

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

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: July 21, 2020

CALENDAR: 1:00 P.M. CHAPTER 13

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

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

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

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

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

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

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

1. [18-90802](#)-B-13 ALLEN/CORINA SANDERS MOTION TO MODIFY PLAN
[BSH](#)-3 Brian S. Haddix 5-19-20 [[66](#)]

Final Ruling

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

The court'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, the Debtors filed a new modified plan on July 16, 2020. The confirmation hearing for the modified plan is scheduled for September 8, 2020. The earlier plan filed May 19, 2020, is not confirmed.

The motion is ORDERED DENIED AS MOOT and the objection ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

2. [19-90803](#)-B-13 MARNIE FIELDS
[LBF](#)-1 Lauren Franzella

MOTION TO MODIFY PLAN
6-9-20 [[21](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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

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

The motion is ORDERED GRANTED for reasons stated in the 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 issue an order.

Final Ruling

The motion has been set for hearing on 28-days notice. 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 by Portfolio Recovery Associates, LLC and a response was filed by the Debtor.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). 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 value the secured claim of Portfolio Recovery Associates, LLC at \$2,525.00.

Debtor's motion to value the secured claim of Portfolio Recovery Associates, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Chevrolet Impala ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$2,525.00 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).

Opposition

Creditor has filed an opposition asserting a clean retail valuation of \$10,825.00 based on the NADA Guides.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 5-1 filed by Portfolio Recovery Associates, LLC is the claim which may be the subject of the present motion.

Discussion

The value offered by the Creditor, \$10,825.00, is based on a "clean" retail evaluation by NADA Guides, a commonly used market guide. This valuation presumes, as the adjective "clean" suggests, that the car has "no mechanical defects and passes all necessary inspections with ease; paint, body and wheels have minor surface scratching with a high gloss finish; interior reflects minimal soiling and wear, with all equipment in complete working order; vehicle has a clean title history. Because individual vehicle condition varies greatly, users may need to make independent adjustments for actual vehicle condition." Cf. <http://www.nadaguides.com>.

The clean retail value suggested by the Creditor cannot be relied upon by the court to establish the Vehicle's replacement value. First, this value assumes that the Vehicle is in excellent condition. This may not be the case. Second, 11 U.S.C. § 506(a)(2) asks for "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." What must be determined, therefore, is what a retailer would charge for this particular Vehicle as it is.

The court can accept a debtor's lay opinion of the value of his 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 lien on the Vehicle's title secures a purchase-money loan incurred on September 4, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$21,573.46. 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 \$2,525.00. 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 minutes.

The court will issue an order.

4. [20-90104](#)-B-13 PAUL DYKES MOTION TO CONFIRM PLAN
[DEF-2](#) David Foyil 5-15-20 [[45](#)]

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. *BCf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Chapter 13 Trustee.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). 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 first amended plan.

The Debtor's plan is not proposed in good faith and is not feasible. 11 U.S.C. § 1425(a)(3) and (a)(6). Debtor's Schedule I fails to account for a 401K payroll deduction, thus rendering Debtor's net income inaccurate. Additionally, this expense is not reasonable or necessary.

Separately, the Trustee objects to confirmation on grounds that feasibility depends on the granting of a motion to value collateral of Ally Financial Services. That motion is heard at Item #3, DEF-1, and was granted. The Trustee also requests in its objection that the Debtor should provide copies of his federal and state income tax returns by April 30 of each year during the pendency of the plan and any modified plan. However, the Trustee does not provide any explanation for why this is appropriate. Therefore, these objections are overruled.

Nonetheless, Debtor's net income is inaccurate and the 401K expenses is not reasonable or necessary. 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 minutes.

The court will issue an order.

5. [18-90506](#)-B-13 ROBIN HAMADE-GAMMON MOTION TO MODIFY PLAN
 [BSH](#)-7 Brian S. Haddix 5-14-20 [[146](#)]

Final Ruling

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

The court'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, the Debtor filed a new modified plan on July 16, 2020. The confirmation hearing for the modified plan is scheduled for September 8, 2020. The earlier plan filed May 14, 2020, is not confirmed.

