UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

June 7, 2016 at 1:00 p.m.

1.	13-29501-B-13 CJO-1	RORY/SHELLY PETERS Peter G. Macaluso	CONTINUED MOTION TO APPROVE LOAN MODIFICATION 4-16-16 [51]

Tentative Ruling: This matter was continued from May 3, 2016. The Motion for Court Consent to Enter into Loan Modification Agreement was originally 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 permit the loan modification requested.

Debtors seek court approval to enter into and finalize a loan modification with Ditech Financial, LLC, fka Green Tree Servicing, LLC ("Creditor") that will allegedly reduce Debtors' mortgage payments. Although the Debtors have filed the loan modification agreement as Exhibit 1, the Debtors' motion does not state with particularity the grounds for relief sought. There is also no evidence showing that Ditech Financial, LLC, fka Green Tree Servicing, LLC is the creditor. The Debtors do not testify that they borrowed money from, signed a promissory note with, or that a promissory note was assigned or transferred to Ditech Financial, LLC, fka Green Tree Servicing, LLC. In fact, Class 4 of the plan lists the creditor with a claim against Debtors' primary residence as Bank of America, N.A.

The Declaration of Cassandra Palmer, bankruptcy representative by Creditor, was filed on May 23, 2016, stating that Debtors executed a Deed of Trust in favor of Countrywide Home Loans, Inc. to secure the Note on their primary residence. A Home Affordable Modification Agreement with an effective date of February 1, 2016, was executed by the Debtors and amends and supplements the Note and Deed of Trust. Ditech Financial is in possession of the original note endorsed in blank, either directly or through its authorized custodian of records.

Although the Debtors have failed to submit a Declaration stating their desire and ability to pay this claim on the modified terms, it appears that they will be able to afford the new payment. The current plan payment (Class 4) is $1,463.15 and the new payment under the loan modification is $993.54. The motion is granted.

2. 16-22506-B-13 ANTOINE FRANKLIN-DIXON AND ARNETT DIXON
KR-1 Peter G. Macaluso
WESTERN FEDERAL CREDIT UNION
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
5-19-16 [12]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion 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.

Western Federal Credit Union ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2005 GMC Yukon, VIN ending in -0472 (the "Vehicle"). The moving party has provided the Declaration of Ignacio Martinez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Martinez Declaration provides testimony that Debtors have not made one post-petition payments, with a total of $385.31 in post-petition payments past due. The Declaration also provides evidence that there are seven pre-petition payments in default, with a pre-petition arrearage of $2,697.17.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $19,838.63, as stated in the Martinez Declaration, while the value of the Vehicle is determined to be $7,370.00, as stated in Schedules B and D filed by Debtor. Due to the default in payments, the Movant obtained possession of the Vehicle on December 24, 2015, prior to the filing of the Chapter 13 petition on April 20, 2016. The Movant is currently in possession of the Vehicle.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtor/s or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow Western Federal Credit Union, and its agents, representatives and successors, and all other creditors having lien rights against the Vehicle, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

3. 15-24907-B-13 YVONNE SILVEIRA MOTION TO MODIFY PLAN
SJS-2 Scott J. Sagaria 4-29-16 [48]

Tentative Ruling: Debtor's 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 permit the requested modification and confirm the modified plan provided that the order modifying plan include an additional provision stating that unsecured creditors in Class 7 are to be paid an interest rate should there be any monies after payment in full of all allowed secured and priority claims.

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

The court will enter an appropriate minute order.

4. 16-21009-B-13 TIMOTHY/LINDA KNIGHT MOTION TO CONFIRM PLAN
DRE-1 D. Randall Ensminger 4-12-16 [17]
Thru #5

CASE DISMISSED: 5/26/16

Final Ruling: No appearance at the June 7, 2016, hearing is required. Matter is dismissed as moot. Case dismissed on May 26, 2016.

5. 16-21009-B-13 TIMOTHY/LINDA KNIGHT COUNTER MOTION TO DISMISS CASE
DRE-1 D. Randall Ensminger 5-19-16 [39]

CASE DISMISSED: 5/26/16

Final Ruling: No appearance at the June 7, 2016, hearing is required. Matter is dismissed as moot. Case dismissed on May 26, 2016.

6. 15-27710-B-13 SHANE/EDEN JACK — MOTION TO CONFIRM PLAN
HLG-2 Kristy A. Hernandez — 4-15-16 [43]

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.

The Debtors are delinquent to the Chapter 13 Trustee in the amount of $2,085.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $2,210.00 will also be due. The Debtors do not appear to be able to make plan payments proposed and have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The 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.

