

**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

ALL APPEARANCES MUST BE TELEPHONIC

(Please see the court's website for instructions)

DAY: TUESDAY

DATE: March 24, 2020

CALENDAR: 1:00 P.M. CHAPTER 13

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

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

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

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

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

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions)

March 24, 2020 at 1:00 p.m.

1. [19-24300](#)-B-13 MARK/CANDY GRAY MOTION TO MODIFY PLAN
[MET](#)-1 Mary Ellen Terranella 2-10-20 [[36](#)]

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 creditors. The Chapter 13 Trustee filed a non-opposition to the motion. 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 ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

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 creditors. The Chapter 13 Trustee filed a non-opposition to the motion. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

The court will enter a minute order.

3. [19-27910](#)-B-13 JOHN HATZIS
[DPC](#)-1 Justin K. Kunej

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID P
CUSICK
2-12-20 [[24](#)]

Final Ruling

This matter was continued from March 10, 2020, to be heard after the continued meeting of creditors set for March 19, 2020. Nevertheless, because the plan discussed below is not confirmable and the objection is not one that may be resolved in the confirmation order, the court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(c).

Having reviewed the Chapter 13 Plan ("Plan") filed by Debtor John Hatzis ("Debtor"), dkt. 11, and the objection to confirmation of the Plan filed by the Chapter 13 Trustee ("Trustee"), dkt. 24, the following objections are meritorious and will be sustained: (i) the Debtor indicates Nonstandard Provisions are appended to the Plan but no attachment was filed; alternatively, (ii) the Debtor has not demonstrated feasibility required by 11 U.S.C. § 1325(a)(6) because the Debtor is delinquent at least \$5,300.00 under the Plan having made no payments as of the time the Trustee's objection was filed; alternatively (iii) the Debtor has not provided sufficient information or disclosure of business and rental expenses.

The plan filed January 10, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Chapter 13 Trustee ("Trustee"). Dkt. 43. The Debtor did not timely file a reply..

The court's decision is to deny the Debtor's motion without prejudice and not confirm the amended plan.

Because the amended plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶ 2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-(c). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

Discussion

The Trustee objects to confirmation on grounds that:

(1) the Debtor is not exercising best efforts. 11 U.S.C. § 1325(b). The Debtor appears to be above the median income and the plan proposes to pay no less than 20% to unsecured creditors, averaging \$159.33 per month, along with 50% of all refunds during the chapter 13 plan. Debtor received a substantial tax refund last year (\$11,873.00) and certain expenses may be improperly deducted on the means test.

(2) the Debtor claims \$2,506 per month in taxes but this is not consistent with Debtor's 2018 tax returns. The Trustee is not certain what the proper tax deduction should be but does not oppose the tax deduction so long as the plan reflects that any tax refunds over \$2,000 be paid into the plan, which there is no indication the Debtor has agreed to do.

(3) The deductions listed by Debtor on Form 122C-1 include her non-filing husband's expenses, which are not appropriate (\$2,903 for husband's son's university, husband's personal loans, and husband's personal expenses). But even if appropriate, they will not necessarily last 60 months for the term of the plan. Separately, the Debtor has not amended Schedules A/B or the Statement of Financial Affairs to clarify her open and closed bank accounts. Also Schedule I includes a questionable income, before deductions, for the non-filing spouse as \$347.62 for "Vacation."

The Trustee's objections are well-founded and will be sustained.

The proposed contribution of 50% of tax returns is of particular concern. In response to the Trustee's objection to confirmation of the initial plan, the Debtor stated that she "agree[d] to a modification of her plan to provide for the contribution of income tax refunds as additional payment into her plan[.]" Dkt. 26 at 1:20-22. The Trustee's reply to the Debtor's response reflects an understanding that all - not just 50% - of tax returns were to be paid into the plan. Dkt. 30 at 1:27-28. The Trustee's current objection appears to soften that understanding by allowing the Debtor to retain up to \$2,000 of tax returns with anything above that amount contributed towards the plan as the Debtor previously committed. In any case, there is no basis for the Debtor to contribute only 50% of tax returns. The contribution is either all or all above \$2,000. Not 50%.

