

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

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

PRE-HEARING DISPOSITIONS

DAY: TUESDAY

DATE: July 9, 2019

CALENDAR: 1:00 P.M. CHAPTER 13

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

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

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

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

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

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

July 9, 2019 at 1:00 p.m.

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1. [19-20204](#)-B-13 MARY SIMPSON MOTION TO CONFIRM PLAN
 [MJD](#)-5 Matthew J. DeCaminada 6-3-19 [[61](#)]

No Ruling

2. [19-21705](#)-B-13 TOBY TOLEN MOTION TO CONFIRM PLAN
[JGD](#)-3 John G. Downing 6-3-19 [[53](#)]
Thru #4

No Ruling

3. [19-21705](#)-B-13 TOBY TOLEN MOTION TO VALUE COLLATERAL OF
[JGD](#)-4 John G. Downing TRI-COUNTIES BANK
6-18-19 [[63](#)]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to value the secured claim of Tri Counties Bank at \$36,500.00.

Debtor's motion to value the secured claim of Tri Counties Bank ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of business assets consisting of a 1986 Assembled trailer, 1986 Peerless trailer, hand tools, chainsaws, and 1990 Link-Belt ("Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of \$36,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 7-1 filed by Tri Counties Bank is the claim which may be the subject of the present motion.

Discussion

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). The time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. See 11 U.S.C. § 1325(a).

The total dollar amount of the obligation represented by the financing agreement with Tri Counties Bank is \$43,234.50 as stated in Claim No. 7-1. The Declaration of Toby C. Tolen states that the Debtor has been involved in the logging industry for 30 years, is familiar with the cost of repaired equipment, and that the price a retail merchant would charge for the Personal Property is \$36,500.00. 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 \$36,500.00. 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.

4. [19-21705](#)-B-13 TOBY TOLEN
[JGD](#)-5 John G. Downing

MOTION TO VALUE COLLATERAL OF
NATIONAL FUNDING
6-18-19 [[68](#)]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

The court's decision is to value the secured claim of National Funding at \$0.00.

Debtor's motion to value the secured claim of National Funding ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of business assets consisting of a 1986 Assembled trailer, 1986 Peerless trailer, hand tools, chainsaws, and 1990 Link-Belt ("Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of \$36,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 8-1 filed by National Funding is the claim which may be the subject of the present motion.

Discussion

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2). The time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. See 11 U.S.C. § 1325(a).

The total dollar amount of the obligation represented by the financing agreement with National Funding is \$95,318.04 as stated in Claim No. 8-1. The Declaration of Toby C. Tolen states that the Debtor has been involved in the logging industry for 30 years, is familiar with the cost of repaired equipment, and that the price a retail merchant would charge for the Personal Property is \$36,500.00. A senior claim by Tri Counties Bank secures a lien on the Personal Property with a balance of approximately \$43,234.50. Therefore, the Creditor's junior claim is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$0.00. 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.

5. [19-20007](#)-B-13 NICHOLAS BONANNO OBJECTION TO CLAIM OF BANK OF
[MEV](#)-3 Marc Voisenat AMERICA, CLAIM NUMBER 3
Thru #6 5-20-19 [[75](#)]

Final Ruling

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

The court's decision is to sustain the objection to Claim No. 4-1 of Bank of America, N.A. and the claim is disallowed in its entirety.

Nicholas Bonanno ("Objector") requests that the court disallow the claim of Bank of America, N.A. ("Creditor"), Claim No. 4-1. The claim is asserted to be in the amount of \$39,969.88. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about March 9, 2007, and the account was charged off on May 15, 2007. This is more than four years prior to the filing of this case. Hence, when the case was filed on January 2, 2019, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

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

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

The court will enter a minute order.