7. 11-44511-B-13 PAUL/CHRISTI CAMILLERI — MOTION TO AVOID LIEN OF HSBC BANK
EJS-1 Eric John Schwab — 4-28-16 [86]

Final Ruling: No appearance at the June 7, 2016, hearing is required.

The Motion to Avoid Judgment Lien Pursuant to 11 USC 522(f) has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of HSBC Bank, aka. Household Finance Company ("Creditor") against the Debtors' property commonly known as 2270 Longview Drive, Roseville, California ("Property").

A judgment was entered against Debtor Paul Camilleri in favor of Creditor in the amount of $12,052.87, with a present balance of $11,298.00. An abstract of judgment was recorded with Placer County on April 11, 2011, which encumbers the Property. All other liens recorded against the Property total $408,541.00.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $215,600.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $1.00 on Schedule C.

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

The court will enter an appropriate minute order.

8. 16-21614-B-13 KEVIN/SYLVIA EDWARDS MOTION TO CONFIRM PLAN
EJS-1 Eric John Schwab 4-25-16 [21]

Final Ruling: No appearance at the June 7, 2016, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The 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 April 25, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

9. 16-22119-B-13 JAMES/HELEN BALDWIN
JPJ-1 Mark A. Wolff

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND MOTION TO DISMISS CASE
5-12-16 [23]

Tentative Ruling: The Trustee's Amended 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, feasibility depends on the granting of a motion to value collateral of Bank of America for a second deed of trust on the Debtors' residence. To date, the Debtors have not filed, set for hearing, and served on the respondent creditor and the Trustee a motion to value the collateral pursuant to Local Bankr. R. 3015-1(j).

Second, 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 Debtors are making voluntary retirement contributions at Line 41 of the Means Test in the amount of $1,371.00. These payments are disposable income under 11 U.S.C. § 547(b)(7) and therefore such income must be applied to make payments under 11 U.S.C. § 1325(b)(1). *Parks v. Drummond (In re Parks)*, 475 B.R. 703 (B.A.P. 9th Cir. 2012).

Third, the Debtors have not rebutted the presumption as to the amount they are required to pay to unsecured creditors under the Means Test. The Debtors' Amended Means Test lists cigarette expenses in the amount of $450.00 and horse expenses in the amount of $400.00 on Line 45. As a result, Line 45 of the Means Test shows that the Debtors' monthly disposable income is $746.17 and that the Debtors pay no less than $44,770.20 to general unsecured creditors. The Trustee calculates that the Debtors' correct monthly disposable income is or should be $2,967.17 and that the Debtors should pay no less than $178,030.20 to general unsecured creditors. The Debtors have presented no evidence of a significant change in expenses and have not shown that the expense figures used in lieu of those on the Means Test for calculating disposable income are known and virtually certain at the time of confirmation.

The Debtors do not appear to appreciate the significance of seeking the extraordinary relief the Bankruptcy Code provides. The Bankruptcy Code provides debtors protection from the pressure of creditors and to ultimately discharge their debts, but it also requires debtors to modify their lifestyle for a limited period of time. A debtor may be able to eliminate their unsecured debts by making a small percentage payment to general unsecured creditors, but the amount that must be paid is based upon reasonable expenses, not expenses to maintain a pre-bankruptcy lifestyle. The expenses for cigarettes and horses are not reasonable expenses.

The plan filed April 4, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

The court will enter an appropriate minute order.

10. 16-23119-B-13 DARLENE CHIAPUZIO-WONG MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso 5-24-16 [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 deny 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 March 2, 2016, after Debtor failed to make plan payments (case no. 15-23669, Dkt. 109). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

The Debtor states that she failed to make plan payments in her previous case due to loss of income and a death in her immediate family. Debtor asserts that she can succeed in her new plan because her divorce is finalized, she receives support payments, adoption assistance, Social Security, and pension funds.

However, the Debtor has not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts for the court to extend the automatic stay. Indeed, this is the Debtor's eighth bankruptcy case and the Debtor should be knowledgeable in the duties and responsibilities that are required of her, which include the duty to make plan payments.

The motion is denied and the automatic stay is not extended for all purposes and parties.

The court will enter an appropriate minute order.

11. 15-26321-B-13 MARCELINO MANZANO
PPR-1 Dale A. Orthner

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
4-28-16 [49]

U.S. BANK, N.A. VS.

Tentative Ruling: The court issues no tentative ruling.

