UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

January 17, 2017 at 1:00 p.m.

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1. 16-24108-B-13 DAVID MARTIN — MOTION TO MODIFY PLAN
MOH-2 Michael O'Dowd Hays — 12-12-16 [56]

CONTINUED TO 2/07/17 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH DEBTOR'S OBJECTION TO LATE FILED CLAIM OF MATHEW W. LAKOTA.

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The court will enter an appropriate minute order.

2. 16-21514-B-13 CHERRONE PETERSON — OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 4
JPJ-4 Peter G. Macaluso — 11-21-16 [97]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 4 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 4. The claim is asserted to be in the amount of $650.35. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about January 27, 2012, which is more than four years prior to the filing of this case. Hence, when the case was filed on March 11, 2016, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

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

The court will enter an appropriate minute order.

3.	12-29929-B-13 PGM-2	CHARLES/JULITA BENTZ Peter G. Macaluso	MOTION FOR COMPENSATION BY THE LAW OFFICE OF PETER G. MACALUSO FOR PETER G. MACALUSO, DEBTORS' ATTORNEY 12-14-16 [71]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The Application for Attorney Fees 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 compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

Peter G. Macaluso ("Applicant") has served as attorney for the Debtor since August 10, 2015, after substituting into this case from Hughes Financial Law, who itself had substituted into this case from Scott A. Coben & Associates on December 14, 2014. Scott A. Coben had consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court had authorized payment of fees and costs totaling $4,000.00. Dkt. 24. Applicant asserts that the initial agreed-upon fee is not sufficient to fully compensate him for legal services rendered. Applicant now seeks compensation in the amount of $600.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 71.

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

Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtor would have to file a motion to approve loan modification. Since the Applicant substituted into this case, he has received no compensation. The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court also recognizes that the Applicant has opted to seek allowance of additional fees of $600.00 instead of $975.00 for services rendered. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

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

Additional Fees	$600.00
Additional Costs and Expenses	$ 0.00

The court will enter an appropriate minute order.

4.	16-28129-B-13 SNM-1 **Thru #9**	JERRY/JOANNE BENNETT Stephen N. Murphy	MOTION TO VALUE COLLATERAL OF PYOD, LLC, AS ASSIGNEE OF AMERICAN GENERAL FINANCIAL SERVICES, INC. 12-15-16 [8]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The Motion to Value Real Property Collateral of Pyod LLC, as Assignee of American General Financial Services, Inc. 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 Pyod, LLC at $0.00.

Debtors' motion to value the secured claim of Pyod, LLC ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 1102 Vintage Court, Vacaville, California ("Property"). Debtors seek to value the Property at a fair market value of $494,300.00 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.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately $593,220.44. Creditor's second deed of trust secures a claim with a balance of approximately $111,805.23. 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 will enter an appropriate minute order.

5.	16-28129-B-13 SNM-2	JERRY/JOANNE BENNETT Stephen N. Murphy	MOTION TO VALUE COLLATERAL OF G.E. CONSTRUCTION CONTRACTORS, INC. 12-15-16 [13]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The Motion to Value Real Property Collateral of G.E. Construction Contractors, Inc. 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 G.E. Construction Contractors, Inc. at $0.00.

Debtors' motion to value the secured claim of G.E. Construction Contractors, Inc. ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 1102 Vintage Court, Vacaville, California ("Property"). Debtors seek to value the Property at a fair market value of $494,300.00 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.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately $593,220.44. Creditor's mechanic's lien of trust secures a claim with a balance of approximately $2,400.00. 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 will enter an appropriate minute order.

6.	16-28129-B-13 SNM-3	JERRY/JOANNE BENNETT Stephen N. Murphy	MOTION TO VALUE COLLATERAL OF SERRANO STONE & PLASTER, INC. 12-15-16 [18]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The Motion to Value Real Property Collateral of Serrano Stone & Plaster, Inc. 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 Serrano Stone & Plaster, Inc. at $0.00.

