

**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: May 5, 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.

This case was filed on October 14, 2019. No plan has been confirmed. Moreover, the Debtor has not made any payments into the plan since the case was filed. See dkt. 50. Whereas the Debtor was delinquent \$8,700.00 when the initial motion to dismiss was filed the Debtor is now delinquent \$17,400.00 as of the filing of the amended motion to dismiss. The Debtor has further hindered and delayed the administration of this case by failing to appear at a number of creditors' meetings.

As a result of the Debtor's conduct and failure to properly prosecute this case, creditors have received no payments during the nearly seven months this case has been pending. Yet, during that time the Debtor has enjoyed the benefits his bankruptcy filing have provided--the automatic stay included--without complying with corresponding obligations as a Chapter 13 debtor. The Debtor's conduct constitutes unreasonable delay prejudicial to creditors. It also amounts to a failure to appear in proper prosecution of the case. Cause exists to dismiss this case under 11 U.S.C. §§ 1307(c)(1) and 109(g)(1).¹ Therefore, the Trustee's amended motion to dismiss is granted and for the reasons stated this case is ordered dismissed.

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

The court will prepare a minute order.

¹Since the plan that was filed but has not been confirmed provides for 0% to unsecured creditors, dismissal rather than conversion is in the best interest of creditors and the estate.

3. [19-21705](#)-B-13 TOBY TOLEN
[JGD](#)-10 John G. Downing

MOTION FOR COMPENSATION FOR
JOHN DOWNING, DEBTORS
ATTORNEY(S)
4-14-20 [[154](#)]

Final Ruling

The motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Rule 2002(a)(6). Before the court is an application for additional compensation filed by the attorney for 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 reviewed the motion and its related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket in this case. See Fed. R. Evid. 201(c)(1).

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 motion is unopposed. However, the absence of an opposition does not necessarily mean that a motion will automatically be granted. *Rivas-Almendarez v. Holder*, 362 Fed. Appx. 606 (9th Cir. 2010). Even an unopposed motion must have merit and there must be a basis for the court to grant the relief requested. See generally, *In re Bassett*, 2019 WL 993302, *5 (Bankr. E.D. Cal. 2019). The court will therefore review the motion.

The court's decision is to deny the motion for compensation.

Request for Additional Fees and Costs

As part of confirmation of the Debtor's Chapter 13 plan, John Downing ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines") for a business case. Specifically, Applicant and Debtor had initially agreed to a flat fee of \$5,000.00, with \$2,000.00 paid pre-petition and \$3,000.00 to be paid through the plan. Dkt. 28. The maximum set fee for a business case under Local Bankruptcy Rule 2016-1 is \$6,000.00. Applicant now seeks additional compensation in the amount of \$2,000.00, or a total of \$9,000.00 in attorney's fees.

Applicant provides a task billing analysis and evidence of the services provided. Dkt. 157.

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

Applicant has not identified any **post-confirmation** work that is **substantial** or **unanticipated**. A motion to confirm the third amended plan was granted on March 17, 2020, dkt. 148, and the order confirming the Debtor's third amended plan was filed and entered on March 20, 2020. Dkt. 149. In other words, there was no confirmed plan in this case until March 20, 2020. Except for one entry on March 31, 2020, all tasks for

which additional compensation is requested are for pre-confirmation services in that they all pre-date the March 20, 2020, plan confirmation date. See Dkt. 157, Ex. 1.

As to the time entry on March 31, 2020, the services described in it are not substantial or unanticipated. The March 31, 2020, time entry is for 3 hours at \$300.00 per hour for "prepar[ing] Fee Application, draft[ing] Order Confirming Plan." Dkt. 157 at Ex. 1. Given that the third amended plan was confirmed, drafting the order confirming it is not unanticipated. The Application also provides no benefit to the Debtor which means it is insubstantial in the case. And in any event, the tasks on the March 31, 2020, entry are "lumped," *i.e.*, multiple services are included in a single and aggregated entry, which means the court is unable to determine if the fees requested are even reasonable. *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 948 (9th Cir. 2007); see also *In re Duta*, 175 B.R. 41, 46-47 (9th Cir. BAP 1994).

For the foregoing reasons, Applicant's request for additional compensation is denied.

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

The court will enter a minute order.