U.S. Bank National Association, On Behalf of Mortgage Equity Conversion Asset Trust 2011-1's Motion for Relief from Automatic Stay Pursuant to 11 U.S.C. § 362(d)(1) 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). Responses have been filed by the Chapter 13 Trustee and the Debtor, and a response has been filed by U.S. Bank National Association.

The matter will be determined at the scheduled hearing.

12. 16-21821-B-13 LAUREN CHERWIN
JPJ-1 Edward A. Smith

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-11-16 [14]

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

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

The Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Means Test shows that the Debtor's monthly disposable income is $1,189.82 and the Debtor must pay no less than $71,389.20 to general unsecured creditors. The Trustee calculates that the plan only proposes to pay $7,213.79 or approximately 5% to Class 7 general unsecured creditors.

The plan filed March 23, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the 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.

13. 16-21924-B-13 ANDREW COLEMAN
JPJ-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
5-11-16 [19]

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

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $2,490.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $2,490.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan provides treatment of Green Planet Mortgage in Class 1 but does not specify a cure of the post-petition arrearage owed to Green Planet Mortgage including a specific post-petition arrearage amount, interest rate, and monthly dividend. Because of this, the plan cannot be effectively administered.

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

The court will enter an appropriate minute order.

14. 15-29825-B-13 VASUDEVA BENARD MOTION TO CONFIRM PLAN
PGM-4 Peter G. Macaluso 4-26-16 [90]

Final Ruling: No appearance at the June 7, 2016, hearing is required.

The Motion to Confirm Debtor's First Amended Plan Filed On April 26, 2016, 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 26, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

15. 16-21827-B-13 STEVEN VANDERLICK
JPJ-1 Len ReidReynoso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-12-16 [15]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the June 7, 2016, 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.

There being no other objection to confirmation, the plan filed March 24, 2016, will be confirmed.

The court will enter an appropriate minute order.

16. 13-35332-B-13 JAMES/IOLANI NEARY
CRG-5 Carl R. Gustafson

MOTION TO MODIFY PLAN AND/OR MOTION TO EXTEND TIME
4-14-16 [119]

Final Ruling: No appearance at the June 7, 2016, hearing is required.

The Motion to Confirm Debtors' Fourth Modified Chapter 13 Plan After Confirmation and Request for Extension on Trustee's Notice of Default 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 14, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

17.	15-26933-B-13 PGM-1	PETE GARCIA Peter G. Macaluso	CONTINUED MOTION TO CONFIRM PLAN 2-8-16 [49]

CONTINUED TO 8/09/16 AT 1:00 P.M. TO ALLOW E*TRADE BANK TO AMEND THEIR CLAIM.

18. 16-20840-B-13 SANDRA SAWYER
WW-1 Mark A. Wolff

MOTION TO VALUE COLLATERAL OF J.P. MORGAN CHASE BANK, N.A.
5-24-16 [45]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, Motion to Value Collateral Securing Claim of J.P. Morgan Chase Bank, N.A. 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 J.P. Morgan Chase Bank, N.A. at $0.00.

The motion to value filed by Debtor to value the secured claim of J.P. Morgan Chase Bank, N.A.("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 8285 Peacock Lane, Elverta, California ("Property"). Debtor seeks to value the Property at a fair market value of $390,000.00 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 $500,000.00. Creditor's second deed of trust secures a claim with a balance of approximately

$85,000.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

The court will enter an appropriate minute order.

19. 16-21744-B-13 DANIEL/EUPHRASIA BLAIR
JPJ-1 Ted A. Greene

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
5-12-16 [15]

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

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Debtors do not appear to be putting forth their best efforts to repay their creditors pursuant to 11 U.S.C. § 1325(a)(3). The Joint Debtor testified at the § 341 meeting that she has two separate 401k loans that she is in the process of repaying and that one of the loans would be paid off during the life of the plan. However, the plan fails to specify an increase in the plan payment as a direct result of the increase of Joint Debtor's monthly net income following the cessation of loan payments. In response, the Debtors state that the length of the two loans are each 55 months and 47 months and that they will mature during the final year of the plan. But the Debtors are incorrect as to the maturity of the 47-month loan since it will mature at the end of year 3 of the plan and there will be an increase in their available income for the remaining 13 months of the plan. The Debtors do not appear to be putting forth their best efforts to apply their available income toward their plan payments in an effort to repay their creditors.

Second, the Debtors have not properly accounted for their 2/3 interest in the subject real property. Although the Debtors state that have filed an amended Schedule A with this court on May 13, 2016, nothing appears on the court's docket aside from Debtors' exhibit submitted with its response.

