UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

May 16, 2017 at 1:00 p.m.

1.	17-21503-B-13 JPJ-1	JASON/BETHANIE HALL Mohammad M. Mokarram	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 4-27-17 [13]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the May 16, 2017, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The plan filed March 8, 2017, was confirmed by order entered May 3, 2017.

The court will enter an appropriate minute order.

2. 17-22206-B-13 ENOCH ELISHA MARSH — MOTION TO VALUE COLLATERAL OF PAUL MANKA
DEF-1 David Foyil — 4-10-17 [8]
Thru #3

Final Ruling: No appearance at the May 16, 2017, hearing is required.

The Motion to Value Collateral of Paul Manka 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 Paul Manka at $0.00.

Debtor's motion to value the secured claim of Paul Manka ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 14702 Hobnob Way, Nevada City, California ("Property"). Debtor seeks to value the Property at a fair market value of $420,000.00 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).

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 held by Wells Fargo Home Mortgage secures a claim with a balance of approximately $459,685.00. A second deed of trust held by Newport Beach Holdings Corporation secures a claim with a balance of approximately $45,000.00. Creditor's attorney's lien secures a claim with a balance of approximately $27,780.00. Therefore, Creditor's claim secured by a junior attorney's lien is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

3.	17-22206-B-13 DEF-2	ENOCH ELISHA MARSH David Foyil	MOTION TO VALUE COLLATERAL OF NEWPORT BEACH HOLDINGS CORPORATION 4-10-17 [14]

Final Ruling: No appearance at the May 16, 2017, hearing is required.

The Motion to Value Collateral of Newport Beach Holdings Corporation 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 Newport Beach Holdings Corporation at $0.00.

Debtor's motion to value the secured claim of Newport Beach Holdings Corporation ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 14702 Hobnob Way, Nevada City, California ("Property"). Debtor seeks to value the Property at a fair market value of $420,000.00 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).

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 held by Wells Fargo Home Mortgage secures a claim with a balance of approximately $459,685.00. Creditor's second deed of trust secures a claim with a balance of approximately $45,000.00. Therefore, Creditor's claim secured by a junior second 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.

4. 15-23109-B-13 ALEX/JACKIE MARTIN MOTION TO MODIFY PLAN
CJY-2 Christian J. Younger 4-11-17 [67]

Final Ruling: No appearance at the May 16, 2017, hearing is required.

The Debtors' 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 April 11, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

5.	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]

Final Ruling: No appearance at the May 16, 2017, hearing is required.

This matter was continued from March 21, 2017. The Debtor, JPMorgan Chase Bank, N.A., and Bayview Loan Servicing, LLC have entered into a stipulation resolving all claims in connection with and as raised or could have been raised in the Debtor's motion for sanctions for violation of the discharge injunction. The court entered an order approving the stipulation on May 3, 2017.

Based on the terms of the stipulation, the motion shall be dismissed without prejudice within five days of Debtor's receipt of the total amount agreed by the parties.

The court will enter an appropriate minute order.

6. 17-20015-B-13 ERIK HUGHES MOTION TO CONFIRM PLAN
SLE-1 Steele Lanphier 3-31-17 [33]

Final Ruling: No appearance at the May 16, 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 first 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 March 31, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

7. 17-21520-B-13 MARK ENOS
JPJ-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-27-17 [16]

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).

The court's decision is to overrule the objection as moot and deny the motion to dismiss as moot.

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on May 8, 2017. The confirmation hearing for the amended plan is scheduled for June 13, 2017. The earlier plan filed March 8, 2017, is not confirmed.

The court will enter an appropriate minute order.

8. 16-25233-B-13 HELEN ZUNIGA
PLC-2 Peter L. Cianchetta

OBJECTION TO CLAIM OF NATIONSTAR MORTGAGE LLC, CLAIM NUMBER 8
3-31-17 [47]

Tentative Ruling: The Debtor's Objection to Claim No. 8 has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is overrule the objection to Claim No. 8 of Nationstar Mortgage LLC.

Debtor requests that the court disallow the claim of Nationstar Mortgage LLC ("Creditor"), Claim No. 8. The claim is asserted to be secured in the amount of $332,731.32. Debtor asserts that the claim should be allowed in the amount of $334,950.66 but also states that she cannot evaluate the claim's accuracy because the it shows five payments that were due on the same date of December 1, 2015. Debtor contends that she was current through all of 2015 and did not fall behind payments until March 2016.