The court also notes there is an issue of bad faith that precludes confirmation of the amended plan. See 11 U.S.C. § 1325(a)(3). During the confirmation hearing held on January 14, 2020, at which confirmation of the Debtor's initial plan was denied, the

court made clear that it would not confirm a plan which excluded consideration of an improper and offensive \$347.62 per month "vacation" deduction from income claimed on Schedule I. Dkt. 34 (audio). That matter is not addressed or resolved. Schedule I has not been amended and the impact of the additional income has not been considered in the analysis of additional income available for the repayment of creditors.

Conclusion

For the foregoing reasons, the Debtor's motion to confirm the first amended plan is denied without prejudice and the first amended plan is not confirmed.

Further, the court notes this case was filed on October 8, 2019, and has therefore been pending nearly six months without a confirmed plan. Inasmuch as the motion to confirm the first amended plan will be denied, this case will be pending approximately an additional two months before another amended plan will be considered for confirmation. A case pending eight months without a confirmed plan is unreasonable delay by the debtor prejudicial to creditors which is cause for dismissal. See 11 U.S.C. § 1307(c)(1). Therefore, the Debtor will have until May 26, 2020, to confirm a plan or this case will be dismissed on the Trustee's ex parte application.

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

The court will enter a minute order.

5. [20-20614](#)-B-13 RICHARD/PATRICIA VENTURA MOTION FOR RELIEF FROM
[JHK](#)-1 Catherine King AUTOMATIC STAY
2-19-20 [[18](#)]

CAB WEST, LLC VS.

Final Ruling

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

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

Cab West, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2018 Ford F150 (the "Vehicle"). The moving party has provided the Declaration of Jacklyn Larson to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor. The Vehicle is a lease per the agreement entered into between Movant and Debtors on March 26, 2018.

The Larson Declaration states that the Debtors are delinquent for the pre-petition January 25, 2020, payment in the amount of \$456.67 and have made no post-petition payments. The plan provides for the surrender of the Vehicle in Class 3 but incorrectly lists the creditor in interest as American Honda Finance. The Larson Declaration states that the Movant is, and has been at all times relevant, the lessor of the Vehicle.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtors and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, including the Debtors' intent to surrender the Vehicle per the plan, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtors or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

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No other or additional relief is granted by the court.

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

The court will enter a minute order.

6. [20-20218](#)-B-13 KATHY CUNNINGHAM OBJECTION TO CONFIRMATION OF
AP-1 Peter G. Macaluso PLAN BY U.S. BANK NA
Thru #7 3-4-20 [[21](#)]

Final Ruling

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

Because the plan discussed below is not confirmable and the objection is not one that may be resolved in the confirmation order, the court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-(c). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

Objecting creditor U.S. Bank NA holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$104,665.44 in pre-petition arrearages. The plan does not propose to cure these arrearages; rather the plan provides for monthly adequate protection payments that are less than the monthly mortgage payments pending completion of a loan modification. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages and because it modifies the ongoing monthly mortgage payment without the creditor's consent, the plan is dead on arrival and cannot be confirmed.

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

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

The court will enter a minute order.

7. [20-20218](#)-B-13 KATHY CUNNINGHAM OBJECTION TO CONFIRMATION OF
[DPC](#)-1 Peter G. Macaluso PLAN BY DAVID P CUSICK
3-4-20 [[17](#)]

Final Ruling

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

Because the plan discussed below is not confirmable and the objection is not one that may be resolved in the confirmation order, the court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-(c). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$4,300.00, which represents approximately 1 plan payment. 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, the maximum fee that may be charged in a nonbusiness case is \$4,000.00 pursuant to Local Bankr. R. 2016-1. The attorney's fees exceed this amount.