Third, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) as the Debtors' projected disposable income is not being applied to make payment to unsecured creditors. The Debtors acknowledge that the percentage paid to unsecured creditors should actually be 65% of the claims scheduled and not 46%.

The plan filed March 21, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

20. 15-29045-B-13 GURDEV BOPARAI
JPJ-2 David Ndudim

MOTION TO RECONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
5-4-16 [50]

Tentative Ruling: The Trustee's Motion to Re-Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not re-convert this Chapter 13 case to a Chapter 7.

This motion has been filed by Chapter 13 Trustee Jan P. Johnson ("Movant"). Movant asserts that the case should be converted based on the ground that the Debtor has failed to take further action to confirm a plan in this case and there is non-exempt equity of $196,125.00 in the estate.

The Debtor has filed a response stating that is has taken action to prosecute this case by filing an amended plan that is scheduled for a confirmation hearing on June 21, 2016, at 1:00 p.m.

Discussion

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Cause does not exist to convert this case pursuant to 11 U.S.C.§ 1307(c) since the Debtor has taken action to file an amended plan for confirmation. The motion is denied without prejudice and the case is not converted to a case under Chapter 7.

The court will enter an appropriate minute order.

21. 15-27260-B-13 FRANCISCA INGEGNERI — MOTION FOR RELIEF FROM AUTOMATIC STAY
KHS-1 Kenneth D. Schnur — 5-13-16 [57]

FRANCISCA INGEGNERI VS.
DEBTOR DISMISSED: 09/28/2015

Tentative Ruling: The court issues no tentative ruling.

The Motion of IH6 Property West, LP's for Relief from Say Nunc Pro Tunc to Allow Movant to Charge Rent and Take Action in State Court if Required been set for hearing on the notice required by 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. Nonetheless, opposition has been filed by the Debtor and a response has been filed by IH6 Property West, LP.

The matter will be determined at the scheduled hearing.

22. 14-27661-B-13 MICHAEL/JURHEE POLLARD MOTION TO MODIFY PLAN
CA-6 Michael David Croddy 4-29-16 [66]

Final Ruling: No appearance at the June 7, 2016, hearing is required.

The Debtors' Motion to Confirm Debtors' Second 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 29, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

23. 11-33964-B-13 ENRIQUE GARCIA MOTION TO MODIFY PLAN
SDB-6 W. Scott de Bie 4-28-16 [90]

Final Ruling: No appearance at the June 7, 2016, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits 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 April 28, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

24. 16-21967-B-13 JUAN GARCIA
JPJ-1 Thomas O. Gillis
Thru #25

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-11-16 [16]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss 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 continue the matter to July 5, 2016, at 1:00 p.m to be heard in conjunction with Debtor's motion to value collateral of note and second mortgage held by Earnest Bazinet.

The court will enter an appropriate minute order.

25. 16-21967-B-13 JUAN GARCIA
PCB-1 Thomas O. Gillis

OBJECTION TO CONFIRMATION OF PLAN BY ERNEST BAZINET AND THE E.E. BAZINET FAMILY TRUST
5-12-16 [19]

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

The court's decision is to continue the matter to July 5, 2016, at 1:00 p.m to be heard in conjunction with Debtor's motion to value collateral of note and second mortgage held by Earnest Bazinet.

The court will enter an appropriate minute order.

26. 16-21768-B-13 APN-1 **Thru #28**
COLETTE MONTGOMERY
George T. Burke
OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
5-24-16 [34]

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

The court's decision is to sustain the objection and deny confirmation of the plan.

Feasibility depends on the granting of a motion to value collateral for WFS Wachovia Dealer Services for a 2012 Hyundai Elantra. The Debtor has filed and set for hearing the motion to value collateral, which was denied without prejudice at Item #27.

The plan filed March 23, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

27. 16-21768-B-13 GTB-1
COLETTE MONTGOMERY
George T. Burke
MOTION TO VALUE COLLATERAL
5-4-16 [15]

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

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

The motion filed by Debtor to value the secured claim of Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services (and not Wachovia Dealer Services) ("Creditor") is accompanied by Debtor's declaration. Debtors are the owners of 2012 Hyundai Elantra ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $3,600.00 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2 filed by Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services is the claim which may be the subject of the present motion.

Opposition

Creditor has filed an opposition asserting that the replacement value of the Vehicle is $8,200.00 based upon the clean retail evaluation by NADA. Dkt. 32, exh. C.

