UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

March 7, 2017 at 1:00 p.m.

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1. 13-21400-B-13 DEBORAH SHEIDLER — MOTION TO MODIFY PLAN
PGM-2 Peter G. Macaluso — 1-30-17 [65]

Final Ruling: No appearance at the March, 7, 2017, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation Filed on January 30, 2017, 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 January 30, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

2. 15-28611-B-13 MARY COBOS — MOTION TO MODIFY PLAN
MC-1 Muoi Chea — 1-24-17 [35]
Thru #3

Final Ruling: No appearance at the March 7, 2017, hearing is required.

The Motion to Confirm First Modified 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 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 January 24, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

3. 15-28611-B-13 MARY COBOS — MOTION TO APPROVE LOAN MODIFICATION
MC-2 Muoi Chea — 1-24-17 [41]

Tentative Ruling: The Motion to Approve 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).

The court's decision is to permit the loan modification requested provided that Debtor file updated Schedules I and J as amended schedules on the court's docket.

Debtor seeks court approval to incur post-petition credit. Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $1,382.71 a month, as listed in the plan filed November 7, 2015, to $1,010.17 a month, as listed in the first modified plan filed January 24, 2017. The modification will extend the loan from September 1, 2033, to October 1, 2056. The interest rate will remain at 5.125%. The Debtor's first deed of trust payment of $1,010.17, which consists of monthly principal, interest, taxes, and insurance, shall commence on November 1, 2016. The new debt is a loan modification incurred only to modify the terms of the existing loan. Debtor asserts that the loan modification will help her fund the first modified plan filed January 24, 2017, by reducing her overall monthly expenses as listed in updated Schedules I and J filed as exhibits to this motion. However, these updated schedules have not been filed as amended schedules with the court.

The motion is supported by the Declaration of Mary M. Cobos. 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.

4. 16-28414-B-13 JPJ-1 **Thru #5**
ARTHUR/TRISHA WHITTEN
Peter G. Macaluso
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-9-17 [33]

CONTINUED TO 3/28/17 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH THE CONTINUED MOTION TO VALUE COLLATERAL OF FORD MOTOR CREDIT COMPANY, LLC AS TO THE 2013 FORD FLEX.

Final Ruling: No appearance at the March 7, 2017, hearing is required. The court will enter an appropriate minute order.

5. 16-28414-B-13 PGM-2
ARTHUR/TRISHA WHITTEN
Peter G. Macaluso
MOTION TO VALUE COLLATERAL OF FORD MOTOR CREDIT COMPANY, LLC
1-28-17 [24]

Tentative Ruling: The Motion to Value Collateral of Ford Motor Credit Company, LLC 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 the motion value.

Debtors' motion to value the secured claim of Ford Motor Credit Company, LLC ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2014 Ford Focus ("Vehicle") with 95,000 miles. This motion seeks to value the 2014 Ford Focus and not a 2013 Ford Flex, as mistakenly stated in the Debtors' motion. The motion to value the 2013 Ford Flex was heard on February 21, 2017, and continued to March 28, 2017.

The Debtors seek to value the Vehicle at a replacement value of $9,000.00 as of the petition filing date. 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. No proof of claim has been filed by Creditor for the claim to be valued. Claim number 2-1 is for the 2013 Ford flex (account number ending in 9343) and not the subject 2014 Ford Focus (account number ending in 4185).

Opposition by Creditor

Creditor disputes Debtors' valuation on grounds that it is based on opinion without any evidence of repair estimates associated with the alleged necessary for repairs, and because the Debtors' claimed mileage is substantially higher than that provided in Schedule D without any explanation for its increase in mileage. Creditor asserts that the value of the Vehicle is $17,275.00 and bases this valuation on NADA Used Car Guide using the mileage of 65,000 listed in Debtors' Schedule D. Creditors additionally assert that even if the vehicle has a mileage of 95,000 as listed in Debtors' motion, the value of the Vehicle is $16,000.00, which is still higher than the Debtors' value.

Response by Debtors

Debtors object to Creditor's valuation on grounds that it is based upon the declaration of Creditor's counsel and is inadmissible evidence as to value. Debtors further assert that the Debtors' own valuation is based on personal knowledge of the Vehicle and the mechanic and cosmetic issues that effect valuation. Debtors assert that they have no objection to the Creditor arranging for an inspection of the Vehicle.

Discussion

Creditor's declaration is inadmissible hearsay. The Declaration of Nancy G. Waters, paralegal with the law firm hired to represent Creditor, relies on the NADA Used Car Guide to prove the truth of the valuation asserted. The valuation is not supported by a declaration of a declarant who has personal knowledge of who prepared the report. Such a declaration is required pursuant to Federal Rule of Evidence 901, requiring that an item of evidence be supported by sufficient evidence to permit a finding that the item is what the proponent claims it is. There is no testimony from the person who prepared the report attesting to how the values were obtained, explanations for the values input into the opinion formed, credentials in making such determinations, etc.

Even if the NADA Used Car Guide is admissible evidence, the values offered by the Creditor - $17,275.00 and $16,000.00 - are based on a "clean" retail evaluation by NADA Used Car Guide, a commonly used market guide. This valuation presumes, as the adjective "clean" suggests, that the car has "no mechanical defects and passes all necessary inspections with ease; paint, body and wheels have minor surface scratching with a high gloss finish; interior reflects minimal soiling and wear, with all equipment in complete working order; vehicle has a clean title history. Because individual vehicle condition varies greatly, users may need to make independent adjustments for actual vehicle condition." Cf. http://www.nadaguides.com.