Creditor filed an opposition stating that Claim No. 8 was properly filed and is accurate. According to the Creditor, the last two payments it received from the Debtor on January 4, 2016, were applied to pay the contractual monthly payments due for October 1, 2015, and November 1, 2015. Creditor contends that the Debtor's loan was in default for the monthly payments due and owing for December 1, 2015, through and including August 1, 2016. Creditor commenced a non-judicial foreclosure in April 2016 and asserts that this action was taken due to Debtor's failure to pay installments that became due on December 1, 2015.

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the Debtor has not satisfied its burden of overcoming the presumptive validity of the claim. The Debtor has not presented substantial and factual basis to overcome the prima facie validity of the proof of claim. The Debtor asserts that the claim is in the amount of $334,950.66 but provides no showing of its calculations and only includes as an exhibit Claim No. 8. The Debtor's mere assertion that the claim is more than the amount claimed by the Creditor is insufficient to overcome the presumptive validity of the claim. Local Bankr. R. 3007-1(a) ("A mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim."). The Debtor has also failed to demonstrate how the use of a summary attached to a proof of claim defeats the claim's prima facie validity. *See Heath v American Express Travel Related Svc. Co., (In re Heath)*, 313 B.R. 424, 432-433 (9th Cir. BAP 2005).

Debtor has failed to satisfy its burden of overcoming the presumptive validity of the claim. The objection to the proof of claim is overruled.

The court will enter an appropriate minute order.

9. 17-21538-B-13 JOHN/AMY FIELDS
JPJ-1 Robert W. Fong
Thru #11

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-27-17 [27]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtors, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $3,650.00, which represents approximately 1 plan payment. 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, feasibility depends on the granting of motions to value collateral for Ford Motor Credit and First Investors Servicing Corp. Although the motion to value collateral of First Investors Servicing Corp. was granted at Item #11, the motion to value collateral of Ford Motor Credit was denied without prejudice at Item #10.

Third, the Debtors have not filed the Rights and Responsibilities of Chapter 13 Debtors and Their Attorneys. Therefore, attorney's fees or costs must be obtained by approval by separate motion pursuant to 11 U.S.C. § 330.

The plan filed March 9, 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 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.

10. 17-21538-B-13 JOHN/AMY FIELDS
RWF-2 Robert W. Fong

MOTION TO VALUE COLLATERAL OF FORD MOTOR CREDIT
4-5-17 [16]

Final Ruling: No appearance at the May 16, 2017, hearing is required.

The Motion to Value Collateral of Ford Motor Credit 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 the motion to value without prejudice.

Debtors' motion to value the secured claim of Ford Motor Credit ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2012 Ford Edge ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $19,040.00 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. 1-2 filed by Ford Motor Credit Company LLC 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 September 20, 2015, according to Schedule D filed by the Debtors. *See* Dkt. 1. This is less than 910 days prior to filing of the petition. The purchase money debt on a motor vehicle acquired for a debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value. Therefore, the Debtors must pay the entire amount of $28,722.67. *See* Claim No. 1-2. Accordingly, the Debtors' motion is denied without prejudice.

The court will enter an appropriate minute order.

11. 17-21538-B-13 JOHN/AMY FIELDS — MOTION TO VALUE COLLATERAL OF FIRST INVESTORS SERVICING CORP.
RWF-3 Robert W. Fong — 4-5-17 [20]

Final Ruling: No appearance at the May 16, 2017, hearing is required.

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

The court's decision is to value the secured claim of First Investors Servicing Corp. at $3,792.00.

Debtors' motion to value the secured claim of First Investors Servicing Corp. ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2006 Saab SUV ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $3,792.00 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).

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 sometime in 2011 according to Schedule D filed by the Debtors. *See* Dkt. 1. This is more than 910 days prior to filing of the petition to secure a debt owed to Creditor with a balance of approximately $6,495.40. 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 $3,792.00. *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.

12. 17-21139-B-13 ELIZABETH EIDE
PSB-2 Pauldeep Bains

MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE, MOTION TO EXCUSE DEBTOR FROM COMPLETING POST PETITION INSTRUCTIONAL COURSE, MOTION TO EXCUSE DEBTOR FROM COMPLETING THE 11 U.S.C. 1328 CERTIFICATE OR CERTIFICATE OF CHAPTER 13 DEBTOR
4-17-17 [30]

Final Ruling: No appearance at the May 16, 2017, hearing is required.

