UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

March 21, 2017 at 1:00 p.m.

1.	17-20407-B-13 MRL-1	FORREST GARDENS Mikalah R. Liviakis	CONTINUED MOTION TO VALUE COLLATERAL OF ADVANTIS CREDIT UNION 1-23-17 [9]

Final Ruling: No appearance at the March 21, 2017, hearing is required

The Motion to Value 2013 Karsten Avalon, Collateral of Advantis Credit Union 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 dismiss the motion as moot and approve the stipulation entered into by the Debtor and Advantis Credit Union.

This matter was continued from February 21, 2017, by stipulation entered into by the Debtor and Advantis Credit Union. On March 14, 2017, the parties entered into a stipulation agreeing, for purposes of this Chapter 13 case only, that the valuation of the 2013 CMH Manufacturing West "Karsten-Avalon" (16" x 61") Mobile Home located at 1399 Sacramento Avenue, Space 100, West Sacramento, California, to be $60,000.00. Advantis will file a proof of claim based on this stipulation. The Chapter 13 plan shall provide that Debtor shall make payments to Advantis through the Chapter 13 plan at $1,104.99 for 60 months at an interest rate of 4%.

The court will enter an appropriate minute order.

2.	12-42115-B-13 LDD-2	IZABELA GIBALEWICZ Linda D. Deos	CONTINUED MOTION FOR SANCTIONS FOR VIOLATION OF THE DISCHARGE INJUNCTION 12-6-16 [58]

CONTINUED TO 5/16/17 AT 1:00 P.M. PER STIPULATION APPROVED ON 3/08/17.

Final Ruling: No appearance at the March 21, 2017, hearing is required.

Debtor, JPMorgan Chase Bank, N.A., and Bayview Loan Servicing, LLC entered into a stipulation to continue the hearing on the motion for sanctions for violation of the discharge injunction to May 16, 2017, at 1:00 p.m. The court entered an order approving the stipulation on March 8, 2017.

The court will enter an appropriate minute order.

3. 15-24115-B-13 TERRICINA MIMS MOTION TO MODIFY PLAN
TAG-7 Ted A. Greene 1-28-17 [108]

Final Ruling: No appearance at the March 21, 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 28, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

4. 17-20020-B-13 BRENDA PEARL — MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
PGM-2 Peter G. Macaluso — 2-15-17 [21]

And #21

Final Ruling: No appearance at the March 21, 2017, hearing is required.

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

The court's decision is to value the secured claim of JPMorgan Chase Bank, N.A. at $6,800.00.

Debtor's motion to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Dodge Journey ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $6,800.00 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 to be valued.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on or about October 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $7,417.06. 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 $6,800.00. *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.

5.	15-24826-B-13 MET-4	CLIFFORD/KATHLEEN GIANNUZZI Mary Ellen Terranella	MOTION TO APPROVE LOAN MODIFICATION 2-10-17 [98]

And #22

Final Ruling: No appearance at the March 21, 2017, hearing is required.

The Motion for Order Approving Loan Modification Agreement 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.

Debtors seek court approval to incur post-petition credit. Deutsche Bank National Trust Company, serviced by Ocwen Loan Servicing, LLC ("Creditor"), whose claim the plan filed October 15, 2015, provides for in Class 1, has agreed to a loan modification which will reduce Debtors' mortgage payment from $4,295.98 a month in Class 1 to $4,235.00 a month in Class 4. The new principal balance, which includes unpaid pre-petition arrears and other charges, is $586,104.95. The interest rate is fixed at 3.00%. The maturity date is October 1, 2036. The first payment was due November 1, 2016, the payment of which Debtors made through their plan to the Trustee.

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

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtors' 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.

While the Debtors request waiver of a 14-day period under Rule 6004(g), the court interprets that the Debtors actually request waiver of the 14-day stay under Rule 6004(h). The 14-day stay of Rule 6004(h) is waived.

The court will enter an appropriate minute order.

6. 16-28129-B-13 JERRY/JOANNE BENNETT
SNM-7 Stephen N. Murphy
Thru #7

CONTINUED 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 the continued hearing of 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. The Declaration of Donna Bradshaw was filed on March 7, 2017 (dkt. 125).

