

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

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

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: April 14, 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

April 14, 2020 at 1:00 p.m.

-
1. [19-21705](#)-B-13 TOBY TOLEN MOTION FOR COMPENSATION FOR
[JGD](#)-9 John G. Downing JOHN DOWNING, DEBTORS
ATTORNEY(S)
3-31-20 [[150](#)]

Final Ruling

Before the court is an application for compensation filed by the attorney for Debtor Toby Tolen ("Debtor"). Debtor's attorney requests approval for \$9,000.00 in fees, \$2,000.00 of which was paid pre-petition and \$7,000.00 of which is to be paid through the Debtor's third amended plan.

The court has determined this matter may be decided on the papers. See General Order No. 612 at 2, ¶ 2 (E.D. Cal. March 18, 2020) (ordering all civil matters to be decided on the papers due to courthouse closure and national COVID-19 crisis). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

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

A fee application in excess of \$1,000.00 must be noticed in the manner required by Bankruptcy Rule 2002(a)(6) which states that "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors . . . at least 21 days' notice by mail of: . . . a hearing on an entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000[.]" Fed. R. Bankr. P. 2002(a)(6). The fee application here fails to comply with Bankruptcy Rule 2002(a)(6) in two respects. First, it was filed on March 31, 2020, and set for hearing on April 14, 2020, which means only 14 - not 21 - days' notice was given. Second, according to the certificate of service, not all creditors were served with notice of the fee application. Notice of the fee application is therefore defective. The fee application is denied without prejudice.

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

The court will enter a minute order.

April 14, 2020 at 1:00 p.m.

Page 1 of 30

2. [20-20008](#)-B-13 BRIAN PUNCHES
[JPG](#)-3 Jeffrey P. Guyton
Thru #3

MOTION TO CONFIRM PLAN
2-28-20 [[65](#)]

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.

Because the 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), 1001-1(c). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$4,400.00, which represents approximately 2 plan payments. 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, feasibility depends on the Debtor selling real property within the next 3 years. No evidence of the condition of the real estate market or Debtor's ability to sell at that time has been presented. The Debtor has failed to carry his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, Claim No. 3-1 of John T. Powers and Ruth M. Powers appears to be misclassified as a Class 1 claim. The pre-written language of the form plan defines Class 1 claims as long-term secured debt that were delinquent when the case was filed. The creditor has asserted that the claim will mature during the life of the plan on February 1, 2021, and such a claim should be classified as Class 2. In addition to the claim being misclassified, feasibility depends on the outcome of Debtor's objection to the claim at Item #3, JPG-4. That objection is overruled without prejudice.

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

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

The court will enter a minute order.

3. [20-20008](#)-B-13 BRIAN PUNCHES
[JPG](#)-4 Jeffrey P. Guyton

OBJECTION TO CLAIM OF JOHN T.
POWERS AND RUTH M. POWERS
REVOCABLE LIVING TRUST, CLAIM
NUMBER 3
3-10-20 [[81](#)]

Final Ruling

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, no party-in-interest shall be required to file written opposition to the objection.

Because an opposition and reply have been filed, the court has determined this matter

may be decided on the papers. See General Order No. 612 at 2, ¶ 2 (E.D. Cal. March 18, 2020) (ordering all civil matters to be decided on the papers due to courthouse closure and national COVID-19 crisis). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). Additional briefing is also unnecessary.

The court's decision is to overrule without prejudice the objection to Claim No. 3-1 of John T. Powers and Ruth M. Powers.

Brian Punches ("Objector") requests that the court disallow the claim of John T. Powers and Ruth M. Powers (collectively "Creditor"), Claim No. 3-1. The claim is asserted to be secured in the amount of \$96,983.08. Objector asserts that Creditor's claim won't mature until February 1, 2021, and that the claim amount incorrectly reflects an accelerated amount of \$96,983.08 and not the correct amount at the time Debtor's petition was filed. Debtor requests that Creditor's claim be reduced to \$6,909.00, which is the amount of arrears owed at the time the petition was filed.