The Motion to Excuse Debtor Elizabeth Eide from Completion Briefing about Credit Counseling, Post-Petition Instructional Course, & the 11 U.S.C. § 1328 Certificate or Certificate of Chapter 13 Debtor Re: 11 U.S.C. § 522(q) Exemptions 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 continue this matter to June 20, 2017, at 1:00 p.m.

This motion requests to waive the requirement of Elizabeth Eide ("Debtor") from completion of the credit counseling course, post-petition instructional management course, and the requirement to file 11 U.S.C. § 1328 Certificate or the Certificate of Debtor regarding 11 U.S.C. § 522(q) Exemptions. However, the motion does not request to substitute in Don C. Mokler, attorney-in-fact to Debtor. A power of attorney was submitted with the petition. *See* dkt. 1. The petition was signed by Mr. Mokler.

If a power of attorney is used to commence or prosecute a bankruptcy case, the power of attorney itself must include provisions that expressly authorize the holder of the power to exercise those powers. *See In re Overhoff*, case no. 16-25436-B-13, dkts. 26, 28. In other words, a general power of attorney is insufficient to permit the commencement and prosecution of a bankruptcy case by someone other than the debtor. *See In re Ballard*, 1987 WL 191320 at *1 (Bankr. N.D. Cal. 1987) ("A better view of the allowability of a petition by power of attorney is found in *In re Sullivan* (Bkrtcy. E.D. Pa.1983) 30 B.R. 781. In that case, the court would not allow a petition to be filed using a limited power of attorney, but did allow a filing pursuant to a power of attorney which specifically authorized a bankruptcy filing."); *see also In re Eicholz*, 310 B.R. 203, 207 (Bankr. W.D. Wa. 2004) (power of attorney sufficient if express language of document authorizes bankruptcy filing).

The power of attorney does not explicitly state that Mr. Mokler may file for bankruptcy on behalf of the Debtor. There are certain provisions that state that Mr. Mokler has authority to manage Debtor's property (p. 10, "Personal Property Transactions") and to act in all legal matters including "commencing actions in my name, signing all documents, submitting claims to arbitration or mediation, settling claims and paying judgments and settlements" (p. 12, "Legal Actions"). But these provisions are not sufficient to give Mr. Mokler authority to file for bankruptcy.

Mr. Molker cannot continue to prosecute a bankruptcy case that he lacked express authority as attorney-in-fact to file. The court is aware that on May 9, 2017, it granted the Debtor's motion to confirm her plan. However, it may now be necessary for the court to vacate that order and dismiss this case. Rather than dismiss this case outright, the court will continue this matter for 30 days and provide Mr. Molker with an opportunity to secure an amendment to the existing power of attorney that expressly authorizes him, as attorney-in-fact, to file and prosecute a bankruptcy case on the Debtor's behalf. To accommodate that process, this matter will be continued to June 20, 2017, at 1:00 p.m. Any amendment to the existing power of attorney shall be filed and served on the Chapter 13 Trustee by June 13, 2017. If an amendment is not timely

filed, the order granting the motion to confirm the Debtor's plan will be vacated and this case will be dismissed.

The court will enter an appropriate order continuing this matter to June 20, 2017, at 1:00 p.m.

The court will enter an appropriate minute order.

13. 17-21740-B-13 SNM-2 — RICHELLE/RHODORA MANUZON, Stephen N. Murphy — MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE, 4-12-17 [17]

Final Ruling: No appearance at the May 16, 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 deny the motion to value without prejudice.

Debtors' motion to value the secured claim of Internal Revenue Service ("Lien Holder") is accompanied by Debtors' declaration. Debtors are the owners of a 2011 Mazda 3, 2003 Toyota Sequoia, 2011 Scion tC, 2015 Honda Accord, household goods, household electronics, clothes, jewelry, wearing apparel, and bank deposits (collectively, "Personal Property"). The Debtors do not claim an interest in any real property according to Schedules A/B. The Debtors seek to value the Personal Property at a replacement value of $6,548.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 5-1 filed by Internal Revenue Service is the claim which may be the subject of the present motion.

