

**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 21, 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 21, 2020 at 1:00 p.m.

-
1. [19-21306](#)-B-13 JOSE/MERCEDES MORALES MOTION TO MODIFY PLAN
[MRL](#)-3 Mikalah R. Liviakis 3-9-20 [[52](#)]

Final Ruling (Conditional)

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 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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 not permit the requested modification and not confirm the modified plan, unless the Debtors are current at the time of the hearing.

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of \$408.00, which represents approximately 0.25 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).

Second, the plan payment in the amount of \$1,700.00 for months 10 through 60 do not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of these monthly amounts plus Trustee's fees is \$1,751.78. The plan does not comply with Section 5.02 of the mandatory form plan.

Third, the post-petition delinquency in mortgage payments should be \$1,163.30 and not \$3,492.00.

Although the second and third issues may be corrected in an order confirming, no response was filed by the Debtor stating that the first issue regarding delinquency will be cured by the time of the hearing on this matter. However:

(1) If the Debtors **are current** at the time of the hearing the motion will be granted and the modified plan confirmed. By April 28, 2020, **Debtors' attorney** shall submit an order granting the motion and a separate order to the Chapter 13 Trustee confirming the modified plan.

(2) If the Debtors **are not current** at the time of the hearing the motion will be denied and the modified plan not confirmed. By April 28, 2020, the **Chapter 13 Trustee** shall

April 21, 2020 at 1:00 p.m.

submit an order denying the motion.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed, unless the above conditions are met in which case it will comply with §§ 1322 and 1325(a).

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

The court will enter a minute order.

Final Ruling

The motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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). 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.

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on January 17, 2020, at their request (case no. 19-20643, dks. 51, 53). 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 Debtors file their bankruptcy to save their home from foreclosure. In the prior case, the Debtors' moved to dismiss their case after mortgage lender, Champion Mortgage Company, paid taxes to Solano County and then filed a Notice of Default and Election to Sell despite the fact that the Debtors provided for Solano County in their previous plan. Debtors' current Chapter 13 plan provides for Champion Mortgage Company as a Class 1 claimant to repay the property tax advances. Solano County actually filed an amended claim in the previous case after Champion Mortgage Company paid the taxes. The amended claim amount of Solano County is provided for in the current plan as a Class 2 claim. The Debtors continue to have steady income to fund their plan.

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

The motion is granted and the automatic stay is extended for all purposes and parties, 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.

3. 20-21907-B-13 NED/EDNA SMITH
MET-2 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF
PERITUS PORTFOLIO SERVICES II,
LLC
4-7-20 [13]

Final Ruling (Conditional)

The motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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 conditionally grant the motion and value the secured claim of Peritus Portfolio Services II, LLC at \$2,950.00 on the terms below and continue the hearing to May 5, 2020, at 1:00 p.m.

Debtors' motion to value the secured claim of Peritus Portfolio Services II, LLC ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2005 Lexus ES330 ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$2,950.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' 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).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in September 2008, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$7,929.00. 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 \$2,950.00. 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.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2) Creditor shall have until 5:00 p.m. on April 28, 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 the Debtors' attorney, the Chapter 13 Trustee, and the United States trustee by facsimile or email.

If **an opposition or response is not timely filed** and served Debtors' 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 the **Debtors' attorney** may submit an order that incorporates this ruling and vacates the continued hearing date of May 5, 2020, at 1:00 p.m.

If **an opposition or response is timely filed and served** the court will hear the motion on May 5, 2020, at 1:00 p.m.

No reply is permitted.

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

The court will enter a minute order.

4. [18-24310](#)-B-13 MICHAEL BRUNSWICK MOTION TO MODIFY PLAN
[MRL](#)-2 Mikalah R. Liviakis 3-12-20 [[50](#)]

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) (ordering all civil matters to be decided on the papers due to courthouse closure and national COVID-19 crisis); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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 not permit the requested modification and not confirm the modified plan.

First, the modified plan fails to specify a cure of the post-petition arrearage owed to Bank of America NA in Class 1 for months September 2019, November 2019, December 2019, and February 2020 in the amount of \$5,313.56.

Second, the total paid into the plan is incorrect. The total paid into the plan as of March 2020 is \$31,480 and then the Debtor will pay \$2,730 a month for the remaining 40 months of the plan.

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.