The motion is ORDERED DENIED AS MOOT and the objection ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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 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 issue an order.

7. [19-91007](#)-B-13 AMY LOPEZ
[BJS](#)-1 Bradley J. Swingle

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF ARATA, SWINGLE,
VAN EGMOND & HEITLINGER FOR
BRADLEY SWINGLER, DEBTORS
ATTORNEY(S)
6-19-20 [[31](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. 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 deny without prejudice the motion for compensation.

Bradley J. Swingle ("Applicant"), the attorney to Chapter 13 Debtor, requests the allowance of \$3,500.00 in fees. Applicant states that \$0.00 was paid pre-petition and that the full \$3,500.00 is to be paid through Debtor's plan pursuant to Local Bankr. R. 2016-1(c). No task billing analysis or supporting evidence has been provided.

The Chapter 13 Trustee filed an objection stating that the notice and motion were not filed as separate documents pursuant to Local Bankr. R. 9014-1(d)(4). Additionally, Applicant has not filed a Right and Responsibilities executed by Bradley J. Swingle. Instead, the one filed with the court is executed by an attorney Flor A. Tataje. Due to these issues, the Trustee opposes the motion for compensation.

The court agrees with the Trustee. The motion is denied without prejudice.

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

The court will issue an order.

8. [19-91014](#)-B-13 SANDRA RODRIGUEZ MOTION TO CONFIRM PLAN
[BSH](#)-3 Brian S. Haddix 5-26-20 [[60](#)]

Final 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 by Wells Fargo USA and the Chapter 13 Trustee. 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 objections as moot.

Subsequent to the filing of the objections, an amended plan was filed on July 16, 2020. The confirmation hearing for the amended plan is scheduled for September 8, 2020. The earlier plan filed May 26, 2020, is not confirmed.

The motion is ORDERED DENIED AS MOOT and the objections ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

9. [19-90817](#)-B-13 GARY COOKSEY
[BSH](#)-8 Brian S. Haddix

MOTION TO CONFIRM PLAN
5-19-20 [[120](#)]

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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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 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 issue an order.

Final Ruling

The motion been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Chapter 13 Trustee. A response was filed by the Debtor.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). 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 permit the requested modification and confirm the modified plan.

The Trustee objects to confirmation of the plan on grounds that the Debtor is delinquent \$280.00. The Debtor filed a response stating that he mailed a payment for that amount to the Trustee on July 2, 2020. Debtor contends that the proposed plan is current.

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

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor/s 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 issue an order.

11. [20-90322](#)-B-13 HECTOR BARRAZA
[RAS](#)-1 Brian S. Haddix
Thru #12

OBJECTION TO CONFIRMATION OF
PLAN BY CREDITOR U.S. BANK
NATIONAL ASSOCIATION
6-10-20 [[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).

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

Subsequent to the filing of the objection, the Debtor filed an amended plan on July 16, 2020. The confirmation hearing for the amended plan is scheduled for September 8, 2020. The earlier plan filed May 1, 2020, is not confirmed.

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

The court will issue an order.

12. [20-90322](#)-B-13 HECTOR BARRAZA
[RDG](#)-1 Brian S. Haddix

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-1-20 [[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).

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

Subsequent to the filing of the objection, the Debtor filed an amended plan on July 16, 2020. The confirmation hearing for the amended plan is scheduled for September 8, 2020. The earlier plan filed May 1, 2020, is not confirmed.

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

The court will issue an order.

13. [20-90028](#)-B-13 ALBERT OCHOA
[BSH](#)-2 Brian S. Haddix

MOTION TO CONFIRM PLAN
5-19-20 [[28](#)]

Final 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 July 16, 2020. The confirmation hearing for the amended plan is scheduled for September 8, 2020. The earlier plan filed May 19, 2020, is not confirmed.

The motion is ORDERED DENIED AS MOOT and the objection ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

14. [20-90129](#)-B-13 JEFFREY/ARBELA WARDA
[BSH](#)-6 Brian S. Haddix
Thru #16

MOTION TO VALUE COLLATERAL OF
HONDA FINANCIAL SERVICES
6-18-20 [[69](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to value the secured claim of Honda Financial Services at \$21,872.00.