Discussion

The claim of Lien Holder is in the approximate amount of $41,388.15 based on Claim No. 5-1 and encumbers all property, both real and personal, owned by the Debtors. *See* 26 U.S.C. § 6321. A review of Schedule A/B shows that the Debtors do not own any real property and that they only own various aforementioned personal property. 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 Declaration of Richelle Manuzon and Rhodora Manuzon has been provided to introduce evidence as to the value of the Personal Property but it appears to be based on hearsay. *See* dkt. 19 at ¶ 5 ("We are told by our attorney and believe that the equity available to secure the Tax Lien is $6,548.00 . . . ."). Consequently, the Debtors have failed to carry their burden under § 506(a)(2) of proving "the price a retail merchant would charge for [the Personal Property]."

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

The court will enter an appropriate minute order.

14. 14-26446-B-13 TODD/DENISE BEINGESSNER MOTION TO MODIFY PLAN
MJD-1 Scott J. Sagaria 4-6-17 [110]

Tentative Ruling: The Debtors' Motion to Modify Chapter 13 Plan After Confirmation 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 $3,845.00, which represents the plan payment due March 25, 2017. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the modified plan does not specify a cure of the post-petition arrearage due to City National Bank/Ocwen Loan Servicing, LLC for the month of March 2017, including a specific post-petition arrearage amount, interest rate, and monthly dividend. Therefore, § 2.08(b) of the plan cannot be effectively administered.

Third, the plan payment in the amount of $3,845.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $5,459.16. The plan does not comply with Section 4.02 of the mandatory form plan.

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

The court will enter an appropriate minute order.

15. 17-21647-B-13 WILLIAM ANDERSON
JCW-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF PLAN BY JPMORGAN CHASE BANK, N.A.
4-26-17 [14]

Tentative Ruling: The Objection to Confirmation of Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the JPMorgan Chase Bank, N.A.'s objection, the Debtor filed an amended plan on May 1, 2017. The confirmation hearing for the amended plan is scheduled for June 20, 2017. The earlier plan filed March 14, 2017, is not confirmed.

The court will enter an appropriate minute order.

16. 15-28948-B-13 RICHARD/GERINE CAYLOR MOTION TO MODIFY PLAN
JSO-7 Jeffrey S. Ogilvie 4-11-17 [106]

Final Ruling: No appearance at the May 16, 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 April 11, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

17. 17-20048-B-13 DAMION HRIBIK MOTION TO CONFIRM PLAN
FF-1 Gary Ray Fraley 4-4-17 [23]

Final Ruling: No appearance at the May 16, 2017, hearing is required.

The Motion to Confirm First Amended Chapter 13 Plan Dated April 4, 2017, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor 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 April 4, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

18. 17-20155-B-13 RUMMY SANDHU MOTION TO CONFIRM PLAN
PGM-3 Peter G. Macaluso 4-4-17 [46]

Tentative Ruling: The Motion to Confirm Debtor's First Amended Plan Filed on April 4, 2017, 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 confirm the first amended plan provided that the Debtor has cured the delinquency.

The Trustee objects to confirmation on the ground that the Debtor is delinquent in the amount of $2,622.00, which represents approximately 1 plan payment. *See* 11 U.S.C. § 1325(a)(6). The Debtor has filed a response stating that it will be current on plan payments by the date of this hearing.

Provided that the delinquency is cured, the amended plan will be deemed to comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and will be confirmed.

The court will enter an appropriate minute order.

19. 15-28862-B-13 LUCAS/VANESSA HUEZO MOTION TO INCUR DEBT
RHM-3 Robert Hale McConnell 4-28-17 [80]
Thru #20

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Incur Debt for Approval of Finance Replacement Vehicle for Recalled Volkswagen 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 matter will be determined at the scheduled hearing.

This matter relates to the motion to modify the automatic stay filed by Pacific Service Credit Union ("PSCU") that was heard and granted on May 9, 2017, for the limited purpose of providing a pay off lien amount to Volkswagen of America so that PSCU's lien may be satisfied and so that the Debtors may move forward to obtain a replacement vehicle.

This motion filed by the Debtors is a request to incur debt to purchase a replacement vehicle. The Debtors seek to purchase a Chevrolet Malibu Premier Sedan in the total amount of $34,215.43, with an expected rebate of $4,174.00, and a cash down payment of $7,500.00, resulting in a total finance amount of $22,542.43.