5. [20-21032](#)-B-13 MARJORIE ALCANTARA
[RJ-2](#) Richard L. Jare

MOTION TO VALUE COLLATERAL OF
GLOBAL LENDING SERVICES, LLC
3-24-20 [[29](#)]

Final Ruling

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

The court's decision is to value the secured claim of Global Lending Services, LLC at \$14,000.00.

Debtor's motion to value the secured claim of Global Lending Services, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2016 Toyota Camry ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$14,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 2-1 filed by Global Lending Services LLC 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 December 7, 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 \$29,522.38 based on Claim No. 2-1. 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 \$14,000.00. *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.

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

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

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.

7. [20-20634](#)-B-13 DEEANNE HELTON AND CONTINUED MOTION TO CONFIRM
 [FF-2](#) MICHAEL COOPER PLAN
 Gary Ray Fraley 3-3-20 [[25](#)]

CONTINUED TO 5/12/2020 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTION TO
VALUE COLLATERAL OF GOLDEN ONE CREDIT UNION.

Final Ruling

No appearance at the April 21, 2020, hearing is required. 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) (ordering all civil matters to be decided on the papers due to courthouse closure and national COVID-19 crisis); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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 not confirm the amended plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$600.00. An additional payment of \$800 will be due on April 25, 2020. 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 Debtor is causing unreasonable delay that is prejudicial to Select Portfolio and provides unfair treatment to the post-petition mortgage arrears. Specifically, the Nonstandard Provisions show that the Debtor has added pre- and post-petition arrears together but that the ongoing mortgage payments are to begin April 2020 and arrears payments are to start a year later on April 2021.

Third, the Debtor may not be able to make the payments under the plan or comply with the plan pursuant to 11 U.S.C. § 1325(a)(6). Debtor has not provided sufficient proof of income to resolve the issues raised by the Trustee in its previous objection and sustained by the court. Dkts. 18, 31. Additionally, the Debtor has failed to amend Schedules I and J to reflect the change in her income and disposable income.

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.

Final Ruling (Conditional)

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 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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 not permit the requested modification and not confirm the modified plan, unless the Debtor is current at the time of the hearing.

The Debtor is delinquent to the Chapter 13 Trustee in the amount of \$727.12, which represents approximately 0.50 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).

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

(1) If the Debtor **is current** at the time of the hearing the motion will be granted and the modified plan confirmed. By April 28, 2020, **Debtor's attorney** shall submit an order granting the motion and a separate order to the Chapter 13 Trustee confirming the modified plan.

(2) If the Debtor **is not current** at the time of the hearing the motion will be denied and the modified plan not confirmed. By April 28, 2020, the **Chapter 13 trustee** shall submit an order denying the motion.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed, unless the above conditions are met in which case it will comply with §§ 1322 and 1325(a).

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

The court will enter a minute order.

10. [20-20939](#)-B-13 ANDREW HUNLEY
[ASW](#)-1 Timothy J. Walsh

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK, NATIONAL
ASSOCIATION
3-18-20 [[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 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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). 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, 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 \$112,081.32 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.

Second, the Debtor does not appear to have the ability to fund the plan. Debtor's Schedule J, Line #23, shows a monthly net income of \$3,351.28. However, the Debtor will be required to make increased plan payments to cure objecting creditor's pre-petition arrears over the life of the plan and increase monthly post-petition payments to the objecting creditor. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed February 20, 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.

11. [20-20040](#)-B-13 BRAD HAMILTON AND CHERISE WILLIAMS
[SS-1](#) John G. Downing OBJECTION TO CONFIRMATION OF
PLAN BY RENO REAL ESTATE
SOLUTIONS, LLC
3-19-20 [[16](#)]

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 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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). 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, objecting creditor Reno Real Estate Solutions, LLC holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$9,201.58 in pre-petition arrearages. Attached to the proof of claim is an installment note that states the entire unpaid principal and any accrued interest is due October 1, 2022. Claim No. 12, part 1, p. 8. Because the claim is due during the plan terms of 60 months, the creditor's claim must be treated as Class 2 and not Class 1.

Second, Debtors do not appear to have the ability to fund the plan. Debtors' Schedule J, Line #23, shows a monthly net income of \$895.24. Objecting creditor's claim alone necessitates a payment of approximately \$1,700 per month. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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.