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 in its motion the alternative retail value of no less than $20,700.00 but also provides the Declaration of Marla Bassett that states a retail value of $20,338.00.

Discussion

Creditor provides the Declaration of Marla Bassett (dkt. 122), the appraiser subcontracted by Property Damage Appraisers, who prepared the report after performing an inspection of the Vehicle on February 27, 2017. Ms. Bassett attests that the Vehicle has approximately $1,044.98 in repair work, that the retail value for the Vehicle with mileage adjustment is $22,553.63, that three comparable vehicles in local dealer inventories averaged a value of $20,126.00, and that the final valuation of the Vehicle is $20,338.00.

Debtors provide the Declaration of Donna Bradshaw (dkt. 125), an appraiser for West Auction, who prepared the report after performing an inspection of the body of the

Vehicle. Ms. Bradshaw attests that the Vehicle is in overall good condition and that the windshield has small chips, the hood has small areas of chipped paint, and the door handles have areas of chipped paint. Ms. Bradshaw also takes into account the equipment of the Vehicle and the mileage. Her final valuation of the Vehicle is $12,900.00.

A debtor bears the burden of proving the valuation of a vehicle and the court finds that the Debtors have not met their burden. Although the Debtors' appraisal takes into account the Vehicle's body condition, equipment, and mileage, the court finds the Creditor's appraisal more persuasive since it also takes into account three comparable vehicles sold by local dealers. The standard is what a used car dealer would sell the vehicle to a debtor. Therefore, based on the foregoing, the motion to value is denied without prejudice.

The court will enter an appropriate minute order.

7. 16-28129-B-13 JERRY/JOANNE BENNETT — MOTION TO CONFIRM PLAN
SNM-9 Stephen N. Murphy — 2-3-17 [96]

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

Feasibility depends on the granting of motions to value collateral for both Ford Motor Company and Wheels Financial Group, LLC, dba LoanMart. The motion to value collateral of Ford Motor Company was denied without prejudice at Item #6. The motion to value collateral of Wheels Financial Group, LLC will be heard on April 4, 2017. *See dkts.* 146, 147.

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

The court will enter an appropriate minute order.

8. 16-24935-B-13 MICHAEL GRAZIADEI MOTION TO CONFIRM PLAN
MET-2 Mary Ellen Terranella 2-6-17 [43]

Tentative Ruling: The Motion to Confirm Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

The Trustee objects to confirmation on two grounds. The first ground is that the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because the Debtor's disposable income is not being applied to make payments to unsecured creditors. Trustee states that the Calculation of Disposable Income (Form 122C-2) filed on November 1, 2016, includes an expense as a "special circumstances" on line 43 in the amount of $1,950.00 for the Debtor's partner's additional expenses for daughters, specifically their college-related expenses. Trustee asserts that this does not qualify as a special circumstance under 11 U.S.C. § 707(b)(2)(B) and that the Debtor has failed to provide any information in his declaration that would justify the adult daughters' college related expenses as reasonable or necessary. The Trustee calculates that the Debtor's correct monthly disposable income is $2,106.47 and the Debtor must pay no less than $126,338.20 to general unsecured creditors. The plan currently proposes to pay only $23,699.40 to Class 7 general unsecured creditors.

The Trustee's second ground for objecting to confirmation is that the plan proposes to pay the unsecured, non-priority claim of American Express Bank FSB a lump sum payment of $10,000.00, or approximately 39% of the amount stated in its proof of claim, within 14 days of confirmation of the plan, or $15,000.00 through monthly payments after completion of the plan. The Trustee opposes the first option to pay a lump sum payment of $10,000.00 within 14 days of confirmation of the plan as the plan would discriminate unfairly against all of the other unsecured non-priority creditors, which are to receive a dividend of only 6% of their claims.

Response by Debtor

Debtor has filed a response stating that the Debtor is not paying toward his partner's additional expenses for her daughters. Debtor asserts that his partner's income was included in the amended Means Test per the Trustee's request and that the partner's income alone is used to pay for her daughters' college-related expenses. Debtor states that he and his partner are not related, married, or share bank accounts, that the two do not commingle funds, bank accounts, or share debts, and that the partner is not a debtor in bankruptcy. As such, the partner's expenditures for her daughters are not under review by the Trustee, including terminating support of her college student daughters.

