UNITED STATES BANKRUPTCY COURT
Eastern District of California

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

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: December 10, 2019
CALENDAR: 1:00 P.M. CHAPTER 13

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

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

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

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

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

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

December 10, 2019 at 1:00 p.m.

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1. 15-25308-B-13 LARRY PERKINS — ORDER TO SHOW CAUSE
Richard L. Jare — 11-21-19 [105]

Final Ruling

The court has reviewed and accepts the response to its order to show cause of November 21, 2019. The order to show cause will be discharged and no further sanctions ordered as to Debtor Larry Perkins or his attorney.

The court will enter a minute order.

2. 18-23613-B-13 ADOR CALICA MOTION TO MODIFY PLAN
EWV-240 Eric W. Vandermey 11-4-19 [49]

Final Ruling

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

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

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

The motion is ORDERED GRANTED for reasons stated in the ruling appended to the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will enter a minute order.

3. 19-26916-B-13 CAROLYN ARNOLD — MOTION FOR RELIEF FROM AUTOMATIC STAY
VVF-1 Matthew J. Gilbert — 11-22-19 [13]

AMERICAN HONDA FINANCE CORPORATION VS.

Tentative Ruling

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

The court's decision is to grant the motion for relief from stay.

American Honda Finance ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Honda Accord (the "Vehicle"). The moving party has provided the Declaration of Araceli Calletano to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Calletano Declaration states that the account is 2.99 payments past due in the sum of $1,737.74 plus late charges and fees of $202.95. This is from 1.99 pre-petition payments in default totaling $1,157.70 and 1 post-petition payment in default totaling $580.04.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $27,162.61, as stated in Movant's documents, while the value of the Vehicle is determined to be $23,843.00, as stated in Schedules A/B and D filed by Debtor.

Section 3.09 of the plan filed November 5, 2019, indicates Debtor's desire to surrender the Vehicle.

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 Debtor 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 Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

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

There also being no objections from any party, the 14-day stay of enforcement under

Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

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

The court will enter a minute order.

4. 19-26222-B-13 CLINTON MCGILL — OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
AP-1 Jeffrey S. Ogilvie — 11-21-19 [18]
Thru #5

Tentative Ruling

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

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

Bank of America, N.A. ("Creditor") holds a deed of trust against real property commonly known as 136 S. Mesa Street, Susanville, California. The Creditor has also filed Proof of Claim No. 2, which shows pre-petition arrears of $1,157.37 and is comprised of principal and interest due and a projected escrow shortage. Debtor's plan filed October 3, 2019, lists Creditor in Class 4 with payments being made directly by Clinton McGill ("Debtor") to the Creditor and no cure of pre-petition arrears. Creditor states that it is not opposed to the Class 4 treatment but requests that post-petition funds be applied to cure the pre-petition arrears.

Debtor has filed a response stating that it does not oppose Creditor's request to use post-petition funds to cure the pre-petition arrears.

Discussion

The United States Bankruptcy Court for the Eastern District of California has adopted a claim classification structure in Chapter 13 cases. General Order 18-03 adopts Form EDC 3-080, a standard form Chapter 13 plan, and Local Rule 3015-1(a) makes use of the Form 3-080 standard form Chapter 13 plan mandatory in Chapter 13 cases.[1]

The mandatory form Chapter 13 plan classifies long-term secured debts on which the last payment is due after the plan term and which are in default when the petition is filed as Class 1 claims. Class 1 claims are paid by the Trustee. Class 1 of the mandatory form Chapter 13 plan states as follows:

> Class 1 includes all delinquent secured claims that mature after the completion of this plan, including those secured by Debtor's principal residence. . . .
>
> Trustee shall maintain all post-petition monthly payments to the holder of each Class 1 claim whether or not this plan is confirmed or a proof of claim is filed.

EDC 3-080, § 3.07 & § 3.07(b).

The Debtor seeks to classify Creditor's mortgage as a Class 4 claim. Classification of the Creditor's mortgage as a Class 4 claim would permit the Debtor to make post-petition mortgage payments directly to their lender rather than through the Trustee. Class 4 of the mandatory form Chapter 13 plan states as follows:

> Class 4 includes all secured claims paid directly by Debtor or third party. Class 4 claims mature after

[1] Local Bankruptcy Rule 3015-1(a) states as follows:
(a) Mandatory Form Plan. All chapter 13 debtors, as well as the trustee and holders of unsecured claims, when proposing a plan pursuant to 11 U.S.C. §§ 1321, 1323, and 1329(a), shall utilize Form EDC 3-080, the standard form Chapter 13 Plan.