Final Ruling

This motion was brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

The court's decision is to deny the motion as not necessary and therefore moot.

Debtors Stacy Savoca and Michael Savoca ("Debtors") seek to employ special counsel Catia G. Saraiva ("Special Counsel") pursuant to 11 U.S.C. §§ 327(e) and 328(a) to represent Ms. Savoca in a personal injury claim related to injuries sustained in an accident on November 9, 2016. Ms. Savoca had contracted with Special Counsel pre-petition on December 1, 2016, and requests that Special Counsel continue to represent her in the personal injury claim while she is in a Chapter 13. Special Counsel states that it was not aware that Ms. Savoca was contemplating filing a bankruptcy. On March 2019, a settlement for insurance limits was reached and Special Counsel was advised that it needed to have its employment by the Debtor approved by the court in order to be paid.

Special Counsel billed over 145 hours from December 2016 to May 2018 in Ms. Savoca's personal injury claim. Special Counsel had agreed to a 30% to 35% split and, since mediation has occurred in the personal injury claim, that the 35% rate is now applicable. Ms. Savoca states that this is less than the industry standard of 40% to 65% for contingency fees after arbitration, mediation, or trial.

Special Counsel testifies that she is representing Ms. Savoca in the personal injury claim. Special Counsel testifies she and the firm do not represent or hold any interest adverse to the Debtors or to the estate and that they have no connection with the Debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Discussion

Bankruptcy Rule 2014(a) authorizes the employment of "professionals pursuant to § 327, § 1103, or § 1114 of the Code." Section 327 is the only provision applicable in this Chapter 13 case. More precisely, although not specifically identified, the Debtor apparently seeks to employ Special Counsel under 11 U.S.C. § 327(e).

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Some courts hold that § 327 applies to the employment of professionals by Chapter 13 trustees and Chapter 13 debtors. See *e.g.*, *Wright v. Csabi (In re Wright)*, 578 B.R. 570 (Bankr. S.D. Tex. 2017) (§ 327(e)); *In re Goines*, 465 B.R. 704 (Bankr. N.D. Ga. 2012) (§ 327(e)); *In re Jenkins*, 406 B.R. 817 (Bankr. N.D. Ind. 2009) ("the term 'trustee' in 11 U.S.C. § 327(e) is to be read as 'Chapter 13 debtor'"). However, a majority of courts hold that § 327 generally-and § 327(e) in particular-applies only when Chapter 13 trustees seek to employ professionals and it is inapplicable to the employment of professionals by Chapter 13 debtors. See *e.g.*, *In re Blume*, 591 B.R. 675 (Bankr. E.D. Mich. 2018) (Chapter 13 debtors were not required to seek bankruptcy

court's approval to employ special counsel under § 327(e) to represent debtors in pending state court litigation); *In re Gilliam*, 582 B.R. 459, 465-66 (Bankr. N.D. Ill. 2018) (§ 327 does not apply to Chapter 13 debtors); *In re Scott*, 531 B.R. 640, 644-45 (Bankr. N.D. Miss. 2015) (nothing suggests that "trustee" in § 327(e) means debtor); *In re Jones*, 505 B.R. 229, 231 (Bankr. E.D. Wis. 2014) ("[A]n individual chapter 13 debtor ... is not a 'trustee' for purposes of § 327."); *In re Maldonado*, 483 B.R. 326, 330 (Bankr. N.D. Ill. 2012) (§ 327 does not apply to debtors in Chapter 13 cases); *In re Tirado*, 329 B.R. 244, 250 (Bankr. E.D. Wis. 2005) ("Therefore, § 327 of the Bankruptcy Code simply does not apply to chapter 13 debtors who seek to employ professionals.").

The majority consider the limitation of § 327 to a "trustee" and the omission of reference to Chapter 13 debtors significant. As the court in *Tirado* explained:

[Section] 327 does not apply to the employment of attorneys or other professionals by a chapter 13 debtor. Section 327 applies to trustees, and, pursuant to § 1107 of the Bankruptcy Code, when § 327 refers to the trustee, the reference includes the debtor in possession. [Internal citation omitted].