Additionally, Debtor asserts that the $10,000.00 lump sum payment to American Express Bank FSB does not discriminate against all other unsecured non-priority claims because the lump sum will result in American Expresses' withdrawal of its proof of claim and pay unsecured creditors a dividend of approximately 10%. Debtor asserts that if the proof of claim is not withdrawn, unsecured creditors will receive a dividend of approximately 9%. Debtor states that it is more beneficial to unsecured creditors if the Debtor is allowed to access his exempt retirement assets, which Debtor argues is not property of the estate at all, to pay the $10,000.00 to American Express.

The Debtor's argument that his partner's expenses are not his expenses is somewhat disingenuous. In fact, if the Debtor is correct then he may have lied under oath to the court or the Internal Revenue Service, or to both. Fortunately, the Debtor is not correct.

The Debtor claimed his partner as a dependent on the amended Schedule J filed on November 1, 2016. Dkt. 27. Consistent with Schedule J, the Debtor claimed a total of five, which the court presumes includes the debtor's partner, as the size of his household on Line 16b of Form 122C-1 filed on November 1, 2016. *Id.* And on Line 5 of Form 122C-2, the Debtor states that for federal income tax purposes he claims a total of five deductions which, consistent with amended Schedule J and Line 16b of Form 122C-1, would necessarily include the Debtor's partner. *Id.*

The court does not believe the Debtor's argument made for plan confirmation purposes that his partner's expenses are not his expenses when, by all indications, he treats (and benefits from the treatment of) his partner as an expense under the Bankruptcy and Tax Codes. That means the item at Line 43 of Form 122C-2 is necessarily the debtor's expense and an improper "special circumstances" deduction for the Debtor to claim. Payment of college tuition is not a "special circumstance." That also means the plan fails to comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor is not applying his projected disposable income to the repayment of unsecured creditors. Therefore, confirmation will be denied.

The court will enter an appropriate minute order.

9. 16-27041-B-13 CHAD/STEPHANIE HUNSAKER MOTION TO CONFIRM PLAN
MJD-2 Matthew J. DeCaminada 2-1-17 [42]

Final Ruling: No appearance at the March 21, 2017, hearing is required.

Debtors' Motion to Confirm Second 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 second amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on February 1, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

10. 17-21445-B-13 LATARUS JAMES MOTION TO EXTEND AUTOMATIC STAY
JLK-1 James L. Keenan 3-7-17 [8]

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 deny without prejudice 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 September 29, 2016, after Debtor failed to make plan payments (case no. 16-21184, dkt. 46). 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 motion states that Debtor failed to make plan payments in the previous case because she lost her job but has now gained employment and can perform under the terms of the proposed plan. However, no declaration has been filed and the Debtor has not explained why her previous or present cases were filed.

The Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is denied without prejudice.

The court will enter an appropriate minute order.

11. 17-20155-B-13 RUMMY SANDHU
PGM-2 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF EMC MORTGAGE
2-15-17 [23]

And #23

Final Ruling: No appearance at the March 21, 2017, hearing is required.

The Motion to Value Collateral of EMC Mortgage 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 EMC Mortgage at $0.00.

Debtor's motion to value the secured claim of EMC Mortgage ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 130 Trident Court, Vallejo, California ("Property"). Debtor seeks to value the Property at a fair market value of $325,000.00 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.

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 $371,782.93. Creditor's second deed of trust secures a claim with a balance of approximately $106,492.00. 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.

12. 16-25970-B-13 EUGENE NIERI MOTION TO MODIFY PLAN
MRL-1 Mikalah R. Liviakis 1-26-17 [27]

Tentative Ruling: The Motion to Confirm the 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.

First, LBS Financial Credit Union holds a retail installment sales contract secured by a 2008 Mastercraft Boat X45 and a 2007 Sports Trailer. The creditor has filed a timely proof of claim in which it asserts $647.34 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 Debtor is delinquent to the Chapter 13 Trustee in the amount of $10,976.00, which represents approximately 2.56 plan payments. 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).

