Fed. R. Bankr. P. 7004(h). The certificate of service that corresponds with the motion at Dkt. 17 reflects that Ally Bank was served as follows: "Attention: AN OFFICER, A MANAGING OR GENERAL AGENT, OR ANY OTHER AGENT AUTHORIZED BY APPOINTMENT OF LAW TO RECEIVE SERVICE OF PROCESS." Dkt. 21. In other words, service on Ally Bank was not solely to an officer.[1]

Service on Ally Bank in the manner above fails to comply with Bankruptcy Rule 7004(h). Bankruptcy Rule 7004(h) requires service solely to the attention of an officer of an insured depository institution. Nothing in Bankruptcy Rule 7004(h) or its legislative history suggests that Congress intended the term "officer" to include anything other than an officer of the respondent creditor. *See Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342, 345-46 (4th Cir. 2003)(examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor).

This court has previously dismissed and/or denied matters without prejudice as non-compliant with Bankruptcy Rule 7004(h) when service was not solely to the attention of an officer of an insured depository institution. *See In re Muir*, No. 18-21924 (Bankr. E.D. Cal. 2018) (Docket 25); *In re Chaney*, No. 16-24101 (Bankr. E.D. Cal. 2016) (Dockets 24, 26). Other judges in this district have done the same. *See In re Easley*, No. 16-27435 (Bankr. E.D. Cal. 2016) (McManus, J.) (Dkts. 62, 64). This court has also continued matters when service was not solely to an officer of an insured depository institution and provided the moving party with an opportunity to re-serve in compliance with Bankruptcy Rule 7004(h). *See In re Robles*, No. 17-25899 (Bankr. E.D. Cal. 2017) (Dockets 56, 60); *In re Petty*, No. 12-24999 (Bankr. E.D. Cal. 2012) (Docket 42). For reasons of judicial economy and to avoid undue delay and expense to the Debtor, the court will continue the hearing on the Debtor's motion to permit the Debtor to properly serve Ally Bank rather than deny the motion without prejudice for defective service.

Therefore, for the foregoing reasons, the hearing on the Debtor's motion to value the collateral of Ally Bank currently set for March 12, 2019, at 1:00 p.m., is continued to April 2, 2019, at 1:00 p.m. The Debtor shall re-serve Ally Bank in the manner required by Bankruptcy Rule 7004(h) to the attention of an officer of the respective institution (and only to an officer of the institution) and by certified mail so that the motion may be heard consistent with Local Bankr. R. 9014-1(f)(2).

THE COURT WILL ENTER A MINUTE ORDER.

[1] It also appears that Ally Bank was not served by certified mail.

27. 19-20050-B-13 JJC-2 — RONALD BROWN, Julius J. Cherry — MOTION TO VALUE COLLATERAL OF HARLEY-DAVIDSON CREDIT CORP/EAGLEMARK SAVINGS BANK 2-25-19 [22]

Final Ruling

Debtor Ronald Brown has filed a motion to value the secured claim of Harley-Davidson Credit Corp./Eaglemark Savings Bank. Dkt. 22. For the reasons explained below, the motion will be continued (in lieu of denied without prejudice) to permit proper service.

Eaglemark Savings Bank is an insured depository institution which means, absent exceptions not applicable here, it must be served "by certified mail addressed to an officer of the institution[.]" Fed. R. Bankr. P. 7004(h). The certificate of service that corresponds with the motion at Dkt. 22 reflects that Eaglemark Savings Bank was served as follows: "Attention: AN OFFICER, A MANAGING OR GENERAL AGENT, OR ANY OTHER AGENT AUTHORIZED BY APPOINTMENT OF LAW TO RECEIVE SERVICE OF PROCESS." Dkt. 26. In other words, service on Eaglemark Savings Bank was not solely to an officer.[1]

Service on Eaglemark Savings Bank in the manner above fails to comply with Bankruptcy Rule 7004(h). Bankruptcy Rule 7004(h) requires service solely to the attention of an officer of an insured depository institution. Nothing in Bankruptcy Rule 7004(h) or its legislative history suggests that Congress intended the term "officer" to include anything other than an officer of the respondent creditor. *See Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342, 345-46 (4th Cir. 2003)(examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor).