> the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not a proof of claim is filed or the plan is confirmed.

EDC 3-080, § 3.10.

Neither the Creditor nor the Debtor cite to any authority to treat the claim as a Class 4. Presumably, the Debtor's placement of Creditor's mortgage in Class 4 rather than Class 1 is based on *Cohen v. Lopez (In re Lopez)*, 372 B.R. 40 (9th Cir. BAP 2007), adopted and affirmed, 550 F.3d 1202 (9th Cir. 2008). Although *Lopez* states that §§ 1326(c) and 1322 of the Bankruptcy Code permit debtors to make payments outside the plan - or directly to creditors rather than through the trustee - it also recognizes that any right to make such direct payments is not absolute and the circumstances under which direct payments may be made are within the discretion of the bankruptcy court. *Id.* at 46-47, 53. This was confirmed in *Geisbrecht v. Fitzgerald (In re Geisbrecht)*, 429 B.R. 682, 685 (9th Cir. BAP 2010), wherein the Ninth Circuit Bankruptcy Appellate Panel stated: "In this appeal we are asked to determine whether [*Lopez*] allows a debtor the absolute right to pay an unimpaired claim directly to the creditor if the plan is otherwise confirmable. We find that a debtor has no absolute right to make such payments[.]" *See also Id.* at 690. In addition to ratifying the bankruptcy court's discretion to define the circumstances in which debtors may or may not make direct payments in a confirmed plan, *Geisbrecht* also explained that the bankruptcy court may properly exercise that discretion through local rules or general orders. *Id.* at 690-91; *see also In re Steinbaugh*, 2013 WL 5883765, *2 (Bankr. D. Idaho 2013) ("[*Geisbrecht*] held the bankruptcy court has discretion to determine when direct payments may not be appropriate."). The Eastern District of California Bankruptcy Court has done precisely that.

Consistent with *Geisbrecht*, this court has previously held that the Eastern District of California Bankruptcy Court has permissibly exercised its discretion to define the circumstances under which debtors in this district may and may not make direct payments to creditors. *See e.g., In re Vera*, case no. 18-23710 (Bankr. E.D. Cal. 2018), dkts. 102, 114. In short, the mandatory form Chapter 13 plan places long-term secured debts that are in default when the petition is filed in Class 1 (which are paid by the Trustee) and permits placement of long-term secured debts that are not in default when the petition is filed in Class 4 (which are paid directly by the debtor or a third-party).

That the Eastern District of California Bankruptcy Court has exercised its discretion differently than bankruptcy courts in other California districts does not mean that debtors in this district are denied *Lopez* rights. As the court also explained in *Vera*, in an appropriate case and under appropriate circumstances a debtor in the Eastern District of California could confirm a plan that provides for direct payments to the creditor on a debt that was in default when the petition was filed. Indeed, that "safety valve" exists in Local Bankruptcy Rule 1001-1(f) which states as follows:

> Modification of Requirements. The Court may sua sponte or on motion of a party in interest for cause, modify the provisions of these Rules in a manner not inconsistent with the Federal Rules of Bankruptcy Procedure to accommodate the needs of a particular case or proceeding.

As an initial matter here, the Debtor's inclusion of Creditor's mortgage in Class 4 of the plan is improper and renders the plan unconfirmable. A review of Creditor's mortgage proof of claim reflects that the Debtor's mortgage was in default when the petition was filed. Accordingly, under the applicable classification structure, Creditor's mortgage belongs in Class 1.

The court is also not persuaded that this case presents appropriate circumstances for a modification of the claim classification under Local Rule 3015-1(a). A modification is not warranted because the court is not persuaded that the plan is feasible if

Creditor's mortgage is included in Class 4 and paid directly by the Debtor.

It is apparent from Creditor's proof of claim that the Debtor's pre-petition default includes a deficiency for principal and interest and, thus, a deficiency resulting from underpayment of the amount contractually due Creditor. Creditor reported $1,157.37 in pre-petition arrears on its proof of claim. That amount includes $854.31 in "principal and interest" and $303.06 in "projected escrow shortage." Moreover, another creditor filed a proof of claim which reflects the absence of a contractual payment since November 2018. *See* Claim No. 2.

Viewed in isolation, the pre-petition arrears attributable to insufficient principal and interest payments might be seen as de minimus. But viewed in a larger picture and under the totality of the circumstances, including the inability to timely pay other creditors, the Debtor's mortgage default is representative of the Debtor's overall inability to pay creditors a contractually required amount at the time payment is contractually due the creditor.