4. [20-21905](#)-B-13 DIANE MORRIS
[TLA](#)-1 Thomas L. Amberg

MOTION TO AVOID LIEN OF SFM-6,
LLC
4-7-20 [[16](#)]

Final Ruling

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 avoid judicial lien.

This is a request for an order avoiding the judicial lien of SFM-6 LLC ("Creditor") against the Debtor's property commonly known as 71 Henna Court, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$12,419.97. An abstract of judgment was recorded with Sacramento County on March 24, 2017, which encumbers the Property. All other liens recorded against the Property total \$213,821.00.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$248,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000.00 on Schedule C.

Non-opposition was filed by the Trustee.

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

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

The court will enter a minute order.

5. [20-21907](#)-B-13 NED/EDNA SMITH CONTINUED MOTION TO VALUE
[MET](#)-2 Mary Ellen Terranella COLLATERAL OF PERITUS PORTFOLIO
SERVICES II, LLC
4-7-20 [[13](#)]

Final Ruling

This matter was heard by the court and conditionally granted on April 21, 2020. In the court's civil minutes, dkt. 27, the court permitted creditor Peritus Portfolio Services II, LLC to file an opposition or response by 5:00 p.m. on April 28, 2020, because the motion was filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2). Since no opposition or response was timely filed and served, Debtors' motion is deemed granted for reasons stated at dkt. 27.

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

The court will enter a minute order.

6. [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](#)]

Final Ruling

The Chapter 13 Trustee having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed February 13, 2020, will be confirmed.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE 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.

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 can be resolved in an order confirming, 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 revised first amended plan filed on February 7, 2020.

Debtor proposes to further modify the plan filed February 7, 2020, to change Section 2.02 to read: "Debtor shall pay all future tax refunds received during the life of this case to the extent such tax refunds are in excess of \$3,000.00." The Chapter 13 Trustee ("Trustee") filed a response stating that, with this language, the plan is confirmable but noted that the Debtor has not addressed the issue of good faith as to the improper and offensive deduction of \$347.62 per month toward "vacation" that was raised by the court on January 14, 2020. Dkt. 34.

Two matters preclude confirmation.

First, although the Trustee has agreed that the Debtor need only turn over tax refunds in excess of \$3,000.00, the court rejects that recommendation. Because the plan provides for payment of only 20% of unsecured claims the court will require the Debtor turn over tax returns in excess of \$2,000.00.

Second, the court has informed the Debtor's attorney on several occasions that it will not confirm a plan that pays less than 100% to unsecured creditors while the Debtor continues to withhold \$347.62 per month in the form of a personal "vacation" deduction. The retention of funds by the Debtor for personal benefit when unsecured creditors are paid less than 100% demonstrates a lack of good faith.¹ See 11 U.S.C. § 1325(a)(3).

Because the Debtor's motion and plan propose an excessive retention of tax refunds and fail to address the Debtor's improper and offensive personal "vacation" deduction, 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.

¹This is the court's final warning to the Debtor and her attorney on this issue. Absent a compelling argument supported by binding authority, any subsequent attempt to confirm a less than 100% plan while the Debtor maintains a personal "vacation" deduction will result in sanctions.

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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.

9. [20-20614](#)-B-13 RICHARD/PATRICIA VENTURA MOTION TO CONFIRM PLAN
[CK-2](#) Catherine King 3-24-20 [[37](#)]

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 can be resolved in an order confirming, 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.

Debtors' plan does not comply with 11 U.S.C. § 1325(a)(1) because it calls for monthly dividends of \$607.97 to GM Financial but the Nonstandard Provisions appear to limit this to the last 36 months. Therefore, this undersecured creditor is not receiving any payments for two years and is not receiving adequate protection under 11 U.S.C. §§ 1326, 1325, and 361.

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.

10. [20-20815](#)-B-13 KELLY MCKELLAR OBJECTION TO CONFIRMATION OF
[DPC](#)-1 Douglas B. Jacobs PLAN BY DAVID P. CUSICK
Thru #11 4-14-20 [[17](#)]

Final Ruling

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

Because the plan is not confirmable and the objection is not one that can be resolved in an order confirming, 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.

The Debtor is delinquent to the Chapter 13 Trustee in the amount of \$2,127.00, 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). Even if the default is cured at the time of the hearing, the plan can not be confirmed for the reasons stated at Item No. 11 (dkt. 21, KMM-1).