Debtors' motion to value the secured claim of Honda Financial Services ("Creditor") is accompanied by Debtor Jeffrey Warda's declaration. Debtors are the owner of a 2017 Honda Accord ("Vehicle"). The Debtors seeks to value the Vehicle at a replacement value of \$21,872.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value may be accepted as conclusive. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 1-1 filed by American Honda Finance Corporation is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on March 25, 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 \$21,919.60. 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 \$21,872.00. 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 minutes.

The court will issue an order.

15. [20-90129](#)-B-13 JEFFREY/ARBELA WARDA
[BSH](#)-7 Brian S. Haddix

MOTION TO VALUE COLLATERAL OF
HONDA FINANCIAL SERVICES
6-18-20 [[73](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to value the secured claim of Honda Financial Services at

\$33,250.00.

Debtors' motion to value the secured claim of Honda Financial Services ("Creditor") is accompanied by Debtor Jeffrey Warda's declaration. Debtors are the owner of a 2017 Honda Accord ("Vehicle"). The Debtors seeks to value the Vehicle at a replacement value of \$33,250.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value may be accepted as conclusive. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. Claim No. 2-1 filed by American Honda Finance Corporation is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on August 5, 2017, as stated in the purchasing agreement filed as an attachment to Claim No. 2-. This is more than 910 days prior to filing of the petition and secures a debt owed to Creditor with a balance of approximately \$34,717.07. 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 \$33,250.00. 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 minutes.

The court will issue an order.

16. [20-90129](#)-B-13 JEFFREY/ARBELA WARDA CONTINUED OBJECTION TO
[RDG-1](#) Brian S. Haddix CONFIRMATION OF PLAN BY RUSSELL
D. GREER
5-14-20 [[48](#)]

Final Ruling

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

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). 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.

Feasibility depends on the granting of two motions to value collateral of Honda Financial services. Those motions were granted at Item #14, BSH-6, and Item #15, BSH-7.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed March 19, 2020, is confirmed.

The objection is ORDERED OVERRULED for reasons stated in 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 issue an order.

17. [19-90141](#)-B-13 JOHN VIEIRA
[BSH](#)-3 Brian S. Haddix

MOTION TO CONFIRM PLAN
5-19-20 [[99](#)]

Final 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 July 15, 2020. The confirmation hearing for the amended plan is scheduled for September 8, 2020. The earlier plan filed May 19, 2020, is not confirmed.

The motion is ORDERED DENIED AS MOOT and the objection ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

18. [20-90342](#)-B-13 RUBEN ALVAREZ
[APN](#)-1 Rabin J. Pournazarian

OBJECTION TO CONFIRMATION OF
PLAN BY GLOBAL LENDING SERVICES
LLC
6-22-20 [[29](#)]

Final Ruling

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

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

Subsequent to the filing of the objection, the Debtor filed an amended plan on July 15, 2020. The confirmation hearing for the amended plan is scheduled for September 1, 2020. The earlier plan filed May 13, 2020, is not confirmed.

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

The court will issue an order.

19. [20-90243](#)-B-13 RAYMOND/MARYANN MARTINEZ OBJECTION TO CONFIRMATION OF
[APN-1](#) Jessica A. Dorn PLAN BY DATA MORTGAGE, INC.
4-21-20 [[14](#)]

Final Ruling

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

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). 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 Data Mortgage, Inc. holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts \$12,902.86 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) and 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed March 31, 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 minutes.

The court will issue an order.

20. [18-90644](#)-B-13 CARRIE FLORES
[JHK](#)-1 Joseph Angelo

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
6-10-20 [[63](#)] f1

TD AUTO FINANCE LLC VS.