6. [19-20007](#)-B-13 NICHOLAS BONANNO MOTION TO CONFIRM PLAN
[MEV](#)-4 Marc Voisenat 5-20-19 [[78](#)]

Final Ruling

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee. As to the limited objection filed by The Socotra Opportunity Fund, LLC, it is overruled but the creditor shall retain the right to file as a separate motion with the court a request for any post-petition accruals. 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 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. [19-21508](#)-B-13 JESSICA THOENE MOTION TO CONFIRM PLAN
[RWF](#)-2 Robert W. Fong 5-24-19 [[39](#)]

Final Ruling

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

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

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

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.

8. [18-27809](#)-B-13 CHERI HOUGLAND MOTION TO CONFIRM PLAN
[MWB](#)-2 Mark W. Briden 6-5-19 [[59](#)]

Final Ruling

The motion was not 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). Only 34 days of notice was provided. The motion to confirm is denied without prejudice.

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

The court will enter a minute order.

9. [19-21111](#)-B-13 JOSELITO HALLARE MOTION TO CONFIRM PLAN
[AF-1](#) Arasto Farsad 5-8-19 [[33](#)]

Tentative Ruling

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

The court's decision is to deny the motion to confirm as moot and overrule the objection as moot.

Subsequent to the filing of the Trustee's objection, an amended plan was filed on June 19, 2019. The confirmation hearing for the amended plan is scheduled for August 6, 2019. The earlier plan filed May 8, 2019, is not confirmed.

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

The court will enter a minute order.

10. [19-22312](#)-B-13 AMELIA KROUSE OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 Mark W. Briden PLAN BY JAN P. JOHNSON
Add On #33 6-19-19 [[18](#)]

Tentative Ruling

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

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

First, feasibility depends on the refinance of real property. The plan fails to indicate when the refinance is expected to occur and the Debtor has not provided any evidence of the condition of the real estate market or the Debtor's ability to refinance. The Debtor has failed to carry the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the Debtor has failed to provide the Trustee with a detailed description of her farming business as well as filing an attachment to Schedule I with the court. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The Debtor has amended Schedule A/B to reflect the real property inheritance located in Santa Cruz, California, which Debtor received from her deceased mother.

For the first and second reasons stated above, the plan filed April 15, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

11. [19-22213](#)-B-13 MONICA AVALOS CONTINUED OBJECTION TO
[JPJ](#)-1 Thomas O. Gillis CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
5-22-19 [[14](#)]

Tentative Ruling

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

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

This matter was continued from June 11, 2019, and again from June 25, 2019, to give the Debtor additional time to provide proof to the Chapter 13 Trustee that her 2018 tax return was signed and filed. The Debtor has not submitted any evidence in the form of a declaration or exhibit to substantiate that the 2018 tax return was signed and filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

The plan filed April 9, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

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

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

12. [19-23616](#)-B-13 MARK BRASHLEY MOTION TO VALUE COLLATERAL OF
WW-1 Mark A. Wolff CONSUMER PORTFOLIO SERVICES,
INC.
6-6-19 [8]

Tentative 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 will address the merits of the motion at the hearing.

The court's decision is to value the secured claim of Consumer Portfolio Services, Inc. at \$13,000.00.

Debtor's motion to value the secured claim of Consumer Portfolio Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Acura TSX ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$13,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

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

Opposition

Creditor has filed an opposition asserting that the base value listing price is \$13,745.00 and that the adjusted listing price taking into account the Vehicle's color, mileage, and option adjustments is \$15,745.00. Creditor relies on the Kelley Blue Book for its valuations. See dkt. 29, exh. 3. Creditor contends that \$15,745.00 should be the value of the Vehicle as required by 11 U.S.C. § 506(a).