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.

11. [20-20815](#)-B-13 KELLY MCKELLAR OBJECTION TO CONFIRMATION OF
[KMM](#)-1 Douglas B. Jacobs PLAN BY HSBC BANK USA, NATIONAL
ASSOCIATION
4-17-20 [[21](#)]

Final Ruling

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

Because the plan is not confirmable and the objection is not one that can be resolved in an order confirming, 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 that its claim will mature during the life of the plan on January 1, 2022, and that at that time the amount of \$140,219.85 is owed in full. The plan does not provide for this full payment. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of any arrearage and 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 upon maturity of the claim, 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.

12. [20-21018](#)-B-13 FREDERICK SALANTI
[DPC-1](#) Bruce Charles Dwigins

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
4-15-20 [[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 can be resolved in an order confirming, 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.

First, the Debtor may not be able to make payments under the plan or comply with the plan pursuant to 11 U.S.C. § 1325(a)(b). Debtor admitted at the meeting of creditors held April 9, 2020, that he owes approximately \$4,800.00 in income taxes incurred in 2019. However, this is not estimated in Debtor's plan nor is the debt reported on Schedule E.

Second, the plan fails to indicate how Debtor's attorney will seek approval of additional fees in this case. It is unclear if the Debtor's attorney intends to opt out of the no-look fee.

Third, the Debtor proposes to surrender a vehicle according to Schedule D but also appears to have a vehicle expense according to Schedule J.

The plan filed February 25, 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.

13. [20-20722](#)-B-13 ANTHONY/KAYLA YAZZIE CONTINUED OBJECTION TO
[DPC](#)-1 Peter G. Macaluso CONFIRMATION OF PLAN BY DAVID
Thru #16 P. CUSICK
3-17-20 [[31](#)]

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 can be resolved in an order confirming, 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.

First, Debtors admitted at the first meeting of creditors that they are receiving a refund for 2019. There are no 2019 tax refunds identified on Schedule B, dkt. 1, pp. 12-18.

Second, the plan may not be in Debtors' best effort under 11 U.S.C. § 1325(b) because their monthly net income is listed on Schedule J as \$3,350.00 and the plan proposes no less than 0% to unsecured creditors.

Amended schedules were filed on May 1, 2020. Dkt. 66. The 2019 tax refund is disclosed in the amended Schedule A; however, amended Schedule J now lists net monthly income of \$3,070.00 which is less than the \$3,150.00 monthly payment required by the plan. Dkt. 3, § 2.01. So in addition to paying unsecured creditors 0%, the plan now does not appear to be feasible. See 11 U.S.C. § 1325(a)(6).

The plan filed February 8, 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.

14. [20-20722](#)-B-13 ANTHONY/KAYLA YAZZIE MOTION TO VALUE COLLATERAL OF
[PGM](#)-2 Peter G. Macaluso AMERICAN HONDA FINANCE
3-21-20 [[36](#)]

Final Ruling

The Debtor and American Honda Finance entered into a stipulation valuing the 2015 Honda Pilot at \$12,500.00. The order approving stipulation was entered on April 27, 2020. The motion to value is therefore dismissed as moot.

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

The court will enter a minute order.

15. [20-20722](#)-B-13 ANTHONY/KAYLA YAZZIE MOTION TO VALUE COLLATERAL OF
[PGM-3](#) Peter G. Macaluso SAFE ONE CREDIT
3-21-20 [[41](#)]

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 Safe One Credit at \$2,000.00.

Debtors' motion to value the secured claim of Safe One Credit ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2008 Honda Accord ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of \$2,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value may be accepted as conclusive. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Non-opposition was filed by the Chapter 13 Trustee.

Proof of Claim Filed

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

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on March 20, 2017, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$9,153.22. 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 \$2,000.00. *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.

16. [20-20722](#)-B-13 ANTHONY/KAYLA YAZZIE CONTINUED OBJECTION TO
[VVF-1](#) Peter G. Macaluso CONFIRMATION OF PLAN BY
AMERICAN HONDA FINANCE
CORPORATION
2-24-20 [[20](#)]

Final Ruling

American Honda Finance Corporation having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

The court will enter a minute order.