Final Ruling

The court has before a motion for relief from the automatic stay of 11 U.S.C. § 362(a) filed by TD Auto Finance, LLC ("Creditor"). Creditor, as loss payee, seeks relief from the automatic stay to obtain and apply insurance proceeds resulting from the total loss of its collateral consisting of Debtor Carrie Flores' ("Debtor") 2012 Volkswagen Jetta. Available insurance proceeds are \$8,418.66. Estimated payoff at the time of the motion was \$8,414.42. Any excess insurance proceeds will be turned over to the Chapter 13 Trustee ("Trustee"). Debtor filed a non-opposition to the motion. The Trustee did not respond.

For the reasons stated, cause for relief from the automatic stay of § 362(a) exists under § 362(d)(1). Therefore, the motion is granted and the 14-day stay of Bankruptcy Rule 4001(a)(3) is waived.

The objection is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

21. [20-90346](#)-B-13 SOPHIA TITH
[RDG](#)-1 Brian S. Haddix

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-1-20 [[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). 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. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). 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 continue this matter to **August 4, 2020, at 1:00 p.m.** to be heard in conjunction with the Objection to Claim of Exemptions, dkt. 21, filed by the Chapter 13 Trustee ("Trustee").

The Trustee objects to confirmation on grounds that the Debtor is not entitled to exempt an amount over \$75,000.00 under California Code of Civil Procedure § 704.730 for her homestead because she is not age 55 or above and is not permanently disabled.

Debtor filed a response stating that she has amended Schedules A/B, C, and J to reflect that she has a dependent child in the home. Debtor is utilizing the \$100,000.00 exemption for families pursuant to California Code of Civil Procedure § 704.730(a)(2) and claims equity in the residence at \$97,129.00. The Debtor does not intend to utilize any other homestead exemption. Nevertheless, the court cannot confirm the plan unless and until the Trustee's objection to the Debtor's claim of exemption is resolved.

The court will issue an order.

22. [19-91056](#)-B-13 ROSA PULIDO
[BSH](#)-2 Brian S. Haddix

MOTION TO CONFIRM PLAN
5-19-20 [[42](#)]

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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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 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 issue an order.

23. [20-90262](#)-B-13 KATHY HARDISTY CONTINUED OBJECTION TO
[ALG](#)-1 Charles L. Hastings CONFIRMATION OF PLAN BY QUICKEN
Thru #29 LOANS, LLC
4-17-20 [[9](#)]

Final Ruling

Creditor Quicken Loans, LLC having filed a notice of withdrawal of its objection, the objection 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.

24. [20-90262](#)-B-13 KATHY HARDISTY CONTINUED MOTION FOR RELIEF
[BRL](#)-1 Charles L. Hastings FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
5-19-20 [[20](#)]

LAGUNA GOLD MORTGAGE, INC.
VS.

Final Ruling

Introduction

The court has before it a *Motion for Order Terminating Automatic Stay and Co-Debtor Stay* filed by creditor Laguna Gold Mortgage, Inc. ("Creditor"). Creditor requests relief from the automatic stay of 11 U.S.C. § 362(a) for cause pursuant to § 362(d)(1). Debtor filed an opposition and an omnibus reply that addresses the motion. Creditor filed a reply to the opposition.

The court has reviewed and considered the motion, opposition, reply, omnibus reply, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket and claims register in this Chapter 13 case. See Fed. R. Evid. 201(c)(1).

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). 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.

Discussion

The motion concerns real property located at 556 Toyon Drive, San Andreas, California ("Property"). The Property is encumbered by Creditor's first and second deeds of trust. Creditor filed proofs of claim which assert that at least \$133,569.58 is owed on the first deed of trust and at least \$193,607.37 is owed on the second deed of trust.

Creditor values the property at \$500,000.00. That valuation is consistent with the value of the Property stated in Schedules A and D. See dkt. 1. Schedules are signed under penalty of perjury. See Fed. R. Bankr. P. 1008. And they have evidentiary

value. *Perfectly Fresh Farms, Inc. v. U.S. Dep't of Agric.*, 692 F.3d 960, 969 (9th Cir. 2012). The court therefore values the property at \$500,000.00 for purposes of this motion.