Debtor separately states that his plan calls for the sale of a real property with sufficient equity to liquidate in full the arrears owed and to pay the \$90,000.00 in full. Debtor states that this sale will be accomplished prior to the maturation of the Creditor's note.

Creditor filed a response stating that the amount owed at the time the petition was filed is \$96,983.08 and that the pre-petition delinquency is \$6,909.00. Creditor provides an accounting of the payoff due as of January 2, 2020, when the petition was filed. Claim No. 3-1, p. 10. Creditor contends that the proof of claim is accurate.

Discussion

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. See 11 U.S.C. § 502(a). Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. See 11 U.S.C. § 502(b).

The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the proof of claim filed February 8, 2020, is valid. The accounting of the \$96,983.08 is provided at page 10 of Claim No. 3-1 to show the amount due as of the petition filing date. Objector has the burden of presenting substantial factual basis to overcome this evidence. Objector has failed to satisfy its burden of overcoming the presumptive validity of the claim.

Objector has failed to support the objection with substantial evidence, much less any evidence. Exhibits attached to (and in violation of the local rules not filed separately from) the objection are largely unauthenticated.¹ But more important, unlike Creditor's response which is supported by an authenticated accounting, dkt. 88 at exh. C, and a declaration which states that the amount of Creditor's claim is accurate at \$96,983.08, dkt. 89 at ¶ 5, the extent of the objection is an unsupported and unsubstantiated statement by the Objector's attorney "that the amount of the Claim is incorrect, and the correct amount of the Claim should be \$6,983.08." Dkt. 81 at 2:5-6. The unsupported and unsubstantiated statement of Objector's attorney is, at

¹Except, perhaps, the proof of claim of which the court has taken judicial notice as its own record, see Fed. R. Evid. 201, and the promissory note which is self-authenticating. See Fed. R. Evid. 902(9).

best, argument and not evidence at all. Consequently, Objector has offered nothing more than a "mere assertion" that Creditor's proof of claim is not valid or that the debt is not owed which, as noted above, does not overcome the presumptive validity of Creditor's proof of claim and Creditor's evidence supporting the same.

Based on the evidence and record before the court, the Creditor's claim is allowed. The objection to the proof of claim is overruled without prejudice.

The objection is ORDERED OVERRULED WITHOUT PREJUDICE for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

4. [20-20809](#)-B-13 JOHN TALLEY AND WENDY OBJECTION TO CONFIRMATION OF
 [DPC](#)-1 JONES-TALLEY PLAN BY DAVID P CUSICK
 Peter L. Cianchetta 3-17-20 [[18](#)]

CONTINUED TO 4/21/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF
CREDITORS SET FOR 4/16/2020.

Final Ruling

No appearance at the April 14, 2020, hearing is necessary. 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.

Because the 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), 1001-1(c). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

The court's decision is to not confirm the fifth amended plan and - consistent with its prior ruling at Docket Nos. 146 and 148 - order this case dismissed.

First, the Debtor's ability to make increased plan payments is unclear. Debtor's amended plan calls for increased plan payments in April 2020 to be \$9,180.00 per month. However, this is almost his entire net income based on Schedules I and J filed December 10, 2019, and after expenses there is not enough monthly net income to be able to afford this plan payment. Debtor has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan does not provide for post-petition mortgage payments owed to Select Portfolio Servicing. The creditor is provided in Class 1 to be paid by the Trustee through the plan. However, the Nonstandard Provisions at § 3.07 state that "Payments on Class 1 to commence May 2020," so it is unclear whether the Debtor has been directly paying the creditor post-petition payments since the plan was filed in March. The Trustee is therefore unable to fully comply with § 3.07(b) of the plan. Any deferment of the monthly post-petition mortgage payment without evidence of the secured creditor's consent - and there is none - is an impermissible modification under § 1322(b)(2) that renders the fifth amended plan dead on arrival.