17. [18-21824](#)-B-13 MICHAEL ZENDER
[TJW-2](#) Timothy J. Walsh

MOTION FOR ORDER TO CONFIRM
SALE OF REAL PROPERTY
4-6-20 [[42](#)]

Final Ruling

The motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed by the Chapter 13 Trustee. 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 deny the motion to sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtor proposes to sell the property described as 174 Baxter Street, Vallejo, California ("Property"). The gross sale is \$475,000.00. After payment of liens and costs, the net to the Debtor and his former spouse is \$189,369.71. The net proceeds to the Debtor is \$47,342.42. The Debtor has filed an exhibits the estimated sellers closing statement and judgment of dissolution. The sales contract was not filed as an exhibit.

The Chapter 13 Trustee opposes the motion on grounds that the motion is silent as to whether the proceeds are to be held by the Trustee or if the proceeds will be disbursed directly to the Debtor. Additionally, it appears that the Debtor is trying to circumvent the requirement for reinvestment of the sale proceeds to another homestead within a 6-month period by giving a large percentage of the money to his former spouse per the marital settlement agreement.

Although the dissolution of marriage was filed by Debtor's former spouse pre-petition, the marital settlement agreement was signed by the parties post-petition without permission of the bankruptcy court. Even though property reverts in the Debtor at confirmation, that property is still property of the estate and subject to the confirmation order in this case. Transfer of that property or approval of that type of settlement requires court permission pursuant to the Bankruptcy Code and Local Bankr. R. 3015-1(h). Debtor's bankruptcy counsel also represented him in the family law case, so there is no excuse as to why this was not brought to the court's attention prior to this motion. The Trustee opposes this sale where the Debtor is not paying 100% to all creditors and any non-exempt equity subject to the liquidation being paid to unsecured creditors is dissipated without being paid in the plan.

Separately, the motion does not comply with Local Bankr. R. 3015-1(h)(1)(D) to the extend that there is no contract of sale filed with the motion to show any terms of the sale or who will be purchasing the home.

Based on the evidence before the court, the court determines that the proposed sale is not in the best interest of the Estate.

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

The court will enter a minute order.

18. [19-27025](#)-B-13 JOSEPH BENEFIELD
[JLZ](#)-2 Jon L. Zitomer

OBJECTION TO NOTICE OF
POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
4-7-20 [[21](#)]

Final Ruling

The objection 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 sustain the objection.

Debtor objects to the post-petition mortgage fee of \$475.00 charged by Union Bank ("Creditor") for its review of the Notice of Bankruptcy and Chapter 13 Plan that was mailed to it by the court. Debtor states that he was current on his mortgage payments when he filed the petition, properly classified Creditor's claim as a Class 4 claim to be paid directly by the Debtor outside of the plan, the Creditor filed no objection or response to the plan, and the plan was ultimately confirmed on January 24, 2020. Debtor asserts that Creditor would have needed no more than 15 minutes to review the plan.

No response was filed by the Creditor.

The court finds that the Creditor has failed to explain the time spent by its counsel to review the plan and proof of claim, has not submitted any billing invoices, and has not identified any applicable hourly billing rate to establish or justify the reasonableness of fees requested. Consequently, Creditor has failed to satisfy its burden of demonstrating the fees requested, even if permitted, are reasonable. *See In re Scarlet Hotels, LLC*, 392 B.R. 698, 703 (6th Cir. BAP 2008). Therefore, the Debtor's objection is sustained and the fees are disallowed.

Based on the evidence before the court, the Objection to the notice of mortgage payment change is sustained.

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

The court will enter a minute order.

Final Ruling

The motion has been set for hearing on the 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 and authorize the Debtor to incur post-petition debt.

Debtor seeks permission to purchase a used 2017 Ford Escape ("Vehicle") to replace a leased vehicle, the lease term which has completed. Debtor states that she has looked at various new and used vehicles and was receiving interest rates in excess of 19%. The total amount financed for the Vehicle is \$19,831.51. The interest rate is 15.49% for 72 months and a monthly payment of \$427.37.

The Declaration of Deborah Turner filed in support of the motion states that the Debtor can afford the proposed monthly payment because it is less than the Debtor's payment on the leased vehicle.

