UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

June 10, 2015 at 10:00 a.m.

1.	10-28001-B-13 JDP-1	RUBEN CARRILLO AND PATRICIA VALLE James D. Pitner	MOTION TO VALUE COLLATERAL OF JP MORGAN CHASE BANK, N.A. 5-15-15 [65]

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

The motion to value filed by Ruben Carrillo and Patricia Valle ("Debtors") to value the secured claim of JP Morgan Chase Bank, N.A. ("Creditor") is accompanied by co-Debtor's declaration. Debtors are the owner of the subject real property commonly known as 4439 Meadow Valley Circle, Fairfield, California ("Property"). Debtors seek to value the Property at a fair market value of $290,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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 $360,551.15. Creditor's second deed of trust secures a claim with a balance of approximately $145,784.11. 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.

2.	09-48305-B-13 PGM-1	MALCOLM RUTH Peter G. Macaluso	MOTION TO WAIVE DEBTOR, MALCOLM RUTH'S 11 U.S.C. 1328 REQUIREMENT AND NOTICE OF DEATH 5-12-15 [43]

Tentative Ruling: The Notice of Death and Motion to Waive Debtor, Malcolm Ruth's 11 U.S.C. § 1328 Requirement 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 grant the motion and waive the § 1328 requirements.

Malcolm Ruth ("Debtor") died on July 6, 2010. Prior to his death, the Debtor completed his plan payments and filed a certification of completion of a post-petition course on personal financial management. However, the Debtor is unable to file the remaining documents required by Local Bankruptcy Rule 5009-1. Nonetheless, it appears from the electronic record that the Debtor has not received a prior discharge with the time periods specified in 11 U.S.C. § 1328(f), the Debtor had no outstanding domestic support obligations, and the Debtor did not owe obligations of the type described in 11 U.S.C. § 522(q). Therefore a discharge shall be issued.

Nonetheless, the court seeks an explanation as to who made the payments and why the court was not notified sooner of the Debtor's death.

3. 15-22108-B-13 PETER/SUSAN SCATENA
JPJ-1 Bonnie Baker

AMENDED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
5-21-15 [21]

Tentative Ruling: The Trustee's Amended 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)(3) & (d)(1) and 9014-1(f)(1). 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 Debtors' projected disposable income is not being applied to make payments to unsecured creditors and, therefore, does not comply with 11 U.S.C. § 1325(b)(1)(B). The Chapter 13 Trustee calculates that the Debtors' disposable income is $420.24 and that the Debtors must pay no less than $25,214.40. The Debtors' proposed plan will pay $0.00 to Class 7 general unsecured creditors.

Second, the Debtors' asset in a health savings account was not listed on Schedules B or C. Without this asset being listed, it cannot be determined whether the plan fully complies with 11 U.S.C. § 1325(a)(4).

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

4.	14-31811-B-13 CJY-1	JAYE/PATRICIA DRUMMOND James D. Pitner	MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH WELLS FARGO BANK 5-21-15 [20]

Final Ruling: No appearance at the June 10, 2015 hearing is required.

CONTINUED TO 6/15/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

5. 14-30613-B-13 DONALD/BROOKE HOBART MOTION TO CONFIRM PLAN
JGD-2 John G. Downing 4-29-15 [57]

Tentative Ruling: The Motion to Approve 1st Amended 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 sustain the trustee's objection to confirmation and not confirm the first amended plan.

First, the plan does not comply with 11 U.S.C. § 1325(a)(4) as the unsecured creditors would receive a higher distribution in a Chapter 7 proceeding.

Second, the Debtors are delinquent to the Trustee in the amount of $2,580.00, which represents approximately 2.8 plan payments. By the time this matter is heard, an additional plan payment in the amount of $930.00 will also be due. The Debtors do not appear to be able to make the plan payments proposed. The Debtors have failed to carry their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, feasibility of the plan cannot be determined as the terms for payment of the Debtors' attorney's fees are unclear. At Section 2.06, the plan does not specify a selection as to whether counsel shall seek approval of fees by either complying with Local Bankr. R. 2016-1(c) or by filing and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, Fed. R. Bank. P. 2002, 2016, and 2017.

Debtors filed a reply on June 2, 2015, and propose to include resolutions of the first and third objections in the confirmation order. The reply also states that Debtors will be current at the time of hearing. However, until it is confirmed that the Debtors are current, the court will not consider whether the other objections may be resolved in the confirmation order or if an amended plan is required. The court will consider those matters at the hearing. However, if the Debtors are not current, those matters will not be considered and the tentative will become the final.