The Debtors also state that Volkswagen will provide them a restitution amount of $6,206.73 and an additional $1,416.84 (for a total of $7,623.57). But these numbers are not supported by Volkswagen Group of America's Settlement Terms at dkt. 83, p. 5. The settlement terms show that the Debtors will be paid only an estimated amount of $1,416.84 after deducting the outstanding loan owed to PSCU.

If the anticipated total payment of $7,623.57 was meant to be used toward the down payment, the Debtors may not have sufficient funds if they receive only $1,416.84.

20. 15-28862-B-13 LUCAS/VANESSA HUEZO MOTION TO INCUR DEBT
RHM-4 Robert Hale McConnell 4-28-17 [84]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Incur Debt for Approval of Settlement with Volkswagen of America 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 matter will be determined at the scheduled hearing.

This motion filed by the Debtors is entitled "Motion to Incur Debt for Approval of Settlement with Volkswagen of America." However, dkt. 80 refers to this motion as a "Motion for Approval of Settlement." If this is a motion to approve a settlement agreement, the Debtors should analyze the elements of *A & C Props.* and *In re Woodson*, which they do not.

21. 17-21962-B-13 SUANNE GRANDERSON — OBJECTION TO CONFIRMATION OF PLAN BY SPECIALIZED LOAN SERVICING, LLC AND/OR MOTION TO DISMISS CASE
TGM-1 Gabriel E. Liberman — 4-11-17 [8]

Tentative Ruling: The Objection to Chapter 13 Plan and Request for Dismissal 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 in part and overrule in part the objection to confirmation.

The objecting creditor Specialized Loan Servicing, for The Bank of New York Mellon, holds a deed of trust secured by the Debtor's residence. The creditor asserts $22,696.10 in pre-petition arrearages. However, this amount is inconsistent with the amount listed in Claim No. 7 filed by The Bank of New York Mellon, Trustee (See 410), c/o Specialized Loan Servicing LLC, which states $18,819.92 in pre-petition arrearages. The creditor provides no evidence in to support the amount of pre-petition arrears as claimed in its motion. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. The claim is presumptively valid.

Given that the claim is presumptively valid and that the Debtor has only provided for a pre-petition default to creditor of $17,500.00, 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 the plan fails to provide for the full payment of arrearages, the plan cannot be confirmed and the objection is sustained in this regard.

However, the creditor's objection that the Debtor's circumstances have not changed since the previous case was dismissed and that the Debtor's plan is not feasible is overruled. That previous case was dismissed due to Debtor's failure to make plan payments. Case no. 13-27863, dkt. 28. Nonetheless, a review of Schedule I and J shows that the Debtor's income is sufficient to cover her and her family's expenses and to cover the proposed plan payments. This objection is overruled.

Since the plan filed March 27, 2017, does not provide for full payment of arrearages as stated in Claim No. 7, the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The plan is not confirmed.

The court will enter an appropriate minute order.

22. 16-25468-B-13 ROBERT DANIEL AND DIANNA DANIEL — MOTION TO INCUR DEBT
PSB-3 — 4-11-17 [48]
Thru #23 — Pauldeep Bains

Final Ruling: No appearance at the May 16, 2017, hearing is required.

The Motion to Incur Post-Petition Debt has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). However, it appears that there is insufficient service of process. Named creditor Select Portfolio Servicing, Inc., who Debtors assert has agreed to the loan modification, was not properly served. The address listed in the proof of service is PO Box 65450 Salt Lake City, UT 84165-0450. This is the creditor's "General Correspondence" address according to its website http://www.spservicing.com. This is not a proper address for service of process and is not listed on the California Secretary of State website.

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

The court will enter an appropriate minute order.

23. 16-25468-B-13 ROBERT DANIEL AND DIANNA DANIEL — MOTION TO MODIFY PLAN
PSB-4 — 4-11-17 [53]
Pauldeep Bains

Final Ruling: No appearance at the May 16, 2017, hearing is required.

The Motion to Confirm Debtors' First Modified Plan Filed on 04/11/2017 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). However, because service of process was insufficient as to creditor Select Portfolio Servicing, Inc. as stated at Item #22, the motion will not be confirmed at this time despite there being no opposition to the motion by the Chapter 13 Trustee or creditors.

The court's decision is to continue the matter to June 20, 2017, to provide Debtors the opportunity to properly serve Select Portfolio Servicing, Inc.

The court will enter an appropriate minute order.