Based on Creditor's assertion that it is owed a total of \$327,176.95 on the first and second deeds of trust, Creditor remains protected by equity of at least \$172,823.05. That translates to an equity cushion of at least 35.56%.¹ Creditor is therefore adequately protected, at least at this juncture. *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400-01 (9th Cir. 1984) (equity cushion of 20% adequate protection for secured creditor even in the absence of payment).²

Creditor's assertion that the Debtor lacks any interest in the Property is without merit. The Debtor has produced a quitclaim deed conveying the Property to the Debtor from the individual Creditor claims owns the Property.

For the foregoing reasons, Creditor's motion for relief from the automatic stay is denied without prejudice.

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

The court will issue an order.

25. [20-90262](#)-B-13 KATHY HARDISTY
[BRL](#)-2 Charles L. Hastings

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LAGUNA
GOLD MORTGAGE, INC.
5-23-20 [[28](#)]

Final Ruling

Due to the recent reassignment of this Chapter 13 case to Department B, the hearing on this matter is continued to **August 18, 2020, at 1:00 p.m.** By no later than August 11, 2020, Debtor Kathy Deanne Hardisty, Chapter 13 Trustee Russell Greer, and creditor Laguna Gold Mortgage, Inc. are **ORDERED** to file a joint status report which addresses: (1) the current status of this matter; (2) issues resolved, if any, and that remain to be resolved as to this matter; (3) settlement discussions to date; (4) the effect, if any, of the June 24, 2020, quitclaim deed to the Debtor.

The court will issue an order.

¹Considering only the first deed of trust, the equity and equity cushion are even greater. At \$133,569.58 there is equity of \$366,430.42 which translates to an equity cushion of at least 73.28%.

²Caselaw regarding the automatic stay is instructive with regard to the co-debtor stay of § 1301. *In re Morris*, 385 B.R. 823, 829 n.8 (Bankr. E.D. Va. 2008). So to the extent Creditor is adequately protected with regard to the automatic stay, it is also adequately protected with regard to the co-debtor stay.

Final Ruling

Introduction

The court has before it an *Application for Order Authoring Debtor to Employ Special Counsel* filed by Debtor Kathy Deanne Hardisty ("Debtor"). Debtor seeks to employ Stephen J. Russell as special counsel for representation in an adversary proceeding against creditor Laguna Gold Mortgage, Inc. ("Creditor"), and with regard to other matters in this case. Creditor objects to the application to employ Mr. Russell on grounds that he is a principal of Gold Country Haven, a purported creditor in this bankruptcy. Creditor asserts that Mr. Russell is a witness for pre- and post-petition acts involving Debtor. Debtor filed an omnibus reply that addresses this matter.

The court has reviewed the application, opposition, omnibus reply, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket in this Chapter 13 case. See Fed. R. Evid. 201(c)(1).

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). 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.

Discussion

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

Pursuant to § 327 a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals to represent or assist the trustee in carrying out the trustee's duties under Title 11.

Some courts hold that § 327 applies to the employment of professionals by Chapter 13 trustees and Chapter 13 debtors. See e.g., *Wright v. Csabi (In re Wright)*, 578 B.R. 570 (Bankr. S.D. Tex. 2017) (§ 327(e)); *In re Goines*, 465 B.R. 704 (Bankr. N.D. Ga. 2012) (§ 327(e)); *In re Jenkins*, 406 B.R. 817 (Bankr. N.D. Ind. 2009) ("the term 'trustee' in 11 U.S.C. § 327(e) is to be read as 'Chapter 13 debtor'").