Each subsection of § 327 either focuses on the trustee or excludes chapter 13. See 11 U.S.C. §§ 327(a) ("the trustee ... may employ ..."); 327(b) ("the trustee may retain or replace ..."); 327(c) ("In a case under chapter 7, 12, or 11 of this title ..."); 327(d) ("the court may authorize the trustee to act as attorney or accountant"); 327(e) ("The trustee ... may employ ..."); and 327(f) ("The trustee may not employ ..."). Congress, through the use of plain and unambiguous language, has limited the scope of § 327 to trustees. Although chapter 11 debtors in possession have also been included under § 327 via § 1107, and chapter 12 debtors must comply with § 327 pursuant to § 1203, there is no corresponding section of chapter 13 making § 327 applicable to chapter 13 debtors.

Therefore, § 327 of the Bankruptcy Code simply does not apply to chapter 13 debtors who seek to employ professionals. The requirements of § 327 would be triggered by a chapter 13 trustee's application to employ a professional, but in this case, [the professional's] services were rendered to the Debtor, not the Trustee. For, unlike chapter 11 and 12 in which the debtor in possession has the same rights and duties when selling property and employing professionals as a trustee, "the [chapter 13] debtor shall have, *exclusive of the trustee*, the rights and powers of a trustee [to use, sell, or lease property]." 11 U.S.C. § 1303 (emphasis supplied).

Tirado, 329 B.R. at 250 (emphasis in original).

This court has previously followed the majority and found that § 327 is inapplicable to a Chapter 13 debtor's employment of professionals. *See e.g., In re Slagle*, case no. 18-27555 (dkt. 49, 52); *In re Fonseca*, case no. 16-28212 (Dkts. 42, 43). In so doing, the court applied *Tirado's* reasoning. It does so here as well.

The court finds *Tirado's* reasoning and the majority position to be the better and better reasoned approach. Accordingly, in this court's view, it is not necessary for the Debtors' Special Counsel retention to be approved under § 327 in order to permit Special Counsel to provide services to the Ms. Savoca in the resolution or prosecution

of her personal injury claim.¹ That said, Special Counsel remains subject to § 329 and Bankruptcy Rule 2016(a). See *Scott*, 531 B.R. at 645-46.

Conclusion

For the foregoing reasons, the Debtors' request to employ special counsel will be denied as not necessary and therefore moot.

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

The court will enter an appropriate minute order.

¹As to the Debtors' request for *nunc pro tunc* relief, Debtors' attorney might want to read the United States Supreme Court's recent decision in *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, 2020 WL 871715 (U.S. Feb. 24, 2020).

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 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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 not confirm the amended plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$5,018.00, which represents approximately 1 plan payment. Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan fails to specify a cure of the post-petition arrearage owed to Select Portfolio Servicing in Class 1 for months December 2019, January 2020, February 2020, and March 2020 in the amount of \$10,803.24. The plan does not comply with 11 U.S.C. § 1325(a)(1).

Third, the plan payment in the amount of \$5,049 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of these monthly amounts plus Trustee's fees is \$5,115.34. The plan does not comply with Section 5.02 of the mandatory form plan.

Fourth, deferring payments to the post-petition mortgage claim until after attorney's fees are paid proposes an impermissible modification of the secured claim of Select Portfolio Servicing, holder of the first deed of trust on Debtor's principal residence. If the modification has not been expressly agreed to by the creditor, the plan may not impose it on the creditor. The plan does not comply with 11 U.S.C. § 1322(b)(2).

Fifth, it is an administrative burden on the Trustee to hold money and not disburse funds to Select Portfolio Servicing in Class 1 especially when it appears that the mortgage lender foreclosed on the property prior to the filing of this case.

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.

14. [18-26071](#)-B-13 RODERIC CANNON AND MOTION FOR RELIEF FROM
[JHK](#)-1 CYNTHIA DAVIS-CANNON AUTOMATIC STAY
Mohammad M. Mokarram 3-18-20 [[36](#)]
ACAR LEASING LTD 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.

ACAR Leasing LTD d/b/a GM Financial Leasing ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Chevrolet Volt (the "Vehicle"). The moving party has provided the Declaration of Aaron Rangel to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Rangel Declaration states that Debtors' entered into a lease agreement for the Vehicle on February 4, 2017. The plan confirmed on November 12, 2018, provides for the Debtors' assumption of the lease. The lease matured on February 4, 2020, and all payments were made under the lease agreement. On February 1, 2020, Debtors surrendered the Vehicle to the dealership and Movant secured the Vehicle on March 9, 2020. The Vehicle is being held pending relief from stay.