Even if the First and Second objections are resolved thereby mooted this objection, the plan is not confirmable for the § 1322(b)(2) reasons stated in the ruling at Item #6, AP-1.

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

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

The court will enter a minute order.

8. [20-20224](#)-B-13 NJOROG NGICHU
[KMM](#)-1 Douglas B. Jacobs

OBJECTION TO CONFIRMATION OF
PLAN BY CREDITOR U.S. BANK
NATIONAL ASSOCIATION
3-5-20 [[14](#)]

Final Ruling

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

Because the plan discussed below is not confirmable and the objection is not one that may be resolved in the confirmation order, the court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(c). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

Objecting creditor U.S. Bank National Association holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$81,845.49 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

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

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

The court will enter a minute order.

Tentative Ruling

The motion has been set for hearing on the 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). The defaults of the non-responding parties are entered.

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. Debtor proposes to sell the property described as 11217 Torrey Pines Drive, Auburn, California ("Property").

Proposed purchaser Tyler Chicourrat has agreed to purchase the Property for \$290,000.00. According to the terms of the short sale agreement, all liens secured by the Property shall be paid in full in a manner consistent with the confirmed plan. Debtor shall send a final escrow closing statement to the Trustee after close of escrow. The Debtor's Chapter 13 plan completed with the January 25, 2020, payment and no payments remain on the plan.

The Trustee has filed a response and, while not opposing the motion, requests that the following provisions be included in the order approving the sale of real property:

1. The Trustee must approve any title company used in connection with the escrow.
2. The escrow is not permitted to close without the Trustee submitting a demand to the title company that complies with the Chapter 13 plan, or waives this right in writing.
3. The Debtor is required to provide the Trustee with all of the contact information for the title company upon opening of escrow.
4. The Trustee must approve the final closing statement prior to any close of escrow.
5. If any of these conditions are not met or the Trustee cannot participate in the escrow in a way that complies with the Chapter 13 plan, the Trustee can submit an ex parte application to the court explaining the issues and requesting that the motion to sell be denied.

Creditor M&T Bank has filed a non-opposition to the motion but requests that the following provisions be included:

The loan secured by a First lien on real property located at 11217 Torrey Pines Dr, Auburn, CA 95602 will be paid in full as of the date of the closing of the sale, and the sale will be conducted through an escrow and based on a non-expired contractual payoff statement received directly from M&T Bank.

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.

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. The request by Creditor M&T Bank for additional language in the standard sale order approved by the Trustee is denied. The proposed additional language is unnecessary.

The court will enter a minute order.

10. [20-20329](#)-B-13 ARAM PASKEVICHYAN OBJECTION TO CONFIRMATION OF
[ANF](#)-1 Peter L. Cianchetta PLAN BY DIRECT CAPITAL
Thru #11 CORPORATION
3-5-20 [[23](#)]

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 overrule the objection. However, the plan is not confirmed for reasons stated at Item #11, DPC-1.

Objecting creditor Direct Capital Corporation states that it has a secured claim in the amount of \$34,087.47 against Debtor's real property. The creditor states that it recorded an abstract of judgment with the Sacramento County Recorder. However, the Debtor has not filed any exhibits to substantiate its recorded abstract of judgment and has not filed a proof of claim. Nor has the creditor provided a declaration from any individual who maintains or controls its loan records. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

The objection is overruled but the plan is not confirmed for reasons stated at Item #11, DPC-1.

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

The court will enter a minute order.

11. [20-20329](#)-B-13 ARAM PASKEVICHYAN OBJECTION TO CONFIRMATION OF
[DPC](#)-1 Peter L. Cianchetta PLAN BY DAVID P CUSICK
3-5-20 [[19](#)]

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.

It is unclear if the Debtor can make the payments under the plan or comply with the plan, 11 U.S.C. § 1325(a)(6), or whether she can reasonably afford higher payments, 11 U.S.C. § 1325(b). This is because the Debtor's income appears to be under-reported or inaccurate, and it is not clear if all of the Debtor's expenses have been listed.