Third, delaying mortgage payments to Select Portfolio Servicing until May affects feasibility. Because the Debtor's ability to make increased plan payments is unclear, it is unlikely that the Debtor will be able to make mortgage payments either directly or through the plan.

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

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

Further, this case has now been pending 14 months without a confirmed plan. Recognizing the substantial delay in confirming a plan and its prejudicial effect on creditors, in its earlier order denying confirmation of the Debtor's fourth amended plan the court stated as follows:

Moreover, because this case has been pending for over one year without a confirmed plan, the Debtor will be provided one more opportunity to confirm an amended plan. The Debtor will therefore have until May 5, 2020, to confirm a fifth amended plan otherwise this case will be dismissed.

Dkts. 146 at p.2 (civil minutes), 148 (order denying confirmation incorporating ruling in civil minutes).

Inasmuch as the Debtor's fifth amended plan is not - and cannot be - confirmed by May 5, 2020, consistent with the court's prior order referenced above this case is **ORDERED DISMISSED**. See 11 U.S.C. §§ 1307(c)(1), (5).

The court will enter a minute order.

6. [19-27910](#)-B-13 JOHN HATZIS
[CCR](#)-1 Justin K. Kunej

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY,
MOTION TO ANNUL THE AUTOMATIC
STAY
3-31-20 [[45](#)]

ACCELERATED REALTY GROUP,
INC. VS.

Final Ruling (Conditional)

The motion has been set for hearing on the 14-days notice required by 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(f).

The court's decision is to conditionally grant the motion on the terms explained below and continue the hearing to April 28, 2020, at 1:00 p.m.

Creditor Accelerated Realty Group ("Movant") is a third-party bidder that purchased property located at 7863 Royal Down Circle, Sacramento, California ("Property"), at a trustee's sale held December 26, 2019. The trustee's sale deed was recorded on January 2, 2020.

Debtor John Hatzis ("Debtor") filed his third bankruptcy one day before the trustee's sale, on December 25, 2019. Movant states that it was unaware of the bankruptcy at the time of the trustee's sale, that it determined no automatic stay was in effect because this is the Debtor's third bankruptcy pending in one year, and, alternatively, that any automatic stay in effect should be annulled - whatever its extent.

On January 24, 2020, Debtor timely filed a motion to impose the automatic stay, which the court ordered granted in part on February 11, 2020.¹ Specifically, the court did not retroactively impose the automatic stay to the filing date of the petition as the Debtor requested and stated on the record in open court that, under the statutory language, the imposed stay was effective on the date of the court entering its order. See Court Audio 23 and 11 U.S.C. § 362(C). Nor did the Debtor's moving papers provide legal authority for retroactively imposing the stay. An order imposing the automatic stay was filed on February 13, 2020, and entered on February 14, 2020.

Movant separately states that it was not served with the court's order imposing the automatic stay, and the docket reflects that to be accurate.

On February 27, 2020, Debtor appealed the court's order granting his motion to impose the stay. However, the Debtor did not file within the required 14 days a statement of the issues on appeal, designation of record, or a notice of ordering a transcript. Movant states that its receipt of the notice of the appeal on March 10, 2020, was the first it learned of the imposed stay.

Meanwhile, Movant served the Debtor with a notice to quit on January 16, 2020. Debtor retained separate counsel to represent him in a state court unlawful detainer case Movant filed in the Sacramento County Superior Court on January 23, 2020. Movant served the Debtor with a summons and complaint in the unlawful detainer proceeding on January 26, 2020, and the Debtor filed an answer on February 4, 2020, but did not mention the then-pending bankruptcy hearing on the motion to impose the automatic stay.

On February 18, 2020, the state court issued a trial notice. An unlawful detainer trial was held and judgment for Movant was entered on March 5, 2020. A writ of possession issued on March 6, 2020. The writ of possession was delivered to the Sheriff on March 9, 2020.

¹Unlike a motion to extend the automatic stay which requires a noticed to hearing to conclude within 30 days of the petition date, a motion to impose the stay need only be filed (not heard) during the same 30-day period. Compare § 362(c)(3)(B) with § 362(c)(4)(B).