Debtors' motion to value the secured claim of Serrano Stone & Plaster, Inc. ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 1102 Vintage Court, Vacaville, California ("Property"). Debtors seek to value the Property at a fair market value of $494,300.00 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.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately $593,220.44. Creditor's mechanic's lien of trust secures a claim with a balance of approximately $2,000.00. 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 will enter an appropriate minute order.

7. 16-28129-B-13 JERRY/JOANNE BENNETT
SNM-4 Stephen N. Murphy

MOTION TO VALUE COLLATERAL OF FORD MOTOR COMPANY
12-15-16 [23]

Tentative Ruling: The Motion to Value Collateral of Ford Motor Company 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 deny without prejudice the motion to value.

Debtors' motion to value the secured claim of Ford Motor Company ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2014 Ford Escape ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $17,812.00 as of the petition filing date. As the owner, 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1 filed by Ford Motor Credit Company LLC is the claim which may be the subject of the present motion. Creditor asserts in that proof of claim that the value of the Vehicle is $20,700.00.

Opposition

Creditor has filed an opposition asserting that the more appropriate starting point to determine the price a retail merchant would charge is the Kelley Blue Book or NADA Guide. Additionally, Creditor disputes Debtors' valuation because it does not take into account the additional options on the Vehicle, such as the navigation system, the 2.0L I4 EcoBoost engine, aluminum/alloy wheels, and leather seats. Creditor asserts that the appropriate value is $21,525.00, which accounts for the Vehicle's navigation system and the expense of cleaning and detailing by the dealer. Creditor further asserts that the value provided in Claim No. 1, which values the property at $20,700.00, does not take into account the navigation system.

Discussion

The court initially rejects Creditor's argument that the Vehicle should be valued at $21,525.00. Creditor filed a proof of claim in which it asserted, under penalty of perjury, that the value of the Vehicle is no more than $20,700.00. The court considers it disingenuous for Creditor to now assert a different and higher value than the one previously stated under oath. Even if Creditor neglected to include vehicle options in its prior sworn valuation stated in its proof of claim, Creditor is nevertheless bound by that valuation. *See* Fed. R. Evid. 801(d)(2).

The court also rejects Debtors' valuation. The Debtors' lay opinion of the value of the Vehicle is not persuasive or credible because it fails to take into account numerous vehicle options. It also appears to be based on hearsay. *See* dkt. 25 at ¶ 8 ("We are told by our attorney and believe that the equity available to secure the claim of Ford Motor Company is $17,812.00."). Consequently, the Debtors have failed to carry their burden under § 506(a)(2) of proving "the price a retail merchant would charge for [the Vehicle]."

Therefore, based on the foregoing, the motion to value is denied without prejudice.

The court will enter an appropriate minute order.

8. 16-28129-B-13 JERRY/JOANNE BENNETT
SNM-5 Stephen N. Murphy

MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP, LLC DBA LOANMART
12-15-16 [28]

Tentative Ruling: The Motion to Value Collateral of Wheels Financial Group LLC dba LoanMart 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 deny without prejudice the motion to value.

Debtors' motion to value the secured claim of Wheels Financial Group LLC dba LoanMart ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2008 Ford Ranger ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $5,600.00 as of the petition filing date. As the owner, 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2 filed by Wheels Financial Group, LC dba 1-900LoanMart is the claim which may be the subject of the present motion.

Opposition

Creditor has filed an opposition asserting that the more appropriate starting point to determine the price a retail merchant would charge is the Kelley Blue Book. Creditor asserts that the Vehicle has a retail replacement value of $7,267.00.