Discussion

Creditor is the lienholder of the Vehicle. Creditor asserts that the value of the Vehicle is approximately \$15,745.00 based on the value provided by Kelley Blue Book. While the Creditor does take into account the Vehicle's condition as good and not excellent, the Creditor's valuation does not make adjustments for the Vehicle's unique wear and tear as stated in the Declaration of Mark Brashley. According to the Brashley Declaration, the Vehicle needs a wheel alignment and new tire, and the paint is chipping on the passenger side mirror. The Creditor does not provide any consideration for the condition of the Vehicle and, therefore, it cannot be determined from Creditor's evidence what a retailer would charge for this Vehicle as it is. In other words, based on the Debtor's use of and familiarity with the Vehicle, and the Creditor's lack thereof, the Debtor's opinion of value is given more weight than Creditor's academic estimation based strictly on market reports which is given none under the circumstances of this case.

The court can accept a debtor's lay opinion of the value of his or her property and, in the absence of evidence to the contrary, may even accept a debtor's opinion of value as conclusive. *In re Enewally*, 368 F.3d 1165, 1173 (9th Cir. 2004). Because the court gives no weight to the Creditor's valuation, the court will accept the Debtor's opinion of value.

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

The court will enter a minute order.

13. [19-22717](#)-B-13 SIGIFREDO SANCHEZ AND OBJECTION TO CONFIRMATION OF
[JPJ](#)-1 CONSUELO RAMIREZ PLAN BY JAN P. JOHNSON AND/OR
Thomas O. Gillis MOTION TO DISMISS CASE
6-19-19 [[16](#)]

Tentative Ruling

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

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

First, the debt owed to GM Financial for a 2019 Chevy Silverado is misclassified as a class 4 debt. The prewritten language of the form plan defines a Class 4 debt claims that "mature after the completion of this plan, are not in default, and are not modified by this plan." This creditor's proof of claim number 3-1 shows that the Debtors were 1 payment in arrears when the petition was filed, the purchase contract shows that Joint Debtor is the only person signed on the loan, and the loan maturity date is November 24, 2025, which is after the last plan payment due date of April 25, 2024. The Debtors' plan does not comply with 11 U.S.C. § 135(a)(1).

Second, the Debtors have failed to amend Schedule H to remove their daughter as a co-debtor on the Chevy Silverado and to amend the Statement of Financial Affairs, Question 5, to add Debtor's unemployment income for 2017 and 2018. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

The Debtors have filed a response of non-opposition to the objection and state that they will file an amended plan that resolves the issues raised by the Trustee.

The plan filed April 30, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained, the motion to dismiss is conditionally denied, and the plan is not confirmed.

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

The objection is ORDERED SUSTAINED and the motion is ORDERED CONDITIONALLY DENIED for reasons stated in the ruling appended to the minutes.

The court will enter a minute order.

14. [19-20621](#)-B-13 MERCEDES MOYA-GRANT MOTION TO CONFIRM PLAN
[RJ-3](#) Richard L. Jare 6-3-19 [[53](#)]

Final Ruling

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

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

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

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.

15. [19-22821](#)-B-13 GLEN CASILLAS MOTION TO VALUE COLLATERAL OF
[PGM-1](#) Peter G. Macaluso THE GOLDEN 1 CREDIT UNION
Add On #36 6-8-19 [[15](#)]

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 Golden 1 Credit Union at \$11,000.00.

Debtor's motion to value the secured claim of Golden 1 Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Volkswagen Jetta ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$11,000.00 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2-1 filed by Golden 1 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 July 27, 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 \$15,005.52. 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 \$11,000.00. *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. [15-21526](#)-B-13 DEE LINDERER MOTION FOR COMPENSATION BY THE
[PSB](#)-4 Pauldeep Bains LAW OFFICE OF BAINS LEGAL, PC
FOR PAULDEEP BAINS, DEBTOR'S
ATTORNEY(S)
6-18-19 [[85](#)]

Tentative Ruling

Because less than 28 days' notice of the hearing was given, the motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, parties in interest were not required to file a written response or opposition. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Request for Additional Fees and Costs

As part of confirmation of the Debtor's Chapter 13 plan, Pauldeep Bains ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$4,000.00. Dkt. 41. Applicant now seeks additional compensation in the amount of \$2,000.00 in fees and \$0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 88.