Movant requests confirmation that no stay was in effect in this bankruptcy at the time of filing and/or annulment of the automatic stay.

No opposition has been filed by the Debtor.

Discussion

Movant presents evidence that it is the owner of the Property. Movant has provided a certified copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Dkt. 50, exh. 1. Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d) (2).

Movant has also presented a colorable claim for title to and possession of this Property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. § 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief.

No automatic stay was in effect at the time of trustee's sale, recorded trustee's deed upon sale, filing of the unlawful detainer action, service of the unlawful detainer complaint and summons, and the filing of the Debtor's answer.

Movant seeks confirmation that the automatic stay was not in effect at the time of several acts which occurred before the automatic stay was imposed. Section 362(c) (4) (A) provides that (I) "if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under section (a) shall not go into effect upon the filing of the later case; and (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect."

The court finds that no automatic stay was in effect when the Debtor filed his third bankruptcy on December 25, 2019, since two prior bankruptcy cases were pending and dismissed within the previous year (see case nos. 18-20243, 19-22226). It follows that no stay was in effect when the trustee's sale occurred on December 26, 2019, when the trustee's deed upon sale was recorded on January 2, 2020, when the notice to quit was served on January 16, 2020, when the complaint for unlawful detainer was filed in state court on January 23, 2020, when the unlawful detainer summons and complaint were served on the Debtor on January 26, 2020, and when the Debtor filed his answer in the state court unlawful detainer action on February 4, 2020. Therefore, the motion confirming the automatic stay was not in effect at the time of each of the immediately preceding acts is granted. See 11 U.S.C. § 362(c) (4) (A) (ii).

Annulment of the imposed automatic stay as to the unlawful detainer judgment.

Movant also requests an annulment of the imposed automatic stay to validate the state court's issuance of a trial notice on February 18, 2020, the unlawful detainer trial held and judgment entered on March 5, 2020, the writ of possession issued on March 6, 2020, and the delivery of the writ of possession to the Sheriff on March 9, 2020, because Movant did not have knowledge of the bankruptcy court's order entered on February 14th, 2020, imposing the automatic stay and, in fact, did not have notice of that order until March 10, 2020, after each of those events occurred.

Annulment is particularly appropriate in this case given the original creditor's authority to proceed with a foreclosure sale of the Property, Movant's (as a third-party) purchase of the Property at a properly-conducted foreclosure sale, Movant's purchase of the Property and prosecution of an unlawful detainer action to judgment without notice or knowledge of the automatic stay imposed in this case, the expense

that Movant incurs while the Debtors unlawfully remain in possession of the Property without payment to Movant, the expense and delay that Movant would incur if required to unwind foreclosure or restart unlawful detainer proceedings, and the Debtor's apparent failure to inform Movant that the stay was imposed. See *Fjeldsted v. Lien (In re Fjeldsted)*, 293 B.R. 12, 24-25 (Bankr. 9th Cir. 2003) (factors to consider in granting annulment).

The court shall issue an order annulling the automatic stay in its entirety as to Movant and Movant's actions retroactive to the petition date, generally, and in the state court unlawful detainer, specifically, so that all such actions taken by Movant, its agents, representatives, members, directors, officers, and employees on or after December 25, 2019, including those arising in or related to the state court unlawful detainer proceedings after February 14, 2020, as identified hereinabove are deemed valid and to not have violated the imposed automatic stay.

Lifting the imposed automatic stay to allow the eviction process of Debtor.

Movant requests lifting the automatic stay to allow the eviction of Debtor to proceed by the sheriff of Sacramento County. That request is granted.

The request for relief from stay as to any non-filing co-debtor, who is liable on such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).

The 14-day stay of enforcement under Rule 4001(a)(3) is waived.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2) the Debtor shall have until 5:00 p.m. on April 21, 2020, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on Creditor, the Chapter 13 Trustee, and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served Creditor's motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and Creditor may submit an order that incorporates this ruling and vacates the continued hearing date of April 28, 2020, at 1:00 p.m.