Discussion

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. Specifically, the Debtor has found a Vehicle with a lower interest rate than what was offered to her elsewhere and the Debtor can afford the monthly payments given that it is less than the amount she was paying for her former leased vehicle. There being no opposition from any party in interest and the terms being reasonable, the motion 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 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 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 31, 2020, for failure to timely file documents (case no. 20-21230, dkt. 16). 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 states that her prior bankruptcy had failed due to filing pro se. Although the Debtor subsequently retained counsel, filed a motion to extend time to file documents, and was granted an extension by the court, the Debtor was unable to complete the collection of information despite her best efforts due to the shelter-in-place order. As a result, Debtor's prior case was dismissed for failure to timely file documents. Debtor states that her circumstances have changed because she has retained counsel from the beginning of this case.

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.

21. [20-21047](#)-B-13 PAUL DENNO AND SANDRA OBJECTION TO CONFIRMATION OF
[DPC-1](#) MURRAY PLAN BY DAVID P. CUSICK
Mark W. Briden 4-15-20 [[21](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a 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); 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 as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on April 16, 2020. The confirmation hearing for the amended plan is scheduled for June 9, 2020. The earlier plan filed February 26, 2020, is not confirmed.

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

The court will enter a minute order.

22. [20-20054](#)-B-13 DAVID/LISA EUFEMIA OBJECTION TO CLAIM OF TITLE
[RPH-2](#) CARLSON HOLDING SERVICES CORP., CLAIM
Robert P. Huckaby NUMBER 3
3-10-20 [[51](#)]

Final Ruling

The court has before it an objection to claim filed by Debtors David and Lisa Carlson ("Debtors"). Debtors object to the claim filed by secured creditor Title Holding Services Corp. ("Creditor"). Creditor filed a response.

The court has reviewed the objection, the response, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket and claims register in the case. See Fed. R. Evid. 201(c)(1).

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).

Findings of fact and conclusions of law are set forth below. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

The court's decision is to overrule the objection without prejudice.

Discussion

Debtors object to Creditor's claim on the following grounds:

(1) The claim is outside the four-year statute of limitations to file actions for breach of written contracts. See C.C.P. § 337. This statute begins to run from the date of the contract's breach. According to the Debtors, the last payment was received on or about March 2009, which is more than four years prior to the filing of this case. Hence, when the case was filed on January 6, 2020, this debt was time barred under applicable nonbankruptcy law, *i.e.*, C.C.P. § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

(2) Creditor has not produced the original Home Equity Line of Credit Agreement, leading Debtors and their counsel to believe that Creditor is not in possession of the actual original promissory note.

Creditor states that the four-year statute of limitations for contracts does not apply. Creditor has availed itself of the remedy of nonjudicial foreclosure and, in so doing, the statute of limitations is 60 years from the recording of a deed of trust or 19 years from the maturity date. See C.C.P. §§ 2924, 726(a), and 882.020. Creditor states that its deed of trust matures in 2035 and that it has until 2045 to foreclose. Creditor contends that it does not seek money from the Debtors but rather seeks foreclosure on its collateral. Therefore, the statute of limitations for nonjudicial foreclosure has not passed. The court agrees with Creditor. Debtors' statute of limitations objection is overruled.

As to the second objection, Creditor states that "there is no requirement for the production of an original promissory note prior to initiation of a nonjudicial foreclosure . . . therefore, the absence of an original promissory note in a nonjudicial foreclosure does not render a foreclosure invalid." *Pantoja v. Countrywide Home Loans Inc.*, 640 F. Supp. 2d 1177, 1186 (N.D. Cal. 2009); quoted in *Herrejon v. Ocwen Loan Servicing LLC*, 980 F. Supp. 2d 1186 (E.D. Cal. 2013). Again, the court agrees with Creditor. Production of the original note is not required and, at least on the record before the court, there is no reason to have the original note produced in these proceedings. *Hafiz v. Greenpoint*, 652 F. Supp. 2d 1039, 1043 (N.D. Cal. 2009).

The court need not order the original note produced because Creditor has provided sworn declaration testimony that it is in possession of the original note. Creditor has also submitted a copy of the original note with its proof of claim. The copy of the note is self-authenticating and therefore admissible evidence. *In re Gold*, 2017 WL 2125813, *3-4 (Bankr. E.D. Cal. 2017) (citing and collecting cases). Debtors, on the other hand, provide only the unsupported and unsubstantiated statement of their attorney--also know as pure speculation--that Creditor does not have possession of the original note. Speculation, of course, is not evidence which means the Debtors have failed to rebut Creditor's admissible evidence of possession. Debtors' objection that Creditor is not in possession of the original note and/or that it needs to produce it are overruled.

