

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

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

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: 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
Sacramento, California

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

1. [19-26202](#)-B-13 ILIANA LOMBARDO MOTION TO CONFIRM PLAN
[MJH](#)-2 Mark J. Hannon 6-12-20 [[64](#)]

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.

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

2. [20-21602](#)-B-13 JOSE/LETICIA GONZALEZ
[MC-1](#) Muoi Chea

MOTION TO CONFIRM PLAN
6-8-20 [[34](#)]

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.

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 and a response was filed by the Debtors.

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.

First, the Debtors have agreed to increase their plan payment from \$2,500.00 to \$2,634.00 beginning July 25, 2020 in order to pay unsecured creditors at 57%. 11 U.S.C. § 1325(a)(6).

Second, the Debtors state that their 401k deductions are still in place and did not mature in June 2019, thus rendering their monthly net income accurate. 11 U.S.C. § 1325(a)(3), (a)(6).

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 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 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.

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 permit the requested modification and not confirm the modified plan.

Debtor's plan is not proposed in good faith. Debtor's plan proposes a monthly payment of \$192.00 beginning June 2020 and \$592.00 beginning July 2020. Debtor has failed to file Supplemental Schedules I and/or J to support the new plan payment. Without the amended schedules, the Trustee is unable to determine whether the proposed plan is feasible and whether it is proposed in good faith. 11 U.S.C. §1325(a)(3), (a)(6).

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

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

The court will issue an order.

5. [20-22306](#)-B-13 MARCEL/SIKWAYI DAWSON
[JHK](#)-1 Carl R. Gustafson
Thru #6
TD AUTO FINANCE LLC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-17-20 [[16](#)]

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 grant the motion for relief from stay.

TD Auto Finance LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Hyundai Sonata (the "Vehicle"). The moving party has provided the Declaration of Danielle Morin to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Morin Declaration states that there are 2 pre-petition payments in default totaling \$709.44. Additionally, there are 2 post-petition payments in default totaling \$709.44.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be \$15,674.05, as stated in the Morin Declaration, while the value of the Vehicle is determined to be \$10,000, as stated in Schedules A/B and D filed by Debtor. Moreover, the Debtors' plan filed July 6, 2020, provides for the surrender of the Vehicle in Class 3.

Discussion

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

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). Indeed, the Debtors' plan provides for the surrender of the Vehicle in Class 3. The court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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

The court will issue an order.

6.	<u>20-22306</u> -B-13 MARCEL/SIKWAYI DAWSON <u>KMM</u> -1 Carl R. Gustafson	OBJECTION TO CONFIRMATION OF PLAN BY HARLEY-DAVIDSON CREDIT CORPORATION 6-25-20 [<u>26</u>]
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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 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 as moot.

Subsequent to the filing of Harley-Davidson Credit Corporation's objection, the Debtors filed an amended plan on July 6, 2020. The confirmation hearing for the amended plan is scheduled for August 11, 2020. The earlier plan filed April 30, 2020, is not confirmed.

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

The court will issue an order.

7. [18-25611](#)-B-13 SHARIE DAVIS
[BSH](#)-3 Brian S. Haddix

MOTION TO MODIFY PLAN
5-19-20 [[38](#)]

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

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 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.

First, the Debtor is not eligible to be a debtor under 11 U.S.C. §109(e). A review of the claims filed to date indicates Debtor has noncontingent, liquidated, unsecured debts in the sum of \$2,520,886.89, which exceeds the eligibility limit for Chapter 13 of \$419,275.00. Normally, the court would look to the schedules as originally filed to determine eligibility. *Scovis v. Henrichsen (In re Scovis)*, 249 F.3d 975, 982 (9th Cir. 2001). However, the omission and/or gross understatement in the schedules of an otherwise known debt owed to the IRS raises the specter of bad faith given that schedules are filed under penalty of perjury and certified to be accurate. See Fed. R. Bankr. P. 1008. Therefore, in making the eligibility determination, the court exercises its discretion to look beyond the Debtor's schedules. See *In re Cox*, 2016 WL 5854214 at * 1 (Bankr. E.D. Wash. 2016). And in doing so, the court takes judicial notice of the claims register and the IRS proof of claim filed as Claim No. 1-1 which asserts an unsecured debt of \$2,590,521.50.¹

Second, the Debtor failed to submit proof of social security number to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

Third, the Debtor has not provided the Trustee with a copy of the federal income tax return for the most recent tax year a return was filed or a written statement that no such documentation exists. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(I).