Discussion

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

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

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.

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.

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 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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 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 \$6,000.00, which represents approximately 3 plan payments. 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 plan fails to specify a cure of the post-petition arrearage owed to Cenlar FSB in Class 1 for months November 2019, February 2020, and March 2020 in the amount of \$4,203.96. The plan does not comply with 11 U.S.C. § 1325(a)(1).

Third, the plan cannot be administered with missing or incomplete information. The plan states in Class 1 arrearage dividend box to "See 7.02" but there is no such section and nothing in the nonstandard provisions indicating the dividend. The plan does not comply with 11 U.S.C. § 1325(a)(1).

Fourth, the plan lists inconsistent length terms. Section 2.03 states that plan length will be 60 months but the nonstandard provisions list only up to 53 months. The plan does not comply with 11 U.S.C. § 1325(a)(1).

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.

16. [19-26277](#)-B-13 JUAN MONGALO AND MILAGROS MOTION TO CONFIRM PLAN
[MMN](#)-6 MONGALO ROBLETO 3-9-20 [[129](#)]
Michael M. Noble

CONTINUED TO 5/5/20 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTION TO APPROVE SETTLEMENT AGREEMENT, WHICH WILL ALSO BE CONTINUED (AS IMPROPERLY SET ON THE COURT'S DISMISSAL CALENDAR) FROM 4/28/20 TO 5/5/20 AT 1:00 P.M.

Final Ruling

No appearance at the April 21, 2020, hearing is required. 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 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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 confirm the amended plan.

First, the plan payment in the amount of \$1,934 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of these monthly amounts plus Trustee's fees is \$2,041.90. The Debtor states that he can increase the plan payment to this amount in the order confirming.

Second, the Trustee requested at the meeting of creditors that the Debtor amend the Statement of Financial Affairs. The Debtor states that he promptly filed the amendment on March 12, 2020. This is reflected on the court's docket at dkt. 22.

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 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.

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

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

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.

Final Ruling

The motion is deemed 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 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 March 10, 2020, due to delinquency in plan payments (case no. 19-24493, dkt. 53). 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 files her bankruptcy to prevent the foreclosure of her home. In the previous case Debtor became delinquent on plan payments when filing her taxes and over estimating the amount owed to the Internal Revenue Service. Debtor was also in the process of taking custody of her granddaughter and removing her mother from an abusive household. In the present case Debtor's circumstances have changed because she has Social Security Income coming in to take care of her mom and medical expenses. Debtor also has filed her taxes and she did not owe as much as expected. Debtor has also returned to work as of March 21, 2020.

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.

20. [19-24685](#)-B-13 EMILIA ARDELEAN
[ASW](#)-1 Daniel J. Griffin

MOTION FOR RELIEF FROM
AUTOMATIC STAY
3-20-20 [[79](#)]

LAND HOME FINANCIAL
SERVICES, INC. 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). Opposition was 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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 grant the motion and modify (not terminate or vacate) the automatic and co-debtor stay(s).

Land Home Services, Inc. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 6035 Glenbrook Lane, Carmichael, California (the "Property"). Movant is the beneficiary under a deed of trust recorded against the Property which is the Debtor's residence. The deed of trust secures the Debtor's obligation under a promissory note in the principal sum of \$418,000, with a current balance of \$411,976.26. Creditor values the Property at \$446,736.00 for purposes of this motion which means there is approximately \$34,760.00 in equity in the Property. Movant has provided the Declaration of Jodi Reisch to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Reisch Declaration states that there were approximately \$5,169.14 in pre-petition arrearages. As of March 12, 2020, the Debtor has failed to tender 3 post-petition payments and post-petition arrearages of approximately \$8,581.36 have accrued.

Opposition

Opposition was filed by the Debtor. Debtor concedes that she missed some mortgage payments since the filing of her petition but states that she did make a payment in the amount of \$3,600.00 on March 26, 2020, reflective of one mortgage payment, plus an additional \$654.66 toward past due balance. Assuming that payment was made, based on information provided in the motion and reply, the Debtor remains in postpetition default of at least \$5,236.02. The amount may vary depending on payment or non-payment of the April 2020 mortgage payment.