This court has previously dismissed and/or denied matters without prejudice as non-compliant with Bankruptcy Rule 7004(h) when service was not solely to the attention of an officer of an insured depository institution. *See In re Muir*, No. 18-21924 (Bankr. E.D. Cal. 2018) (Docket 25); *In re Chaney*, No. 16-24101 (Bankr. E.D. Cal. 2016) (Dockets 24, 26). Other judges in this district have done the same. *See In re Easley*, No. 16-27435 (Bankr. E.D. Cal. 2016) (McManus, J.) (Dkts. 62, 64). This court has also continued matters when service was not solely to an officer of an insured depository institution and provided the moving party with an opportunity to re-serve in compliance with Bankruptcy Rule 7004(h). *See In re Robles*, No. 17-25899 (Bankr. E.D. Cal. 2017) (Dockets 56, 60); *In re Petty*, No. 12-24999 (Bankr. E.D. Cal. 2012) (Docket 42). For reasons of judicial economy and to avoid undue delay and expense to the Debtor, the court will continue the hearing on the Debtor's motion to permit the Debtor to properly serve Eaglemark Savings Bank rather than deny the motion without prejudice for defective service.

Therefore, for the foregoing reasons, the hearing on the Debtor's motion to value the collateral of Harley-Davidson Credit. Corp./Eaglemark Savings Bank currently set for March 12, 2019, at 1:00 p.m., is continued to April 2, 2019, at 1:00 p.m. The Debtor shall re-serve Eaglemark Savings Bank in the manner required by Bankruptcy Rule 7004(h) to the attention of an officer of the respective institution (and only to an officer of the institution) and by certified mail so that the motion may be heard consistent with Local Bankr. R. 9014-1(f)(2).

THE COURT WILL ENTER A MINUTE ORDER.

[1] It also appears that Eaglemark Savings Bank was not served by certified mail.

28. 18-27555-B-13 MRL-3 — MATTHEW SLAGLE — Mikalah R. Liviakis — MOTION TO CONFIRM PLAN — 2-3-19 [35]

No Ruling

29. 16-25658-B-13 JOHN/MARGARET FRAUMENI MOTION TO MODIFY PLAN
RSG-2 Robert S. Gimblin 1-28-19 [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. The Debtors 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.

30. 16-24559-B-13 LBG-1 STEVEN SIPE
Lucas B. Garcia

MOTION FOR COMPENSATION BY THE LAW OFFICE OF STEPHEN JOHNSON DEBTOR'S ATTORNEY
2-12-19 [167]

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.

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor's Chapter 13 plan, Lucas Garcia ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $6,000.00. Dkt. 81. Applicant now seeks additional compensation in the amount of $19,440.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 171.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated Debtor and that creditors James and Judith Carter ("Creditors")would be embroiled in months' contention over the removal of Debtor's personal property on Creditors' real property. Applicant asserts that the work was beneficial to the estate as it created funds that the Debtor can use to continue his ongoing operations and thereby fund the remainder of the plan. Applicant also asserts that the work was necessary, as without it the estate would have suffered a tremendous loss to a reserve that was needed to continue to fund the plan. Applicant states that the hourly rate is reasonable since it was agreed to by the debtor back to the inception of the case and no increase in hourly fee was applied due to annual adjustments to attorney fees.

The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

Applicant is allowed $19,440.00 in fees and $0.00 in expenses to be paid directly by the Debtor from the proceeds of the favorably-resolved litigation involving the Carter Trust.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE

MOTION WITHIN SEVEN (7) DAYS.

31. 18-26862-B-13 TRENELL MONTAGUE
SBT-3 Susan B. Terrado

MOTION TO CONFIRM PLAN
1-28-19 [55]

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.

