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

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

**January 13, 2016 at 10:00 a.m.**

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1. 14-29900-B-13 CARL BROWN — CONTINUED MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso — 10-29-15 [25]

**Tentative Ruling:** The Motion to Modify Chapter 13 Plan After Confirmation Filed on October 29, 2015, has 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

This matter was continued from December 19, 2015. There have been no new or additional developments. Therefore, the court adopts its tentative from the December 9, 2015, hearing below.

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, the claim of Sacramento County for a utility lien on property located at 4220 Zaccaro Way is misclassified as a Class 2A claim in the amount of $305.70 with a monthly dividend of $15.00 at 3% interest. However, the first deed of trust on that property is listed in Class 3 of the plan as a secured claim that is satisfied by the surrender of the collateral. The Trustee cannot pay the secured utility lien on property that has simultaneously been surrendered. The plan cannot be properly administered and feasibility cannot be assessed pursuant to 11 U.S.C. § 1325(a)(6).

Second, the plan payment in the amount of $200.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $208.00. The plan filed October 29, 2015, does not comply with Section 4.02 of the mandatory form plan.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

2. 15-28407-B-13 WILTON ALSANDOR
BMV-2 Bert M. Vega

MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
12-10-15 [33]

**Final Ruling:** No appearance at the January 13, 2016, hearing is required.

The Motion for an a [sic] Order to Value Collateral Held by Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services Under 11 U.S.C. 506(a) has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services at $16,350.00.

The motion filed by Debtor to value the secured claim of Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Mazda6 4D I Touring ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $16,350.00 as of the petition filing date. As the owner, Debtor's opinion of value is some 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). Additionally, this value is supported by the Creditor's Claim No. 1, which lists the value of the property at $16,350.00.

**Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 1 filed on November 12, 2015, by Wells Fargo Bank, N.A. dba Wells Fargo Dealer Services 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 February 12, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $20,796.74. 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 $16,350.00. *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 court shall enter an appropriate civil minute order consistent with this ruling.

3. 15-28707-B-13 IDA FOSTER
JPJ-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-23-15 [27]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The Debtor testified at the meeting of creditors that her bankruptcy case is related to the bankruptcy case of Sheila Foster, case no. 15-27814. The Debtor has not filed a notice of related cases pursuant to Local Bankr. R. 1015-1.

The plan filed November 9, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate civil minute order consistent with this ruling.

4. 13-28709-B-13 BETHANY SANDERS
SJS-3 Scott M. Johnson

MOTION TO MODIFY PLAN
12-3-15 [86]

DEBTOR DISMISSED: 12/02/2015

**Final Ruling**: No appearance at the January 13, 2016 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

5. 15-29322-B-13 JAMES/TRACEE LEWIS
AFL-1 Ashley R. Amerio
**Thru #9**

MOTION TO VALUE COLLATERAL OF FORTIS CAPITAL IV, LLC
12-14-15 [8]

**Tentative Ruling:** The Motion to Value Secured Portion of Claim of Fortis Capital IV, LLC has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Debtors move to value the collateral of secured creditor Fortis Capital, IV, LLC ("Creditor"). Creditor's claim is secured by a lien recorded against real property located at 8642 Duryea Dr., Sacramento, California. That property appears to be the Debtors' residence.

The motion states that Creditor's lien is a judgment lien in ¶ 7 and a deed of trust in ¶ 12. And while the motion refers to an abstract of judgment, no abstract of judgment is submitted. The court will not guess whether Creditor's lien is a judgment lien or a security interest. The internal inconsistency in the motion also prevents the court from conducting an analysis under 11 U.S.C. § 1322(b)(2). Because the Debtors have not stated grounds for relief with the requisite particularity, the motion is denied without prejudice. See Fed. R. Bankr. Pro. 9013.

The court shall enter an appropriate civil minute order consistent with this ruling.

6. 15-29322-B-13 JAMES/TRACEE LEWIS
AFL-2 Ashley R. Amerio

MOTION TO VALUE COLLATERAL OF PORTFOLIO RECOVERY ASSOCIATES, LLC
12-16-15 [13]

**Tentative Ruling:** The Motion to Value Secured Portion of Claim of Portfolio Recovery Associates, LLC has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Debtors move to value the collateral of secured creditor Portfolio Recovery Associates, LLC ("Creditor"). Creditor's claim is secured by a lien recorded against real property located at 8642 Duryea Dr., Sacramento, California. That property appears to be the debtors' residence.