Third, the plan cannot be effectively administered. The modified plan fails to specify a cure of the post-petition arrearage owed to Wells Fargo Bank, N.A. for the months of October 2016, December 2016, and February 2017 including a specific post-petition arrearage amount, interest rate, and monthly dividend. The Trustee is unable to fully comply with § 2.08(b) of the 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.

13. 16-24478-B-13 DANIEL/TRACY STYPA MOTION TO CONFIRM PLAN
MET-3 Mary Ellen Terranella 2-6-17 [81]
Thru #14

Final Ruling: No appearance at the March 21, 2017, hearing is required.

The Motion to Confirm 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 plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on February 6, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

14. 16-24478-B-13 DANIEL/TRACY STYPA MOTION TO APPROVE LOAN
MET-4 Mary Ellen Terranella MODIFICATION
2-6-17 [87]

Final Ruling: No appearance at the March 21, 2017, hearing is required.

The Motion for Order Approving Loan Modification Agreement 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.

Debtors seek court approval to incur post-petition credit. First U.S. Community Credit Union ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtors' mortgage payment from the current $1,800.00 a month to $464.69 a month. The new principal balance, which includes unpaid pre-petition arrears and other charges, is $73,182.02. The interest rate is fixed at 4.50% until February 28, 2022, at which time it will revert back to the original terms of the note. The maturity date has been extended to April 28, 2023, at which time balloon payment will be due. The first payment is due March 28, 2017.

The motion is supported by the Declaration of Christopher Larsen and Sherry Larsen. The Declaration affirms the Debtors' desire to obtain the post-petition financing.

Although the Declaration does not state the Debtors' ability to pay this claim on the modified terms, the court finds that the Debtors will be able to pay this claim since it is a reduction from their current monthly mortgage payments.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtors' 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.

While the Debtors request waiver of a 14-day period under Rule 6004(g), the court interprets that the Debtors actually request waiver of the 14-day stay under Rule 6004(h). The 14-day stay of Rule 6004(h) is waived.

The court will enter an appropriate minute order.

15. 16-27481-B-13 ARMANDA CASIAS MOTION TO CONFIRM PLAN
MET-2 Mary Ellen Terranella 2-7-17 [32]

Final Ruling: No appearance at the March 21, 2017, hearing is required.

The Motion to Confirm 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 amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on February 7, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

16. 16-24685-B-13 CHRISTOPHER/SHERRY LARSEN MOTION TO MODIFY PLAN
MRL-2 Mikalah R. Liviakis 2-8-17 [27]

Tentative Ruling: The Motion to Confirm Debtor's Chapter 13 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.

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $4,141.20, which represents approximately 2 plan payments. 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 Debtors have failed to file amended Schedules I and J or other documentation showing that their monthly income is now $2,100.00. Schedules I and J filed on July 18, 2016, show a monthly net income of $3,999.00. With the addition of the mortgage payment in the amount of $1,358.01 according to Class 4 of the modified plan, the Debtors' monthly net income is $2,640.99. The plan does not comply with 11 U.S.C. §§ 1325(a)(3) or (a)(6).

Third, the modified plan changes the treatment of the home loan on Special Loan Servicing, LLC from Class 1 to Class 4. The motion states that the mortgage company has entered him into a trial loan modification. No evidence or statement from the lender has been presented showing that it has consented to or is considering a loan modification.

Fourth, the Debtors have not sought court approval for any loan modification as required pursuant to Local Bankr. R. 3015-1(j).

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.

17. 13-23493-B-13 MARY JANE BROWN
PGM-6 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTOR'S ATTORNEY
2-21-17 [126]

Tentative Ruling: The Application for Additional 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).

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

REQUEST FOR ADDITIONAL FEES AND COSTS

As part of confirmation of the Debtor's Chapter 13 plan, Peter Macaluso ("Applicant") consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling $4,000.00, which was not the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation. Dkt. 90. Applicant now seeks additional 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. 129.

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).

Counsel's time is billed in irregular six-minute and quarter-hour increments. The quarter-hour increments are a problem.

Although not unreasonable per se, billing in quarter-hour increments tends to suggest a practice over billing. *See Alvarado v. FedEx Corp.*, 2011 WL 4708133, *17 (N.D. Cal. 2011) (court reduced requested fees for billing in quarter-hour increments because use of such billing likely overstated the number of hours actually worked); *Denny Mfg. Co., Inc. v. Drops & Props, Inc. Eyeglasses*, 2011 WL 2180358, *6 (S.D. Ala. 2011) (finding that billing in .25 hour increments not reasonable and reducing time entries by .25 to account for tasks taking less than fifteen minutes).