Discussion

The court rejects Debtors' valuation. The Debtors' lay opinion of the value of the Vehicle is not persuasive or credible because it includes an arbitrary $2,086.00 deduction for a "condition adjustment" which the Debtors have not established they are qualified to make. Debtors' lay opinion also appears to be based on hearsay. *See* dkt. 30 at ¶ 8 ("We are told by our attorney and believe that the equity available to secure the claim of LoanMart is $5,600.00."). Consequently, Debtors have failed to carry their burden under § 506(a)(2) of proving "the price a retail merchant would charge for [the Vehicle]."

Therefore, based on the foregoing, the motion to value is denied without prejudice. Debtors are further ordered to make the Vehicle available to Creditor to allow Creditor, at Creditor's expense, to obtain a professional appraisal of the Vehicle.

The court will enter an appropriate minute order.

9. 16-28129-B-13 JERRY/JOANNE BENNETT
SNM-6 Stephen N. Murphy

MOTION TO VALUE COLLATERAL OF THE INTERNAL REVENUE SERVICE
12-16-16 [33]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The Motion to Value Collateral of the Internal Revenue Service 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 the Internal Revenue Service at $12,406.00.

Debtors' motion to value the secured claim of the Internal Revenue Service ("IRS") is accompanied by Debtors' declaration. Debtors are the owners of a variety of real and personal property listed in Schedules A and B (dkt. 1). 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3 filed by the Internal Revenue Service is the claim which may be the subject of the present motion.

Discussion

The claim of the IRS is in the amount of $75,789.35 according to Claim No. 3. It secures both real and personal property. There is no equity available in the real property located at 1102 Vintage Court, Vacaville, California, as determined at Items #4 and #5, nor in the 2014 Ford Escape and 2008 Ford Ranger, which the court has valued at Items #7 and #8. The remainder of personal property securing the IRS's claim consists of household goods, electronics, clothes, jewelry, bank deposits, pensions, personal loan, and un-matured life insurance.

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." *See* 11 U.S.C. § 506(a)(2). Debtors assert that the remaining personal property has a replacement value of $12,406.00. This valuation is also supported in the IRS's Claim No. 3. Therefore, the IRS's claim secured by a lien on the asset's title is under-collateralized. The IRS's secured claim is determined to be in the amount of $12,406.00. *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 will enter an appropriate minute order.

10. 13-24835-B-13 SUZANNE ERICKSON
PGM-4 Peter G. Macaluso

MOTION TO APPROVE LOAN MODIFICATION
12-14-16 [54]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The Motion for Order Approving Trial Loan Modification 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). 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 permit the loan modification requested.

Debtor seeks court approval to enter into a trial loan modification agreement with Wells Fargo Home Mortgage. Wells Fargo Home Mortgage ("Creditor"), whose claim the plan provides for in Class 1 in the plan dated October 31, 2016, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $1,214.90 a month to $1,182.51 a month. The first payment on the trial loan modification will be due January 1, 2017, and the last payment will be due March 1, 2017. The three trial payments are each in the amount of $1,182.51. Any difference between the amount of the trial period payment and the regular mortgage payments will be added to the balance of the loan along with any other past due amounts.

The motion is supported by the Declaration of Suzanne Erickson. The Declaration affirms the Debtor's desire to obtain the post-petition financing. Although the Declaration does not state the Debtor's ability to pay this claim on the modified terms, the court finds that the Debtor will be able to pay this claim since it is a reduction from the Debtor's current monthly mortgage payments.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

The court will enter an appropriate minute order.

11. 16-26843-B-13 CHERYL BACH MOTION TO CONFIRM PLAN
SDB-1 W. Scott de Bie 12-2-16 [23]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The Motion for Order Confirming First Amended Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on December 2, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

12. 16-21744-B-13 DANIEL/EUPHRASIA BLAIR
TAG-1 Ted A. Greene
Thru #13

MOTION TO VALUE COLLATERAL OF FIRST TECH FEDERAL CREDIT UNION
12-16-16 [29]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The Motion to Value Collateral Pursuant to 11 U.S.C. § 506(a)(2) 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 First Tech Federal Credit Union at $20,000.00.