The motion states that Creditor's lien is a judgment lien in ¶ 7 and a deed of trust in ¶ 12. And while the motion refers to an abstract of judgment, no abstract of judgment is submitted. There is also no information where the purported abstract of judgment is recorded. The court will not guess whether Creditor's lien is a judgment lien or a security interest. The internal inconsistency in the motion also prevents the court from conducting an analysis under 11 U.S.C. § 1322(b)(2). Because the Debtors have not stated grounds for relief with the requisite particularity, the motion is denied without prejudice. See Fed. R. Bankr. Pro. 9013.

The court shall enter an appropriate civil minute order consistent with this ruling.

7. 15-29322-B-13 JAMES/TRACEE LEWIS
AFL-3 Ashley R. Amerio

MOTION TO VALUE COLLATERAL OF GLORIA BANDY
12-29-15 [22]

**Tentative Ruling:** The Motion to Value Secured Portion of Claim of Gloria Bandy has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Debtors move to value the collateral of secured creditor Gloria Bandy ("Creditor"). Creditor's claim is secured by a lien recorded against real property located at 8642 Duryea Dr., Sacramento, California. That property appears to be the debtors' residence.

The motion states that Creditor's lien is a judgment lien in ¶ 7 and a deed of trust in ¶ 12. And while the motion refers to an abstract of judgment, no abstract of judgment is submitted. There is also no information where the purported abstract of judgment is recorded. The court will not guess whether Creditor's lien is a judgment lien or a security interest. The internal inconsistency in the motion also prevents the court from conducting an analysis under 11 U.S.C. § 1322(b)(2). Because the Debtors have not stated grounds for relief with the requisite particularity, the motion is denied without prejudice. See Fed. R. Bankr. Pro. 9013.

The court shall enter an appropriate civil minute order consistent with this ruling.

8. 15-29322-B-13 JAMES/TRACEE LEWIS
AFL-4 Ashley R. Amerio

MOTION TO VALUE COLLATERAL OF H.S.A. FANNIE MAE HOME SAVER ADVANCE
12-30-15 [27]

**Tentative Ruling:** The Motion to Value Secured Portion of H.S.A. Fannie Mae Home Saver Advance has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Creditor's lien is identified as a 3rd deed of trust; however, the motion identifies the purported creditor as "H.S.A. Fannie Mae Home Saver Advance." This appears to be a federal loan program and not an actual creditor and no note or deed of trust are provided to indicate otherwise or to otherwise confirm the identify of the actual creditor. The court will not value a creditor's collateral without knowing with certainty the identity of the creditor whose collateral is being valued. Moreover, without clarification or further identification of the actual creditor holding the 3rd deed of trust on the Debtors' residence, the court is unable to determine if the actual creditor was properly served. Because the Debtors have not stated grounds for relief with the requisite particularity, the motion is denied without prejudice. See Fed. R. Bankr. Pro. 9013.

The court shall enter an appropriate civil minute order consistent with this ruling.

9. 15-29322-B-13 JAMES/TRACEE LEWIS
AFL-5 Ashley R. Amerio

MOTION TO VALUE COLLATERAL OF OCWEN LOAN SERVICING, LLC
12-30-15 [32]

**Tentative Ruling:** The Motion to Value Secured Portion of Claim of Ocwen Loan Servicing, LLC has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Creditor's lien is identified as a 2nd deed of trust; however, the motion identifies the purported creditor as "Ocwen Loan Servicing, LLC." This appears to be a federal loan program and not an actual creditor and no note or deed of trust are provided to indicate otherwise or to otherwise confirm the identify of the actual creditor. The court will not value a creditor's collateral without knowing with certainty the identity of the creditor whose collateral is being valued. Moreover, without clarification or further identification of the actual creditor holding the 2nd deed of trust on the Debtors' residence, the court is unable to determine if the actual creditor was properly served. Because the Debtors have not stated grounds for relief with the requisite particularity, the motion is denied without prejudice. See Fed. R. Bankr. Pro. 9013.