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

Applicant asserts that he provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would be awarded a settlement that would be enough to entirely pay off her Chapter 13 plan. Applicant's substantial and unanticipated work consisted of drafting the motion to approve settlement agreement, preparing the stipulation between the Debtor and Trustee in order for the Trustee to properly account for and disburse funds from the settlement, and applying for this motion for additional attorney fees. Applicant has agreed to discount the fees requested by \$1,300.00.

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

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	\$2,000.00
Additional Costs and Expenses	\$ 0.00

The motion is ORDERED GRANTED for additional fees of \$2,000.00 and additional costs and expenses of \$0.00.

The court will enter a minute order.

17. [19-23626](#)-B-13 GRELING CHARLES MOTION TO VALUE COLLATERAL OF
[MRL](#)-1 Mikalah R. Liviakis BMW FINANCIAL SERVICES N.A.,
LLC
6-6-19 [[10](#)]

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 BMW Financial Services N.A., LLC at \$17,500.00.

Debtor's motion to value the secured claim of BMW Financial Services N.A., LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 BMW 320i ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$17,500.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is 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. No proof of claim has been filed by Creditor for the claim to be valued.

Non-Opposition

BMW Financial Services NA, LLC has filed a notice of non-opposition to Debtor's motion to value.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on or about September 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 \$25,610.00. 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 \$17,500.00. *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.

18. [19-23627](#)-B-13 JOSEFINA TELLERS MOTION TO VALUE COLLATERAL OF
[MRL](#)-1 Mikalah R. Liviakis ONEMAIN FINANCIAL GROUP, LLC
6-6-19 [[8](#)]

Final Ruling

The motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). However, there appears to be insufficient service of process on Onemain Financial Group, LLC. The address used by the Debtor does not appear on the California Secretary of State website, Better Business Bureau website, or the U.S. Bankruptcy Court Eastern District of California's Roster of Governmental Agencies. It also does not match the address provided on Claim No. 3-1 filed by Onemain Financial Group, LLC. Therefore, the court's decision is to deny the motion without prejudice.

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

The court will enter a minute order.

19. [17-20031](#)-B-13 JAMES MURRAY MOTION TO MODIFY PLAN
[RS-2](#) Richard L. Sturdevant 5-30-19 [[66](#)]

No Ruling

20. [19-20938](#)-B-13 REUBEN MOHAMMED MOTION TO CONFIRM PLAN
[DPB](#)-5 Douglas P. Broomell 6-4-19 [[77](#)]

No Ruling

21. [19-21640](#)-B-13 DEBORA MILLER-ZURANICH MOTION TO CONFIRM PLAN
[PLC](#)-3 Peter L. Cianchetta 6-3-19 [[50](#)]

Final Ruling

The court entered an order on June 21, 2019, requiring the Debtor to convert her case to a Chapter 11 within 10 days from the entry of the court's order, otherwise the case will be dismissed on the Chapter 13 Trustee's ex parte motion. The Debtor failed to convert her case by the deadline of July 1, 2019; however, the Debtor did file a Notice of File Documents in Converted Case on July 3, 2019. No ex parte motion to dismiss was filed by the Trustee.

The court's decision is to deny as moot the motion to confirm plan.

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

The court will enter a minute order.

22. [15-21845](#)-B-13 JOSEPH BARNES MOTION TO MODIFY PLAN
[SS](#)-12 Scott D. Shumaker 6-6-19 [[254](#)]

Final Ruling

The motion was not 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). Only 33 days of notice was provided. The motion to confirm is denied without prejudice.

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

The court will enter a minute order.

23. [14-25050](#)-B-13 STEPHEN PATTON MOTION FOR RELIEF FROM
AP-3 James D. Pitner AUTOMATIC STAY
6-5-19 [[80](#)]
WELLS FARGO BANK, N.A. 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 deny as moot the motion for relief from stay.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 9625 Rock Springs Ro, Newcastle, California (the "Property"). Movant has provided the Declaration of Tonya R. Caldwell to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Caldwell Declaration states that there are at least 3 post-petition payments in default, beginning with the monthly payment due in March of 2019.¹

The operative plan is the first modified plan filed August 11, 2014. Dkt. 42. It was ordered confirmed on September 15, 2014. Dkt. 49. The confirmation order was entered on September 29, 2014. Dkt. 50.