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

Nor have the Debtors proven to the court's satisfaction the replacement value of the Vehicle. The Debtors have not explained the 30,000 mileage discrepancy as listed in Schedule D against their declaration. Additionally, the Debtors provide no estimate as to cost to fix the needed repairs or rid the noxious odors inside the Vehicle as stated in their declaration. These factors must be considered in order to determine the cost a retail merchant would charge for the Vehicle.

While neither parties have persuaded the court regarding their position of the value of the vehicle, the Debtors have the burden of proof. Therefore, the motion will be denied without prejudice.

The court will enter an appropriate minute order.

6. 17-20014-B-13 ROBERT ROSS — OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
AP-1 Eric W. Vandermey — 2-8-17 [14]
Thru #7

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). 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, Wells Fargo Bank, N.A. ("Creditor") holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $28,586.93 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

Second, the plan does not appear to be feasible since the Debtor's monthly disposable income as listed in Schedule J is less than the payment required to pay administrative expenses and Class 1 claims, taking into account the Creditor's pre-petition arrears as stated in its proof of claim. *See* 11 U.S.C. §§ 1325(a)(6).

The plan filed January 3, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

7. 17-20014-B-13 ROBERT ROSS — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Eric W. Vandermey — 2-9-17 [17]

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 Debtor did not appear at the meeting of creditors set for February 2, 2017, as required pursuant to 11 U.S.C. § 343.

Second, 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).

Third, the Debtor has not provided the 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).

Fourth, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

The plan filed January 3, 2017, 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 will enter an appropriate minute order.

8. 16-23515-B-13 VASILE/LENUTA BEUCA MOTION TO MODIFY PLAN
MS-1 Mark Shmorgon 1-27-17 [17]

Final Ruling: No appearance at the March 7, 2017, hearing is required.

The Motion to Confirm First Modified 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 January 27, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

9. 12-27718-B-13 KEVIN/ANNETTE CARROLL MOTION TO MODIFY PLAN
MG-1 Matthew J. Gilbert 1-22-17 [30]

Tentative Ruling: The Motion to Confirm First Modified Chapter 13 Plan Filed 1/21/17 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 post-confirmation modified plan filed January 22, 2017, proposes to change the interest rate on the secured debt owed to Travis Federal Credit Union in Class 2A from 6% to 0%. Nothing in 11 U.S.C. § 1329 permits the Debtors to change the interest rate in a post-confirmation modified plan. The Trustee has already paid this creditor in full with interest in the amount of $12.22 in accordance with the previously confirmed plan and the timely filed and allowed proof of claim.

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.

10. 16-28428-B-13 DANZHEL TU
JPJ-01 Justin K. Kuney

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
2-9-17 [14]

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). 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 testified at the meeting of creditors that she owned a Honda vehicle that was not disclosed on her schedules. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not complied with the duty imposed by 11 U.S.C. § 521(a)(1).

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to the Debtor's stated valued on Schedules A, B, and C, the total value of non-exempt property in the estate is $34,510.00. The total amount that Debtor proposes to pay to unsecured creditors is only $12,904.20. Furthermore, there may be additional non-exempt equity in Debtor's Honda vehicle and her real property located at 9068 Marble Valley Court, Sacramento, California. The Debtor failed to list the Honda vehicle in her schedules and the real property may have a higher valuation than stated in Debtor's Schedule A/B based on the Trustee's preliminary investigation.

The plan filed December 25, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

11. 16-28129-B-13 JERRY/JOANNE BENNETT
SNM-7 Stephen N. Murphy
Thru #12

MOTION TO VALUE COLLATERAL OF FORD MOTOR COMPANY
2-3-17 [83]

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 collateral.

This is Debtors' second motion to value collateral of Ford Motor Company ("Creditor") after Debtors' first motion to value was denied without prejudice due to insufficient evidence of valuation. *See* dkt. 62. Debtors are the owners of a 2014 Ford Escape ("Vehicle"). Debtors seek to value the Vehicle at a replacement value of $12,900.00 as of the petition filing date. This valuation is based on the appraisal of Donna Bradshaw, an International Society of Appraisers appraiser for West Auctions.

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 appraisal presented in Debtors' motion is hearsay and inadmissible pursuant to Fed. R. Evid. 802. Creditor asserts that the document is an out-of-court statement offered for truth of the matter asserted and does not fall within any enumerated exception to the hearsay rule. Creditor further alleges that the appraisal lacks foundation because it is not authenticated by a competent witness pursuant to Fed. R. Evid. 901. Creditor argues that there is no declaration under penalty of perjury by the report preparer to properly authenticate the findings of the appraisal. As such, Creditor contends that the appraisal should be deemed to be inadmissible hearsay evidence and should be excluded in its entirety.