Debtor owns and operates a residential care home facility and she states that income can fluctuate based on the number of residents. Debtor states that one resident passed away, which resulted in a periodic reduction of income and prevented her from making a mortgage payment. Debtor states that she recently filled that vacancy and expects to generate sufficient income to catch up on the arrears within a period of 60 days.

Debtor argues two reasons that should be considered by the court:

First, in light of the COVID-19 crisis, relief sought by the Movant outside of the bankruptcy court to foreclose on the home is currently unenforceable due to current restrictions on foreclosures and evictions in California. Debtor argues that Creditor would not be prejudiced by allowing Debtor an opportunity to cure of 60 days.

Second, Debtor states that there is sufficient equity in the Property. The value of the real property as of the petition filing date was \$446,736 and the amount owed as of March 12, 2020, was \$411,976.26 according to Movant's papers. This leaves an equity cushion of \$34,759.74, which in turn creates a 7.78% equity cushion.

The Debtor requests that this matter be continued for 60 days to June 23, 2020. The request is denied and the matter is decided below.

Discussion

This case was filed on July 25, 2019. No plan has been confirmed. Pending litigation by another creditor, the apparent need for discovery related to the Debtor's operation of a residential care facility, and the need to facilitate that discovery in light of the COVID-19 pandemic have delayed the confirmation process. Nevertheless, the Debtor classifies Creditor in Class 4 of the unconfirmed - yet operative - first amended plan. As a Class 4 creditor, the Debtor's intent it to pay Creditor directly subject to a modification of the automatic stay to permit Creditor to exercise its rights under applicable non-bankruptcy law in the event of a default. And so that is what the court will order, as explained below.

A debtor's persistent failure to make mortgage payments, standing alone, may constitute adequate cause for relief from the stay. *Dangcil v. JP Morgan Chase Bank, N.A. (In re Dangcil)*, 2017 WL 1075045, *8 (9th Cir. BAP 2017) (internal quotations and citations omitted). Even accounting for the \$3,600.00 payment, the Debtor remains in postpetition default of her mortgage payments which means there is cause under § 362(d)(1) for relief from the automatic stays. The same applies to any co-debtor stay under § 1301. See *In Re Amey*, 314 B.R. 864, 867 (Bankr. N.D. Ga. 2004) ("[T]he Court concludes that Movant has shown cause for the lifting of the automatic and codebtor stays, and the Court will, therefore, terminate them pursuant to 11 U.S.C. § 362(d) and § 1301(c)."); *In re Cupolo*, 2013 WL 211536, *3 (Bankr. E.D. Ky. 2013) ("Accordingly, cause exists to modify the stay and co-debtor stay[.]").

That there is cause, however, does not necessarily mean the court must terminate or vacate the stays and thereby allow Creditor to immediately proceed with its remedies. Section 362(d)(1) also permits the court to modify the stays.

The court takes into account that the Property is the Debtor's residence. Modification - rather than termination - of the automatic and co-debtor stays is also consistent with the Debtor's proposed treatment of Creditor's claim in Class 4 of the first amended plan. The court therefore modifies the automatic and co-debtor stays as follows:

(1) The Debtor shall have until June 25, 2020, to become current on all unpaid postpetition mortgage payments due Creditor. This includes the balance of mortgage payments owing for January, February, March and, if not yet paid, April 2020, *i.e.*, the monthly mortgage payments due for those months less the \$3,600.00 the Debtor reportedly paid on March 26, 2020.

(2) Beginning with the mortgage payment due for April 2020, the Debtor shall make the monthly postpetition mortgage payments to creditor in the amount and at the time due under the promissory note.

(3) If the Debtor fails to timely make any monthly mortgage payment beginning with the payment due for April 2020, the Debtor will have ten (10) days after the date of written notice from Creditor to Debtor (by U.S. mail) and Debtor's attorney (by email or facsimile and U.S. mail) to cure the default. This also applies to any default occurring if the Debtor is not current by June 25, 2020. If the Debtor fails to cure the default within the 10-day period, Creditor may submit a declaration of default and an order terminating the automatic and any co-debtor stays without a waiver of the 14-day stay of Bankruptcy Rule 4001(a)(3).

Conclusion

With the foregoing, and also considering the existing equity, the court concludes that Creditor is adequately protected. Creditor's motion is therefore granted, but only to

the extent of the modification provided for hereinabove.