The court shall enter an appropriate civil minute order consistent with this ruling.

10. 15-28729-B-13 CHARLES EVANS
WFM-1 W. Scott de Bie

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
12-23-15 [17]

**Tentative Ruling:** The Objection to Confirmation of the Chapter 13 Plan 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other 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 Debtor has filed a written reply to the objection.

The court's decision is to overrule the objection and confirm the plan.

The objecting creditor U.S. Bank, N.A. ("Creditor") holds a deed of trust secured by the Debtor's residence. The Creditor asserts $29,042.55 in pre-petition arrearages but has not yet filed a proof of claim. Although the Creditor states that it will file a proof of claim prior to the claims bar deadline, the Creditor provides no evidence to support the basis for the claimed pre-petition arrears. The Creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records and has submitted as an exhibit only a note and deed of trust.

**Attorneys' Fees Requested**

Though requested in the Objection, creditor has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with this Objection. Creditor is not awarded any attorneys' fees.

There being no objection to confirmation, the plan filed November 9, 2015, will be confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

11. 15-28634-B-13 PALMER COOKE
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
12-23-15 [23]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other 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, the Debtor did not appear at the duly noticed first meeting of creditors set for December 17, 2015, as required pursuant to 11 U.S.C. § 343.

Second, the Debtor has not provided the Chapter 13 Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Third, the Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Fourth, commencing in month 8 through month 41, the plan payment in the amount of $999.00 does not equal the aggregate of the Trustee's fees and monthly dividends payable on account of Class 2 secured claims. The aggregate of the monthly amounts plus the Trustee's fee is $1,558.00. The plan does not comply with Section 4.02 of the mandatory form plan.

The plan filed November 19, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

12. 15-21836-B-13 RALPH/BELINDA HUDDLESTON MOTION TO MODIFY PLAN
MG-1 Matthew J. Gilbert 11-25-15 [19]

**Tentative Ruling:** The Motion to Confirm 1st Modified Chapter 13 Plan Filed November 25th 2015 has 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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan.

The Debtors are delinquent to the Chapter 13 Trustee in the amount of $669.02, which represents approximately 1 partial plan payment. The Debtors do not appear to be able to make plan payments proposed and have not carried their burden of showing that the plan complies with 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 court shall enter an appropriate civil minute order consistent with this ruling.

13. 11-46037-B-13 JAVIER CONTRERAS MOTION TO INCUR DEBT
CYB-2 Candace Y. Brooks 12-22-15 [59]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given, the Motion for Order Allowing Debtor to Incur Debt to Purchase Real Property for a Primary Residence is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. 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. If there is opposition, the court may reconsider this tentative ruling.

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

The motion seeks permission to purchase real property, the total purchase price of which is $309,000.00. Debtor and his spouse have been pre-approved for a loan in the amount of $315,425.00. The mortgage loan is a 30-year, fixed rate loan with interest at 3.750%. The total monthly payment is $2,123.54, which is composed of principal, interest, mortgage, taxes, and homeowners insurance. The Debtor asserts that he and his spouse will be able to make payments to the mortgage. The down payment of $10,815.00 will be paid by Debtor's spouse. Debtor asserts that the proposed purchase of the real property and purchase money loan will not have any adverse impact on the estate, the Trustee, or any other creditor in this bankruptcy case or any discharge that the Debtor may receive in this case.

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 court shall enter an appropriate civil minute order consistent with this ruling.

14. 15-25141-B-13 FRED/SAUNDRA WILLIAMS — MOTION TO VALUE COLLATERAL OF DB50 2011-2 TRUST
RAC-3 Richard A. Chan — 12-15-15 [40]

**Final Ruling:** No appearance at the January 13, 2015, hearing is required.

The Motion to Value Secured Portion of Claim of DB50 2011-2 Trust has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of DB50 2011-2 Trust at $0.00.

The motion to value filed by Debtors to value the secured claim of DB50 2011-2 Trust ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of the subject real property commonly known as 1324 Branwood Way, Sacramento, California ("Property"). Debtors seek to value the Property at a fair market value of $359,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some 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 valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

**Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 9 filed on October 21, 2015, by Real Time Resolutions, Inc. is the claim which may be the subject of the present motion.