Debtors' motion to value the secured claim of First Tech Federal Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2013 Nissan Rogue ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $16,869.00 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2 filed by First Tech Federal Credit Union is the claim which may be the subject of the present motion.

Discussion

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for a proof of claim executed and filed in accordance with [the] rules. Fed. R. Bankr. P. 3001(f); *see also Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. *See Id.* at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted). "[T]o rebut the prima facie evidence a proper proof of claim provides, the objecting party must produce 'substantial evidence' in opposition to it." *Am. Express Bank, FSB v. Askenaizer (In re Plourde)*, 418 B.R. 495, 504 (1st Cir. BAP 2009)).

Proof of Claim No. 2 filed by First Tech Federal Credit Union states a balance owed of $23,514.98 and a value of the Vehicle at $20,000.00. A proof of claim is presumed valid. No objection to the proof of claim has been filed. Therefore, the court values the Vehicle at $20,000.00 at 3.24% interest rate based on Proof of Claim No. 2.

The court will enter an appropriate minute order.

13. 16-21744-B-13 DANIEL/EUPHRASIA BLAIR
TAG-2 Ted A. Greene

MOTION TO VALUE COLLATERAL OF HONDA FINANCIAL SERVICES
12-16-16 [34]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The Motion to Value Collateral Pursuant to 11 U.S.C. § 506(a)(2) has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). However, it does not appear that Honda Financial Services was properly served. This address does not exist on the California Secretary of State website. Nor does the address match that provided on Proof of Claim No. 4.

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

The court will enter an appropriate minute order.

14. 16-28351-B-13 SHASHI MANI MOTION TO EXTEND AUTOMATIC STAY
GTB-1 George T. Burke 12-30-16 [15]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion 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 to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on February 1, 2016, after Debtor failed to timely file documents (case no. 16-20149, dkt. 13). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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 the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

The Debtor asserts that the previous plan had failed because she had filed for bankruptcy pro se at the direction of loan modification attorneys who did not represent her in her previous bankruptcy but agreed only to assist her in obtaining a loan modification for a fee of $17,900.00. The Debtor ultimately did not obtain a loan modification and the Debtor did not know how to succeed in her plan. The Debtor asserts that her present plan will succeed because she has hired experienced bankruptcy counsel to assist her in this case.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court will enter an appropriate minute order.

15. 16-22152-B-13 THOMAS/DENISE RAHMING MOTION TO MODIFY PLAN
NBC-2 Eamonn Foster 12-13-16 [32]

Tentative Ruling: The Motion to Confirm Second Modified Plan 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 modified plan does not specify a cure of the post-petition arrearage owed to Nationstar Mortgage, LLC including a specific post-petition arrearage amount, interest rate, and monthly dividend. Although the modified plan adds Nationstar Mortgage to Class 2 in the amount of $2,106.00 at 0% interest and $51.00 per month, it is not clearly identified as post-petition arrears. Additionally, the amount of $2,106.00 is understated and the correct amount should be $2,108.54, which represents two installments of $1,054.27 each. Furthermore, treatment in Class 2 is improper because such claims are secured claims that are modified by the plan or that will mature before the plan is completed. It does not appear that the plan is modifying the claim and the proof of claim shows a maturity date of April 1, 2036, whereas the plan will complete in the year 2021. The court agrees this is to be placed in Class 1.

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

The court will enter an appropriate minute order.