The first modified plan classifies Movant's claim in Class 4 which means it is paid directly by the debtor, Stephen Patton ("Debtor"). Classification of Movant's claim in Class 4 also means all bankruptcy stays were modified upon confirmation. More precisely, § 2.11 of the confirmed first amended plan states as follows:

2.11. Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.

Dkt. 42 at 4, § 2.11 (emphasis added).

Given that all bankruptcy stays were previously (and therefore currently are) modified to permit Movant to exercise its rights to the Property, there is no need to terminate the stay as Movant requests. Movant's request is therefore denied as moot.

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

The court will enter a minute order.

¹Debtor passed away March 23, 2019, which likely explains the absence of payments from March 2019 forward. See Dkts. 89, 91.

24. [16-26053](#)-B-13 JOHN PUGH MOTION TO MODIFY PLAN
[JGD](#)-7 John G. Downing 5-22-19 [[104](#)]

No Ruling

25. [19-21258](#)-B-13 TROY EMRY MOTION TO CONFIRM PLAN
[PSE](#)-2 Pauldeep Bains 5-31-19 [[37](#)]

No Ruling

26. [16-26572](#)-B-13 FRANK RUBALCAVA AND MOTION TO MODIFY PLAN
[DJC](#)-3 ARIANA CABRAL 5-30-19 [[48](#)]
Diana J. Cavanaugh

No Ruling

27. [18-22674](#)-B-13 DIDIER GIRON MOTION TO CONVERT CASE TO
[JPJ](#)-4 Seth L. Hanson CHAPTER 7
6-3-19 [[50](#)]

No Ruling

28. [15-28581](#)-B-13 BARBARA WHITSON MOTION FOR COMPENSATION BY THE
GW-2 Gerald L. White LAW OFFICE OF GERALD L. WHITE
FOR GERALD L. WHITE, DEBTOR'S
ATTORNEY
5-28-19 [[42](#)]

Final Ruling

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

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

Fees and Costs Requested

Gerald L. White ("Applicant"), the attorney to Chapter 13 Debtor, makes a final request for the allowance of \$495.00 in fees and \$0.00 in expenses. The period for which the fees are requested is for November 3, 2015, through April 29, 2019. The order of the court approving employment of Applicant was entered on January 12, 2016. Dkt. 16. Applicant declined seeking approval of compensation pursuant to the Guidelines for Payment of Attorney Fees in Chapter 13 Cases. Dkt. 1, p. 51.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 46.

Statutory Basis for Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (I) unnecessary duplication of services; or
- (ii) services that were not--
 - (I) reasonably likely to benefit the debtor's estate;
 - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Debtor and bankruptcy estate and reasonable.

Applicant is allowed, and the Debtor shall pay outside of the plan, the following amounts as compensation to this professional in this case:

Fees	\$495.00
Costs and Expenses	\$ 0.00

The motion is ORDERED GRANTED for fees of \$495.00 and costs and expenses of \$0.00.

The court will enter a minute order.

29. [19-21385](#)-B-13 RICHARD/MONICA VINEY OBJECTION TO CLAIM OF CAVALRY
[JPJ](#)-1 Mohammad M. Mokarram SPV I, LLC, CLAIM NUMBER 3
5-16-19 [[23](#)]

Final Ruling

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

The court's decision is to sustain the objection to Claim No. 3-1 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Richard Viney and Monica Viney ("Objector") requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 31. The claim is asserted to be in the amount of \$507.58. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about February 8, 2012, which is more than four years prior to the filing of this case. Hence, when the case was filed on March 6, 2019, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. See 11 U.S.C. § 502(b)(1).