Additionally, Creditor states that the appraisal does not sufficiently explain how it reached its retail value, that the words "retail value" stated in the appraisal might actually mean auction value, and that the appraiser should have used the Kelley Blue Book or NADA Used Car Guide as a starting point with deductions based on the Vehicle's condition made therefrom. The Creditor offers the alternative retail value of no less than $20,700.00

Discussion

Creditor's declaration is inadmissible hearsay. The Declaration of Jennifer H. Wang, associate attorney with the law firm hired to represent Creditor, relies on the NADA Used Car Guide to prove the truth of the valuation asserted. The valuation is not supported by a declaration of a declarant who has personal knowledge of who prepared the report. Such a declaration is required pursuant to Federal Rule of Evidence 901, requiring that an item of evidence be supported by sufficient evidence to permit a finding that the item is what the proponent claims it is. There is no testimony from the person who prepared the report attesting to how the values were obtained, explanations for the values input into the opinion form, credentials in making such determinations, etc.

Even if the NADA Used Car Guide is admissible evidence, the value offered by the Creditor is based on a "clean" retail evaluation by NADA Used Car Guide, a commonly used market guide. This valuation presumes, as the adjective "clean" suggests, that

the car has "no mechanical defects and passes all necessary inspections with ease; paint, body and wheels have minor surface scratching with a high gloss finish; interior reflects minimal soiling and wear, with all equipment in complete working order; vehicle has a clean title history. Because individual vehicle condition varies greatly, users may need to make independent adjustments for actual vehicle condition." Cf. http://www.nadaguides.com.

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

The court also rejects Debtors' valuation. While an appraisal has been provided, it is not supported by a declaration of Ms. Bradshaw, who personally prepared the appraisal. Similar to the court's findings as stated in minute order dkt. 62, the Debtors' declaration again appears to be based on hearsay. *See* dkt. 85 at ¶ 10 ("We are told by our attorney and believe that the equity available to secure the claim of Ford Motor Company is $12,900.00."). 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.

12. 16-28129-B-13 JERRY/JOANNE BENNETT — MOTION TO VALUE COLLATERAL OF WHEELS FINANCIAL GROUP, LLC
SNM-8 Stephen N. Murphy — 2-3-17 [91]

Final Ruling: No appearance at the March 7, 2017, hearing is required.

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). 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 value collateral.

This is Debtors' second motion to value collateral of Wheels Financial Group LLC dba LoanMart ("Creditor") after Debtors' first motion to value was denied without prejudice due to unpersuasive evidence as to valuation. *See* dkt. 63. Debtors are the owners of a 2008 Ford Ranger ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $5,250.00 as of the petition filing date. This valuation is based on the appraisal of Donna Bradshaw, an International Society of Appraisers appraiser for West Auctions.

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, LLC dba 1-800LoanMart is the claim which

may be the subject of the present motion.

Discussion

The court rejects Debtors' valuation. While an appraisal has been provided, it is not supported by a declaration of Ms. Bradshaw, who personally prepared the appraisal. Similar to the court's findings as stated in minute order dkt. 63, the Debtors' declaration again appears to be based on hearsay. *See* dkt. 93 at ¶ 10 ("We are told by our attorney and believe that the equity available to secure the claim of Ford Motor Company is $12,900.00."). 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.

13. 16-25930-B-13 ANGELINA ROBINSON
JPJ-3 Richard L. Sturdevant

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
1-23-17 [51]

Tentative Ruling: The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case 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 dismiss the case.

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted or dismissed on the following grounds.

First, Debtor is delinquent to the Trustee in the amount of $19,626.00, which represents approximately three plan payments. By the time this matter is heard, an additional plan payment in the amount of $6,542.00 per month will also be due. The Debtor has not made plan payments to the Trustee since the filing of the petition, which was on September 5, 2016. Cause exists to convert or dismiss this case to a Chapter 7 proceeding pursuant to 11 U.S.C. § 1307(c)(1).

Second, the Debtor has failed to prosecute this case causing unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The Trustee's objection to confirmation of Chapter 13 plan was hear and sustained on November 8, 2016. To date, the Debtor has not taken further action to confirm a plan in this case.

Response by Debtor

Debtor has filed a response asserting that she will file and set for hearing an amended plan prior to the hearing on this motion. Debtor also states that the amended plan will pay unsecured creditors 100% and will lower monthly plan payments, and that she intends to surrender one real property. Although Debtor states that a motion to value collateral will be heard on March 7, 2017, no motion to value appears on the court's docket nor is scheduled to be heard on that date.

Discussion

Because no amended plan has been filed and set for hearing prior to the hearing on this motion as was represented in the Debtor's opposition and because there is no motion to value pending as also represented by the Debtor in her opposition, for the above reasons, there is cause to dismiss. Therefore this case is ordered dismissed.

The court will enter an appropriate minute order.

14. 17-20743-B-13 ROBERT/LEE-ANN MAHAN — MOTION TO VALUE COLLATERAL OF ALLIANT CREDIT UNION
MRL-1 Mikalah R. Liviakis — 2-6-17 [8]

Final Ruling: No appearance at the March 7, 2017, hearing is required.

The Motion to Value 4730 Grazing Hill Road, Collateral of Alliant Credit Union 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 Alliant Credit Union at $0.00.

Debtors' motion to value the secured claim of Alliant Credit Union ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owner of the subject real property commonly known as 4730 Grazing Hill Road, Shingle Springs, California ("Property"). Debtors seek to value the Property at a fair market value of $800,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value is conclusive. *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 $920,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $92,965.00. 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.

15. 16-21744-B-13 DANIEL/EUPHRASIA BLAIR — MOTION TO VALUE COLLATERAL OF HONDA FINANCIAL SERVICES
TAG-3 Ted A. Greene — 1-30-17 [45]

Final Ruling: No appearance at the March 7, 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 Honda Financial Services at $11,420.00.