Applicant's billing records include two time entries billed in quarter-hour increments totaling .50 hours (10/7/13, 11/19/13). The 10/7/13 .25 entry is for preparation and emailing of a declaration which appears to be the declaration filed on October 18, 2013, at dkt. 93. That declaration consists of five single-sentence paragraphs and a form "under penalty of perjury" paragraph for a total of less than one page of text. The 11/19/13 .25 entry is for review of a decision that required no appearance. Both appear excessive. Therefore, in order to adjust for these entries, the court will reduce Applicant's time by .50 which, at $300 per hour, results in a corresponding deduction of $150.00 and a reduction to the total fee award to $450.00.

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
Less Excessive Fees	$150.00
Total Awarded	**$450.00**

The court will enter an appropriate minute order.

18. 17-20993-B-13 EVAN/CELESTE NEISER — MOTION TO AVOID LIEN OF THERESE REESE
MRL-1 Mikalah R. Liviakis — 3-7-17 [9]

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 Therese Reese ("Creditor") against the Debtors' personal property consisting of a 2014 Toyota Highlander XLE, 2012 Honda Civic Hybrid, household furniture, computer, TV, laptop, baseball equipment, camping gear, shotgun pistol, wedding ring and costumer jewelry, two dogs, two cats, cash, checking and savings accounts, 403(b) retirement plan, security deposit with landlord, term life insurance, a "Therese Reese promissory estoppel claim" and a "Barry Pruett malpractice claim" (collectively, "Personal Property"). The Debtors do not own any real property.

A judgment was entered against Debtor Evan Neiser in favor of Creditor in the amount of $52,494.21. An abstract of judgment was recorded with Orange County on February 2, 2017, which encumbers the Personal Property. First US Community Credit Union holds senior liens against the 2014 Toyota Highlander XLE and 2012 Honda Civic Hybrid in the amounts of $25,431.00 and $10,170.00, respectively.

Debtor has claimed exemptions pursuant to Cal. Civ. Proc. Code § 703 in the total amount of $35,331.00 on Schedule C.

Creditor has filed a non-opposition to the motion provided that the amended judgment entered by the Superior Court of California in the County of Orange on January 19, 2017, remains fully intact.

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' exemptions of the Personal Property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

19. 17-21397-B-13 STEPHEN/BRENDA VICE — MOTION TO EXTEND AUTOMATIC STAY
MET-1 Mary Ellen Terranella — 3-5-17 [8]

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.

Debtors seek 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 Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on February 23, 2017, after Debtors failed to cure their delinquency and failed to increase their plan payment to account for the increase in monthly contract installment (case no. 13-34688, dkt. 40, 42). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 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 Declaration of Stephen Vice and Brenda Vice states that the previous case was filed to save the Debtors' family home, which also operates as Joint Debtor's business, from possible foreclosure. The Debtors state that they fell behind on plan payments in the previous case due to the unexpected health problems and hospitalization of Joint Debtor. The severity of the medical issues caused her to be unable to operate her child care business for several weeks, which resulted in a lack of income. However, Debtors state that Joint Debtor has now fully recovered and is operating her child care business. Additionally, she began receiving Social Security benefits in January 2017. Debtors assert that this additional income will assist them in successfully completing their Chapter 13 plan.

The Debtors have 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.

20.	11-40498-B-13 RLG-8	FREDERICK/MARSHA AIKENS Robert L. Goldstein	MOTION TO AVOID LIEN OF AMERICAN GENERAL FINANCE, INC. 2-6-17 [126]

Final Ruling: No appearance at the March 21, 2017, hearing is required.

The Motion to Avoid Lien of American General Finance, Inc. dba Springleaf Financial Services and/or Any Servicers or Successors 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 the motion to avoid judicial lien.

This is a request for an order avoiding the second deed of trust of American General Finance, Inc. dba Springleaf Financial Services ("Creditor") against the Debtors' property commonly known as 49 Broad Street, Sutter Creek, California ("Property"). According to Debtors' motion, the second deed of trust was recorded on approximately September 29, 2006, against the Property.