The plan filed January 21, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

12. [19-23949](#)-B-13 ERIC/REGINA FLEMING
[UND](#)-3 Ulric N. Duverney

MOTION TO CONFIRM PLAN
2-21-20 [[79](#)]

No Ruling

13. [20-20151](#)-B-13 DEBORAH CHILDRESS
[DPC](#)-1 George T. Burke
Thru #14 OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P CUSICK
3-4-20 [[14](#)]

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 overrule the objection and confirm the plan.

Feasibility depends on the granting of Debtor's motion to value collateral of Florin Mobile Estates Homeowners Association. That motion is granted at Item #14, GTB-1.

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

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

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

The court will enter a minute order.

14. [20-20151](#)-B-13 DEBORAH CHILDRESS
[GTB](#)-1 George T. Burke
MOTION TO VALUE COLLATERAL OF
FLORIN MOBILE ESTATES
HOMEOWNERS ASSOCIATION AND/OR
MOTION TO AVOID LIEN OF FLORIN
MOBILE ESTATES HOMEOWNERS
ASSOCIATION
3-10-20 [[22](#)]

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 value secured claim of Florin Mobile Estates Homeowners Association at \$0.00 and deny the motion to avoid lien.

Debtor's motion to value the secured claim of Florin Mobile Estates Homeowners Association ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 8592 Calais Circle, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of \$75,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank* (In re *Enewally*), 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property that secures a claim is the first step, not the end result, of this motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately \$92,024.46 according to Claim No. 2-1. Creditor's junior lien secures a claim with a balance of approximately \$7,885.58 according to Claim No. 1-1. Therefore, Creditor's claim secured by a junior lien is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

As to Debtor's request to avoid Creditor's lien, that is denied without prejudice. The court is not determining the validity of a claim or avoiding a lien or security interest. Creditor's lien will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if Creditor will not release its lien the court will entertain an adversary proceeding. See Fed. R. Bankr. P. 7001(2).

The motion is ORDERED GRANTED IN PART AND DENIED IN PART for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

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, it is unclear whether the Debtors are able to make proposed plan payments. 11 U.S.C. § 1325(a)(6). Schedule I and the Profit and Loss Statements show different amounts of income, with the difference being over \$2,000.

Second, the maximum fee that may be charged in a nonbusiness case is \$4,000.00 pursuant to Local Bankr. R. 2016-1. Debtors provide no indication that this is a business case with a maximum fee charge of \$6,000.00.

Determination of whether this is a business case starts with § 1304(a) which states: "A debtor that is self-employed and incurs trade credit in the production of income from such employment is engaged in business." 11 U.S.C. § 1304(a). There are two requirements for a Chapter 13 case to be a business case: The debtor must (i) be self-employed and (ii) incur trade credit. This case fails in both respects.

The Debtors are not self-employed or sole-proprietors. See dkt. 1 (Petition), page 4, #12 (sole-proprietorship box checked "no"). Rather, the Debtors appear to be employees of a separate legal entity which may or may not be their own. See Schedule I. But the distinction is not relevant. What is relevant is that they are employed by another entity. Joint Debtor also reports earnings primarily from wages. Dkt. 1 (SOFA), pages 1-2, #4. In any case, this court has previously taken the position that employment by one's own separate legal entity is not self-employment for purposes of a Chapter 13 business case. See *In re Atz*, 18-26755 (Bankr. E.D. Cal. 2018) at dkt. 22 (audio).

Additionally, the Debtors' schedules do not reflect what would be considered "trade credit." There does not appear to be any debt secured against inventory or materials listed on Schedule D. Rather, the bulk of secured debt on Schedule D appears to be for a mortgage on a personal residence and for two newly-purchased extravagant vehicles. The debts in Schedule E/F are primarily community consumer debts consisting of numerous personal credit card balances. In fact, the Petition and SOFA both state that debts are primarily consumer and not business debts. See Docket 1 (Petition), page 1, #16; (SOFA), page 3, #6.