The court is not persuaded that the Debtor's plan, which proposes to modify the claim classification structure in the form Chapter 13 plan to allow direct payments on a mortgage in default when the petition was filed, is feasible as required by § 1325(a)(6).

The plan filed October 3, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is not confirmed.

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

The court will enter a minute order.

5.	19-26222-B-13 DPC-1	CLINTON MCGILL Jeffrey S. Ogilvie	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK 11-19-19 [14]

Tentative Ruling

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

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

The Chapter 13 Trustee objects to confirmation on grounds that the Debtor cannot comply with the plan pursuant to 11 U.S.C. § 1325(a)(6). Section 3.09 of the plan filed October 3, 2019, proposes to surrender a 2009 Jeep Wrangler but the Debtor testified at the meeting of creditors his desire to keep and continue making payments on the vehicle.

The Debtor filed a response stating that he will surrender the vehicle and therefore its classification will remain at Section 3.09 Class 3 in the plan.

Nonetheless, for reasons stated at Item #4, AP-1, the plan filed October 3, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is not confirmed.

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

The court will enter a minute order.

6. 19-26724-B-13 CYB-1 | BECKI MORGAN
Candace Y. Brooks | MOTION TO VALUE COLLATERAL OF BANK OF STOCKTON
11-21-19 [12]

Tentative Ruling

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

The court's decision is to value the secured claim of Bank of Stockton at $16,225.00.

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 2015 Chevrolet 2 LT Impala ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $16,225.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 4-1 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 December 2, 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 $25,763.70. 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 $16,225.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.

7. 19-24625-B-13 CASEY WOODBURY
AP-1 Pro Se

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
9-11-19 [18]

BANK OF NEW YORK MELLON TRUST COMPANY, N.A. VS.

Final Ruling

The court will grant the motion and terminate the automatic stay of 11 U.S.C. § 362(a).

Bank of New York Mellon Trust Company, N.A. ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 871 Crooked Lane, Newcastle, California (the "Property"). Movant has provided the Declaration of Rigoberto Corona to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Corona Declaration states that pursuant to paragraph 9(a) of the Deed of Trust, Movant may require immediate payment in full of all sums secured by the Property if a borrower dies and the Property is not the principal residence of at least one surviving borrower. Movant states that the original and sole borrower was Helen M. Woodbury and that she passed away on August 24, 2016. Movant thus disputes that debtor Casey Woodbury ("Debtor") has an interest in the property, which is nonetheless listed in Schedule A of the petition. Movant contends that the amount owed to it is $364,417.24 and that the cost of sale is $30,000.00. With the Property valued at $375,000.00 according to Debtor's schedules, Movant calculates Debtor's equity as -$19,417.24.

Opposition has been filed by Debtor asserting that the value of the Property is between $500,000 to $600,000. Debtor also filed a request to continue the hearing on the motion for relief from automatic stay in order to retain counsel. Movant was amenable to the continuance. The court entered an order granting the request and the hearing was continued from October 15, 2019, to November 12, 2019. Dkt. 41.

On November 7, 2019, Debtor filed another request to continue the hearing due to difficulty retaining counsel and the need to await an appraisal report that was recently completed on the Property. Debtor stated that the appraisal report would not be available by the November 12, 2019, hearing date and requested that the motion for relief from stay be continued to a date in mid-December. The court granted the Debtor's request for a second continuance to permit the Debtor to submit additional evidence of the Property's value and to further attempt to retain counsel; however, the court cautioned the Debtor that no further continuances would be granted. Dkts. 51-52. Subsequent to the second continued hearing, the Debtor submitted no additional evidence of the Property's value and remains pro se.

The primary issue here appears to be the value of the Property. If, as the Debtor suggests, the Property is worth $600,000.00, Movant is owed $364,417.24, and there is an 8% costs of sale at $30,000.00 factored in there would be $205,582.76 ($600,000 - $394,417.24) in equity. That translates to a 34.26% equity cushion which means Movant is adequately protected, even in the absence of payments. *See Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396 (9th Cir. 1984). If, on the other hand, the Property is worth $375,000 as the Debtor states in the Schedules - which the court reminds the Debtor are filed under penalty of perjury - then there is no equity in the Property and the stay should terminate to permit Movant to exercise its rights under applicable non-bankruptcy law. The latter is the more likely scenario and so, for purposes of this motion, the court values the Property at $375,000.00. The court also notes that the Debtor fails to articulate how the Property could conceivably appreciate $225,000.00 in the several months between the time the Chapter 13 petition and stay relief motion were filed.