If an opposition or response is timely filed and served the court will hear the motion on April 28, 2020, at 1:00 p.m. **Debtor and his attorney of record are cautioned that a frivolous or baseless opposition or response - or one filed for an improper purpose such as to harass, increase costs, or delay - will result in substantial sanctions against the Debtor and/or his attorney of record under Federal Rule of Bankruptcy Procedure 9011 and/or the court's inherent authority.** No reply is permitted.

No other or additional relief is granted by 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). Opposition was filed by Equity Trust Company fbo Bruce Nelson IRA and the Trustee.

Because the 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), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

First, feasibility depends on the Debtors filing and the court sustaining an objection to claim of Equity Trust Company fbo Bruce Nelson IRA. To date, no objection to the claim has been filed.

Second, Debtors are delinquent to the Chapter 13 Trustee in the amount of \$1,685.00, which represents approximately 1 plan payment. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, no dividend is specified for administrative expenses. Section 3.06 of the plan specifies a monthly payment of \$0.00 for administrative expenses. It is not possible for the Trustee to pay the balance of the Debtors' attorney's fees and any other administrative expenses through the plan with a monthly payment specified at \$0.00. A dividend of \$39.00 would work to cover these expenses.

Fourth, the plan exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4). This may be due to a typo in the Nonstandard Provisions.

Fifth, the Debtors have failed to resolve the issues raised by the Trustee and sustained by the court on February 4, 2020. Specifically, the voluntary petition has not been amended to include Shanon Bennett's middle name and Schedule A/B has not been amended to show the correct street address. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

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

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

The court will enter a minute order.

8. [20-20814](#)-B-13 PATRICK EASTER AND TINA OBJECTION TO CONFIRMATION OF
[ETL](#)-1 GUEVARA-EASTER PLAN BY SVIP, LLC
Julius J. Cherry 3-25-20 [[24](#)]

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 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), 1001-1(f). 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 plan incorrectly classifies creditor Sacramento Valley Properties LLC ("Creditor") as a Class 4 claim, which is reserved for claims that mature after the completion of the plan, are not in default, and are not modified by the plan. Creditor's claim matures on December 2020 based on the terms of the promissory note, dkt 27, exh. 1. The plan does not comply with 11 U.S.C. § 1322(b)(2).

Second, the Debtors do not have the ability to fund the plan. Schedule J lists a monthly net income of \$950.88. However, there is no evidence in the schedules or proposed plan explaining how the Debtors will cover the balloon payment owed to Creditor in December 2020 when the loan matures. Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed February 13, 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 was properly filed at least 14 days prior to the hearing. 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(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f) (2) (C).

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 January 23, 2020, due to delinquency in plan payments and failure to file an amended plan (case no. 19-22424, dkt. 72). 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).

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 prior and present bankruptcy cases were filed in an effort to save his home from foreclosure. Debtor states that the prior case depended on Debtor's worker's compensation case settlement. The settlement proceeds were intended to supplement Debtor's income and plan payments. However, the settlement was delayed and Debtor's bankruptcy case was ultimately dismissed. Debtor's circumstances have changed because the worker's compensation has settled. The order approving compromise was executed on January 24, 2020, and the settlement check in the amount of \$180,174.28 was issued on January 28, 2020. In the present bankruptcy, the Debtor intends to fund the plan using monthly contributions from the worker's compensation settlement and a lump sum step payment in the amount of \$50,000.00 in month 6. These funds are available and earmarked in Debtor's bank account.

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.

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

The court will enter a minute order.

10. [20-20722](#)-B-13 ANTHONY/KAYLA YAZZIE OBJECTION TO CONFIRMATION OF
[DPC](#)-1 Peter G. Macaluso PLAN BY DAVID P. CUSICK
3-17-20 [[31](#)]

CONTINUED TO 5/05/2020 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO
VALUE COLLATERAL.