Discussion

The $8,200.00 value offered by the Creditor is based on a clean retail evaluation by

NADA, a commonly used market guide. This valuation presumes that the car has "no mechanical defects and passes all necessary inspections with ease; paint, body and wheels have minor surface scratching with a high gloss finish; interior reflects minimal soiling and wear, with all equipment in complete working order; vehicle has a clean title history. Because individual vehicle condition varies greatly, users may need to make independent adjustments for actual vehicle condition." Cf. http://www.kbb.com (indicating that retail "value assumes the vehicle has received the cosmetic and/or mechanical reconditioning needed to qualify it as 'Excellent'" and that "this is not a transaction value; it is representative of a dealer's asking price and the starting point for negotiation").

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

Nor has the Debtor proven to the court's satisfaction the replacement value of the Vehicle. The court notes that the Debtor filed a copy of a market report from Kelley Blue Book that shows a retail evaluation at $3,630.00. However, this report in itself is no different than the Kelley Blue Book evaluation provided by the Creditor. And the Debtor's declaration provides no evidence supporting the particular condition of her Vehicle other than stating that it is "fair." It is the Debtor's burden of proof to persuade the court regarding her position, which she has not done. Therefore, the motion will be denied without prejudice.

The court will enter an appropriate minute order.

28. 16-21768-B-13 COLETTE MONTGOMERY
JPJ-1 George T. Burke

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-11-16 [21]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and 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 WFS Wachovia Dealer Services for a 2012 Hyundai Elantra. The Debtor has filed and set for hearing the motion to value collateral, which was denied without prejudice at Item #27.

Second, according to Schedule E of the petition, the Debtor owes a priority obligation to the Franchise Tax Board in the amount of $1,200.00. However, the plan fails to provide treatment for this creditor's priority debt. The plan does not comply with 11 U.S.C. § 1322(a)(2).

Third, the plan payment in the amount of $1,800.00 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 $1,868.00. The plan does not comply with Section 4.02 of the

mandatory form plan.

The plan filed March 23, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the 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.

29. 16-20570-B-13 JPJ-1 **Thru #30**
STEPHANIE RUSCIGNO
Peter G. Macaluso
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
5-11-16 [77]

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

The court's decision is to sustain the objection and deny confirmation of the plan.

First, the Debtor failed to appear at the meeting of creditors held on May 5, 2016. The Meeting has been continued to June 16, 2016.

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

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

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

Fifth, it cannot be determined whether the Debtors' projected disposable income is being applied to make payments to unsecured creditors. The Means Test filed April 20, 2016, does not list any income for the Debtor, but the Statement of Financial Affairs Question #15 lists VA Benefits received in 2016 and 2015.

Sixth, although the Debtor has indicated in her plan filed March 21, 2016, that her attorney will seek approval by complying with Local Bankr. R. 2016-1(c), the Debtor has not filed the Rights of Responsibilities of Chapter 13 Debtors and Their Attorneys.

Seventh, 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. The total value of Debtor's non-exempt property in the estate is $84,322.50 since the Debtor has not exempt any assets on Schedule C. However, the total amount that the plan will pay to unsecured creditors is only $6,962.59. Additionally, it is unclear if the Debtor has listed all bank accounts on Schedule B that she might have an interest in. This cannot be properly assessed until the Debtor has been thoroughly examined at the continued meeting of creditors on June 16, 2016.

The plan filed March 21, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

30. 16-20570-B-13 MMW-2
STEPHANIE RUSCIGNO
Peter G. Macaluso
OBJECTION TO CONFIRMATION OF PLAN BY DFI FUNDING, INC.
5-9-16 [72]

Tentative Ruling: The Objection to Confirmation of Debtor's Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at

least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, DFI Funding, Inc. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim and asserts that its loan matured pre-petition on August 1, 2015, and that the total amount of its secured claim is now $312,396.91. The plan does not provide for repayment of this loan in full through the plan. *See* 11 U.S.C. § 1325(a)(5)(B)(ii).

Second, the plan payment in the amount of $1,500.00 is not sufficient to repay the full amount owed to DFI Funding, Inc. The plan is not feasible pursuant to 11 U.S.C. § 1325(a)(6).

The plan filed March 21, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

31. 15-26973-B-13 JPJ-2 | STEVEN RUTHENBECK
Matthew R. Eason | MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
5-4-16 [86]

Final Ruling: No appearance at the June 7, 2016, hearing is required.

The Trustee's Motion of Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case 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 convert this Chapter 13 case to a Chapter 7.