Fourth, Debtor's Disclosure of Compensation of Attorney for Debtors (Form 2030) at Line 7 states that the agreed upon fee of \$4,000.00 does not include judicial lien avoidances (dkt. 1, p. 47). This is contradictory to the Rights and Responsibilities signed by Debtor and her attorney (dkt. 3). These services are included in the "no look fee" and should not be excluded. Services related to the avoidance of judicial liens are also required by Local Bankruptcy Rule 2017-1(a)(1) which, in relevant part,

¹This presents an even larger problem for the Debtor with regards to the continued viability of this case as a Chapter 13 case. A motion to dismiss this case filed by the Trustee or any other party in interest is likely to be granted under § 109(e). So this effectively leaves the Debtor two options: (1) move to convert; or (2) voluntarily dismiss. Moreover, because eligibility is determined as of the petition date, *Guastella v. Hampton (In re Guastella)*, 341 B.R. 908, 918 (9th Cir. BAP 2006), any postpetition reduction of the IRS debt is irrelevant. *Slack v. Wilshire Ins. Co. (In re Slack)*, 187 F.3d 1070, 1073 (9th Cir. 1999); accord *In re Mohr*, 425 B.R. 457, 461 (S.D. Ohio 2010).

states: "An attorney who is retained to represent a debtor in a bankruptcy case constitutes an appearance for all purposes in the case, including, without limitation, motions for relief from the automatic stay, ***motions to avoid liens***, objections to claims, and reaffirmation agreements." (Emphasis added).

Fifth, the plan is not feasible under 11 U.S.C. § 1325(a)(6). Debtor stated at the meeting of creditors that she is not earning \$5,000.00 in rental income that would go toward making her plan payments, the plan does not provide for the priority claim of the Internal Revenue Service, the plan does not provide for the secured claim of the Internal Revenue Service, the plan does not provide for the secured claim of the Franchise Tax Board, and the proposed plan payment of \$4,877.37 is insufficient to cover monthly payments plus Trustee's fees.

The plan filed May 7, 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.

9. [19-23718](#)-B-13 JAMES SHROPSHIRE
[JCK](#)-6 Gregory J. Smith

MOTION TO MODIFY PLAN
6-9-20 [[101](#)]

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.

10. [20-20818](#)-B-13 FERNANDO/MARIA THERESA MOTION TO CONFIRM PLAN
[EJV](#)-3 SISON 6-5-20 [[49](#)]
Eric J. Gravel

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.

11. [20-20228](#)-B-13 DALJEET BRAR
[RDG-1](#) Charles L. Hastings

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
3-2-20 [[18](#)]

Final Ruling

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

First, the Debtor has not provided the Trustee with a copy of his 2019 corporate tax return. It cannot be determined whether the plan is feasible. 11 U.S.C. § 1325(a)(6).

Second, feasibility depends on the granting of a motion to value collateral of North Mill Equipment Finance, LLC. That motion was heard and denied on May 7, 2020. Dkts. 40, 43.

Third, no box in Section 3.05 of the plan has been check marked and Section 3.06 of the plan does not provide a monthly dividend for attorney's fees. The plan cannot be administered with these inconsistencies and the plan is not feasible. 11 U.S.C. § 1325(a)(6).

Fourth, the Debtor has failed to provide the Trustee with October 2019 through February 2020 profit loss statements for Debtor's business to show an ability to fund the plan. Without these documents, feasibility of the plan cannot be determined. 11 U.S.C. § 1325(a)(6).