Additionally, the court entered an order granting the Debtors' motion to value the Property and found that Creditor's second deed of trust against the Property was completely under-collateralized pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The court determined the claim to be in the amount of $0.00 and the balance of the claim to be unsecured. *See dkt. 75.*

Debtors received their discharge after plan completion on November 15, 2016.

Discussion

A debtor who seeks to avoid a second deed of trust in a Chapter 13 bankruptcy must file an adversary proceeding. Fed. R. Bankr. P. 7001(2). A creditor's lien is not void on the basis of whether it is secured under § 506(a), but on the basis of whether the underlying claim is allowed or disallowed. 4 COLLIER ON BANKRUPTCY 506.06[1][a] (Alan N. Resnick & Henry J. Sommer eds., 16th Ed.). *See Dewsnup v. Timm*, 502 U.S. 410, 417-18 (1992). The Creditor's deed of trust remains of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the Creditor will not reconvey its deed of trust, the court will entertain an adversary proceeding. *See also* 11 U.S.C. § 1325(a)(5)(B)(I).

Since the correct avenue to avoid the second deed of trust is by filing an adversary proceeding and not by motion, the Debtors' motion will be denied without prejudice.

The court will enter an appropriate minute order.

21. 17-20020-B-13 BRENDA PEARL
JPJ-1 Peter G. Macaluso

See Also #4

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-22-17 [29]

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). A written reply has been filed to the objection.

The court's decision is to overrule the objection, deny the conditional motion to dismiss case, and confirm the plan.

First, feasibility depends on the granting of a motion to value collateral for JPMorgan Chase Bank. That motion was granted at Item #4.

Second, the Debtor has amended Schedules A/B and C to provide for her CalPERS retirement account as requested by the Trustee at the meeting of creditors on February 16, 2017. The Debtor has complied with 11 U.S.C. § 521(a)(3).

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed January 3, 2017, is confirmed.

The court will enter an appropriate minute order.

22. 15-24826-B-13 CLIFFORD/KATHLEEN GIANNUZZI
MET-5
See Also #5 Mary Ellen Terranella

CONTINUED MOTION TO MODIFY PLAN
2-14-17 [103]

Tentative Ruling: The Motion to Modify 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 permit the requested modification and confirm the modified plan provided that the order confirming state that any post-petition income tax year refund in excess of $2,000.00 be turned over to the Trustee.

The Trustee objects to confirmation of the modified plan on the ground that it fails to provide for the turnover of any post-petition income tax year refund in excess of $2,000.00. The Debtors have filed a response stating that they did not intend to exclude this provision and that this was an oversight. Debtors have provided an exhibit proposing an order modifying plan that specifically provides for the turnover to the Trustee of post-petition tax refunds in excess of $2,000.00.

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

The court will enter an appropriate minute order.

23. 17-20155-B-13 RUMMY SANDHU
JPJ-1 Peter G. Macaluso

See Also #11

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
2-22-17 [28]

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, feasibility depends on the granting of a motion to value collateral for EMC Mortgage. That motion was granted at Item #11.

Second, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. Form 122C-1, Line #3 does not list a $500.00 per month child support income that was listed under Schedule I, Line #8c. Form 122C-2, Line #9b includes an improper expense for the second deed of trust held by EMC Mortgage. The second deed of trust is a wholly unsecured debt and payments to wholly unsecured junior deeds of trust do not qualify as deductions and must be excluded from Form 22C. *Thissen v. Johnson*, 406 B.R. 888, 894 (E.D. Cal. 2009). Form 122C-2, Line #17 includes an improper expense for involuntary deductions in the amount of $1,068.84 because Debtor has listed any involuntary deductions on Schedule I and Debtor testified at her meeting of creditors that she does not have any involuntary retirement deductions. Form 122C-2, Line #45 shows a monthly disposable income under § 1325(b)(2) as ($815.99). When the incomes of $500.00, $516.00, and $1,068.84 are added together, then Line #45 changes from ($815.99) to $1,268.85. This means that the Debtor must pay no less than $71,131.00 to her unsecured, non-priority creditors.

The plan filed January 10, 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.