Inasmuch as there is no equity in the Property and, despite multiple opportunities, the Debtor has not demonstrated the Property is necessary to an effective reorganization there is a basis for relief from the automatic stay under § 362(d)(2).

There is also cause for relief from the automatic stay under § 362(d)(1). The absence

of equity means there is no equity cushion and, in the absence of payment, Creditor is not adequately protected. The court also notes that the Chapter 13 Trustee ("Trustee") has filed a motion to dismiss this case due to the Debtor's failure to prosecute it resulting in unreasonable delay prejudicial to creditors, the Debtor has not provided the Trustee with payment advices or tax returns, and the Debtor has not provided the Trustee with other required financial information. Dkt. 55.

Therefore, for the foregoing reasons, Creditor's motion is granted and the automatic stay is terminated.

The 14-day stay of Rule 4001(a)(3) is waived.

The court will enter a minute order.

8.	19-22526-B-13 MJD-7	KENNETH/ANN VALLIER Matthew J. DeCaminada	MOTION TO CONFIRM PLAN 11-5-19 [72]

No Ruling

9.	19-23949-B-13 UND-2	ERIC/REGINA FLEMING Ulric N. Duverney	CONTINUED MOTION TO CONFIRM PLAN 10-9-19 [48]

No Ruling

10. 19-26149-B-13 SALLY DAVIDSON — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
DPC-1 Jeffrey M. Meisner — 11-13-19 [14]
Thru #11

Tentative Ruling

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

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

First, feasibility of the plan depends on the granting of a motion to value collateral of Gateway One Lending & Finance for a 2015 Chrysler. That motion is denied at Item #11, DNC JMM-1.

Second, the Debtor is married and has not filed a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2).

Third, the Debtor admitted that she has recently filed multiple tax returns and received tax refunds of approximately $6,000.00. The Debtor did not list the refunds on Schedule A/B or C.

The plan filed September 30, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

11. 19-26149-B-13 SALLY DAVIDSON — MOTION TO VALUE COLLATERAL OF GATEWAY ONE LENDING & FINANCE
JMM-1 Jeffrey M. Meisner — 11-21-19 [24]

Tentative Ruling

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

The court's decision is to deny the motion to value without prejudice.

Debtor's motion to value the secured claim of Gateway One Lending & Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2015 Chrysler 200 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $10,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2-1 filed by Gateway One Lending Finance is the claim which may be the

subject of the present motion.

Discussion

The court finds issue with the Debtor's valuation. The declaration states that the valuation of the Vehicle is based on her opinion and the Kelley Blue Book. The Kelley Blue Book is a third party industry source and, therefore, Debtor's opinion of value is based on hearsay. Fed R. Evid. 801-803; *see also In re Guerra*, 2008 WL 3200931, *2 n.4 (Bankr. E.D. Cal. 2008) ("Filed with Guerra's declaration was an unauthenticated document titled: 'Edmonds.com True Market Value Pricing Report.' The court has not considered this attachment in that it is inadmissible hearsay[.]"). Second, the motion states that the $10,000.00 valuation is a "private party" value. This is the value in which a private party, who is not a retailer, could buy or sell a car. The standard here must be a retail valuation, taking into account the condition of the car. *See* 11 U.S.C. § 506(a).

In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2).

The Debtor has not persuaded the court regarding her position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

The court will enter a minute order.

12. 19-26151-B-13 CHAD/MARIAN VAITAI — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
DPC-1 Marc A. Caraska — 11-18-19 [17]

Tentative Ruling

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

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

The claim of JPMorgan Chase Bank, National Association ("Creditor") has been misclassified. The plan filed October 1, 2019, lists Creditor under Class 1 of the plan with $0.00 in arrears and $0.00 in monthly post-petition payments. Debtors Chad and Marian Vaitai ("Debtor") testified at the meeting of creditors that they are current on their payments to Creditor. Creditor filed Claim No. 1-1 and it, too, reflects $0.00 in arrears but a monthly payment of $1,496.75 effective November 1, 2019, p. 41. The claim should be classified as Class 4 and paid directly by the Debtor rather than Class 1 and paid by the Trustee.

That said, the court will reconsider this ruling at the time of the hearing if it is the Debtors' intent to waive their Class 4 direct-pay rights in exchange for the security that mortgage payments by the Trustee offers, understand that there is an additional monthly fee associated with the Trustee's Class 1 mortgage payments, and consent to payment of the Trustee's fee.