The other issues raised by the Trustee have been resolved. Specifically, the motion to value collateral of Financial Pacific Leasing, Inc. was granted on May 5, 2020, and the Debtor filed an amended Rights and Responsibilities and Disclosure of Compensation of Attorney for Debtor on June 15, 2020. The court also takes judicial notice of the stipulation entered into between Debtor and LoanCare, LLC at dkt. 50.

Nonetheless, the plan filed January 15, 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 OVERRULED for reasons stated in the minutes.

The court will issue an order.

12. [19-21429](#)-B-13 JAYCEE DEVERA
[JCK](#)-2 Gregory J. Smith

MOTION TO MODIFY PLAN
6-9-20 [[29](#)]

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.

13. [14-27334](#)-B-13 STEVEN/CYNTHIA PETLANSKY
Eric John Schwab

OBJECTION TO DISCHARGE BY
LAWRENCE R. COCKRELL
6-17-20 [[107](#)]

Final Ruling

The objection 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 the debtors and a response was filed by the creditor.

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 objection is overruled and the Debtors are entitled to a discharge.

Unsecured creditor Lawrence Cockrell ("Creditor") asserts that Steven Petlansky and Cynthia Petlansky ("Debtors") are not entitled to a discharge pursuant to 11 U.S.C. § 1328. The grounds raised by the Creditor are Debtors' receipt of credit while in bankruptcy, the accrual of new debt while in bankruptcy, luxury purchases and trips while in bankruptcy, and compensation of unsecured creditors at a rate of 30%.

In response, Debtors state that Creditor has raised allegations that are not germane to the court's Notice of Intent to Enter a Chapter 13 Discharge. The allegations are not supported by fact, law, or any admissible evidence that would prevent entry of discharge in this case. The court agrees with the Debtors.

For the foregoing reasons, the Debtors are entitled to a discharge.

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

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). Parties in interest were not required to file a written response or opposition, 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 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 March 28, 2020, due to Debtor's failure to make plan payments. 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 her circumstances have changed from the prior case. Specifically, in the prior case the Debtor had lost her sole source of income due to COVID-19 and the sudden mandatory closure of the Indian casino from which she derived all her income. Her circumstances have changed because the casino has reopened and the Debtor's income has resumed.

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 conditionally granted and the automatic stay is conditionally 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.

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.

16. [20-21351](#)-B-13 DAVID/ANN READING
[RDG](#)-1 Jessica A. Dorn

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
5-1-20 [[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). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 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 not confirm the plan.

This matter was continued from July 7, 2020, to allow the Debtors to file an amended Schedules I and J. Dkt. 27. As of July 17, 2020, amended schedules have not been filed.

The plan filed March 20, 2020, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

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.

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 permit the requested modification and not confirm the modified plan.

First, the plan does not provide for the total post-petition arrears owed to JPMorgan Chase Bank in the amount of \$2,809.68 representing months March 2020 through May 2020. Consequently, payment of the post-petition arrears in full would result in a plan that will take 124 months to complete. 11 U.S.C. § 1325(a)(6).

Second, Debtors' plan is not feasible. Section 7.03 of Debtors' plan provides for pre-petition arrears owed to JPMorgan Chase Bank in the amount of \$17,316.04 to be paid a monthly dividend of \$417.92 beginning in month 11 (September 2020) to accommodate payment of attorney fees. As of June 2020, the balance owed for attorney fees is \$1,615.68. The proposed monthly dividend of \$417.92 will take four months to pay this claim in full (June 2020 through September 2020). Accordingly, the Trustee is unable to administer the monthly dividend of \$417.92 owed to JPMorgan Chase Bank for the pre-petition arrears in September 2020. 11 U.S.C. §1325(a)(6).

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

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

The court will issue an order.

18. [19-27454](#)-B-13 JOSEPH MONTGOMERY
[RWF](#)-2 Gregory J. Smith
Thru #19

MOTION TO VALUE COLLATERAL OF
BANK OF STOCKTON
6-16-20 [[41](#)]

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 value the secured claim of Bank of Stockton at \$19,395.00.