24. 17-21370-B-13 DAMON/LYDIA WARD
JPJ-1 Michael Benavides

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
4-27-17 [23]

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). 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, Joint Debtor Lydia Ward failed to submit proof of her social security number to the Trustee at the April 20, 2017, meeting of creditors. The meeting was subsequently continued to May 5, 2017, for the Joint Debtor to provide this proof. The meeting was held and concluded on May 5, 2017.

Second, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $250.00, which represents approximately 1 plan payment. 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).

Third, the Debtors projected disposable income is not being applied to make payments to unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B). The Calculation of Disposable Income (Form 122C-2) shows that the Debtor's monthly disposable income is $600.70 and the Debtors must pay no less than $36,042.00 to unsecured non-priority creditors. Instead, the Debtors propose to pay a 0% dividend to unsecured non-priority creditors.

Fourth, the plan does not comply with 11 U.S.C. § 1325(a)(4) because unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A/B and C, the total value of non-exempt property in the estate is $14,200.00. The total amount that will be paid to unsecured creditors is only $9,381.00.

Fifth, feasibility of the plan cannot be fully assessed because the Debtors have not provided the Trustee with copies of all payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. Debtor Damon Ward has not provided payment advices for February 2017 and Joint Debtor Lydia Ward has not provided payment advices for the second half of January and February 2017. The Debtors have not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Sixth, the Debtors have not amended Schedule A/B to add two term life insurance policies, which are listed as a payroll deduction on Joint Debtor's pay advice. The Debtors have not complied with 11 U.S.C. § 521(a)(3).

Seventh, the payment of Debtors' attorney's fees is inconsistent. The plan states that the attorney was paid $900.00 prior to the filing of the case and subject to court approval additional fees of $3,100.00 shall be paid through the plan. In contrast, the Disclosure of Compensation of Attorney for Debtor states that the attorney has agreed to accept $0.00 for services rendered and that the attorney received $0.00 prior to the filing of the petition.

The plan filed March 16, 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 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.

25. 17-22670-B-13 TROY FINLEY
KH-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-28-17 [11]

SWAY 2014-1 BORROWER, LLC
VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, Motion for Relief From Automatic Stay is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. Below is the court's tentative ruling. If there is opposition offered at the hearing, the court may reconsider this tentative ruling.

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

SWAY 2014-1 Borrower, LLC. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1764 Dover Circle, Suisun, California (the "Property"). Movant has provided the Declaration of Kelly McCavitt to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Declaration states that Movant is the legal owner of the Property, that the Property was leased to a Jason Hernandez and Jackie Hernandez, and that it was subsequently subleased to the Debtor. Dkts. 15, 17. Movant seeks to proceed with the unlawful detainer action filed in state court on January 5, 2017. Dkts. 16, 17.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Solano on January 5, 2017, with a Notice to Quit served on December 22, 2016. Dkt. 16.

Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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

No other or additional relief is granted by the court.

26. 17-22293-B-13 SYLVIA KNIGHT
MMM-1 Mohammad M. Mokarram

MOTION TO VALUE COLLATERAL OF SAFE CREDIT UNION
5-2-17 [12]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Value Collateral of Safe Credit Union is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to value the secured claim of Safe Credit Union at $7,500.00.

Debtor's motion to value the secured claim of Safe Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Nissan Ultima SE ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $7,500.00 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1-1 filed by Safe Credit Union 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 April 4, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,340.63 based on Claim No. 1-1. 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 $7,500.00. *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.

27. 17-21397-B-13 STEPHEN/BRENDA VICE
Mary Ellen Terranella

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
4-13-17 [22]

Tentative Ruling: This matter was continued from May 2, 2017, to allow the Debtors to review the proof of claim filed by Bank of America, N.A. on May 1, 2017.

Bank of America, N.A.'s Objection to Confirmation of the Chapter 13 Plan was originally 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). Bank of America, N.A., which holds a deed of trust secured by the Debtors' residence, objects to confirmation on the ground that the plan does not propose to cure pre-petition arrearages.

The matter will be determined at the scheduled hearing.

28. 17-22283-B-13 ROBERT MAC BRIDE MOTION TO RECONSIDER O.S.T.
RSM-2 Pro Se 5-12-17 [33]

Tentative Ruling: The court issues no tentative ruling.

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The matter will be determined at the scheduled hearing.