However, a majority of courts hold that § 327 generally - and § 327(e) in particular - applies only when Chapter 13 trustees seek to employ professionals and it is inapplicable to the employment of professionals by Chapter 13 debtors. See e.g., *In re Blume*, 591 B.R. 675 (Bankr. E.D. Mich. 2018) (Chapter 13 debtors were not required to seek bankruptcy court's approval to employ special counsel under § 327(e) to represent debtors in pending state court litigation); *In re Gilliam*, 582 B.R. 459, 465-66 (Bankr. N.D. Ill. 2018) (§ 327 does not apply to Chapter 13 debtors); *In re Scott*, 531 B.R. 640, 644-45 (Bankr. N.D. Miss. 2015) (nothing suggests that "trustee" in § 327(e) means debtor); *In re Jones*, 505 B.R. 229, 231 (Bankr. E.D. Wis. 2014) ("[A]n individual chapter 13 debtor . . . is not a 'trustee' for purposes of § 327."); *In re Maldonado*, 483 B.R. 326, 330 (Bankr. N.D. Ill. 2012) (§ 327 does not apply to debtors in Chapter 13 cases); *In re Tirado*, 329 B.R. 244, 250 (Bankr. E.D. Wis. 2005) ("Therefore, § 327 of the Bankruptcy Code simply does not apply to chapter 13 debtors who seek to employ

professionals.").

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

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

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

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

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

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

The court finds *Tirado's* reasoning and the majority position to be the better and better reasoned approach. Accordingly, the court concludes that it is not necessary for the Debtor's special counsel retention to be approved under § 327 in order to permit special counsel to provide services to the Debtor in or in connection with this Chapter 13 case. That said, special counsel remains subject to § 329 and Bankruptcy Rule 2016(a). See *Scott*, 531 B.R. at 645-46.

Conclusion

For the foregoing reasons, the Debtor's application to employ special counsel is unnecessary and therefore is denied as moot.

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

The court will issue an order.

27. [20-90262](#)-B-13 KATHY HARDISTY CONTINUED MOTION FOR APPROVAL
[CLH](#)-2 Charles L. Hastings OF POST PETITION CONTRACT FOR
THE USE OF PROPERTY OF THE
ESTATE, INCLUDING AN OPTION TO
PURCHASE
6-2-20 [[51](#)]

Final Ruling

Due to the recent reassignment of this Chapter 13 case to Department B, the hearing on this matter is continued to **August 18, 2020, at 1:00 p.m.** By no later than August 11, 2020, Debtor Kathy Deanne Hardisty, Chapter 13 Trustee Russell Greer, and creditor Laguna Gold Mortgage, Inc. are **ORDERED** to file a joint status report which addresses: (1) the current status of this matter; (2) issues resolved, if any, and that remain to be resolved as to this matter; (3) settlement discussions to date; (4) the effect, if any, of the June 24, 2020, quitclaim deed to the Debtor.

The court will issue an order.

28. [20-90262](#)-B-13 KATHY HARDISTY OBJECTION TO CLAIM OF LAGUNA
[CLH](#)-3 Charles L. Hastings GOLD MORTGAGE, INC., CLAIM
NUMBER 6 AND 7 AND/OR OBJECTION
TO CLAIM OF LAGUNA GOLD
MORTGAGE, INC., CLAIM NUMBER 7
6-2-20 [[57](#)]

Final Ruling

The court has before it an *Objection to Claim of Laguna Gold Mortgage, Inc., Claim, 6-1 and 7-1* filed by Debtor Kathy Deanne Hardisty. Creditor Laguna Gold Mortgage ("Creditor") has filed an opposition to the objection. Debtor filed a reply to the opposition and an omnibus reply that addresses the opposition and other matters.

The court has reviewed the objection, opposition, reply, omnibus reply, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket and claims register in this Chapter 13 case. See Fed. R. Evid. 201(c)(1).

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). 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).

Fundamental for purposes of this matter is the Debtor's representation that she intends to file an adversary proceeding which will involve issues of fact and law in common with the current objection to Creditor's claims. Also relevant is the Debtor's representation that there already is a dispute over the production of documents that pertain to the objection. And based on the number and extent of declarations filed in support of and opposition to the Debtor's objection to Creditor's claim, there are a number factual issues and disputes that in any case will require an evidentiary hearing. Therefore, in the interests of judicial economy, to facilitate the plan confirmation process, to better manage and resolve disputes between the Debtor and Creditor arising in the discovery process, and based on anticipated claims with facts

and law common to the Debtor's objections to Creditor's claims:

IT IS ORDERED that the Debtor's objection to Creditor's claims, dkt. 57, is and shall be filed by the clerk of the court as a complaint initiating an adversary proceeding.