Debtors' motion to value the secured claim of Honda Financial Services ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2013 Honda Civic ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $11,420.00 as of the petition filing date. Given the absence of contrary evidence, the Debtors' opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 4 filed by American Honda Finance Corporation is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on or around June 14, 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 $19,879.66 according to Claim No. 4. 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 $11,420.00. *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.

16. 16-28351-B-13 SHASHI MANI
PPR-1 George T. Burke

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
1-20-17 [29]

Tentative Ruling: The Objections to Proposed Chapter 13 Plan and Confirmation Thereof 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). A written reply has been filed to the objection.

The matter will be determined at the scheduled hearing.

17. 16-22152-B-13 THOMAS/DENISE RAHMING MOTION TO MODIFY PLAN
NBC-3 Eamonn Foster 2-1-17 [49]

Final Ruling: No appearance at the March 7, 2017, hearing is required.

The Motion to Confirm Third Modified Plan was not 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). Instead, only 34 days' notice was provide.

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

The court will enter an appropriate minute order.

18. 16-27061-B-13 DANIEL CEJA MOTION TO CONFIRM PLAN
SNM-3 Stephen N. Murphy 1-19-17 [53]

Tentative Ruling: The Motion to Confirm Chapter 13 Plan Filed November 4, 2016, 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 dismiss the motion as moot.

The plan that is the subject of this motion is the plan filed on November 4, 2016. Confirmation of that plan was denied on January 3, 2017. The Debtor has failed to file an amended plan and failed to file a motion to vacate or reconsider the order denying confirmation.

Furthermore, the Debtor is delinquent to the Trustee in the amount of $5,830.00, which represents approximately 1.94 plan payments. By the time this matter is heard, an additional plan payment in the amount of $3,010.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The motion is dismissed as moot.

The court will enter an appropriate minute order.

19. 17-20761-B-13 VYACHESLAV LAZARESKU
MS-1 Mark Shmorgon

MOTION TO AVOID LIEN OF EMPLOYMENT DEVELOPMENT DEPARTMENT
2-7-17 [8]

Final Ruling: No appearance at the March 7, 2017, hearing is required.

The Motion to Avoid Judicial Lien 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 grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Employment Development Department ("Creditor") against the Debtor's property commonly known as 5321 Calistoga Way, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $3,105.25. An abstract of judgment was recorded with Sacramento County on July 10, 2014, which encumbers the Property. All other liens recorded against the Property total $203,772.61.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $250,701.00 as of the date of the petition.

Debtor has 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 Debtor's 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. 17-20464-B-13 ANATOLY PANASIUK
MS-1 Mark Shmorgon
Thru #25

MOTION TO VALUE COLLATERAL OF SACRAMENTO COUNTY TAX COLLECTOR
1-26-17 [9]

Final Ruling: No appearance at the March 7, 2017, hearing is required.

The Motion to Value Collateral of Sacramento County Tax Collector 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 Sacramento County Tax Collector at $3,247.76.

Debtor's motion to value the secured claim of Sacramento County Tax Collector ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of various personal property consisting of a 1998 Toyota 4Runner, 2017 Toyota Camry, household goods, electronics, books and pictures, sports and hobby equipment, wearing apparel, jewelry, two dogs and one cat, cash on hand, a Chase checking account, a Bank of America checking account, and Panasiuk (a sole proprietorship) ("Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of $4,416.76 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *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 to be valued.

Discussion

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).

The total dollar amount of the obligation represented by the abstract of judgment of Sacramento County Tax Collector is $8,216.85 as stated in the Debtor's motion. Additionally, there is a senior tax lien recorded against the Personal Property by the Department of Industrial Relations in the amount of $1,169.00. Debtor states in his declaration that the price a retail merchant would charge for the Personal Property is $4,416.76. Therefore, accounting for the senior lien of Department of Industrial Relations, the Creditor's claim secured by a lien on the asset's title is not under-collateralized. The creditor's secured claim is determined to be in the amount of $3,247.76. *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.

21. 17-20464-B-13 ANATOLY PANASIUK
MS-2 Mark Shmorgon

MOTION TO VALUE COLLATERAL OF EMPLOYMENT DEVELOPMENT DEPARTMENT
1-26-17 [14]

Final Ruling: No appearance at the March 7, 2017, hearing is required.

The Motion to Value Collateral of Employment Development Department 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 Employment Development Department at $0.00.

Debtor's motion to value the secured claim of Employment Development Department ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of various personal property consisting of a 1998 Toyota 4Runner, 2017 Toyota Camry, household goods, electronics, books and pictures, sports and hobby equipment, wearing apparel, jewelry, two dogs and one cat, cash on hand, a Chase checking account, a Bank of America checking account, and Panasiuk (a sole proprietorship) ("Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of $4,416.76 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *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 to be valued.

Discussion

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).

The total dollar amount of the obligation represented by the state tax lien of Employment Development Department is $29,957.99 as stated in Debtor's motion. Additionally, there are two senior liens recorded against the Personal Property: (1) Department of Industrial Relations in the amount of $1,169.00 and (2) Sacramento County Tax Collector in the amount of $8,216.85. Debtor states in his declaration that the price a retail merchant would charge for the Personal Property is $4,416.76. Therefore, accounting the two senior liens, 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 $0.00. *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.