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

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

The court will enter a minute order.

30. [19-22488](#)-B-13 BRENDA LEMMA MOTION TO CONFIRM PLAN
NF-[1](#) Nikki Farris 5-20-19 [[19](#)]

No Ruling

31. [19-22793](#)-B-13 ROGER/TENILLE JONES MOTION TO CONFIRM PLAN
[PSB](#)-1 Pauldeep Bains 5-22-19 [[16](#)]
Add On #37

No Ruling

Final Ruling

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

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

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

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.

33. [19-22312](#)-B-13 AMELIA KROUSE OBJECTION TO CONFIRMATION OF
[HSM](#)-2 Mark W. Briden PLAN BY ROBERT PASTEGA AND
See Also #10 DEBBIE PASTEGA
7-1-19 [[23](#)]

Final Ruling

The objection was not set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). See also Local Bankr. R. 3015-1(c)(4) (objection shall comply with Local Bankr. R. 9014-1(f)(2)). No application for an order shortening time was filed. Therefore, the objection is overruled without prejudice.

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

The court will enter a minute order.

34. [19-23824](#)-B-13 ROLINA BROWN MOTION TO EXTEND AUTOMATIC STAY
[PGM](#)-1 Peter G. Macaluso O.S.T.
6-30-19 [[20](#)]

Tentative Ruling

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The court's decision is to deny the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on June 11, 2019, due to Debtor's failure to confirm a plan within 60 days of the court's order sustaining the Chapter 13 Trustee's objection to confirmation and conditional denial of the motion to dismiss case (case no. 19-20293, dkt. 84). 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).

Debtor states that she had filed the prior and present bankruptcy cases to save her home. Debtor also explains that in the prior case the mortgage company for her residence had added unexplained costs to the loan, and that her brother was facing medical complications requiring her care and that he subsequently passed away. Debtor asserts that her circumstances have changed and that this case will succeed "if the mortgage company's behavior is fair and honest." Dkt. 22, p. 2. However, this does not constitute changed circumstances since how the mortgage company conducts itself is speculative.

The Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is denied without prejudice.

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

The court will enter a minute order.

35. [18-26312](#)-B-13 MELEA SHEPPARD CONTINUED MOTION TO MODIFY PLAN
[EJS](#)-1 Eric John Schwab 5-16-19 [[17](#)]

No Ruling

36. [19-22821](#)-B-13 GLEN CASILLAS CONTINUED OBJECTION TO
[JPJ](#)-1 Peter G. Macalauso CONFIRMATION OF PLAN BY JAN P.
See Also #15 JOHNSON AND/OR MOTION TO
DISMISS CASE
6-11-19 [[20](#)]

Tentative Ruling

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

The matter will be determined at the scheduled hearing.

The Chapter 13 Trustee objects to confirmation on grounds that the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) shows that the Debtor's monthly disposable income is \$199.98 and the Debtor must pay no less than \$11,998.80 to unsecured non-priority creditors. The plan pays only \$1,075.13 to unsecured non-priority creditors. Additionally, the Debtor has made impermissible deductions on Forms 122C-1 and -2 at Lines 13, 21, and 29. With these deductions corrected, the Debtor's monthly disposable income is \$987.64 and the Debtors must pay no less than \$59,258.40 to unsecured creditors.

The Debtor has filed a response stating that he has amended Forms 122C-1 and -2 to address the Trustee's objections.

While feasibility also depends on the granting of the motion to value collateral for Golden 1 Credit Union, that motion is granted at Item #15.

The matter will be determined at the scheduled hearing.

37. [19-22793](#)-B-13 ROGER/TENILLE JONES CONTINUED OBJECTION TO
[JPJ](#)-1 Pauldeep Bains CONFIRMATION OF PLAN BY JAN P.
See Also #31 JOHNSON AND/OR MOTION TO
DISMISS CASE
6-12-19 [[27](#)]

No Ruling