Finally, again without any evidence and based on more speculation, because Creditor refused to produce the original note Debtors suggest the note and deed of trust are split. A review of the proof of claim confirms otherwise. While it may be that the note and deed of trust were assigned and/or transferred at different times, the timing of those events is immaterial. *See Hooper v. Anderson (In re Hooper)*, 2012 WL 603766, *7 (9th Cir. BAP 2012). Inasmuch as this is yet another unsupported and unsubstantiated objection it is also overruled.

Conclusion

At best, Debtors' objection to Creditor's claim amounts to nothing more than an assertion that the debt is not owed or the claim is not valid. Neither suffice to overcome the presumptive validity of Creditor's proof of claim. *See Fed. R. Bankr. P. 3001(f); Local Bankr. R. 3007-1(a)*. Debtors' objection is therefore overruled without prejudice in its entirety.

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

The court will prepare a minute order.

23. [20-20756](#)-B-13 TIMOTHY BROWN OBJECTION TO CONFIRMATION OF
[APN](#)-1 Chinonye Ugorji PLAN BY WELLS FARGO BANK, N.A.
Thru #24 4-15-20 [[35](#)]

CONTINUED TO 6/02/20 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH THE MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES.

Final Ruling

No appearance at the May 5, 2020, hearing is required. The court will enter a minute order.

24. [20-20756](#)-B-13 TIMOTHY BROWN OBJECTION TO CONFIRMATION OF
[DPC](#)-1 Chinonye Ugorji PLAN BY DAVID P. CUSICK
4-14-20 [[31](#)]

CONTINUED TO 6/02/20 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH THE MOTION TO VALUE COLLATERAL OF WELLS FARGO DEALER SERVICES.

Final Ruling

No appearance at the May 5, 2020, hearing is required. The court will enter a minute order.

25. [20-20956](#)-B-13 DARREN/HILLARY WHITE OBJECTION TO CONFIRMATION OF
[DPC-1](#) Catherine King PLAN BY DAVID P. CUSICK
Thru #26 4-15-20 [[20](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a 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); 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 as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on April 30, 2020. The confirmation hearing for the amended plan is scheduled for June 2, 2020. The earlier plan filed February 21, 2020, is not confirmed.

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

The court will enter a minute order.

26. [20-20956](#)-B-13 DARREN/HILLARY WHITE OBJECTION TO CONFIRMATION OF
[MJ-1](#) Catherine King PLAN BY NATIONSTAR MORTGAGE LLC
3-17-20 [[13](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a 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); 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 as moot.

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on April 30, 2020. The confirmation hearing for the amended plan is scheduled for June 2, 2020. The earlier plan filed February 21, 2020, is not confirmed.

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

The court will enter a minute order.

27. [20-21060](#)-B-13 JOHN DURBIN OBJECTION TO CONFIRMATION OF
[APN](#)-1 Mark W. Briden PLAN BY TOYOTA MOTOR CREDIT
Thru #28 CORPORATION
4-22-20 [[27](#)]

Final Ruling

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

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.

Toyota Motor Credit Corporation ("Creditor") objects to plan confirmation on grounds that the Debtor's plan proposes an unreasonably low interest rate on its claim. Creditor contends that the appropriate interest rate is 6.75% given the prime rate of 4.75% at the time the petition was filed, with the added risk adjustment of 1.5% to 4%.

Debtor has filed a response stating he is amenable to providing Creditor the interest rate of 6.75% and can provide this in the order confirming.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed March 24, 2020, is confirmed.

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

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

The court will enter a minute order.

28. [20-21060](#)-B-13 JOHN DURBIN MOTION TO VALUE COLLATERAL OF
[MWB](#)-1 Mark W. Briden TOYOTA FINANCIAL SERVICES
4-15-20 [[19](#)]

Final Ruling

The Debtor having filed a notice of withdrawal of its motion, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

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

The court will enter a minute order.

29. [14-28972](#)-B-13 TERRY/KATHALEEN SCOTT
[DPC-1](#) Peter G. Macaluso

OBJECTION TO CLAIM OF
ASSESSMENT MANAGEMENT SERVICES,
CLAIM NUMBER 13-1
3-9-20 [[94](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b) (1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 13-1 of Assessment Management Services and disallow the claim in its entirety.