**Discussion**

The first deed of trust secures a claim with a balance of approximately $405,828.49. Creditor's second deed of trust secures a claim with a balance of approximately $76,929.48. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall enter an appropriate civil minute order consistent with this ruling.

15. 15-27148-B-13 PETER/MARIAN SKILLMAN MOTION TO CONFIRM PLAN
PLC-2 Peter L. Cianchetta 12-1-15 [36]

**Tentative Ruling:** The Motion to Confirm Chapter 13 Plan has been set for hearing on the 42-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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to not confirm the amended plan.

The Debtors filed an amended plan on December 24, 2015. The confirmation hearing for the amended plan is scheduled for February 10, 2015. The earlier plan filed December 1, 2015, is not confirmed. The Trustee's objection regarding delinquency in 1 plan payment is overruled as moot.

The court shall enter an appropriate civil minute order consistent with this ruling.

16. 15-28650-B-13 URBANO TOVAR
JPJ-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-23-15 [19]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the plan payment in the amount of $2,350.00 does not equal the aggregate of the Trustee's fees, monthly payment for administrative expenses, and monthly dividend payable on account of the Class 2 secured claim. The aggregate of the monthly amounts plus the Trustee's fee is $3,463.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, feasibility depends on the granting of a motion to value collateral for Cach, LLC. Although the Debtor has filed a motion to value the collateral, it is set for hearing on January 20, 2016.

Third, the Internal Revenue Service filed a secured claim in the amount of $179,521.70. The Debtor scheduled this creditor's secured claim at $1.00. The plan will take approximately 134 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

The plan filed November 6, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court shall enter an appropriate civil minute order consistent with this ruling.

17. 15-27658-B-13 MONICA BURTON MOTION TO CONFIRM PLAN
MDL-2 Michael D. Lee 12-1-15 [38]

**Tentative Ruling:** The Motion to Confirm Second Amended Chapter 13 Plan has been set for hearing on the 42-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)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not confirm the second amended plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $1,780.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried its burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan payment in the amount of $1,780.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims and Class 2 secured claims. The aggregate of the monthly amounts plus the Trustee's fee is $1,825.00. The plan does not comply with Section 4.02 of the mandatory form plan.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

18. 15-28768-B-13 PHILIP/MARTHA BEARGEON — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
JPJ-1 Stephen N. Murphy — 12-23-15 [17]

**Tentative Ruling:** The Trustee's Objection to Confirmation of the Chapter 13 Plan 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). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other 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, the Debtors have not provided the Chapter 13 Trustee with a copy of the business license and proof of business insurance as requested by the Trustee at the meeting of creditors. The Trustee has not complied with 11 U.S.C. § 521(a)(3).

Second, feasibility of the plan cannot be fully assessed. The additional provisions of the plan filed November 11, 2015, states "lump sum payments totaling $263,640.00 shall become due upon the sale of real property." This provision does not specify a date this sale will take place, what real property will be sold, or provide proof or evidence that the real property will be sold for this amount. The Debtors do not appear to be able to make the plan payment proposed and have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed November 11, 2015, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

19. 15-20176-B-13 LEO PALILEO MOTION TO MODIFY PLAN
SCG-2 Sally C. Gonzales 11-24-15 [39]

**Final Ruling:** No appearance at the January 13, 2016, hearing is required.

The Motion to Confirm Debtor's First [Modified] Plan Filed November 23, 2015, 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)(ii) 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 filed on November 23, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

20. 15-28583-B-13 DRUE BROWN
**Thru #21** W. Steven Shumway

OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT, LLC
12-10-15 [21]

**Final Ruling:** MATTER CONTINUED TO 2/10/16 AT 10:00 A.M. IN ORDER TO BE HEARD IN CONJUNCTION WITH MOTION TO VALUE COLLATERAL OF BOSCO CREDIT, LLC.

21. 15-28583-B-13 DRUE BROWN
JPJ-1 W. Steven Shumway

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-23-15 [26]

**Final Ruling:** MATTER CONTINUED TO 2/10/16 AT 10:00 A.M. IN ORDER TO BE HEARD IN CONJUNCTION WITH MOTION TO VALUE COLLATERAL OF BOSCO CREDIT, LLC.