22. 17-20464-B-13 ANATOLY PANASIUK
MS-3 Mark Shmorgon

MOTION TO VALUE COLLATERAL OF EMPLOYMENT DEVELOPMENT DEPARTMENT
1-26-17 [19]

Final Ruling: No appearance at the March 7, 2017, hearing is required.

The Motion to Value Collateral of Employment Development Department 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 Employment Development Department at $0.00.

Debtor's motion to value the secured claim of Employment Development Department ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of various personal property consisting of a 1998 Toyota 4Runner, 2017 Toyota Camry, household goods, electronics, books and pictures, sports and hobby equipment, wearing apparel, jewelry, two dogs and one cat, cash on hand, a Chase checking account, a Bank of America checking account, and Panasiuk (a sole proprietorship) ("Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of $4,416.76 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *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 to be valued.

Discussion

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).

The total dollar amount of the obligation represented by the state tax lien of Employment Development Department is $2,611.69 as stated in Debtor's motion. Additionally, there are three senior liens recorded against the Personal Property: (1) Department of Industrial Relations in the amount of $1,169.00, (2) Sacramento County Tax Collector in the amount of $8,216.85, and (3) Employment Development Department in the amount of $29,957.99. Debtor states in his declaration that the price a retail merchant would charge for the Personal Property is $4,416.76. Therefore, accounting the three senior liens, 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 $0.00. *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.

23. 17-20464-B-13 ANATOLY PANASIUK
MS-4 Mark Shmorgon

MOTION TO VALUE COLLATERAL OF EMPLOYMENT DEVELOPMENT DEPARTMENT
1-26-17 [24]

Final Ruling: No appearance at the March 7, 2017, hearing is required.

The Motion to Value Collateral of Employment Development Department 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 Employment Development Department at $0.00.

Debtor's motion to value the secured claim of Employment Development Department ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of various personal property consisting of a 1998 Toyota 4Runner, 2017 Toyota Camry, household goods, electronics, books and pictures, sports and hobby equipment, wearing apparel, jewelry, two dogs and one cat, cash on hand, a Chase checking account, a Bank of America checking account, and Panasiuk (a sole proprietorship) ("Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of $4,416.76 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *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 to be valued.

Discussion

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).

The total dollar amount of the obligation represented by the state tax lien of Employment Development Department is $2,339.66 as stated in Debtor's motion. Additionally, there are four senior liens recorded against the Personal Property: (1) Department of Industrial Relations in the amount of $1,169.00, (2) Sacramento County Tax Collector in the amount of $8,216.85, (3) Employment Development Department in the amount of $29,957.99, and (4) Employment Development Department in the amount of $2,611.69. Debtor states in his declaration that the price a retail merchant would charge for the Personal Property is $4,416.76. Therefore, accounting the four senior liens, 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 $0.00. *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.

24. 17-20464-B-13 ANATOLY PANASIUK
MS-5 Mark Shmorgon

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
1-26-17 [29]

Final Ruling: No appearance at the March 7, 2017, hearing is required.

The Motion to Value Collateral of 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 Internal Revenue Service at $0.00.

Debtor's motion to value the secured claim of Internal Revenue Service ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of various personal property consisting of a 1998 Toyota 4Runner, 2017 Toyota Camry, household goods, electronics, books and pictures, sports and hobby equipment, wearing apparel, jewelry, two dogs and one cat, cash on hand, a Chase checking account, a Bank of America checking account, and Panasiuk (a sole proprietorship) ("Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of $4,416.76 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *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 to be valued.

Discussion

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).

The total dollar amount of the obligation represented by the federal tax lien of Internal Revenue Service is $255,029.87 as stated in Debtor's motion. Additionally, there are five senior liens recorded against the Personal Property: (1) Department of Industrial Relations in the amount of $1,169.00, (2) Sacramento County Tax Collector in the amount of $8,216.85, (3) Employment Development Department in the amount of $29,957.99, (4) Employment Development Department in the amount of $2,611.69 and (5) Employment Development Department in the amount of $2,339.66. Debtor states in his declaration that the price a retail merchant would charge for the Personal Property is $4,416.76. Therefore, accounting the five senior liens, 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 $0.00. *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.

25. 17-20464-B-13 ANATOLY PANASIUK
MS-6 Mark Shmorgon

MOTION TO VALUE COLLATERAL OF EMPLOYMENT DEVELOPMENT DEPARTMENT
1-26-17 [34]

Final Ruling: No appearance at the March 7, 2017, hearing is required.

The Motion to Value Collateral of Employment Development Department 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 Employment Development Department at $0.00.

Debtor's motion to value the secured claim of Employment Development Department ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of various personal property consisting of a 1998 Toyota 4Runner, 2017 Toyota Camry, household goods, electronics, books and pictures, sports and hobby equipment, wearing apparel, jewelry, two dogs and one cat, cash on hand, a Chase checking account, a Bank of America checking account, and Panasiuk (a sole proprietorship) ("Personal Property"). The Debtor seeks to value the Personal Property at a replacement value of $4,416.76 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *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 to be valued.

Discussion

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).