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.

32.	18-26272-B-13 TBG-1	PAULETTE PERFUMO Stephan M. Brown	CONTINUED MOTION TO CONFIRM PLAN 1-2-19 [28]

No Ruling

33. 18-27077-B-13 ANDREW/DIANE GARCIA MOTION TO CONFIRM PLAN
HDR-3 Harry D. Roth 1-22-19 [35]

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 Debtors 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.

34. 18-27978-B-13 JHW-1 **Thru #35**

ROMULO/GENEVIEVE CALICDAN
Nikki Farris

OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT COMPANY, LLC
2-13-19 [15]

Tentative Ruling

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

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

Creditor Ford Motor Credit Company, LLC holds a security interest in a 2016 Ford Escape by way of a retail installment sale contract entered into with Debtors entered on or about October 29, 2015. Creditor objects to the plan because it fails to provide an appropriate interest rate.

Discussion

The court takes judicial notice of the prime rate of interest as published in a leading newspaper. *Bonds, Rates & Credit Markets: Consumer Money Rates*, Wall St. J., March 8, 2019, http://online.wsj.com/mdc/public/page/mdc_bonds.html. The current prime rate is 5.50%. Here, the plan proposes a 0% interest rate.

The Supreme Court decided in *Till v. SCS Credit Corp.*, 124 S.Ct. 1951 (2004), that the appropriate interest rate is determined by the "formula approach." This approach requires the court to take the national prime rate in order to reflect the financial market's estimate of the amount a commercial bank should charge a creditworthy commercial borrower to compensate it for the loan's opportunity costs, inflation, and a slight risk of default. The bankruptcy court is required to adjust this rate for a greater risk of default posed by a bankruptcy debtor. This upward adjustment depends on a variety of factors, including the nature of the security, and the plan's feasibility and duration. *Cf. Farm Credit Bank v. Fowler (In re Fowler)*, 903 F.2d 694, 697 (9th Cir. 1990); *In re Camino Real Landscape Main. Contrs., Inc.*, 818 F.2d 1503 (9th Cir. 1987).

To set the appropriate rate, the court is required to conduct an "objective inquiry" into the appropriate rate. However, a debtor's bankruptcy statements and schedules may be culled for the evidence to support an interest rate.

As surveyed by the Supreme Court in *Till*, courts using the formula approach typically have adjusted the interest rate 1% to 3%.

The court finds that the appropriate interest rate should be about 2.0% above the current prime rate given the nature of the security, the risk of default, and the evidence submitted by the Creditor that would warrant its entitlement to 7.50%. The court sustains the objection as to increasing the interest rate to 7.50%.

The plan filed December 27, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

35. 18-27978-B-13 JPJ-1 — ROMULO/GENEVIEVE CALICDAN — Nikki Farris — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 2-20-19 [20]

Tentative Ruling

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

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

First, the maximum fee that may be charged in a nonbusiness case is $4,000.00 pursuant to Local Bankr. R. 2016-1. Debtors filed this bankruptcy individually and not as a corporation. The attorney's fees exceed the $4,000.00 amount.

Second, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because Debtors' projected disposable income is not being applied to make payments to unsecured creditors. Form 122-C, Line 45, currently shows a monthly disposable income as -$173.82. This amount changes to $3,056.45 when adding the overstated mortgage expenses (Form 122C-1, Line 9b, $522.60), the additional transportation expense (Form 122C-2, Line 15, $100.00), the care and support of an elderly, chronically ill, or disabled member of their household or member of their immediate family who is unable to pay for such expenses (Form 122C-2, Line 26, $200.00), the improper expenses related to the surrender of time share (Form 122C-2, Lines 33d and 34, $450.00 and $41.67), and additional college expenses for two adult children (Form 122C-1, Line 43, $1,200.00 and $500.00). This means Debtors must pay no less than $183,387.00 to unsecured, non-priority creditors. The plan pays only $30,714.73 to unsecured, non-priority creditors. Based on the Debtors' plan, the total amount of the unsecured non-priority creditors is $127,978.04. The Debtors must pay all of their unsecured non-priority creditors in full.