This case was transferred from Chapter 13 Trustee Jan Johnson to Chapter 13 Trustee David Cusick ("Trustee"). According to the Trustee, the servicing of the claim was transferred in approximately March 2018 and therefore the proof of claim filed by Assessment Management Services should receive no further payments after that date since it was no longer a creditor in this case. However, without a Transfer of Claim to a "new" creditor, the Trustee cannot pay the "new" Creditor.

To further complicate the situation, Trustee has become aware after a conversation with the Debtor that the house may have foreclosed in May 2018. No motion to approve sale was brought before the court but the Sacramento County Recorder's Office does show that the house was transferred/sold on May 3, 2018.

Trustee states it is unclear whether any funds should be paid and, if so, to whom. If a "creditor" to this claim is required to be paid according to the plan, the Debtor will need to pay additional funds into the plan. However, if the court sustains the objection to the claim, then the plan can be completed.

Since a transfer of claim was never filed with the court, the creditor has not complied with Fed. R. Bankr. P. 3002(e) (2) or (4) and the objection to claim should be sustained and the claim disallowed as to any balance still owing after March 2018.

Non-opposition filed by Debtors and creditor Natomas Park Master Association ("NPMA"). NPMA is the creditor for Claim No. 13-1 filed in the name Assessment Management Services, which was the name of the collection department of NPMA's agent when the claim was filed. NPMA does not oppose the Trustee's objection.

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 Trustee has satisfied its burden of overcoming the presumptive validity of the claim. Since a transfer of claim was never filed with the court, the creditor has not complied with Fed. R. Bankr. P. 3002(e) (2) or (4) and the objection to claim is sustained and disallowed as to any balance still owing after March 2018.

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 objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 7-1.

Debtor Gregory Baker ("Objector") requests that the court treat the claim of Bryce Franklin Baker ("Creditor"), Claim No. 7-1, as an unsecured, non-priority claim and not a domestic support obligation. The claim is currently asserted to be domestic support obligation in the amount of \$31,612.25. Objector contends that the claim is not a domestic support obligation but rather an agreement to repay Creditor for money that the Debtor has borrowed. Debtor has filed the separation agreement. Dkt. 19, exh. B, p. 6, para. 10 d.

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 Objector has satisfied its burden of overcoming the presumptive validity of the claim. The terms of the separation agreement state that the Debtor and Creditor stipulated that the Debtor borrowed money from custodial accounts established for their minor children Daryl Elizabeth Baker and Bryce Franklin Baker, and that the Debtor agrees to repay these accounts with interest. It is therefore not a domestic support obligation.

Based on the evidence before the court, the Creditor's claim should be treated as an unsecured, non-priority debt and not a domestic support obligation. The objection to the proof of claim is sustained.

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

The court will enter a minute order.

31. [19-26277](#)-B-13 JUAN MONGALO AND MILAGROS CONTINUED MOTION TO CONFIRM
[MMN](#)-6 MONGALO ROBLETO PLAN
Michael M. Noble 3-9-20 [[129](#)]

Add-on #37

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 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 confirm the third amended plan.

The Chapter 13 Trustee objects to confirmation on grounds that feasibility depends on the Debtor obtaining a loan modification with Realtime Resolutions, Inc. from Class 2 to Class 4 since they have agreed to a loan modification with the creditor. This objection is overruled based on the granting of the motion at Item No. 37 (dkt. 140, RMP-2).

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.

IT IS FURTHER ORDERED that the order confirming shall provide for the reclassification of Realtime Resolutions, Inc.'s claim from Class 2 to Class 4 based on the approved loan modification.

The court will enter a minute order.

32. [20-20179](#)-B-13 JOSE ZUNIGA
[DPC](#)-1 Peter G. Macaluso

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

CASE DISMISSED 4/30/2020

Final Ruling

The case having been dismissed on April 30, 2020, 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.

33. [19-27880](#)-B-13 JONATHAN GARCIA
[DPC-1](#) Richard L. Jare

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
2-12-20 [[28](#)]

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 can be resolved in an order confirming, 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.

The plan will take approximately 127 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

The plan filed January 6, 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.