The total dollar amount of the obligation represented by the state tax lien of Employment Development Department is $27,517.55 as stated in Debtor's motion. Additionally, there are six senior liens recorded against the Personal Property: (1) Department of Industrial Relations in the amount of $1,169.00, (2) Sacramento County Tax Collector in the amount of $8,216.85, (3) Employment Development Department in the amount of $29,957.99, (4) Employment Development Department in the amount of $2,611.69, (5) Employment Development Department in the amount of $2,339.66, and (6) Internal Revenue Service in the amount of $255,029.87. Debtor states in his declaration that the price a retail merchant would charge for the Personal Property is $4,416.76. Therefore, accounting the six senior liens, 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 $0.00. *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.

26. 16-23766-B-13 EDWARD GRINDROD MOTION TO MODIFY PLAN
SS-3 Scott D. Shumaker 1-31-17 [60]

Final Ruling: No appearance at the March 7, 2017, hearing is required.

The Debtor's Motion for Order Confirming Second Modified Plan Filed January 31, 2017, 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 January 31, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

27. 16-28566-B-13 JPJ-1 — ANTONIO VALENZUELA AND MARIA SEPULVEDA, Thomas O. Gillis — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE, 2-9-17 [14]

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 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). A 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 Debtors have exempted their 2016 Volkswagen Passat on amended Schedule C filed February 27, 2017. It does not appear that the unsecured creditors will receive a higher distribution in a Chapter 7 proceeding. The plan complies with 11 U.S.C. § 1325(a)(4).

Second, the Debtors have disclosed Co-Debtor's prior cleaning business that is no longer in operation on the Statement of Financial Affairs, question #27, on amended Schedule C filed February 27, 2017. The plan has been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtors have complied with the duty imposed by 11 U.S.C. § 521(a)(1).

Third, the Debtors have amended the Statement of Financial Affairs, question #16, to reflect that their attorney Thomas O. Gillis was paid $2,000.00 prior to filing the petition.

Fourth, the plan filed December 30, 2016, fails to provide Debtors' attorney's signature. The Debtors' attorney provides no legal authority for why a document uploaded by an attorney does not require his signature.

Because the plan does not include the Debtors' attorney's signature, the plan filed December 30, 2016, 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 Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are 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 Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

28. 17-20566-B-13 GREGORY HETRICK
SDH-1 Scott D. Hughes

MOTION TO VALUE COLLATERAL OF BMW BANK OF NORTH AMERICA
1-30-17 [8]

Tentative Ruling: The Motion to Value Collateral 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 BMW Bank of America at $4,100.00.

According to the Debtor, Debtor and BMW Bank of America ("Creditor") have stipulated as to the valuation of a BMW 525i ("Vehicle"). BMW of America shall have a Class 2 secured claim of $4,100.00 payable at 4.75% interest and that the remainder of the claim shall be treated as a Class 7 general unsecured claim. Debtor asserts that counsel for Creditor will appear by phone at the date of the hearing to verify this agreement.

The court will enter an appropriate minute order.

29. 16-28074-B-13 EDITH INGRAM — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
JPJ-2 Chinonye Ugorji — 1-26-17 [25]

Final Ruling: No appearance at the March 7, 2017, hearing is required.

The Trustee's Objection to Debtor's Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor 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 as consent to the granting of the motion. *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 Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The court's decision is to sustain the objection and the exemptions are disallowed in their entirety.

Pursuant to California Code of Civil Procedure §§ 703.140(a)(1) and (a)(3), a debtor may claim certain property as exempt under either § 703 or § 704, but not a combination of both. According to Schedule C, the Debtor claimed her interest in real and/or personal property as exempt under both California Code of Civil Procedure § 703 and § 704. The Debtor has not cited any authority for the proposition that she may utilize some of the exemptions available under § 703 and other exemptions available under § 704.

Therefore, the Trustee's objection is sustained and the claimed exemptions are disallowed.

The court will enter an appropriate minute order.

30. 11-29591-B-13 BRIAN SAECHAO
16-2030 PLC-3

MOTION TO AMEND
1-30-17 [66]

SAECHAO V. FEDERAL NATIONAL MORTGAGE ASSOCIATION ET AL

Tentative Ruling: The Motion for Leave to File First Amended Complaint 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny the motion to amend in its entirety.

Before the court is a Motion for Leave to Amend to File First Amended Complaint filed by plaintiff Brian Kao Saechao ("Plaintiff"). Defendants Federal National Mortgage Association ("FNMA") and Seterus, Inc. ("Seterus") (collectively, "Defendants") have opposed the motion. Plaintiff filed no reply.

The court takes judicial notice of the docket in this adversary proceeding, in the underlying chapter 13 case captioned *In re Brian Kao Saechao*, case no. 11-29591, and in the related adversary proceeding captioned *Brian Kao Saechao v. Federal National Mortgage Association and Seterus, Inc.*, adv. no. 13-02368 filed in this court on November 11, 2013 ("Saechao I"). For the reasons previously stated in the civil minutes filed in this adversary proceeding on July 19, 2016, and the order filed July 22, 2016, to the extent necessary, the court grants Defendants' request for judicial notice at dkt. 74.

Finding bad faith, undue delay, undue prejudice, and futility Plaintiff's motion will be denied.

Background

This adversary proceeding concerns a dispute over the settlement agreement between the parties that resolved Saechao I. This adversary proceeding was filed on February 16, 2016.

Plaintiff is represented in this adversary proceeding by the same attorney who represented him in Saechao I. Defendants were represented in Saechao I by the law firm of McCarthy & Holthus, LLP ("M & H").