The plan filed December 27, 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 SUSTAINING ITS OBJECTION WITHIN SEVEN (7) DAYS.

36. 18-27489-B-7 SHAWN GODFREY
ASW-1 Mohammad M. Mokarram
Thru #37

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK TRUST, N.A.
1-10-19 [21]

CASE CONVERTED: 02/27/2019

Final Ruling

This case was converted on February 27, 2019. The objection is dismissed without prejudice. The matter is removed from the calendar.

THE COURT WILL ENTER A MINUTE ORDER.

37. 18-27489-B-7 SHAWN GODFREY
ASW-2 Mohammad M. Mokarram

MOTION TO QUASH AND/OR MOTION TO VACATE
2-4-19 [25]

CASE CONVERTED: 02/27/2019

Final Ruling

This case was converted on February 27, 2019. The objection is dismissed without prejudice. The matter is removed from the calendar.

THE COURT WILL ENTER A MINUTE ORDER.

38. 19-20091-B-13 PHILIP/CHRISTINE LAGROW
JPJ-1 Nikki Farris

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-20-19 [16]

Tentative Ruling

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

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

It is unclear whether Debtors are over the median income. According to the Statement of Current Monthly Income (Form 122C-1), the gross business income for Debtor Philip Lagrow is $4,981.67. This is contrary to Schedule I, Line 8a, where Debtor lists his net income as $4,981.67. Additionally, Debtors provided a profit and loss statement for January 2018 through December 2018 that shows total gross annual income of $303,336.53, which calculates to an average monthly gross income of $25,278.04. The California Median Family income for a 2-person household is $75,327.00. The Debtors propose a 36-month plan term. However, if Debtor's gross income is $6,277.25 or more, than the income will exceed the median income and the applicable commitment period would be five years. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

The plan filed January 8, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION AND CONDITIONALLY DENYING THE MOTION WITHIN SEVEN (7) DAYS.

39. 19-21098-B-13 EJS-1 | RICHARD BEJARANO
Eric John Schwab | MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
2-28-19 [9]

Tentative Ruling

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). 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 grant the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on February 1, 2019, due to failure to file documents (case no. 19-20199, dkt. 14). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 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 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 states that the prior and present cases were filed in order to save his home. Debtor states that his circumstances have changed because he has retained counsel. In the prior case, Debtor had filed pro se and was unfamiliar with the bankruptcy process.

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

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

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

40.	15-28729-B-13 MET-1	CHARLES EVANS Mary Ellen Terranella	CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JERLINE WALLACE-EVANS 2-5-19 [52]

No Ruling

41. 18-27831-B-13 VAL/CHANDRA COLA
JPJ-1 Mohammad M. Mokarram

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-6-19 [13]

Tentative Ruling

This matter was continued from March 5, 2019, to provide the Debtors additional time to amend their schedules and provide the Trustee with their federal income tax return. The objection and motion were properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and conditionally deny the motion to dismiss.

First, the Debtors have not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs to reflect Debtor's wages in the 2017 calendar year. The Debtors have not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

Second, the Debtor has not provided the Trustee with a copy of his separate federal income tax return for the most recent tax year a return was filed. The Debtors have not complied with 11 U.S.C. § 521(e)(2)(A)(1).

The plan filed December 18, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER SUSTAINING ITS OBJECTION AND CONDITIONALLY DENYING THE MOTION WITHIN SEVEN (7) DAYS.

42. 19-20050-B-13 RONALD BROWN
JPJ-1 Julius J. Cherry
See Also #26-27

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-13-19 [14]

Final Ruling

CONTINUED TO 4/02/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO VALUE COLLATERAL OF ALLY BANK AND HARLEY-DAVIDSON CREDIT CORP/EAGLEMARK SAVINGS BANK.