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

6. 15-23515-B-13 JACQUELINE/ROBERT COONEY
HDR-1 Harry D. Roth
Thru #7

MOTION TO VALUE COLLATERAL OF FORD MOTOR CREDIT, LLC
5-11-15 [8]

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

The court's decision is to deny without prejudice the motion to value, the Debtors having provided an "as-is" value of the vehicle and not the market value that a merchant would charge.

The motion filed by Jacqueline Cooney and Robert Cooney ("Debtors") to value the secured claim of Ford Motor Credit, LLC ("Creditor") is accompanied by co-Debtor's declaration. Debtors are the owner of a 2009 Ford Fusion SE ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $7,450.00 as of the petition filing date. While the Debtors' opinion is some evidence of the asset's value, the replacement value is the price a retail merchant would charge for the property and not the "as-is" value. 11 U.S.C. § 506(a)(2).

Because the Debtors provide an "as-is" value for the Vehicle, the Debtors' motion to value collateral is denied without prejudice.

7. 15-23515-B-13 JACQUELINE/ROBERT COONEY
HDR-2 Harry D. Roth

MOTION TO VALUE COLLATERAL OF FORD MOTOR CREDIT, LLC
5-11-15 [13]

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

The court's decision is to deny without prejudice the motion to value, the Debtors having provided an "as-is" value of the vehicle and not the market value that a merchant would charge.

The motion filed by Jacqueline Cooney and Robert Cooney ("Debtors") to value the secured claim of Ford Motor Credit, LLC ("Creditor") is accompanied by co-Debtor's declaration. Debtors are the owner of a 2011 Ford F-150 Supercab ("Vehicle"). The Debtors seek to value the Vehicle at "as-is" value of $16,075.00 as of the petition filing date. While the Debtors' opinion is some evidence of the asset's value, the replacement value is the price a retail merchant would charge for the property and not the "as-is" value. 11 U.S.C. § 506(a)(2).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by the Creditor for the 2011 Ford F-150 Supercab to be valued.

Opposition by Creditor

On June 8, 2015, the Creditor filed an opposition to Debtors' motion to value on the ground that it is based on the "as-is" value of the Vehicle and not "the price a merchant would charge" pursuant to 11 U.S.C. § 506(a)(2). While Creditor asserts that

the replacement value of the Vehicle is $28,100.00, Creditor seeks payment of $19,415.92, which is the balance owed by the Debtors pursuant to a retail installment sale contract that the Debtors entered into with the Creditor.

Because the Debtors provide an "as-is" value for the Vehicle, the Debtors' motion to value collateral is denied without prejudice.

8. 13-22923-B-13 JPJ-3 — RUDY HEURTELOU AND WENDY LAU — Peter G. Macaluso — MOTION TO MODIFY PLAN — 5-4-15 [175]

Tentative Ruling: The court issues no tentative ruling.

The Trustee's Motion for Post-Confirmation Modification of the Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The motion will be determined at the scheduled hearing.

9. 15-23225-B-13 DONALD WILSON
ADR-1 Justin K. Kuney

MOTION TO VALUE COLLATERAL OF TRINITY FINANCIAL SERVICES, LLC
5-12-15 [16]

Final Ruling: No appearance at the June 10, 2015 hearing is required.

Debtor's Motion for Order Valuing 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). 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 Trinity Financial Services, LLC at $0.00.

The motion to value filed by Donald Wilson ("Debtor") to value the secured claim of Trinity Financial Services, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 216 Cantamar Court, Roseville, California ("Property"). Debtor seeks to value the Property at a fair market value of $505,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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 $548,422.00. Creditor's second deed of trust secures a claim with a balance of approximately $88,159.00. 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.

10. 15-22932-B-13 SHARON WILDEE — MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES, INC.
PGM-1 Peter G. Macaluso — 5-11-15 [17]

Add on Item #24

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

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

The motion to value filed by Sharon Wildee ("Debtor") to value the secured claim of Americredit Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Mazda ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $5,000.00 as of the petition filing date. As the owner, the 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 proof of claim No. 1 filed by Creditor is the claim which may be the subject of the present motion.

Opposition

Creditor opposes Debtor's motion based on the Debtor's failure to present evidence to support her contention that the replacement value of the Vehicle is $5,000.00.