Plaintiff signed the Saechao I settlement agreement on March 27, 2014. Plaintiff represented in ¶ 26 of the agreement that he was advised by counsel before he signed it. Plaintiff's attorney also signed the Saechao I settlement agreement on March 26, 2014, as "READ AND APPROVED AS TO FORM".

The Saechao I settlement agreement is not signed by FNMA. Only Seterus signed the Saechao I settlement agreement, and it did so on March 28, 2014. M & H signed the Saechao I settlement agreement as "READ AND APPROVED AS TO FORM" for both Defendants on April 4, 2014.

On April 1, 2016, Defendants filed a motion to dismiss in this adversary proceeding which the court granted in part and denied in part in an order filed on July 22, 2016. Relevant for purposes of the present motion, the court dismissed with prejudice Plaintiff's negligence claim alleged in the fifth claim for relief of the complaint.

On September 23, 2016, Plaintiff filed a motion for partial summary judgment on the issue of his loan balance for purposes of the Saechao I settlement agreement. Finding disputed factual issues regarding Plaintiff's loan balance, the court denied Plaintiff's summary judgment motion in an order filed on November 4, 2016.

The parties have also engaged in discovery and, at Plaintiff's request, the discovery deadline was recently extended to May 30, 2017.

Plaintiff asserts that he now needs to amend his complaint to add a new party and new claims to account for certain "facts" that only recently came to light through discovery in this adversary proceeding. Plaintiff does not identify these purported newly-discovered "facts." However, from the proposed amended complaint, the court can discern that these "facts" relate to Plaintiff's loan balance for purposes of the Saechao I settlement agreement and include a claim that Plaintiff and his attorney were somehow duped by Defendants and their former attorneys (M & H) into signing the Saechao I settlement agreement which only Seterus signed.

Applicable Standard

Federal Rule of Civil Procedure 15(a) - applicable by Federal Rule of Bankruptcy Procedure 7015 - provides that a party may amend a complaint once "as a matter of course" before a responsive pleading is served and after that a "party may amend the party's pleading only by leave of court or by written consent of the adverse party and leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). Thus, "after a brief period in which a party may amend as of right," leave to amend lies "within the sound discretion of the trial court." *U.S. v. Webb*, 655 F.2d 977, 979 (9th Cir. 1981).

When deciding whether to grant leave to amend, a court must consider: (1) whether the amendment was filed with undue delay; (2) whether the movant has requested the amendment in bad faith or as a dilatory tactic; (3) whether movant was allowed to make previous amendments which failed to correct deficiencies of the complaint; (4) whether the amendment will unduly prejudice the opposing party and; (5) whether the amendment is futile. *See Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

The five factors are not considered equally. Prejudice is the most important factor and is given the most weight. *Eminence*, 316 F.3d at 1052. Therefore, "[a]bsent prejudice, or a strong showing of any of the remaining *Foman* factors, there exists a presumption under Rule 15(a) in favor of granting leave to amend." *Id.*

Discussion

Plaintiff's request for leave to amend is made in bad faith, is disingenuous, and his statement regarding the need for leave to amend now is not credible.

Plaintiff was represented in Saechao I by the same attorney that now represents him in this adversary proceeding. Both Plaintiff and his current attorney signed the Saechao I settlement agreement. The former certified he was assisted by counsel before he signed the agreement. The latter stated he read and approved the settlement document before plaintiff signed it.

The absence of FNMA's signature on the Saechao I settlement agreement is apparent from the face of the document itself, and from even a cursory glance at page 7 of the document. Thus, not only was the absence of FNMA's signature from the Saechao I settlement agreement known to Plaintiff and his attorney in March/April 2014, but, both undoubtedly knew that M & H represented the Defendants in Saechao I and, more important, in the settlement of the Saechao I adversary proceeding. That means for over 3 years Plaintiff and his attorney knew or should have known of the facts that both now claim give rise to the claims in the fifth and sixth claims for relief of the proposed amended complaint. Notably, that 3 years includes 2 years before the complaint in this adversary proceeding was filed and 1 year while this adversary proceeding has been pending. Doing nothing for 3 years with full knowledge of potentially actionable facts is undue delay.

Requesting leave now to now allege claims that were - or should have been - known 2 years before and 1 year after this adversary proceeding was filed is also unduly prejudicial. There have been significant events in this adversary proceeding. The court has ruled on two dispositive motions. The court granted in part and denied in

part Defendants' motion to dismiss and the court denied Plaintiff's motion for summary judgment. Both decisions narrowed the claims and the scope of this litigation, and focused the issues for trial. The parties have also engaged in discovery. The addition now of M & H as a new party and the addition now of new claims against M & H as a new party where facts giving rise to the proposed claims were known as early as March 2014 would require the court to reverse course and expand the scope of this litigation, further extend discovery, and further delay trial sometime well into 2018. At significant additional expense, the Defendants would also be required to respond to - and the court would be compelled to address (or re-address) - issues already determined by the dismissal and summary judgment motions.

To the extent that all of the claims and/or allegations Plaintiff seeks to add pertain to his loan balance, the court has already determined that to be a factual matter for trial. In that respect, the proposed amendments are an improper collateral attack on the court's summary judgment decision and a bad faith attempt by the Plaintiff to amend around an adverse summary judgment decision. *See Schlacter-Jones v. General Tel.*, 936 F.2d 435, 443 (9th Cir. 1991) (stating that "[t]he timing of the motion [for leave to amend], after the parties had conducted discovery and a pending summary judgment motion had been fully briefed, weighs heavily against allowing leave" because "[a] motion for leave to amend is not a vehicle to circumvent summary judgment"), overruled in part on other grounds by *Cramer v. Consolidated Freightways, Inc.*, 255 F.3d 683, 692 (9th Cir. 2001). Granting leave would also put the Defendants in the position of potentially having to re-litigate what has already been litigated and resolved in their favor - at least at the summary judgment stage, i.e., Plaintiff's loan balance is a disputed factual matter to be resolved at trial.