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

First, the Debtor has failed to prosecute this case, causing an unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1). The Debtor's third amended plan was not confirmed on May 3, 2016, and the Debtor has subsequently proposed two amended plan that were either withdrawn or denied.

Second, the Debtor is $177,000.00 delinquent in plan payments, which represents 1 lump sum plan payment required to complete the plan and pay 100% to general unsecured creditors. This is cause to dismiss the case pursuant to 11 U.S.C. § 1307(c)(1).

Third, the total value of non-exempt equity in the estate is $525,041.00. Rather than dismissing this case, conversion to a Chapter 7 proceeding is in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1303(c).

Discussion

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219,

1224 (9th Cir. 1999).

Cause exists to convert this case pursuant to 11 U.S.C.§ 1307(c) since the Debtor has failed to prosecute the case, is delinquent in plan payment, and there is non-exempt equity in the estate. The motion is granted and the case is converted to a case under Chapter 7.

The court will enter an appropriate minute order.

32. 16-21574-B-13 RODNEY/ANNA RATH — MOTION FOR RELIEF FROM AUTOMATIC STAY
BN-1 Mohammad M. Mokarram — 4-27-16 [12]

THE GOLDEN 1 CREDIT UNION
VS.

Tentative Ruling: The court issues no tentative ruling.

Motion for Relief From Automatic Stay to Permit Foreclosure and Sale of Real Property, and Memorandum of Points and Authorities in Support Thereof 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 has been filed by the Debtors and a response has been filed by Golden 1 Credit Union.

The matter will be determined at the scheduled hearing.

33. 14-25175-B-13 JOHNNIE/KIMBERLY RHYNES — MOTION TO VACATE DISMISSAL OF CASE
SNM-5 Stephen N. Murphy — 5-17-16 [75]

DEBTOR DISMISSED:
04/13/2016
JOINT DEBTOR DISMISSED:
04/13/2016

Tentative Ruling: The Motion to Vacate Order Dismissing Case was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

Debtors assert that either mistake or excusable neglect justify the court vacating the order dismissing the case. The Debtors state that they were not aware of the default in plan payments until after their case was dismissed. Prior to the dismissal of their case, Joint Debtor was responsible for financial matter in the Debtors' household, including paying bills. However, Joint Debtor failed to make payments due to impaired memory function from a brain injury that occurred when Joint Debtor was 21 years old and further aggravated when Joint Debtor was in a motor vehicle accident in January 2016. Letters from physicians supporting Joint Debtor's condition have been submitted as evidence. Dkt. 79.

Debtors assert that they are now fully aware of the severity of the re-injury and Debtor will fully participate in all financial matters of the household. Additionally, the Debtors state that they will use TFS Bill Pay service to avoid defaulting on plan payments. The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

DISCUSSION

The court finds that the motion is supported by both cause and excusable neglect. Allowing the Debtors to complete their plan will provide them with financial relief, and they have already deposited all past due payments with their attorney and the payments will be forwarded to the Chapter 13 Trustee upon the reopening of the case. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.*, 507 U.S. 380 (1993), the court also finds the Debtors' request is supported by a showing of excusable neglect because Joint-Debtor, who was responsible for making plan payments, has impaired memory function resulting in the missed plan payments. The Debtors state that they will use TFS Bill Pay to ensure that no future plan payments are missed. Vacating dismissal will not result in prejudice to any party.

Given the unique circumstances of the Debtors, the court will grant the motion to reconsider and vacate the order dismissing the case.

The court will enter an appropriate minute order.

34. 16-20983-B-13 ELAINE ANCHETA
HWW-4

MOTION TO CONFIRM PLAN
4-22-16 [39]

DEBTOR DISMISSED: 04/28/2016

Final Ruling: No appearance at the June 7, 2016, hearing is required. Matter is dismissed as moot. Case dismissed on April 28, 2016.

35. 15-26284-B-13 JPJ-1 | MORTISHIA FAIRCHILD
Mary Ellen Terranella | OBJECTION TO CLAIM OF BANK OF AMERICA, N.A., CLAIM NUMBER 2-1
4-13-16 [37]

Final Ruling: No appearance at the June 7, 2016, hearing is required.

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

The court's decision is to sustain the objection to Claim No. 2 of Bank of America, N.A. and disallow the claim in its entirety.

Chapter 13 Trustee ("Objector") requests that the court disallow the claim of Bank of America, N.A. ("Creditor"), Claim No. 2. The claim is asserted to be unsecured in the amount of $9,799.74. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1).