The plan filed January 16, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

16. [19-20354](#)-B-7 ERIC BENSON AND KARRI MOTION FOR RELIEF FROM
MJ-[1](#) O'DONNELL AUTOMATIC STAY
 Stephen M. Reynolds 2-5-20 [[100](#)]

THE BANK OF NEW YORK MELLON
VS.
CASE CONVERTED TO CHAPTER 7
ON 2/28/2020

Final Ruling

The case having been converted to a Chapter 7, the motion for relief from automatic stay is continued to April 7, 2020, at 9:30 a.m. to permit the Chapter 7 trustee sufficient time to review the motion. No appearance at the March 24, 2020, hearing is required.

The hearing set for March 24, 2020, at 1:00 p.m., is determined to be a preliminary hearing with the final hearing continued as noted. The automatic stay shall remain in effect pending a final determination. The court also finds that circumstances surrounding the COVID-19 virus and court access are compelling circumstances that warrant a continuance of the hearing and continuation of the automatic stay pending final determination. See 11 U.S.C. § 362(e); General Order No. 612 (E.D. Cal. March 18, 2020).

The court will enter a minute order.

17. [20-20354](#)-B-13 DOREEN PETER OBJECTION TO CONFIRMATION OF
[APN](#)-1 Gabriel E. Liberman PLAN BY NISSAN MOTOR ACCEPTANCE
Thru #19 CORPORATION
2-27-20 [[14](#)]

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 overrule the objection and confirm the plan.

Feasibility depends on the granting of Debtor's motion to value collateral of Nissan Motor Acceptance Corporation. That motion is granted at Item #19, GEL-1.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed January 22, 2020, is confirmed.

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

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

The court will enter a minute order.

18. [20-20354](#)-B-13 DOREEN PETER OBJECTION TO CONFIRMATION OF
[DPC](#)-1 Gabriel E. Liberman PLAN BY DAVID P CUSICK
3-5-20 [[18](#)]

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 overrule the objection and confirm the plan.

Feasibility depends on the granting of Debtor's motion to value collateral of Nissan Motor Acceptance Corporation. That motion is granted at Item #19, GEL-1.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed January 22, 2020, is confirmed.

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

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

The court will enter a minute order.

19. [20-20354](#)-B-13 DOREEN PETER
[GEL](#)-1 Gabriel E. Liberman

MOTION TO VALUE COLLATERAL OF
NISSAN MOTOR ACCEPTANCE
CORPORATION
3-10-20 [[22](#)]

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 value the secured claim of Nissan Motor Acceptance Corporation at \$6,874.00.

Debtor's motion to value the secured claim of Nissan Motor Acceptance Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Nissan Versa Note SL ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$6,874.00 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. 4-1 filed by Nissan Motor Acceptance Corporation is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on March 23, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$8,077.92. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$6,874.00. 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 ruling appended to the minutes. The court will enter a minute order.

20. [19-27562](#)-B-13 KENNETH SMITHOUR
[DPC](#)-1 Mary Ellen Terranella
Thru #22

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
1-22-20 [[13](#)]

Final Ruling

This objection was continued from March 3, 2020, to be heard in conjunction with Debtor's motion to value collateral of Travis Credit Union. The objection was originally filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan discussed below is not confirmable and the objection is not one that may be resolved in the confirmation order, the court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(c). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

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

The plan is not feasible based on the rulings at Item No. 21 [MET-1] and Item No. 22 [MET-2] denying the motions to value the collateral of Travis Credit Union.

The objection regarding Debtor's failure to appear at the meeting of creditors is resolved. The Debtors appeared at the continued meeting of creditors on February 13, 2020, and it was concluded as to the Debtor. 11 U.S.C. § 343.

Nonetheless, due to the failure to provide payment advices to the Trustee, and independently the denial of the motions to value, the plan filed November 13, 2019, 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 ruling appended to the minutes.

The court will enter a minute order.