16. 12-32455-B-13 TERRY BARTELL MOTION TO MODIFY PLAN
PGM-4 Peter G. Macaluso 12-8-16 [56]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on December 8, 2016, 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 December 8, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

17. 16-20955-B-13 MARIO/FLORA RODRIGUEZ MOTION TO MODIFY PLAN
SDB-1 W. Scott de Bie 12-13-16 [33]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation 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 debtors to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on December 13, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

18.	11-44161-B-13 HLG-1	GREGORY/TAMMIE CASSINA Kristy A. Hernandez	MOTION TO SUBSTITUTE TAMMIE MARTINE CASSINA FOR GREGORY WILLIAM CASSINA, MOTION TO CONTINUE ADMINISTRATION OF CASE AND MOTION TO WAIVE 1328 REQUIREMENT FOR DEBTOR, TAMMIE MARTINE CASSINA 12-19-16 [70]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The Notice of Death and Motion for Omnibus Relief Upon Death of Debtor 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). 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 substitute Gregory Cassina, who is appointed representative of the estate, to continue administration of the case, and waive the deceased Co-Debtor's certification otherwise required for entry of a discharge.

Debtor Gregory Cassina gives notice of death of his wife and Co-Debtor Tammie Cassina and requests the court substitute Gregory Cassina in place of his deceased spouse for all purposes within this Chapter 13 proceeding.

Discussion

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under Chapter 11, Chapter 12, or Chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, § 7025.02, which states [emphasis added],

> Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the

> period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.
>
> The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**
>
> The **motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...**

See also Hawkins v. Eads, *supra*. While the death of a debtor in a Chapter 13 case does not automatically abate the case, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Debtor has provided sufficient evidence to show that continued administration of the Chapter 13 case is possible and in the best interest of creditors. In fact, the Debtors have paid $20,220.00 to the Trustee to date and completed the plan. A court order waiting 11 U.S.C. § 1328 as to Tammie Cassina is required in order to enter discharge. Based on the evidence provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties. The court grants the motion.

The court will enter an appropriate minute order.

19. 16-27763-B-13 WILSON/BRANDI WONG — MOTION TO AVOID LIEN OF CACH, LLC
HLG-1 Kristy A. Hernandez — 12-28-16 [17]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion 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 to avoid judicial lien.

This is a request for an order avoiding the judicial lien of CACH, LLC ("Creditor") against the Debtors' property commonly known as 4331 Marl Way, Carmichael, California ("Property").

A judgment was entered against Debtor Wilson Wong in favor of Creditor in the amount of $10,935.97. An abstract of judgment was recorded with Sacramento County on August 20, 2014, which encumbers the Property. All other liens recorded against the Property total $245,828.00.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of $330,000.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

20. 14-21464-B-13 WILLIAM MCDANIELS JR. CONTINUED MOTION TO MODIFY PLAN
RJ-4 Richard L. Jare 11-8-16 [63]

Tentative Ruling: This motion was continued from January 3, 2017, to provide additional time for the Debtor to become current on plan payments and provide evidence of a consent agreement with the Internal Revenue Service stating that it expressly consents to less than payment in full of its priority claim.

The Motion to Confirm the Modified Plan was originally 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 was filed.

The matter will be determined at the scheduled hearing.

21. 16-25464-B-13 DOUG/VIRGINIA DAVIS MOTION TO MODIFY PLAN
MRL-1 Mikalah R. Liviakis 12-2-16 [19]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The Motion to Confirm Debtor's [sic] Chapter 13 Plan 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 Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on December 2, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

22. 15-23473-B-13 RODNEY/CHRISTINE HOLLAND MOTION TO MODIFY PLAN
BLG-6 Chad M. Johnson 12-5-16 [98]

Tentative Ruling: The Motion to Confirm Second Modified Plan Filed on 12/5/2016 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.

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $8,972.00, which represents approximately 2 plan payments for the months of November and December 2016. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the modified plan does not propose a cure of the three post-petition payments owed to Wells Fargo Home Mortgage in Class 1 for the months of July, November, and December 2016. The modified plan proposes a cure of only one post-petition payment. The Trustee cannot comply with § 2.08(b) of the plan.

Third, the plan will take approximately 78 months to complete due to the Internal Revenue Service's amended proof of claim filed on January 26, 2016, that shows the amount of unsecured priority claims as $14,532.14. This 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).