IT IS FURTHER ORDERED that the Debtor shall have until August 11, 2020, to file an amended complaint that incorporates the claim objection(s) and any other relevant claims for relief and to serve the amended complaint on defendant(s) in accordance with applicable Federal and Local Bankruptcy Rules.

IT IS FURTHER ORDERED that in order to expedite prosecution of the adversary proceeding, written discovery in the form of document requests, interrogatories, and requests for admissions shall be permitted and may be served upon the filing of an answer or other response by any named defendant. The time to respond to any written discovery request is shortened to fourteen (14) days after the date of service. The court expects the parties to cooperate in all discovery matters (and it will sanction those who do not) and to resolve any dispute without court intervention. However, in the event parties are unable to resolve any discovery dispute among themselves, a discovery dispute may be heard on three (3) days' notice. A further discovery schedule will be set at the initial status conference and this initial discovery schedule will be modified accordingly.

The court will issue an order consistent with the ruling above.

29.	<u>20-90262</u> -B-13	KATHY HARDISTY Charles L. Hastings	CONTINUED AMENDED OBJECTION TO CONFIRMATION OF PLAN BY RUSSELL D. GREER 6-1-20 [<u>42</u>]
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Final Ruling

Due to the recent reassignment of this Chapter 13 case to Department B, the hearing on this matter is continued to **August 18, 2020, at 1:00 p.m.** By no later than August 11, 2020, Debtor Kathy Deanne Hardisty, Chapter 13 Trustee Russell Greer, and creditor Laguna Gold Mortgage, Inc. are **ORDERED** to file a joint status report which addresses: (1) the current status of this matter; (2) issues resolved, if any, and that remain to be resolved as to this matter; (3) settlement discussions to date; (4) the effect, if any, of the June 24, 2020, quitclaim deed to the Debtor.

The court will issue an order.

30. [17-90564](#)-B-13 DANIEL/GERARDEE DONNAN CONTINUED MOTION TO DISMISS CASE
[EGS](#)-3 Jessica A. Dorn 8-12-19 [[125](#)]
Thru #31

Final Ruling

This matter is continued to **August 18, 2020, at 1:00 p.m.** The parties are **ORDERED** to file a joint status report by August 11, 2020.

The court will issue an order.

31. [17-90564](#)-B-13 DANIEL/GERARDEE DONNAN CONTINUED STATUS CONFERENCE RE:
[JAD](#)-5 Jessica A. Dorn OBJECTION TO CLAIM OF BAYVIEW
LOAN SERVICING, LLC, CLAIM
NUMBER 8
2-16-18 [[62](#)]

Final Ruling

This matter is continued to **August 18, 2020, at 1:00 p.m.** The parties are **ORDERED** to file a joint status report by August 11, 2020.

The court will issue an order.

32. [18-90668](#)-B-13 THOMAS ANTTUMALIL AND MOTION TO MODIFY PLAN
[MSN](#)-1 THERESA THOMAS 5-14-20 [[25](#)]
Mark S. Nelson

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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

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

The motion is ORDERED GRANTED for reasons stated in the 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 issue an order.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to conditionally grant the motion to extend automatic stay, and continue the hearing to **August 4, 2020, at 1:00 p.m.**

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 February 12, 2020, due to Debtor's failure to timely confirm a plan (case no. 19-90492, dkts. 28, 42). 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 asserts that the previous plan had failed due to his failure to file income tax returns for 2016 through 2018 and he had no information whatsoever about a charitable remainder trust established by his late parents which provided him with modest income during his lifetime from assets transferred to a charity, the Heifer Project. Because he had not established the trust, he had no documents to provide to the Trustee to establish the value of his interest, if any, in the trust. Debtor states that his circumstances have changed because he has hired a new accountant to prepare all missing income tax returns and to help deal with the issues related to the charitable remainder trust.

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.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule

9014-1(f)(2), any party in interest shall have until 5:00 p.m. on July 28, 2020, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Debtor's attorney, the Chapter 13 Trustee, and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on August 4, 2020, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on August 4, 2020, at 1:00 p.m.