The motion is ORDERED GRANTED and the automatic stay is ORDERED MODIFIED (NOT TERMINATED OR VACATED) for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

Final Ruling

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *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 Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (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 sustain the objection and the exemptions are disallowed in their entirety.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140(a)(2). California Code of Civil Procedure §703.140(a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal waiver has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

The objection is ORDERED SUSTAINED and the claimed exemptions DISALLOWED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

Final Ruling

The motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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 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 17, 2020, due to delinquency in plan payments (case no. 18-27047, dkt. 53). 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 files her bankruptcy to restructure her vehicle payment. Prior to the filing of this case, Debtor's vehicle was repossessed and, if the stay were not extended in this case, she would be subject to the same collection efforts despite payments being made through the chapter 13 plan. The Debtor states that she now has a permanent job providing steady income and is also able to work through the current COVID-19 pandemic. The Debtor fell behind on payments previously due to a decrease in income and because she had to care for her mother during a health emergency. Debtor now has a permanent job and her mother is healthy.

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.

Final Ruling (Conditional)

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 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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 not permit the requested modification and not confirm the modified plan, unless the Debtor is current at the time of the hearing.

The Debtor is delinquent to the Chapter 13 Trustee in the amount of \$600.00, which represents approximately 0.25 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).

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

(1) If the Debtor **is current** at the time of the hearing the motion will be granted and the modified plan confirmed. By April 28, 2020, **Debtor's attorney** shall submit an order granting the motion and a separate order to the Chapter 13 Trustee confirming the modified plan.

(2) If the Debtor **is not current** at the time of the hearing the motion will be denied and the modified plan not confirmed. By April 28, 2020, the **Chapter 13 Trustee** shall submit an order denying the motion.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed, unless the above conditions are met in which case it will comply with §§ 1322 and 1325(a).

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

The court will enter a minute order.

24. [20-21895](#)-B-13 JAMES/TARA KLINE
[ETW](#)-1 Yasha Rahimzadeh

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-3-20 [[13](#)]

JEAN BURRIS VS.

Final Ruling

Before the court is a *Motion for Relief From the Automatic Stay* filed by secured creditor Jean Burris ("Creditor"). The motion seeks relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1), (d)(2), and (d)(4).

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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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). Further briefing is also unnecessary. See Local Bankr. R. 9014-1(f)(2)(C).

To the extent Creditor requests relief from the automatic stay of § 362(a) under § 362(d)(1) and (d)(2), that request is denied as moot. To the extent Creditor requests relief from the automatic stay under § 362(d)(4), that request is denied.

Background

This is the second Chapter 13 case debtors James and Tara Kline ("Debtors") filed and which was dismissed within a one year period. This case was filed on March 31, 2020, and dismissed on April 15, 2020, based on the Debtors failure to timely file documents. The Debtors' prior Chapter 13 case, No. 19-26866, was filed on November 1, 2019, and dismissed on March 13, 2020, based on the Debtors failure to make plan payments and file a plan.

Discussion

Dismissal of this Chapter 13 case means there no longer is an estate vested with property. See 11 U.S.C. § 349(b)(3); *Koo v. VNO Shops on the Lake (In re Koo)*, 2013 WL 5460138, *2 (9th Cir. BAP 2013) ("With the dismissal of a bankruptcy case, property of the bankruptcy estate reverts in the debtor (or other entity that owned the estate property prepetition). See § 349(b)(3). The dismissal order terminates the bankruptcy estate."). Dismissal also means there no longer is an automatic stay to terminate. See 11 U.S.C. § 362(c). Creditor's request for relief under §§ 362(d)(1) and (d)(2) is therefor moot and will be denied as such.

However, creditor also seeks relief under § 362(d)(4) which is not necessarily mooted by dismissal. See *Benzeen, Inc. v. JP Morgan Chase Bank (In re Benzeen, Inc.)*, 2018 WL 6627275 at *4 (9th Cir. BAP 2018) (noting that request for § 362(d)(4) relief survives dismissal and foreclosure); *Azkam v. U.S. Bank N.A.*, 2020 WL 1700028, *3 (E.D. Cal. 2020) ("An order granting relief under [§ 362(d)(4)] may survive the dismissal of the bankruptcy in some cases."). Nevertheless, Creditor has not demonstrated that relief under § 362(d)(4) is warranted.