Debtor's motion to value the secured claim of Bank of Stockton ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 BMW 750 LI ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$19,395.00 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. Claim No. 7-1 filed by Bank of Stockton 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 26, 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 \$23,467.86. 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 \$19,395.00. 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 valuation motion pursuant to Federal Rule of Bankruptcy Procedure 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.

19. [19-27454](#)-B-13 JOSEPH MONTGOMERY
[RWF](#)-3 Gregory J. Smith

MOTION TO CONFIRM PLAN
6-8-20 [[34](#)]

Final Ruling

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

The court has determined this matter may be decided on the papers. See General Order No. 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 confirm the second amended plan.

Feasibility depends on the granting of a motion to value collateral of Bank of Stockton. That motion is granted at Item #18, RWF-2. Therefore, the Trustee's objection is overruled.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the 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.

20. [19-24858](#)-B-13 SHANNON/DEBRA DEESE
[APN](#)-1 Mark J. Hannon

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-16-20 [[27](#)]

FEDERAL HOME LOAN
CORPORATION VS.

Final Ruling

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

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

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 creditor Wilmington Savings Fund Society, FSB, D/B/A Christina Trust.

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 permit the requested modification and not confirm the modified plan.

Wilmington Savings Fund Society, FSB, D/B/A Christina Trust ("Creditor") holds a deed of trust secured by the Debtor's residence. The creditor timely filed Proof of Claim No. 9-1. The Debtor's original confirmed plan proposed to cure the pre-petition arrearages while maintaining post-petition mortgage payments; however, Debtor fell behind on post-petition mortgage payments. Creditor objects to confirmation of the modified plan on grounds that it proposes to cure three post-petition arrearages owed for April 2020 through June 2020 in the total amount of \$3,591.48 with monthly payments of \$86.55 and 0% interest.

Creditor argues that the modified plan does not set forth a reasonable schedule and time period for the payment of the post-petition mortgage arrears. Creditor states that the monthly repayment amount proposed by the Debtor, as well as the 0% interest rate, exceed a reasonable arrangement in light of Debtor's past non-payment history. The Debtor has already fallen delinquent on the plan, including the obligation to maintain ongoing post-petition mortgage payments. Creditor contends that the proposed cure of those arrears over the remaining term of the plan places an increased burden on and unfairly prejudices Creditor. Given the Debtor's payment history, the court agrees with Creditor. See Dkt. 46, Ex. A.

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

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

The court will issue an order.

22. [20-22359](#)-B-13 JENELL BAUCOM
[APN](#)-1 Len ReidReynoso

OBJECTION TO CONFIRMATION OF
PLAN BY TOYOTA MOTOR CREDIT
CORPORATION
6-1-20 [[17](#)]

Final Ruling

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

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the 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 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 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.

First, the Debtor has failed to provide evidence that the plan is mathematically feasible. The plan provides a monthly payment of \$3,822.53 and a 14% dividend to general unsecured creditors. Based on the claims that have been filed to date, the Debtor's monthly plan payment will need to be at least \$4,001.00 in order for the plan to be feasible as proposed paying unsecured creditors 14%. 11 U.S.C. § 1325(a)(6).

Second, Debtor's Form 2030 Disclosure of Compensation of Attorney for Debtor (dkt. 27), states that the agreed upon fee of \$4,000.00 does not include judicial lien avoidances. This is contradictory to the Rights and Responsibilities signed by Debtor and his attorney (dkt. 3). These services are included in the "no look fee" and should not be excluded. Services related to the avoidance of judicial liens are also required by Local Bankruptcy Rule 2017-1(a)(1) which, in relevant part, states: "An attorney who is retained to represent a debtor in a bankruptcy case constitutes an appearance for all purposes in the case, including, without limitation, motions for relief from the automatic stay, ***motions to avoid liens***, objections to claims, and reaffirmation agreements." (Emphasis added).