Creditor requests that the Debtor provide evidence to support her opinion that the Vehicle is worth $5,000.00 and that repair costs will be $3,500.00. Debtor states that it is her opinion that the repair work will cost $3,500.00 and provides a list of repair work needed on the Vehicle. However, Debtor does not provide repair estimates from auto body shops with the associated costs to make repairs. Additionally, Creditor requests that the Debtor make the Vehicle available for inspection with regard to its condition and valuation.

The valuation of the Vehicle that Creditor asserts is $7,740.00 based upon the "retail" value of the Vehicle. Creditor provides the NADA Used Car Guide as support for the Vehicle's retail value with mileage of 200,000 miles.

Discussion

The value offered by the Creditor, $7,740.00, is based on a "clean" retail evaluation by NADA Used Car Guide, a commonly used market guide. This valuation presumes, as the adjective "clean" suggests, that the car has "no mechanical defects and passes all necessary inspections with ease; paint, body and wheels have minor surface scratching with a high gloss finish; interior reflects minimal soiling and wear, with all equipment in complete working order; vehicle has a clean title history. Because individual vehicle condition varies greatly, users may need to make independent adjustments for actual vehicle condition." Cf. http://www.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 Vehicle as it is.

While both parties have not persuaded the court regarding their position of the value of the Vehicle, the Debtor has the burden of proof. Therefore, the motion will be denied without prejudice.

11. 15-21333-B-13 JULIO/LUZ MURRIETA MOTION TO CONFIRM PLAN
CMO-1 Cara M. O'Neill 4-17-15 [23]

Tentative Ruling: The Motion for Confirmation of Amended 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 confirm the first amended plan, subject to the order stating the following:

Administrative expenses shall be reduced from $700.00 to $100.00 in order for the plan to comply with Section 4.02.

The language in Class 3 stating "Debtors ask the trustee to sell time share to pay creditors" shall be stricken since it is the intent of the Debtors to allow the timeshare to go back to the lender.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

12. 14-20335-B-13 ALFRED/ESTHER BURKES MOTION TO MODIFY PLAN
RAC-3 Richard A. Chan 5-6-15 [32]

Tentative Ruling: The Motion 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.

The modified plan filed May 6, 2015, does not provide for the timely filed secured claim of Ally Financial ("Creditor"), Proof of Claim no. 1, for the 2013 Subaru Forester with a principal balance of $3,147.00. This principal balance is derived from the original claim of $14,608.79, less monthly plan payments made by the Debtors and $8,600.68 from the insurance company after the vehicle was totaled. The Debtors cannot treat the remaining balance of the secured claim as an unsecured claim by way of a modified plan. The claim remains a secured claim according to the originally-filed proof of claim unless that proof of claim is objected to, and it has not been, which means it remains a valid and allowed secured claim. The plan does not comply with 11 U.S.C. §§ 1325(a)(5)(A) or (B).

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

13.	09-47645-B-13 SNM-4	RYAN/RITSA PRESTON Stephen N. Murphy	MOTION TO AVOID LIEN OF BANK OF AMERICA, N.A. 5-4-15 [65]

Final Ruling: No appearance at the June 10, 2015 hearing is required.

CONTINUED TO 6/15/15 AT 1:30 P.M. IN DEPT. A BEFORE THE HON. MICHAEL S. MCMANUS.

14. 14-30753-B-13 MERLYN BRADY
ADR-2 Justin K. Kuney

MOTION TO CONFIRM PLAN
4-28-15 [43]

Tentative Ruling: The Debtor's Motion to Confirm Second 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 sustain the trustee's objection and not confirm the second amended plan.

First, the plan filed April 28, 2015, and the Debtor's motion provide conflicting language on the payments made to date and the plan, therefore, fails to properly account for all payments the Debtors have made to the Trustee to date. It is unclear if the amount of $1,960.00 is a monthly payment amount as indicated in the plan or a total-paid-in amount as indicated in the motion. This discrepancy has a direct effect on the amount of Debtor's delinquency to the Trustee.

Second, if the $1,960.00 is the proposed monthly payments for months 1 through 6, the plan fails to comply with 11 U.S.C. § 1325(a)(6) because the Debtor's monthly net income is $430.00, which is less than the proposed payment. However, if the $1,960.00 is in fact the total-paid-in amount, then the Debtor must properly account for all payments made to date.

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

15. 15-22254-B-13 MIKHAIL/YULIYA VARKENTIN — OBJECTION TO CLAIM OF HUNT CONSTRUCTION CO., CLAIM NUMBER 2, 3 AND 4
MS-1 Mark Shmorgon — 4-27-15 [23]

Final Ruling: No appearance at the June 10, 2015 hearing is required.