21. [19-27562](#)-B-13 KENNETH SMITHOUR
[MET](#)-1 Mary Ellen Terranella

CONTINUED MOTION TO VALUE
COLLATERAL OF TRAVIS CREDIT
UNION
2-13-20 [[19](#)]

Final Ruling

This motion was continued from March 3, 2020, to allow creditor Travis Credit Union ("Creditor") to file a response and for debtor Kenneth Smithour ("Debtor") to file any reply. The motion was originally brought pursuant to Local Bankruptcy Rule 9014-1(f)(2).

The court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(c). Further briefing is also unnecessary. See Local

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

Debtor's motion to value the secured claim of Creditor is accompanied by Debtor's declaration. Debtor is the owner of a 2004 Lexus RX330 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$2,775.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Opposition

Creditor asserts that the replacement value of the Vehicle is \$6,719.00 based on the inspection of the Vehicle and calculation of the value based upon the mileage of the Vehicle at 229,001 miles and not 250,000 as indicated in Debtor's motion. The Creditor utilizes the Kelley Blue Book to reach its valuation but does not provide the declaration of the individual who inspected the Vehicle.

Proof of Claim Filed

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

Discussion

Creditor asserts that the value of the Vehicle is approximately \$6,719.00 based on the value provided by Kelley Blue Book. Even though the Creditor has accounted for the correct mileage, such market guide valuations generally presume the condition of the vehicle is excellent. See e.g., <http://www.kbb.com> (indicating that retail "value assumes the vehicle has received the cosmetic and/or mechanical reconditioning needed to qualify it as 'Excellent'" and that "this is not a transaction value; it is representative of a dealer's asking price and the starting point for negotiation"). The vehicle must be valued at its replacement value. In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a) (2). Because the Creditor's valuation does not take into consideration the condition of the property and is unsupported by any declaration, the court cannot determine what a retailer would charge for this Vehicle as it is.

Nor has the Debtor proven to the court's satisfaction the replacement value of the Vehicle. The Vehicle's mileage, as originally stated in the motion, was 250,000 miles and had a valuation of \$2,775.00. The Debtor now states that the earlier mileage was an estimate and acknowledges that it is actually 229,001 miles, but states that the valuation of \$2,775.00 should nonetheless be accepted. The court disagrees.

The Debtor now has a serious credibility problem. A 21,000 mile difference is substantial. The court therefore gives the Debtor's opinion of value absolutely no weight. The Debtor owns the Vehicle and is or should be familiar with it. Estimating miles at 250,000 when actual miles are or should be known because they are readily ascertainable (as Creditor was able to easily determine) is an intentional effort by the Debtor to adversely devalue the Vehicle by overstating its use and wear and tear. In other words, the Debtor was less than honest in his opinion of the Vehicle's value.

While neither parties have persuaded the court regarding their position of the value of the Vehicle, the Debtor has the burden of proof. Therefore, the motion will be denied without prejudice. If the Debtor re-files the motion it must be based on admissible evidence other than the Debtor's opinion.

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

The court will enter a minute order.

22. [19-27562](#)-B-13 KENNETH SMITHOUR CONTINUED MOTION TO VALUE
[MET](#)-2 Mary Ellen Terranella COLLATERAL OF TRAVIS CREDIT
UNION
2-13-20 [[23](#)]

Final Ruling

This motion was continued from March 3, 2020. The motion was originally brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Debtor's motion to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Lexus RX ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$12,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). But not in this case.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 4-1 filed by Travis Credit Union is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$30,770.93. Nevertheless, given the credibility determination made in the ruling at Item No. 21 [[MET](#)-1], the court does not believe the Debtor and therefore gives his opinion of value no weight. That means the Debtor's motion is not supported by admissible evidence of value and that also means the Debtor has not carried his burden.

If the Debtor re-files the motion it must be based on admissible evidence other than the Debtor's opinion.

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

The court will enter a minute order.