Third, attorney Marshall Moushigian appeared for the attorney of record at the Debtor's meeting of creditors held April 22, 2020. Debtor's Disclosure of Compensation of Attorney for Debtors (Form 2030) should be filed to clarify the fees that were paid to this attorney and the source of those fees.

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.

24. [17-25971](#)-B-13 JONATHAN/JESSICA REYES
[JCK](#)-2 Gregory J. Smith

MOTION TO MODIFY PLAN
6-11-20 [[42](#)]

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.

25. [20-22371](#)-B-13 VICTOR/VARNA FACHA
[AP-1](#) Jennifer G. Lee
Thru #26

OBJECTION TO CONFIRMATION OF
PLAN BY PNC BANK, NATIONAL
ASSOCIATION
6-18-20 [[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). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 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 as moot the objection to confirmation.

The issues raised in the objection to confirmation of plan by PNC Bank, National Association ("Creditor") is addressed in the objection by the Chapter 13 Trustee Russell D. Greer ("Trustee"). The Trustee's objection was sustained at Item #26, RDG-1. This therefore moots the objection raised by Creditor.

The plan filed May 4, 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 OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

26. [20-22371](#)-B-13 VICTOR/VARNA FACHA
[RDG-1](#) Jennifer G. Lee

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). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in a confirmation order, the court has determined this matter may be decided on the papers. See General Order No. 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.

First, the plan is not feasible since the proposed monthly plan payment is insufficient

to cover monthly amounts and the Trustee's fee. Debtor's plan payment is only \$4,800.00 per month whereas the monthly payment plus Trustee's fee is \$4,827.21.

Second, creditor PNC Bank, N.A. holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim but the Debtor's plan does not provide for this secured claim.

Third, Paragraph 6.02 of Debtors' plan provides that they shall maintain insurance as required by any law or contract and Debtors shall provide evidence of that insurance as required by section 1326(a)(4). Accordingly, Trustee requests that Debtors provide a copy of their liability and worker's compensation riders if appropriate.

Fourth, Debtors' Plan is not the their best effort under 11 U.S.C. §1325(b). Debtors admitted at their meeting of creditors that they have filed the 2019 tax returns and received total tax refunds of \$8,949.00 (\$3,675.00 Federal, \$5,274.00 State). These tax refunds have not been listed on Debtors' Schedule A/B or exempted on Schedule C.

The plan filed May 4, 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.

27. [18-26974](#)-B-13 FERNANDO CANTILLO
[JCK](#)-7 Gregory J. Smith

MOTION TO MODIFY PLAN
6-11-20 [[107](#)]

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 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.

29. [18-27084](#)-B-13 MELISSA BICE
[JCK](#)-2 Gregory J. Smith
Thru #30

MOTION TO MODIFY PLAN
6-11-20 [[50](#)]

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.

30. [18-27084](#)-B-13 MELISSA BICE
[RDG](#)-1 Gregory J. Smith

OBJECTION TO CLAIM OF NAVIENT
SOLUTIONS, LLC, CLAIM NUMBER 3
6-17-20 [[55](#)]

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 sustain the objection to Claim No. 3 of Navient Solutions, LLC and disallow the claim in its entirety.

The Chapter 13 Trustee requests that the court disallow the claim of Navient Solutions, LLC ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$34,780.21. 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 18, 2019. Notice of Bankruptcy Filing and Deadlines, dkt. 12. The Creditor's proof of claim was filed August 1, 2019.

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 sustained.

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

The court will issue an order.

31. [19-25989](#)-B-13 ANGELINA/MIGUEL PEINADO MOTION FOR RELIEF FROM
[EAT](#)-1 Michael M. Noble AUTOMATIC STAY
1-23-20 [[89](#)]
THE BANK OF NEW YORK MELLON
VS.

Final Ruling

The court's decision is to continue this matter.