22. 15-28986-B-13 STEVEN/ANADELIA MILLER — MOTION TO VALUE COLLATERAL OF CAPITAL ONE AUTO FINANCE
MWB-1 Mark W. Briden — 12-9-15 [10]

**Tentative Ruling:** The Motion to Value Collateral of Capital One Auto Finance Re 2009 Dodge Caliber has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to value the secured claim of Capital One Auto Finance at $4,757.00.

The motion filed by Debtors to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2009 Dodge Caliber ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $3,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some 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). Debtors' Schedule D lists a total secured debt of $7,827.00 to Capital One Auto Finance.

**Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 3 filed on December 7, 2015, by Capital One Auto Finance, a division of Capital One, N.A., is the claim which may be the subject of the present motion. Claim No. 3 lists the value of the a motor vehicle at $4,757.00, the total claim at $7,909.02, and the annual interest rate at 8.84%. Thus, the amount secured is $4,757.00 and the amount unsecured is $3,152.02.

According to Schedule D, the account ending in -0976 relates to creditor Capital One Auto Finance, which holds a lien on a 2009 Dodge Caliber, 104,000 miles, VIN 1B34B48A590172288. Proof of Claim No. 3 does not identify the collateral for the claim but it states it is a claim on an account ending in -0976. The court concludes that Proof fo Claim No. 3 relates to the 2009 Dodge Caliber.

Proof of Claim No. 4, although also filed by Capital One Auto Finance, a division of Capital One, N.A., is for a 2015 KIA Soul Wagon 4D I4 and is not the subject of the present motion.

**Opposition**

Capital One Auto Finance opposes Debtors' motion and provides a replacement value different from not only that of the Debtors', but also different from that listed in Claim No. 3 filed by Capital One Auto Finance. In its Objection, Capital One Auto Finance asserts that the replacement value of the Vehicle is $7,076.00. The Objection does not provide the current total claim and instead only states that the original amount financed was $14,552.00. In its Objection, Capital One Auto Finance also objects to the Debtors' use of Kelley Blue Book excerpts because they reference private party value and are inadmissible hearsay.

**Discussion**

The Debtors value the Vehicle at $3,000.00, Claim No. 3 by Capital One Auto Finance values the Vehicle at $4,757.00, and the opposition by Capital One Auto Finance values the Vehicle at $7,076.00. The court finds the replacement value of the Vehicle to be $4,757.00.

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party

objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

Here, the Debtors have not objected to the Claim No. 3 and Capital One Auto Finance has neither amended nor withdrawn its claim. As such, the claim amount controls and the replacement value of the property is $4,757.00.

The lien on the Vehicle's title secures a purchase-money loan incurred on May 25, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Capital One Auto Finance with a balance of approximately $7,909.02. 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 $4,757.00. *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 request by Capital One Auto Finance for an evidentiary hearing is denied with prejudice.

The court shall enter an appropriate civil minute order consistent with this ruling.

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| 23. | 11-43491-B-13<br>JPJ-1 | DAVE/KARON GILLILAND<br>Mark A. Wolff | MOTION TO CONVERT CASE TO CHAPTER 7 OR MOTION TO DISMISS CASE<br>12-3-15 [97] |

**Final Ruling:** CONTINUED TO 2/17/16 AT 10:00 A.M. TO BE HEARD IN CONJUNCTION WITH MOTION TO CONFIRM FIRST MODIFIED PLAN.

24. 15-20693-B-13 RANDY/DANIELLE SMITH — MOTION TO VALUE COLLATERAL OF ARBORELLE APARTMENT HOMES
Richard Kwun — 12-16-15 [41]

**Final Ruling:** No appearance at the January 13, 2016, hearing is required.

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

The court's decision is to value the secured claim of Arborelle Apartment Homes at $0.00.

The motion to value filed by Debtors to value the secured claim of Arborelle Apartment Homes ("Creditor") is accompanied by the Declaration of Danielle L. Smith. Debtors are the owners of the subject real property commonly known as 1046 O'Donnell Avenue, California ("Property"). Debtors seek to value the Property at a fair market value of $133,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is some 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 valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

**Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 6 filed by Arborelle Apartment Homes is the claim which may be the subject of the present motion.