23. [19-26567](#)-B-13 WALTER FLETSCHER
[APN](#)-2 Douglas B. Jacobs

OBJECTION TO CONFIRMATION OF
PLAN BY MEB LOAN TRUST III
2-6-20 [[39](#)]

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).

The court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(c). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

Subsequent to the filing of the creditor MEB Loan Trust III's objection, the Debtor filed an amended plan on March 2, 2020. The confirmation hearing for the amended plan is scheduled for April 14, 2020. The earlier plan filed February 5, 2020, is not confirmed.

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

The court will enter a minute order.

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 creditors. The Chapter 13 Trustee filed a non-opposition to the motion. 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 ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

25. [20-20179](#)-B-13 JOSE ZUNIGA
[DPC](#)-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P CUSICK
3-5-20 [[30](#)]

CONTINUED TO 5/05/2020 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED MEETING OF
CREDITORS SET FOR 4/30/2020.

Final Ruling

No appearance at the March 24, 2020, hearing is required. The court will enter a
minute order.

26. [20-20379](#)-B-13 CHRISTINE HERNANDEZ-MAYER MOTION FOR RELIEF FROM
[BPN](#)-1 Pro Se AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
I.L.W.U. CREDIT UNION VS. 2-20-20 [[22](#)]

DEBTOR DISMISSED: 2/21/2020

Final Ruling

The case having been dismissed on February 21, 2020, the motion for relief from automatic stay is denied as moot.

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

The court will enter a minute order.

27. [19-24685](#)-B-13 EMILIA ARDELEAN
[TBG](#)-2 Daniel J. Griffin

CONTINUED MOTION TO CONFIRM
PLAN
10-11-19 [[37](#)]

No Ruling

28. [20-20194](#)-B-13 FLORA BROUGHTON OBJECTION TO CONFIRMATION OF
[DPC](#)-1 Peter G. Macaluso PLAN BY DAVID P CUSICK
Thru #29 3-4-20 [[26](#)]

CONTINUED TO 4/07/2020 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO VALUE COLLATERAL.

Final Ruling

No appearance at the March 24, 2020, hearing is required. The court will enter a minute order.

29. [20-20194](#)-B-13 FLORA BROUGHTON OBJECTION TO CONFIRMATION OF
[LBJ](#)-1 Peter G. Macaluso PLAN BY BOSCO CREDIT LLC
2-18-20 [[23](#)]

CONTINUED TO 4/07/2020 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO VALUE COLLATERAL.

Final Ruling

No appearance at the March 24, 2020, hearing is required. The court will enter a minute order.

30. [19-20995](#)-B-13 RUDY GONZALEZ, AND
[SBT](#)-5 ROBERTA GONZALEZ
Susan B. Terrado

MOTION TO MODIFY PLAN
2-16-20 [[104](#)]

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 creditors. The Chapter 13 Trustee filed a non-opposition to the motion. 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 ruling appended to the minutes. Counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(c).

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

Debtor Jeffrey McCullough ("Debtor") moves to confirm a first amended plan. Dkt. 24. The Chapter 13 Trustee ("Trustee") objects to confirmation on grounds that feasibility depends on the granting of a motion to value collateral of U.S. Bank NA ("U.S. Bank") which consists of a 2016 Ford Explorer. Dkt. 38. The Debtor has not filed a motion to value to date.

U.S. Bank also objects to confirmation on grounds that the plan does not provide for the full amount of its claim and does not provide for a sufficient interest rate. Dkt. 35.

Without a motion to value being granted, the first amended plan is not feasible. See 11 U.S.C. § 1325(a)(6). The Trustee's objection is sustained and U.S. Bank's objection is overruled as moot. The Debtor's motion to confirm is denied without prejudice. The first amended plan is not confirmed.

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

The court will enter a minute order.