Final Ruling

No appearance at the April 14, 2020, hearing is necessary. The court will enter a
minute order.

11. [19-24624](#)-B-13 THOMAS/SELIMA GARRIS
[SJT](#)-2 Susan J. Turner

MOTION TO MODIFY PLAN
2-28-20 [[40](#)]

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).

Because the 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), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

The court's decision is to deny the motion to modify.

In response to the filing of the Trustee's objection, the Debtors state that they consent to the issues raised and will file a new plan. Therefore, the plan filed February 28, 2020, 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.

12. [16-24033](#)-B-13 JOHN PETERSON
[DBJ](#)-3 Douglas B. Jacobs

MOTION TO MODIFY PLAN
3-10-20 [[71](#)]

Final Ruling

The Debtor having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

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

The court will enter a minute order.

13. [20-20843](#)-B-13 MARLON/MICHELLE OBJECTION TO CONFIRMATION OF
[DPC](#)-1 VALENZUELA PLAN BY DAVID P. CUSICK
Thru #14 Steele Lanphier 3-17-20 [[15](#)]

CONTINUED TO 4/21/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 4/16/2020.

Final Ruling

No appearance at the April 14, 2020, hearing is necessary. The court will enter a minute order.

14. [20-20843](#)-B-13 MARLON/MICHELLE OBJECTION TO CONFIRMATION OF
[KMM](#)-1 VALENZUELA PLAN BY DATA MORTGAGE, INC.
Steele Lanphier 3-20-20 [[19](#)]

CONTINUED TO 4/21/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 4/16/2020.

Final Ruling

No appearance at the April 14, 2020, hearing is necessary. The court will enter a minute order.

15. [17-22863](#)-B-13 CAITLIN MILLS
[LBG](#)-6 Lucas B. Garcia

MOTION TO MODIFY PLAN
3-2-20 [[67](#)]

Final Ruling

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 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). Opposition was filed.

Because the 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), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$250.00, 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, even if the Debtor is current, the Debtor does not utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective November 9, 2018.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and 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.

Final Ruling

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 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). Opposition was 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), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

The court's decision is to permit the requested modification and confirm the modified plan.

The Trustee objects to plan modification on grounds that the Debtor is delinquent \$1,141.00, which represents approximately 1 plan payment, and that the plan states an incorrect amount of post-petition arrearage owed to Nationstar Mortgage LLC dba Mr. Cooper at \$2,597.47 when the correct amount is actually \$1,729.28.

The Debtor filed a response stating that she made the plan payment of \$1,450.00 and that the discrepancy of \$1,141.00 was due to a math error in the calculation of arrears resulting from Debtor's counsel incorrectly utilizing a February 2019 filing date for the petition as opposed to the actual February 2018 filing date when calculating payment figures. This resulted in a perceived delinquency. The correct figures in Section 7 - Nonstandard Provisions for Section 2.01 should state: "Payments into the plan shall be as follows: \$1,249.00 per month for 24 months; \$1,450.00 per month for 36 months."

Separately, the Debtor agrees to correct the amount of post-petition arrears owed to Nationstar Mortgage LLC dba Mr. Cooper in the order modifying.

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

The court will enter a minute order.

17. [19-26567](#)-B-13 WALTER FLETSCHER OBJECTION TO CONFIRMATION OF
[APN](#)-3 Douglas B. Jacobs PLAN BY VW CREDIT, INC.
Thru #19 3-19-20 [[61](#)]

Final Ruling

The Debtor having filed a notice of withdrawal of the motion to confirm plan at Item #18, DBJ-2, and because this objection to confirmation relates to that plan, the objection to confirmation is overruled as moot.

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

The court will enter a minute order.

18. [19-26567](#)-B-13 WALTER FLETSCHER MOTION TO CONFIRM PLAN
[DBJ](#)-2 Douglas B. Jacobs 3-2-20 [[45](#)]

Final Ruling

The Debtor having filed a notice of withdrawal for the pending motion, the withdrawal being consistent with any opposition filed to the motion, the court interpreting the notice of withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the motion, and good cause appearing, the motion is dismissed without prejudice.