**Discussion**

The first and second deeds of trust secure a claim with a balance of approximately $316,755.00. Arborelle Apartment Homes's judicial lien secures a claim with a balance of $3,070.24. Therefore, Creditor's claim secured by a judicial lien is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall enter an appropriate civil minute order consistent with this ruling.

25. 15-28594-B-13 DOREEN PURVIS
**Thru #26** Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF PLAN BY OCWEN LOAN SERVICING, LLC
12-3-15 [20]

**Tentative Ruling:** The Objection to Confirmation of Debtor's Chapter 13 Plan 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other 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 Debtor has filed a written reply to the objection.

The court's decision is to overrule the objection and confirm the plan.

The objecting creditor Ocwen Loan Servicing holds a deed of trust secured by the Debtor's residence. The creditor asserts $16,950.67 in pre-petition arrearages but has not yet filed a proof of claim. Although the Creditor implies that it will file a proof of claim prior to the claims bar deadline, the Creditor provides no evidence to support the basis for the claimed pre-petition arrears. The Creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed November 18, 2015, is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

26. 15-28594-B-13 DOREEN PURVIS
JPJ-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
12-23-15 [24]

**Tentative Ruling:** The Trustee's Objection to Confirmation of Debtor's Chapter 13 Plan 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). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other 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 Debtor has filed a written reply to the objection.

The court's decision is to overrule the objection and confirm the plan.

First, the Debtor has filed the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys on December 28, 2015.

Second, the Debtor has agreed to increase plan payments to $2,117.00 per month in order to equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims. The plan complies with Section 4.02 of the mandatory form plan.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed November 18, 2015, is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

27. 15-26796-B-13 JOHN DICKERSON
APN-1 Rebecca E. Ihejirika

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
12-16-15 [49]

WELLS FARGO BANK, N.A. VS.

**Final Ruling:** No appearance at the January 13, 2016, hearing is required.

The Motion by Secured Creditor, Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services, for Relief From the Automatic Stay Against Debtor and Against Non-filing Co-Debtor Re: 2014 Honda Accord has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2014 Honda Accord, VIN ending in -6566 (the "Vehicle"). The moving party has provided the Declaration of Kiel Maples to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Maples Declaration provides testimony that the arrears total $10,405.38. Debtor has not made 4 post-petition payments, with a total of $2,601.96 in post-petition payments past due. The Declaration also provides evidence that there are 12 pre-petition payments in default, with a pre-petition arrearage of $7,803.42.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be $32,749.39, as stated in the Maples Declaration, while the value of the Vehicle is determined to be $22,175.00, as stated in Schedules B and D filed by Debtor.

**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 Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services, and 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 court shall enter an appropriate civil minute order consistent with this ruling.

28. 15-29155-B-13 SHAMEKA BATTE
Pro Se

OBJECTION TO CERTIFICATION BY A DEBTOR
1-6-16 [28]

**Tentative Ruling:** The court issues no tentative ruling.

The Lessor's Objection to Debtor's Certification and/or Debtor's Further Certificate Concerning Residential Property and Notice of Hearing (11 U.S.C. § 362(l)(3)(A)) was properly filed 10 days prior to the hearing as required by 11 U.S.C. § 362(l)(3). The objection was served upon the Debtor.

Under Section 362(l)(3), the landlord may file an objection to one or both of the certifications that a debtor files pursuant to Sections 362(l)(1) and (2). The statute provides that the court shall conduct a hearing within 10 days of the filing and service of the objection by the landlord. The purpose of the hearing is to determine whether the certification to which the landlord has objected is true. If the objection is sustained, the exception to the automatic stay, Section 362(b)(22), is fully applicable and the landlord may recover possession of the residential property despite the filing of the petition. The clerk of the court must immediately serve upon the landlord and the debtor a certified copy of the court's order sustaining the landlord's objection.

The objection will be determined at the scheduled hearing.

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| 29. | 15-21370-B-7<br>15-2103 | DEEPAK VERMA<br>VERMA V. NAVIENT SOLUTIONS, INC. | PRE-TRIAL CONFERENCE RE: COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT LOANS<br>5-26-15 [1] |