34. [20-21286](#)-B-13 YOUSSEF FAR
[20-2022](#) EAT-1
FAR V. WILMINGTON TRUST, N.A.
ET AL

MOTION TO DISMISS ADVERSARY
PROCEEDING/NOTICE OF REMOVAL
4-3-20 [[6](#)]

CASE DISMISSED 4/28/2020

Final Ruling

The court entered an order on April 28, 2020, granting the motion to dismiss adversary proceeding. No appearance at the hearing is necessary.

35. [19-27597](#)-B-13 PAVEL LISETSKY
[DPC](#)-2 Pro Se

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID P
CUSICK
1-29-20 [[22](#)]

Add-on #38

CONTINUED TO 5/26/20 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 5/21/2020.

Final Ruling

No appearance at the May 5, 2020, hearing is required. The court will enter a minute order.

36. [19-21010](#)-B-13 CLARENCE COOK
[19-2149](#) PIB-3
COOK V. TRINITY FINANCIAL
SERVICES, LLC

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT O.S.T.
4-21-20 [[43](#)]

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 to approve settlement agreement.

Debtor requests that the court approve a compromise and settle competing claims and defenses with Trinity Financial Services, LLC ("Creditor"). The agreement is for Debtor to make a short payoff to Trinity of a loan that is secured by Debtor's real property. This settlement will resolve the pending adversary proceeding and the Debtor's bankruptcy case, and avoid needless expense and further use of judicial resources.

Debtor and Creditor have resolved these claims and disputes, subject to approval by the court on terms and conditions summarized at dkt. 44.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant argues that the four factors have been met.

Probability of Success

The adversary proceeding involves Debtor's challenges to the assignments, the Debtor's objections to Creditor's proof of claim, Creditor's authority to foreclose, and the loan default amount, and seeks equitable remedies. The parties each contend that they have valid and legitimate arguments concerning the loan balance and the amounts charged. Moreover, Creditor contends that it has evidence to support its ownership interest in the note and authority to

foreclose. At this point, however, discovery by either side has not been performed, and the probability of success for either party is far from certain. As such, this factor weighs in favor of granting the motion.

Difficulties in Collection

There could be impediments to collection of the real property in the event the bankruptcy case continues. In terms of Plaintiff's affirmative case, he seeks equitable remedies and this factor does not apply.

Expense, Inconvenience and Delay of Continued Litigation

The issues in the adversary are complex. Further, the parties would incur substantial expense and delay if they were to continue litigating the adversary proceeding. For example, the Debtor would first have to prepare and file a first amended complaint and survive any further motion to dismiss to put the pleadings at issue. Thereafter, the parties would have to engage in substantial discovery, at considerable cost, which would result in additional delay in obtaining a judgment in the action, which itself could be the subject of multiple appeals.

Paramount Interest of Creditors

Debtor believes that the settlement agreement and release is fair, reasonable, and in the best interests of the estate and its creditors because they provide for an assured result without subjecting the estate to the risks, costs, and delays inherent in litigating the adversary proceeding.

Upon weighing the factors outlined in *A & C Properties* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the estate. The motion is granted.

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

The court will enter a minute order.

37. [19-26277](#)-B-13 [RMP](#)-2 JUAN MONGALO AND MILAGROS MONGALO ROBLETO Michael M. Noble CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH JUAN CARLOS MONGALO AND MILAGROS DEL SOCORRO MONGALO ROBLETO 4-9-20 [[140](#)]

See Also #31

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 permit the loan modification requested.

Creditor Real Time Resolutions, Inc. has agreed to reduce Debtors' unpaid principal balance from \$67,670.87 to \$65,000.00 and the interest rate from 8.00% to 4.00%. Monthly installment payments will be \$717.67 for a period of 108 months. The loan will be deemed current for purposes of the instant bankruptcy, with the first post-petition payment due March 20, 2020, which Debtors have paid.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

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

The court will enter a minute order.

38. [19-27597](#)-B-13 PAVEL LISETSKY
[DPC-1](#) Pro Se
See Also #35

CONTINUED MOTION TO DISMISS
CASE
1-29-20 [[26](#)]

CONTINUED TO 5/26/20 AT 1:00 P.M. TO BE HEARD AFTER THE CONTINUED MEETING OF CREDITORS SET FOR 5/21/2020.

Final Ruling

No appearance at the May 5, 2020, hearing is required. The court will enter a minute order.