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

The court will enter a minute order.

19. [19-26567](#)-B-13 WALTER FLETSCHER MOTION FOR RELIEF FROM
[KMM](#)-1 Douglas B. Jacobs AUTOMATIC STAY
3-16-20 [[51](#)]

MEB LOAN TRUST III 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). Response was filed by the Trustee. No opposition was filed by the Debtor.

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(f).

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

MEB Loan Trust III ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 6306 Carmel Drive, Redding, California (the "Property"). Movant has provided the Declaration of Steven Ross to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Ross Declaration states that there are 4 post-petition payments in default totaling

\$8,483.26.

A response was filed by the Trustee. The Trustee does not oppose the motion for relief from stay and states that Claim No. 5-1 was filed by MEB Loan Trust III, c/o Specialized Loan Servicing LLC reflecting a delinquency of \$19,944.58 and a secured claim of \$203,965.93.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be \$394,936.21 as stated Movant's papers. The value of the Property is determined to be \$375,000.00 as stated in Schedules A/B and D filed by Debtor.

Discussion

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

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, it appears that there is no equity in the Property. Moreover, the Debtor has failed to establish that the Property is necessary to an effective reorganization. *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC (In re First Yorkshire Holdings, Inc.)*, 470 B.R. 864, 870 (Bankr. 9th Cir. 2012).

The request for relief from stay as to any non-filing co-debtor, who is liable on such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).

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

No other or additional relief is granted by the court.

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

The court will enter a minute order.

20. [19-27379](#)-B-13 TAMI TRIHUB
[TAM](#)-1 Thomas A. Moore

MOTION TO CONFIRM PLAN
3-8-20 [[36](#)]

Final Ruling

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 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). Opposition was filed by the Trustee.

Because the 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), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

The Debtor is delinquent to the Chapter 13 Trustee in the amount of \$8,437.00, which represents approximately 3 plan payments. 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).

No response was filed by the Debtor stating the delinquency will be cured by the time of the hearing on this matter.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and 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.

21. [17-20880](#)-B-13 ERIKA DALTON
[MB-1](#) Michael Benavides

MOTION TO MODIFY PLAN
3-10-20 [[33](#)]

Final Ruling

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 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). A limited opposition was filed by the Trustee.

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(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

The court's decision is to permit the requested modification and confirm the modified plan.

The Trustee has filed a response requesting that the motion be granted with the clarification of these terms in the order modifying plan: "The plan is currently in month 37 and the Debtor has paid a total of \$7,664.00 with approximately 1.97% being paid to the unsecured creditors."

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

The court will enter a minute order.

22. [20-20286](#)-B-13 MARY CHADWICK
[CJK](#)-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA N.A.
3-12-20 [[32](#)]

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 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), 1001-1(f). 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 Bank of America N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$69,534.04 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 February 13, 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.

23. [20-20786](#)-B-13 RONNIE/THERESA BROWN OBJECTION TO CONFIRMATION OF
[DPC](#)-1 Eric John Schwab PLAN BY DAVID P CUSICK
3-17-20 [[16](#)]

CONTINUED TO 4/21/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 4/16/2020.

Final Ruling

No appearance at the April 14, 2020, hearing is necessary. 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. The court will address the merits of the motion at the hearing.

Because the 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), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

The Debtor has not filed his 2016 state tax return. Debtor's response does not mention the 2016 state tax return but instead states that a 2019 has not been prepared as yet.

The other issues raised by the Trustee have been resolved. Specifically, the Trustee states that the Debtor is delinquent \$1,700.00 for the March payment; the Debtor states that he mailed the payment on March 31, 2020. The Trustee states that the Debtor's monthly expenses increased with no explanation; Debtor states that it increased due to being approved a prior loan modification that has also provided 100% dividend to creditors. The Trustee states that the Statement of Financial Affairs fails to list non-filing spouse's business income and no balance sheet has been provided relating to non-filing spouse's business; Debtor states that the Statement of Financial Affairs has been amended and that the balance sheet has been provided.