Creditor Bank of New York Mellon ("Creditor") moves for relief from stay with respect to real property located at 611 Cathedral Way, Tracy, CA. During a hearing held on June 16, 2020, Creditor stated that Debtors' loan modification was denied because they qualify for COVID forbearance. This matter was continued to July 21, 2020, to permit the parties to formalize the COVID forbearance in writing and file it with the court. Dkt. 161 (court audio). Nothing has been filed as of July 17, 2020.

Nevertheless, this matter is continued to August 18, 2020, at 1:00 p.m. The parties are **ORDERED** to file a joint status report no later than August 11, 2020. If an agreement is not filed prior to the continued hearing date, the court will decide the motion at that time.

The court will issue an order.

32. [20-21794](#)-B-13 GREGORY/JANEE MOORE
[TBK](#)-1 Taras Kurta
Thru #33

CONTINUED MOTION TO AVOID LIEN
OF BENEFICIAL STATE BANK
6-5-20 [[26](#)]

Final Ruling

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

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

The court will issue an order.

33. [20-21794](#)-B-13 GREGORY/JANEE MOORE
[TBK](#)-2 Taras Kurta

MOTION TO CONFIRM PLAN
6-5-20 [[30](#)]

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.

34. [19-27899](#)-B-13 JUDITH SIMON
[HWW](#)-2 Hank W. Walth
Thru #35

MOTION TO MODIFY PLAN
6-16-20 [[28](#)]

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.

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 permit the requested modification and not confirm the modified plan.

Debtor's plan proposes a monthly payment of \$3,113.62 in July 2020 and \$349.00 beginning August 2020. Although the Debtor filed supplemental schedules on July 7, 2020, Schedules I and J fail to support Debtor's ability to pay this increased monthly payment. Indeed, Debtor's monthly net income is \$2,149.00, which is less than the proposed monthly payment of \$3,113.62.

Separately, the Trustee objects to confirmation on grounds that a lump sum payment in July 2020 is dependent the court's granting of a motion to approve settlement agreement. That matter is heard at Item #35, HWW-3, and is granted. Therefore, this issue is resolved.

Nonetheless, for the first reason stated above, the modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

The court will issue an order.

35. [19-27899](#)-B-13 JUDITH SIMON
[HWW](#)-3 Hank W. Walth

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH PERFORMANT
FINANCIAL CORPORATION
6-24-20 [[33](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

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 compromise, and continue the hearing to August 4, 2020, at 1:00 p.m..

Judith Simon ("Debtor") requests court approval of a compromise and settlement with her former employer Performant Financial Corporation ("Creditor"). The claims and disputes to be resolved by the proposed settlement relate to Debtor's complaint filed against Creditor for harassment and discrimination in the workforce. The Debtor had timely filed her complaint with the California Department of Fair Employment and Housing, which mediated the dispute. An agreement was reached in which Debtor would be entitled to \$4,000.00 as compensation for lost wages minus mandatory payroll deductions, and \$8,500.00 for non-economic damages. Debtor's unsecured creditors will receive the non-exempt portion of the settlement, which is approximately \$2,764.62.

Debtor and Creditor have resolved these claims and disputes, subject to approval by the court on terms and conditions summarized at dkt. 36.

Discussion

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

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

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

Debtor argues that the four factors have been met.

Probability of Success in Litigation

A settlement is fair and equitable, and provides money damages that the Debtor did not expect when she filed her complaint. The Debtor is not certain that she will be able to find a lawyer to take the case on a contingency, that she would prevail in litigation, or that she would obtain a settlement or judgment that is not less than what is provided for in this compromise. This factor weighs in favor of the compromise.

Difficulties in Collection

This is neutral. Performant is a corporation and collection may not be difficult. However, its financial condition is unknown.

Expense, Inconvenience and Delay of Continued Litigation

Extensive discovery and litigation effort and costs would be required, and there would be a delay in obtaining a judgment or settlement. This factor weighs in favor of the compromise.

Paramount Interest of Creditors

The compromise is in the best interest of unsecured creditors, who will receive \$2,764.62 that represents the non-exempt portion of the settlement. This factor weighs in favor of the compromise.

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

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.