Fourth, the plan payment in the amount of $4,486.00 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 $4,699.43. The plan 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 will enter an appropriate minute order.

23. 16-25086-B-13 FLOYDETTE JAMES
PLG-3 Steven A. Alpert

MOTION TO VACATE DISMISSAL OF CASE
1-3-17 [42]

DEBTOR DISMISSED: 12/28/2016

Tentative Ruling: Debtor's Motion to Vacate Dismissal and Reinstate Chapter 13 Case was properly set for hearing on the notice required by 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.

The court's decision is to deny the motion to vacate dismissal.

This case was dismissed because the Debtor failed to confirm an amended plan within the 75-day entry of the order denying confirmation of the Debtor's plan. The Debtor asserts that there were unusual circumstances that prevented the confirmation of a plan within the 75-day deadline. Specifically, the Debtor's attorney had to amend three plans over a 2-month period because Wells Fargo had filed a proof of claim listing a different amount of arrears, Wells Fargo had filed a notice of mortgage payment change stating that payment would change beginning January 2017, and the Trustee had informed the Debtor that plan payments would increase on January 25, 2017.

The Debtor asserts that the court should apply Fed. R. Civ. P. 59(a)(1) and (2) to vacate its order dismissing this case. This is not the standard. Debtor's motion fails to set forth any grounds for relief from the dismissal order pursuant to Fed. R. Civ. P. 60(b) as incorporated into contested matters in bankruptcy cases by Fed. R. Bankr. P. 9024.

Discussion

Grounds for relief from a final judgment, order, or other proceeding are limited to:

> (1) mistake, inadvertence, surprise, or excusable neglect;
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
> (4) the judgment is void;
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). The court uses equitable principals when applying Rule 60(b). *See* 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default." *Falk*, 739 F.2d at 463.

Debtor has failed to allege any facts that would amount to relief from the order dismissing case pursuant to Fed. R. Civ. P. 60(b). Debtor does not addressed why she could not and did not request from the Trustee an extension of time to confirm a plan.

The court notes that such extensions are routinely granted. As such, the motion is denied.

The court will enter an appropriate minute order.

24.	16-21391-B-13 JPJ-2	GEORGE TOTTEN Steven A. Alpert	OBJECTION TO CLAIM OF PINNACLE CREDIT SERVICES, LLC, CLAIM NUMBER 3 11-21-16 [31]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 4 of Pinnacle Credit Services, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Pinnacle Credit Services, LLC ("Creditor"), Claim No. 3. The claim is asserted to be in the amount of $2,535.15. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about April 22, 2009, which is more than four years prior to the filing of this case. Hence, when the case was filed on March 7, 2016, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

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

The court will enter an appropriate minute order.

25. 16-26597-B-13 PGM-3 **Thru #27**

FAVIOLA VALENCIA-ARANDA AND JOSE ARANDA
Peter G. Macaluso

MOTION TO AVOID LIEN OF LEO MARTINEZ
12-15-16 [46]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The Motion to Avoid Judicial Lien Pursuant to § 522(f)(1)(A) 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). 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 deny without prejudice the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Leo Martinez ("Creditor") against the Debtors' property commonly known as 7116 Koropp Court, Sacramento, California ("Property").

A judgment was entered against Debtor Faviola Valencia-Aranda in favor of Creditor in the amount of $835.85. An abstract of judgment was recorded with Sacramento County on January 11, 2008, which encumbers the Property. However, a review of Debtors' amended Schedule C filed on January 10, 2017, shows that they have not claimed an exemption as to the Property, which is required in order to avoid a judicial lien under § 522(f)(1). *Green v. Hap Community Credit Union (In re Green)*, 2013 WL 4055846, *4 (9th Cir. BAP 2013) (citation omitted). The judicial lien does not impair any homestead exemption. Therefore, the motion is denied without prejudice.

The court will enter an appropriate minute order.