According to the proof of claim, the underlying debt is a contract claim, most likely based on a written contract. California law provides a four-year statute of limitations to file actions for breach of written contracts. *See* Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach. According to the Objector's exhibits, the last payment was received on or about November 14, 2018, which is more than four years prior to the filing of this case. Hence, when the case was filed on August 6, 2015, this debt was time barred under applicable nonbankruptcy law, i.e., Cal. Civ. Pro. Code § 337(1), and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

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

The court will enter an appropriate minute order.

36. 15-29588-B-7 BEVERLY BAKER HARRIS MOTION TO CONFIRM PLAN
SJS-2 Matthew J. DeCaminada 4-25-16 [62]

CASE CONVERTED: 04/28/2016

Final Ruling: No appearance at the June 7, 2016, hearing is required. Matter is dismissed as moot. Case converted on April 28, 2016.

37. 16-22790-B-13 ALVIN/JOAN MENDIOLA
SNM-1 Stephen N. Murphy
Thru #38

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
5-3-16 [8]

Final Ruling: No appearance at the June 7, 2016, hearing is required.

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

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

The motion filed by Debtors to value the secured claim of Internal Revenue Service ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a variety of personal property listed in Schedules A and B (dkt. 1) and Debtors' declaration (dkt. 10). The Debtors seek to value the personal property at $5,503.93 as of the petition filing date. As the owner, the 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).

The lien on the variety of personal property secures a debt owed to Creditor in the approximate amount of $60,450.00. However, the value of two particular personal property cannot be determined. Specifically, Debtors list a 2013 BMW 328i and 2012 Nissan Altima as being subject to Creditor's lien, but the Debtors have not filed a motion to value for the 2013 BMW[1] or indicated whether these vehicles were purchased within 910 days of the bankruptcy filing date. Therefore, it cannot be determined whether Creditor's claim secured by a lien on all the listed personal property is under-collateralized. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The court will enter an appropriate minute order.

38. 16-22790-B-13 ALVIN/JOAN MENDIOLA
SNM-2 Stephen N. Murphy

MOTION TO VALUE COLLATERAL OF CONSUMER PORTFOLIO SERVICES, INC.
5-3-16 [12]

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

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

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[1]The Debtors have filed a motion to value the 2012 Nissan Altima at Item #38. However, that motion is denied without prejudice.

The motion filed by Debtors to value the secured claim of Consumer Portfolio Services, Inc. ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of 2012 Nissan Altima ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $9,600.00 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).

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.

Opposition

Creditor has filed an opposition asserting that the replacement value of the Vehicle is $11,335.00 based upon the clean retail evaluation by Kelley Blue Book. Dkt. 27, exh. 1.

Discussion

The $11,335.00 value offered by the Creditor is based on a clean retail evaluation by Kelley Blue Book, a commonly used market guide. This valuation presumes that the car has "no mechanical defects and passes all necessary inspections with ease; paint, body and wheels have minor surface scratching with a high gloss finish; interior reflects minimal soiling and wear, with all equipment in complete working order; vehicle has a clean title history. Because individual vehicle condition varies greatly, users may need to make independent adjustments for actual vehicle condition." Cf. http://www.kbb.com (indicating that retail "value assumes the vehicle has received the cosmetic and/or mechanical reconditioning needed to qualify it as 'Excellent'" and that "this is not a transaction value; it is representative of a dealer's asking price and the starting point for negotiation").

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

Nor have the Debtors proven to the court's satisfaction the replacement value of the Vehicle. The court notes that the Debtors filed a copy of a market report from Edmonds.com that shows a retail evaluation at $9,600.00. However, this report in itself is no different than the Kelley Blue Book evaluation provided by the Creditor. And the Debtors' declaration provides no additional evidence as to the particular condition of this Vehicle. It is the Debtors' burden of proof to persuade the court regarding their position, which they have not done. Therefore, the motion will be denied without prejudice.

The court will enter an appropriate minute order.

39. 11-29591-B-13 BRIAN SAECHAO
16-2030
SAECHAO V. FEDERAL NATIONAL MORTGAGE ASSOCIATION ET AL
Thru #40

CONTINUED STATUS CONFERENCE RE: COMPLAINT
2-16-16 [1]

CONTINUED TO 6/21/16 AT 1:00 P.M. PER ITEM #40.

40. 11-29591-B-13 BRIAN SAECHAO
16-2030 TRF-1
SAECHAO V. FEDERAL NATIONAL MORTGAGE ASSOCIATION ET AL

CONTINUED MOTION TO DISMISS CAUSE(S) OF ACTION FROM COMPLAINT
4-1-16 [7]

Tentative Ruling: The court issues no tentative ruling but will entertain argument at the scheduled hearing. The matter will then be continued to June 21, 2016, at 1:00 p.m. and the court will render a decision on or before the continued hearing date. If a written decision is filed before the continued hearing date, the continued hearing will be vacated and no appearance on June 21, 2016, will be required.