32. [20-20197](#)-B-13 RONALD AHLERS
[AP-1](#) Peter G. Macaluso
Thru #33

OBJECTION TO CONFIRMATION OF
PLAN BY NEW RESIDENTIAL
MORTGAGE LOAN TRUST 2017-2
2-28-20 [[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). 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 has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(c). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

First, the Debtor exceeds the unsecured debt limit. The Debtor owes more than \$419,275.00 in non-contingent, liquidated, unsecured debts and is therefore not eligible for relief under Chapter 13 of the U.S. Bankruptcy Code pursuant to 11 U.S.C. § 109(e).

Second, New Residential Mortgage Loan Trust 2017-2 c/o Nationstar Mortgage LLC d/b/a/ Mr. Cooper ("Creditor") holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$28,030.57 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Third, the plan proposes to impermissibly modify the secured claim Creditor. The plan may not impose a modification that has not been expressly agreed to by the Creditor.

Because it fails to provide for the full payment of arrearages and modifies the ongoing monthly mortgage payment without the Creditor's consent, the plan is dead on arrival and cannot be confirmed.

The plan filed January 14, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

33. [20-20197](#)-B-13 RONALD AHLERS
[DPC-1](#) Peter G. Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P CUSICK
3-5-20 [[18](#)]

Final Ruling

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

The court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h), 1001-1(c). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f) (2) (C).

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

First, feasibility depends on the granting of a motion to avoid lien held by Franchise Tax Board. The Debtor has failed to file, set for hearing, and serve on the respondent creditor and the Trustee a stand-alone motion to avoid lien.

Second, the Debtor exceeds the unsecured debt limit. The Debtor owes more than \$419,275.00 in non-contingent, liquidated, unsecured debts and is therefore not eligible for relief under Chapter 13 of the U.S. Bankruptcy Code pursuant to 11 U.S.C. § 109(e). The schedules do not appear to be filed in good faith since several claims filed for secured or non-dischargeable debt in Debtor's previous case, no. 17-26982, were not included in this case. The Debtor does not provide any explanation as to why those debts are no longer owing.

Third, the plan proposes to impermissibly modify the secured claims of Ditech and Mr. Cooper, holders of the first and second deeds of trust on the Debtor's principal residence. There is no evidence that the lenders have consented to or are considering a loan modification. The plan may not impose a modification that has not been expressly agreed to by the creditors. See 11 U.S.C. § 1322(b) (2).

The plan filed January 14, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

Final Ruling

This matter was continued from March 10, 2020, to allow the Debtor to file a supplemental declaration as to her reduction in expenses. The supplemental declaration was to be filed by March 17, 2020. Dkt. 22 (audio). Based on the review of the court's docket, no supplemental declaration has been timely filed.

The court has determined this to be a matter that may be decided on the papers and without oral argument. See General Order No. 612 at 2, ¶2 (E.D. Cal. March 18, 2020); Local Bankr. R. 9014-1(h).

The court's decision is to deny 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 January 16, 2020, since the Debtor was in default and the plan would not be completed within 60 months (case no. 18-21219, dkt. 26). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018). However, because in this case the court conditionally extended the automatic stay through March 24, 2020, the automatic stay terminates in its entirety at 11:59 p.m. on March 24, 2020.

Discussion

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

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

The Debtor asserts that the bankruptcy filing is necessary to save her home from foreclosure and so that she can continue to operate her business. The Debtor is a licensed administrator for the Masonic Guest Home, which she has ran for more than 15 years and has a current gross monthly income of \$4,979.00. The Debtor states that since her previous case was dismissed, her circumstances have changed because she started taking younger clients than usual thinking that they will live longer.

The Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. The Debtor's gross income has stayed the same from the prior case to the present case and there is no increase in gross income from the Debtor taking on younger clients, who will presumably reside in the Masonic Guest Home. Instead, it appears that the only change in circumstances is the change in expenses. A comparison of Schedules I and J from the prior case to the present case shows that the Debtor has reduced her expenses in order to have an increased monthly net income. Debtor's monthly net income is now \$2,975.00 from the prior case of \$1,450.00. The Debtor does not explain in her declaration the cause of the reduction in expenses.

The motion is denied without prejudice.

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

The court will enter a minute order.