The court will issue an order.

34. [19-90193](#)-B-13 JOSE/CLAUDIA ACEVES
[JCK](#)-3 Gregory J. Smith

MOTION TO MODIFY PLAN
6-1-20 [[79](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

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

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

The motion is ORDERED GRANTED for reasons stated in the 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 issue an order.

35. [19-90999](#)-B-13 GUSTAVO JIMENEZ
[RDG-2](#) Gregory J. Smith

OBJECTION TO CLAIM OF PACIFIC
ENTERPRISE BANK, CLAIM NUMBER
18
6-9-20 [[58](#)]

Final Ruling

The objection has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, the claimant is not required to file written opposition to the objection and may appear at the hearing to offer oral argument.

However, in light of General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary), the court has determined this matter may be decided on the papers. The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

The court's decision is to conditionally sustain the objection to Claim No. 18 of Pacific Enterprise Bank and disallow the claim in its entirety, and continue the hearing to **August 4, 2020, at 1:00 p.m.**

Chapter 13 Trustee Russell Greer ("Objector") requests that the court disallow the claim of Pacific Enterprise Bank ("Creditor"), Proof of Claim No. 18 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$40,467.43. Objector asserts that the Claim has not been timely filed. See Fed. R. Bankr. P. 3002(c). The deadline for filing proofs of claim in this case for a non-government unit was January 17, 2020. Notice of Bankruptcy Filing and Deadlines, dkt. 10. The Creditor's proof of claim was filed February 14, 2020.

Section 501(a) of the Bankruptcy Code provides that any creditor may file a proof of claim. "A proof of claim is a written statement setting forth a creditor's claim." Rule 3001(a). If the claim meets the requirements of § 501, the bankruptcy court must then determine whether the claim should be allowed. Section 502(a) provides that a claim is deemed allowed unless a party in interest objects. If such an objection is made, the court shall allow such claim "except to the extent that the proof of claim is not timely filed." See 11 U.S.C. § 502(b)(9).

Federal Rule of Bankruptcy Procedure 3002(c) governs the time for filing proofs of claim in a Chapter 13 case. Rule 9006(b)(3) prohibits the enlargement of time to file a proof of claim under Rule 3002(c) except as provided in one of the six circumstances included in Rule 3002(c). *Zidell, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.)*, 920 F.2d 1428, 1432-1433 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists."). No showing has been made that any of those circumstances apply.

The court also notes that the excusable neglect standard does not apply to permit the court to extend the time to file a proof of claim under Rule 3002(c). As the Ninth Circuit stated in *Coastal Alaska*:

Rule 9006(b) plainly allows an extension of the 90-day time limit established by Rule 3002(c) only under the conditions permitted by Rule 3002(c). Rule 3002(c) identifies six circumstances where a late filing is allowed, and excusable neglect is not among them. Thus, the 90-day deadline for filing claims under Rule 3002(c) cannot be extended for excusable neglect.

Id. at 1432. In fact, the time for filing claims under Rule 3002(c) cannot be extended for any equitable reason at all. As stated in *Spokane Law Enforcement Credit Union v.*

Barker (In re Barker), 839 F.3d 1189, 1197 (9th Cir. 2016): “[T]he Ninth Circuit has repeatedly held that the deadline to file a proof of claim in a Chapter 13 proceeding is ‘rigid’ and the bankruptcy court lacks equitable power to extend this deadline after the fact.”

In sum, Creditor filed an untimely proof of claim and has not demonstrated any reason that would permit the court to allow its late-filed proof of claim.

Based on the evidence before the court, the Creditor’s claim is disallowed in its entirety as untimely. The objection to the proof of claim is conditionally sustained.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 3007-1(b)(2), any party in interest shall have until 5:00 p.m. on July 28, 2020, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Debtor’s attorney, the Chapter 13 Trustee, and the United States trustee by facsimile or email. If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court’s final decision, and the continued hearing on August 4, 2020, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on August 4, 2020, at 1:00 p.m.

The court will issue an order.