The Objection to Claims #2, #3 and #4 of Hunt Construction Co. 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 Proofs of Claim #2, #3, and #4 of Hunt Construction Co. Proof of Claim #2 will be treated as one single secured claim for $10,000.00, and Proofs of Claim #3 and #4 will be treated as general unsecured claims.

Mikhail Varkentin and Yulia Varkentin, the Chapter 13 Debtors ("Objectors"), request that the court disallow the claim of Hunt Construction Co. ("Creditor"), Proofs of Claim #2, #3, and #4 ("Claims"). Claim #2 is asserted to be secured in the amount of $10,000.00 and is categorized as a security agreement by the Creditor (Dkt. 25, Exh. A). Claim #3 is asserted to be unsecured in the amount of $52,413.20 and is categorized as past due rent by the Creditor (Dkt. 25, Exh. B). Claim #4 is asserted to be secured in the amount of $4,756.02 and is categorized as a commercial lease by the Creditor (Dkt. 25, Exh. C).

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). It is settled law in the Ninth Circuit that 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 Objectors state that the debt involved in all of these claims is for back rent as of the date the case was filed. Objectors assert that these proofs of claim contain no evidence to support them being unsecured priority claims. Additionally, Objectors state that no evidence has been shown that these claims meet any of the specifications of 11 U.S.C. § 507(a) and, therefore, they are not entitled to priority treatment.

The Objectors also state that they have rejected the lease pursuant to 11 U.S.C. § 365 and as specified in their Chapter 13 plan under Section 3. Any allowance of an administrative expense for post petition rent must be made by motion pursuant to 11 U.S.C. §502. For both residential and non-residential leases, a landlord carries the burden to demonstrate the damages resulting from rejection or termination of the lease. "Upon such showing, the landlord's allowable claim is limited to the formula described in section 502(b)(6)(A) plus, under subparagraph (B) of that section, any unpaid rent that was due under the lease, without acceleration, on the earlier of the dates described in subparagraph (A)." Collier on Bankruptcy 502.03[7][c] (Alan N. Resnick & Henry J. Sommer eds.), 16.

Objectors have satisfied their burden of overcoming the presumptive validity of the claims.

Based on the evidence before the court, the Creditor's Proof of Claim #2 will be treated as one single secured claim for $10,000.00 and, to the extent they are claims for pre-petition rent or lease rejection damages, Proofs of Claim #3 and #4 will be treated as general unsecured claims. Pre-petition rent and lease rejection damage claims are not secured claims or priority administrative claims and shall not be classified as such. This ruling and the re-classification of the claims herein is without prejudice to any further objection by the Debtors to least rejection damages, if any, claimed by Hunt Construction and without prejudice to any motion for allowance of administrative claim for any post-petition (not pre-petition) rent by Hunt Construction, if any. The objection to the proofs of claim is sustained.

16. 14-32457-B-13 JIMMY HAASE
CAH-1 C. Anthony Hughes

CONTINUED MOTION TO VALUE COLLATERAL OF WILMINGTON TRUST, N.A.
2-27-15 [23]

DISMISSED 05/17/15

Final Ruling: No appearance at the June 10, 2015 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

17. 11-36163-B-13 KYLE PURVIS
JSO-9 Jeffrey S. Ogilvie

MOTION TO VACATE DISMISSAL OF CASE
5-14-15 [128]

DISMISSED 04/23/2015

Tentative Ruling: The Motion to Vacate Order of Dismissal 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 motion to vacate is granted.

The Debtor confirmed a plan then failed to make the payments required by it. This default prompted the trustee to serve the debtor and the debtor's attorney with a Notice of Default. It recited that as of June 26, 2014, two plan payments had not been made, a total default of $6,500. This notice of default procedure, as authorized by Local Bankruptcy Rule 3015-1(g), provides three alternatives: (1) Cure the default within 30 days of the notice of default as well as paying the additional payment that would come due during the 30-day period to cure the default; (2) Within 30 days of the notice of default, file a modified plan and a motion to confirm it in order to cure/suspend the default stated in the notice of default; (3) Contest the notice of default by setting a hearing within 28 days of the notice of default on 14 days of notice to the trustee.

The Debtor apparently opted to file a modified plan. The Debtor's first modified plan was filed on February 26, 2015 (Dkt. 114), and heard before this court on April 14, 2015. The first modified plan was subsequently denied without prejudice.