The proposed amendment to allege the fraud and conspiracy claims in the proposed sixth claim for relief is futile. Plaintiff has not complied with the certification requirements of California Civil Code § 1710.10. Plaintiff has not demonstrated by affidavit a reasonable probability that he will prevail against M & H on the proposed fraud and conspiracy claims. Plaintiff also did not provide M & H with any opportunity to address those fraud and conspiracy claims prior to his request for leave to amend. The proposed fraud claim in the sixth claim for relief also lacks the specificity required by Federal Rule of Civil Procedure 9(b) applicable by Federal Rule of Bankruptcy Procedure 7009. Therefore, even if it could be allowed, the sixth claim for relief would be dismissed.

Leave to amend to re-plead the negligence claim in the proposed fifth claim for relief is also sought in bad faith, is prejudicial to the Defendants, and is futile since the Defendants have already prevailed on that claim on the merits. The negligence claim in the fifth claim for relief was dismissed with prejudice on July 22, 2016. Plaintiff's remedy is to appeal that dismissal if he so chooses. *See Lacey v. Maricopa County*, 693 F.3d 896, 927-928 (9th Cir. 2012).

Finally, as to the remainder of the proposed amendments to conform the second, third, and fourth claims for relief with the addition of M & H, the re-pleading of the fifth claim for relief, and the addition of a new sixth claim for relief, in light of the court's decision stated above, leave to amend the second, third, and fourth claims is futile.

Therefore, for all the foregoing reasons, Plaintiff's motion for leave to amend will be denied in its entirety.

The court will enter an appropriate minute order.

31. 16-28298-B-13 CAROL AMBEAU — MOTION TO RESTRICT OR REDACT PUBLIC ACCESS RE CLAIM #2 1-31-17 [29]
TGM-1 Mary Ellen Terranella

Final Ruling: No appearance at the March 7, 2017, hearing is required.

The Motion of the Bank of New York Mellon for Protective Order to Restrict Public Access to Consumer Information Pursuant to 11 U.S.C. § 107 and Bankruptcy Rule 9037 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 grant the motion to restrict public access to Claim No. 2.

Bank of New York Mellon seeks to restrict public access to Claim No. 2, which was filed by Bank of New York Mellon and included unredacted documents that disclosed personally identifiable information, which should have been redacted pursuant to Bankruptcy Rule 9037. Bank of New York Mellon had provided a closed-end term loan secured by real estate to the Debtor prior to the initiation of the bankruptcy case. Following the initiation of the case, the unredacted documents were electronically filed with the court. Bank of New York Mellon has filed an amendment of the unredacted documents as Exhibit A to its motion.

Bank of New York Mellon submits that Fed. R. Bankr. P. 9037(a) creates a presumption that "cause" exists under § 107(c) for issuing an order protecting an individual from the disclosure of information restricted by Fed. R. Bankr. P. 9037(a).

In light of its error, Bank of New York Mellon states in its motion that it will offer the Debtor and any other individual whose personal identifiable information was included in the unredacted document (the "Notice Party") credit monitoring without cost for a period of 12 months. This credit monitoring will be offered in writing in a separate letter mailed to each Notice Party, and each Notice Party will have 120 days from the date of the notice to accept the offer set forth in the notice.

Bank of New York Mellon further requests that the court require the Clerk of this Court, after entry of the protective order, to retain the original unredacted documents for access by the applicable Debtor, Debtor's counsel, the U.S. Trustee, and any applicable case trustee and such trustee's counsel upon request by any such party, consistent with procedures of this court.

Discussion

Fed. R. Bankr. P. 9037(a) prescribes that a party making an electronic filing may include personally identifiable information only in redacted form as follows: the last four digits of a consumer's financial-account number or social security number, the year of an individual's date of birth, and the initials of any minor.

Additionally, Rule 9037(d) prescribes that, for cause, the court may by order: (1) require redaction of additional information or (2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.

Section 107(c) of the Bankruptcy Code permits the court, "for cause," to protect an individual with respect to any paper or pleading filed in a bankruptcy case "to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's

property." 11 U.S.C. § 107(c).

The court has authority under Rule 9037(d) to require redaction of additional information and to limit a nonparty's remote electronic access to a document filed with the court. Bank of New York Mellon has filed an amendment to the unredacted documents as Exhibit A to its motion. Claim No. 2 includes confidential personally identifiable information, the disclosure of which would create an undue risk of identity theft or other unlawful injury to the individual or the individual's property pursuant to § 107(c).

Therefore, the court will allow the amendment of the unredacted documents and order that the public be restricted from accessing Claim No. 2. The original unredacted documents shall be retained by the Clerk of Court and accessed only by the applicable Debtor, Debtor's counsel, the U.S. Trustee, and any applicable case trustee and such trustee's counsel upon request by any such party, consistent with procedures of this court. The motion will be granted.

The court will enter an appropriate minute order.