The plan filed October 1, 2019, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter a minute order.

13. 19-27056-B-13 BONITA MELENDEZ MOTION TO EXTEND AUTOMATIC STAY
RJM-1 Rick Morin 11-26-19 [14]

Tentative Ruling

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

The court's decision is to deny the motion to extend automatic stay without prejudice.

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.[1] The Debtor's prior bankruptcy case was dismissed on May 31, 2019, for failure to make plan payments (case no. 17-27449, dkts. 97, 99). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. *See e.g., Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); *accord Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor states that the previous plan failed because she fell behind on plan payments and could not catch up on the missed payments. Debtor contends that her circumstances have changed because her daughter is now more involved in her life and will help her stay on top of her finances and payments. Debtor states that this bankruptcy is necessary to stay in her home because it is all that she has and she cannot afford a new home.

The Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. The Debtor does not provide any declaration from her daughter stating that she will help her mother in the bankruptcy case. The court therefore cannot determine whether there has been a substantial change in Debtor's personal affairs.

The motion is denied without prejudice and the automatic stay is not extended.

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

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[1]Debtor did have a third bankruptcy case that was not closed until September 11, 2019, but she received a discharge in that case on March 23, 2016. *See* case no. 14-28030.

The court will enter a minute order.

14. 19-26161-B-13 CIRILO/RIZEL LARON
APN-1 Peter G. Macaluso
Thru #15

OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
11-14-19 [19]

CONTINUED TO 1/07/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO VALUE COLLATERAL.

Final Ruling

No appearance at the hearing is necessary. The court will enter a minute order.

15. 19-26161-B-13 CIRILO/RIZEL LARON
DPC-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
11-15-19 [25]

CONTINUED TO 1/07/19 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTIONS TO VALUE COLLATERAL.

Final Ruling

No appearance at the hearing is necessary. The court will enter a minute order.

16. 16-22968-B-13 MARK/KERRI WARMUS — MOTION TO INCUR DEBT
RJM-2 Rick Morin — 11-26-19 [30]

Tentative Ruling

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

The court's decision is to grant the motion and authorize the Debtors to incur post-petition debt.

The motion seeks permission to purchase real property commonly known as 2543 Higgins Road, West Sacramento, California, the total purchase price of $314,204.00. Debtors will finance the property with Essex Mortgage for a loan term of 30 years, monthly payments of $2,262.00, and an interest rate of 4.75%. The Declaration of Kerri A. Warmus is filed in support of this motion. Debtors contend that they can afford the proposed monthly payments and do not seek to reduce the 100% distribution to their allowed claims and 0% to general unsecured claims. The Debtors are in month 42 of their plan.

Discussion

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

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

The court will enter a minute order.

17. 19-26277-B-13 MMN-2 | JUAN MONGALO AND MILAGROS MONGALO ROBLETO
Michael M. Noble | MOTION TO VALUE COLLATERAL OF BANK OF STOCKTON
11-21-19 [41]

Tentative Ruling

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

The court's decision is to value the secured claim of Bank of Stockton at $12,000.00.

Debtors' motion to value the secured claim of Bank of Stockton ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2017 Toyota Camry ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $12,000.00 as of the petition filing date. This is based on the Vehicle's value listed in the schedules as $14,000.00 less approximate repairs of $2,000.00. Debtors have since obtained an insurance repair estimate of $3,858.44. Dkt. 44. As the owners, Debtors' 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).

The Chapter 13 Trustee filed a response stating that while the Debtors have filed an insurance repair estimate that supports the $3,858.44 cost of repairs, it remains unclear whether insurance will or has covered the damages.

Debtors filed a reply stating that they have not repaired their Vehicle and that, while the repair costs are covered by their insurer, the insurance claim is an exempt asset.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that amended Claim No. 6-2 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 in October 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,734.26. 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 $12,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

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

The court will enter a minute order.

18. 19-26987-B-13 CAMERON POWE
GHW-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-15-19 [12]

FEDERAL NATIONAL MORTGAGE ASSOCIATION VS.
DEBTOR DISMISSED: 11/26/2019

Final Ruling

The case having been dismissed on November 26, 2019, the motion for relief from stay is denied as moot.

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

The court will enter a minute order.

19.	19-23295-B-13 MOH-2	MICHAEL GAINZA Michael O'Dowd Hays	MOTION TO CONFIRM PLAN 10-22-19 [39]

No Ruling