The Debtor asserts that he fully intended to file a second modified plan to satisfy the Trustee's original objection but, within 1 week, the case was dismissed on April 23, 2015. The Debtor was in month 44 of a 60-month plan and had paid to date $46,930.30 in plan payments. This amount includes payments by the Debtor after January 27, 2015, and are as follows: January 29, 2015, March 3, 2015, and April 9, 2015. Debtor asserts that the Trustee's Declaration (Dkt. 124) actually related to a January delinquency, which was intended to be cured by a second modified plan.

Given the unique circumstances in this case, the court will vacate the order of dismissal and allow the Debtor a reasonable time to confirm a second modified plan, or to cure the delinquency of approximately $1,000.00. The Debtor must file a second modified plan and set it for hearing by June 13, 2015 or this case may be dismissed upon ex parte application by the Trustee.

18. 14-32364-B-13 MICHAEL/PAULA RHOADES
JPJ-2 Peter L. Cianchetta
Thru #19

CONTINUED MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
3-26-15 [45]

Tentative Ruling: The Motion to Convert the Bankruptcy 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 continue the motion to convert to be heard in conjunction with the hearing on the motion to confirm the June 5, 2015 Amended Chapter 13 Plan, which is set for hearing on July 21, 2015, at 10:00 a.m.

19. 14-32364-B-13 MICHAEL/PAULA RHOADES
PLC-2 Peter L. Cianchetta

AMENDED MOTION TO CONFIRM PLAN
4-30-15 [60]

Tentative Ruling: The Motion to Confirm Plan Dated April 29, 2015 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 Debtors having filed a June 5, 2015 Amended Chapter 13 Plan, the motion to confirm the plan dated April 29, 2015, is denied as moot. The new plan is set for hearing on July 21, 2015, at 10:00 a.m. If the new plan is not confirmed on that date, the case may be converted to one under Chapter 7 on that date.

20. 15-22784-B-13 JOSEPH/HEATHER ADKINS
DBJ-1 Bonnie Baker
Thru #21

OBJECTION TO CONFIRMATION OF PLAN BY TRI COUNTY BANK
5-21-15 [19]

Tentative Ruling: The Secured Creditor, Tri County Bank's, 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)(3) & (d)(1) and 9014-1(f)(1). 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.

Pursuant to 11 U.S.C. § 1322(b)(2), the Debtors cannot modify the rights of Tri County Bank ("Creditor") with regard to its second deed of trust since there is value in the personal residence supporting the Creditor's security interest. Creditor holds a first and second deed of trust on Debtors' personal residence, which is worth more than the amount owed on the first deed of trust. Therefore, the Debtors cannot modify the terms of the second deed of trust as proposed in Class 2 of the Debtors' proposed plan filed April 6, 2015.

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

21. 15-22784-B-13 JOSEPH/HEATHER ADKINS
JPJ-1 Bonnie Baker

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
5-20-15 [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)(3) & (d)(1) and 9014-1(f)(1). 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.

Debtors' Schedule J filed on April 6, 2015, lists a car payment for Vehicle 1 on line 17a in the amount of $300.42. Debtors testified at the Meeting of Creditors that there is no vehicle payment and that this expense is improper. However, the Debtors have not complied with the Trustee's request to amend Schedule J and delete this improper expense. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan 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.

22. 14-31789-B-13 SJS-2 — TYE MEDINA AND FELICIA REYES — Scott J. Sagaria — MOTION TO CONFIRM PLAN 4-27-15 [32]

Final Ruling: No appearance at the June 10, 2015 hearing is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on April 27, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

23. 15-20996-B-13 WARREN DITTMAR
RCO-1 W. Scott de Bie

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
5-8-15 [34]

JAMES B. NUTTER AND COMPANY
VS.

Final Ruling: No appearance at the June 10, 2015 hearing is required.

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

The court's decision is to grant the motion for relief from stay based on the terms and conditions set forth in the parties' stipulation filed and served on June 1, 2015 (Dkts. 48 and 49).

24.	15-22932-B-13 JPJ-1	SHARON WILDEE Peter Macaluso	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 5-14-15 [23]

Related to Item #10

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)(3) & (d)(1) and 9014-1(f)(1). 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.

Given that the motion to value collateral of GM Financial for a 2010 Mazda was denied without prejudice (see Item #10), the Debtor's plan is not confirmed.

The plan 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.