26. 16-26597-B-13 PGM-4

FAVIOLA VALENCIA-ARANDA AND JOSE ARANDA
Peter G. Macaluso

MOTION TO AVOID LIEN OF ARAMINTA B. HAWKINS
12-15-16 [52]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The Motion to Avoid Judicial Lien Pursuant to § 522(f)(1)(A) 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). 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 deny without prejudice the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Araminta B. Hawkins ("Creditor") against the Debtors' property commonly known as 7116 Koropp Court, Sacramento, California ("Property").

A judgment was entered against Debtor Faviola Valencia-Aranda in favor of Creditor in the amount of $2,401.95. An abstract of judgment was recorded with Sacramento County on September 16, 2009, which encumbers the Property. However, a review of Debtors' Schedule C shows that they have not claimed an exemption as to the Property, which is required in order to avoid a judicial lien under § 522(f)(1). *Green v. Hap Community Credit Union (In re Green)*, 2013 WL 4055846, *4 (9th Cir. BAP 2013) (citation omitted). The judicial lien does not impair any homestead exemption. Therefore, the motion is denied without prejudice.

The court will enter an appropriate minute order.

27. 16-26597-B-13 PGM-5 — FAVIOLA VALENCIA-ARANDA AND JOSE ARANDA, Peter G. Macaluso — MOTION TO AVOID LIEN OF CERTIFIED EMPLOYMENT GROUP, 12-15-16 [58]

Final Ruling: No appearance at the January 17, 2017, hearing is required.

The Motion to Avoid Judicial Lien Pursuant to § 522(f)(1)(A) 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). 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 deny without prejudice the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Certified Employment Group ("Creditor") against the Debtors' property commonly known as 7116 Koropp Court, Sacramento, California ("Property").

A judgment was entered against Debtor Faviola Valencia-Aranda in favor of Creditor in the amount of $16,773.20. An abstract of judgment was recorded with Sacramento County on February 16, 2012, which encumbers the Property. However, a review of Debtors' Schedule C shows that they have not claimed an exemption as to the Property. The judicial lien does not impair any exemption. Therefore, the motion is denied without prejudice.

The court will enter an appropriate minute order.

28. 16-28298-B-13 CAROL AMBEAU
MET-1 Mary Ellen Terranella
Thru #29

MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON
1-2-17 [12]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, the Motion for Order Valuing Collateral 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 value the secured claim of The Bank of New York Mellon at $0.00.

Debtor's motion to value the secured claim of The Bank of New York Mellon ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2021 Tolenas Avenue, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $245,000.00 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 Claim No. 2 filed by The Bank of New York Mellon, Trustee (See 410) 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 $360,000.00.

Creditor's second deed of trust secures a claim with a balance of approximately $29,438.72. 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 will enter an appropriate minute order.

29. 16-28298-B-13 CAROL AMBEAU — MOTION TO VALUE COLLATERAL OF TRAVIS CREDIT UNION
MET-2 Mary Ellen Terranella — 1-2-17 [17]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, the Motion to Value Collateral 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 value the secured claim of Travis Credit Union at $10,700.00.

Debtor's motion to value the secured claim of Travis Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Nissan Rogue ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $10,700.00 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).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim with last four digits of account number ending in 0705.

Discussion

The lien on the Vehicle's title secures a refinancing loan, and not a purchase-money loan that would trigger the 910 day requirement. The lien was incurred on September 2014 and secures a debt owed to Creditor with a balance of approximately $12,826.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $10,700.00. *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 will enter an appropriate minute order.

30. 16-26999-B-13 ANGELINA KUBRAKOV
MJ-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-17-16 [21]

WELLS FARGO BANK, N.A. VS.

CASE DISMISSED: 1/08/17

Final Ruling: No appearance at the January 17, 2017, hearing is required. This case was dismissed on January 8, 2017. Therefore, the motion is dismissed as moot.

The court will enter an appropriate minute order.