Creditor's request for relief under § 362(d)(4) is based solely on the apparent delay in her ability to foreclose caused by the Debtors second Chapter 13 case filed shortly after the Debtors prior Chapter 13 case was dismissed. There is, however, no evidence of the Debtors' fraudulent intent or a "scheme" by the Debtors to use two successive filings to "hinder, delay, or defraud" and, without more, the court is not persuaded that delay alone establishes either. See generally, *Jimenez v. ARCP 1, LLP (In re Jimenez)*, ___ B.R. ___, 2020 WL 1042503, *5-*6 (9th Cir. BAP 2020).

Conclusion

To the extent Creditor requests relief from the automatic stay of § 362(a) under § 362(d)(1) and (d)(2) that request is denied as moot. To the extent Creditor requests

relief from the automatic stay under § 362(d)(4) that request is denied.

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 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 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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 not confirm the amended plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$7,221.61, which represents approximately 2 plan payments. 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 plan fails to specify a cure of the post-petition arrearage owed to The Money Source Inc in Class 1 for months February 2020 and March 2020 in the amount of \$5,351.96. The plan does not comply with 11 U.S.C. § 1325(a)(1).

Third, the plan payments in the amount of \$3,610.87 for months 1 through 4 and \$3,622 for months 5 through 60 do not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of these monthly amounts plus Trustee's fees is \$3,666.11. The plan does not comply with Section 5.02 of the mandatory form 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.

The court will enter a minute order.

26. [20-20809](#)-B-13 JOHN TALLEY AND WENDY CONTINUED OBJECTION TO
[DPC](#)-1 JONES-TALLEY CONFIRMATION OF PLAN BY DAVID P
Peter L. Cianchetta CUSICK
3-17-20 [[18](#)]

DUE TO A CONTINUED MEETING OF CREDITORS HELD ON 4/16/20, THIS MATTER IS
CONTINUED TO 5/5/2020 AT 1:00 P.M.

Final Ruling

No appearance at the April 21, 2020, hearing is required. The court will enter a
minute order.

27. [20-20843](#)-B-13 MARLON/MICHELLE CONTINUED OBJECTION TO
[DPC](#)-1 VALENZUELA CONFIRMATION OF PLAN BY DAVID
Thru #28 Steele Lanphier P. CUSICK
3-17-20 [[15](#)]

CONTINUED TO 5/19/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 5/14/2020.

Final Ruling

No appearance at the April 21, 2020, hearing is required. The court will enter a minute order.

28. [20-20843](#)-B-13 MARLON/MICHELLE CONTINUED OBJECTION TO
[KMM](#)-1 VALENZUELA CONFIRMATION OF PLAN BY DATA
Steele Lanphier MORTGAGE, INC.
3-20-20 [[19](#)]

CONTINUED TO 5/19/2020 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 5/14/2020.

Final Ruling

No appearance at the April 21, 2020, hearing is required. The court will enter a minute order.

29. [20-20786](#)-B-13 RONNIE/THERESA BROWN
[DPC](#)-1 Eric John Schwab

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID P
CUSICK
3-17-20 [[16](#)]

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 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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 overrule the objection and confirm the plan.

Debtors appeared at the continued meeting of creditors set for April 16, 2020, as required pursuant to 11 U.S.C. § 343. The meeting was concluded as to both Debtor and Joint Debtor.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed February 12, 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 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.

30. [20-20797](#)-B-13 NIDA LACAP
[RAS](#)-1 Peter G. Macaluso
Thru #31

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY HSBC
BANK USA, NATIONAL ASSOCIATION
3-6-20 [[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.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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 sustain the objection and deny confirmation of the plan.

Objecting creditor HSBC Bank USA, 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 \$31,345.27 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 12, 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.

31. [20-20797](#)-B-13 NIDA LACAP
[DPC](#)-1 Peter G. Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID P
CUSICK
3-17-20 [[23](#)]

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 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); General Order No. 617 (E.D. Cal. April 17, 2020) at 2-3, ¶ 3 (extending General Order No. 612 through June 1, 2020). 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 overrule the objection; however, the plan is not confirmed for reasons stated at Item #30, RAS-1.

Debtor appeared at the continued meeting of creditors set for April 16, 2020, as required pursuant to 11 U.S.C. § 343. The meeting was concluded as to Debtor.

Nonetheless, the plan filed February 12, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled but the plan is not confirmed.

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

The court will enter a minute order.