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

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

The court will enter a minute order.

PATELCO CREDIT UNION VS.

Final Ruling

The motion has been set for hearing on the 14-days notice required by 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(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

The court's decision is to grant in part the motion for relief from stay to the extend of allowing Patelco Credit Union to renew its amended judgment and file abstracts of the renewed judgment together with necessary documents in applicable counties.

Patelco Credit Union ("Movant") requests relief from the stay for the limited purpose to renew any amended judgment and file abstracts of the renewed judgment in applicable counties. The judgment would otherwise set to expire in August 2020. Pursuant to California Code of Civil Procedure §§ 683.020 and 683.110, the judgment must be renewed before the 10 year mark in order to preserve it and Movant's rights thereunder. Movant seeks relief pursuant to 11 U.S.C. § 108(c) so that it may proceed with renewing the judgment in state court.

Movant also requests that any other stays applicable to 75 Coral Lane, Suisun City, California, via non-filing, co-debtor pursuant to 11 U.S.C. § 1301(c) be vacated or waived. Movant has provided the Declaration of Robert Koury to introduce into evidence the documents upon which it bases the claim.

Response

Debtor has filed a response stating that he does not oppose granting relief for the limited purpose of Movant renewing its amended judgment and filing abstracts of the renewed judgment together with any other necessary documents in the applicable counties.

However, the Debtor opposes any relief from the automatic stay as to other stays applicable to the property located at 75 Coral Lane, Suisun City, California, via the non-filing, co-debtor stay of 11 U.S.C. § 1301 or Bankruptcy Rule 4001(a)(3) because the Debtor intends to file an amended plan that will provide for payment of Movant's claim in full through the Chapter 13 plan.

Discussion

The court finds that the nature of Movant's expiring amended state court judgment warrants relief from stay for cause. The issues appear to have been already litigated in Solano Superior Court. Movant filed an amended abstract of judgment in both Solano County and Contra Costa County in September 2010 but they are set to expire in August 2020 pursuant to California Code of Civil Procedure §§ 683.020 and 683.110.

The court shall issue a minute order modifying the automatic stay as it applies to the Debtor and any co-debtor stay applicable to any other party named in the state court judgment *only* to allow the Movant to renew its amended judgment and file abstracts of the renewed judgment in applicable counties.

The automatic and any co-debtor stay(s) are not modified with respect to the enforcement of the judgment against the Debtor, co-debtor, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted by the court.

The 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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

The court will enter a minute order.

26. [20-20797](#)-B-13 NIDA LACAP OBJECTION TO CONFIRMATION OF
[DPC](#)-1 Peter G. Macaluso PLAN BY DAVID P CUSICK
Thru #27 3-17-20 [[23](#)]

CONTINUED TO 4/21/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 4/16/2020.

Final Ruling

No appearance at the April 14, 2020, hearing is necessary. The court will enter a minute order.

27. [20-20797](#)-B-13 NIDA LACAP OBJECTION TO CONFIRMATION OF
[RAS](#)-1 Peter G. Macaluso PLAN BY HSBC BANK USA, NATIONAL
ASSOCIATION
3-6-20 [[18](#)]

CONTINUED TO 4/21/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 4/16/2020.

Final Ruling

No appearance at the April 14, 2020, hearing is necessary. The court will enter a minute order.

28. [19-27699](#)-B-13 MIGUEL/TERESITA LUNA
[MRL](#)-1 Mikalah R. Liviakis

MOTION TO CONFIRM PLAN
3-6-20 [[23](#)]

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.

Because the 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), 1001-1(f). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

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

The Debtors have filed a declaration establishing support payments of \$1,400.00 to their parents and that they can afford these payments. Dkt. 30.

The issue raised by the Trustee regarding amending schedules to reflect Debtors' business lease agreement for rental equipment has been resolved. The Debtors filed an amended Schedule G on April 2, 3030, dkt. 31.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, 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.