41.	16-21593-B-13 JPJ-2	SENAY FRANKLIN Pro Se	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 4-28-16 [13]

Final Ruling: No appearance at the June 7, 2016, hearing is required.

This matter is continued to June 21, 2016, at 1:00 p.m. to be heard in conjunction with the continued objection to confirmation. See civil minutes dkt. 21 and civil minute order dkt. 23.

42. 16-22094-B-13 JEFFREY MAYHEW
JHW-1 Peter G. Macaluso
Thru #45

OBJECTION TO CONFIRMATION OF PLAN BY TD AUTO FINANCE, LLC
5-5-16 [21]

Final Ruling: No appearance at the June 7, 2016, hearing is required.

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

The court's decision is to overrule the objection as moot in light of Item #44.

Nonetheless, the plan filed April 1, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a) for reasons stated at Item #43. The objection is sustained and the plan is not confirmed.

43. 16-22094-B-13 JEFFREY MAYHEW
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
5-11-16 [38]

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

The court's decision is to sustain the objection and deny confirmation of the plan.

First, feasibility depends on the granting of a motion to value collateral of TD Auto Finance for a 2011 Volkswagen Jetta. That matter is heard at Item #44 and denied as moot.

Second, feasibility depends on the granting of a motion to avoid the lien of Springleaf Financial Services for Debtor's personal property. That matter is heard at Item #45 and granted.

Third, the Debtor has not amended the Means Test to properly disclose all gross income received during the six-month period preceding the filing of the case. It cannot be determined whether the Debtor's projected disposable income is being applied to make payments to unsecured creditors.

Fourth, the plan will take approximately 120 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4). The reasons for this over-extension is due to a proof of claim filed by Real Time Resolutions in the amount of $265,793.82. The Debtor states that it will file, set for hearing, and serve an objection to the claim of Real Time Resolutions as exceeding the statute of limitations.

Fifth, it must be confirmed whether the Debtor has provided the Chapter 13 Trustee with all requested documents including evidence of income from February 7, 2016, through March 31, 2016, evidence of income for Debtor's spouse received from October 1, 2015, through March 31, 2016, copies of bank statements from February 23, 2016, through March 31, 2016. Without these documents, it cannot be determined whether the plan complies

with 11 U.S.C. §§ 1325(a)(3)(4) or (6) or § 1325(b)(1)(B).

The plan filed April 1, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

44. 16-22094-B-13 JEFFREY MAYHEW
PGM-2 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF TD AUTO FINANCE
5-6-16 [27]

Final Ruling: No appearance at the June 7, 2016, hearing is required.

The Motion to Value Collateral of TD Auto Finance 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 has been filed by TD Auto Finance and the Debtor has filed a response.

The court's decision is to deny the motion as moot, the Debtor and Creditor having entered into a stipulation valuing the 2011 Volkswagen Jetta at $9,715.00 to be paid at 4.50% as a Class 2 claim with a monthly dividend of $460.00. *See* dkt. 53.

45. 16-22094-B-13 JEFFREY MAYHEW
PGM-3 Peter G. Macaluso

MOTION TO AVOID LIEN OF SPRINGLEAF FINANCIAL SERVICES, INC.
5-10-16 [33]

Final Ruling: No appearance at the June 7, 2016, hearing is required.

The Motion to Avoid Lien Pursuant to § 522(f)(1) has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the lien of Springleaf Financial Services, Inc. ("Creditor") against the Debtor's personal property composed of a Sony digital camera, Sony digital camcorder, Pioneer HDTV home theater system, Sony 32-inch television, Sanyo DVD/VCR combo, and Taylor golf clubs (collectively, "Personal Property").

On or about July 22, 2013, the Debtor used his Personal Property as collateral for a non-purchase money loan with Creditor. The Creditor has filed Proof of Claim No. 6, which may be the subject of the present motion.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 522(f) in the amount of $270.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A),

there is no equity to support the lien. Therefore, the fixing of this lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

46. 15-29496-B-13 ANTHONY/HELEN CASACLANG MOTION TO CONFIRM PLAN
SDB-3 W. Scott de Bie 4-21-16 [53]

Final Ruling: No appearance at the June 7, 2016, hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The 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 April 21, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.