

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime

Bankruptcy Judge

Sacramento, California

October 11, 2016 at 1:00 p.m.

1. [15-28100](#)-B-13 TAMMY ANGEL MOTION TO MODIFY PLAN
DBL-1 Bruce Charles Dwiggins 9-16-16 [[18](#)]

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The Motion to Confirm First Modified Plan Dated September 16, 2016, was not 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). Only 25 days' notice was provided.

The court's decision is to dismiss the motion without prejudice and the plan is not confirmed.

The court shall enter an appropriate minute order.

October 11, 2016 at 1:00 p.m.

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2. [16-23205](#)-B-13 JANET ROBERTS
BLC-1 Brian L. Coggins

CONTINUED MOTION TO VALUE
COLLATERAL OF SPECIALIZED LOAN
SERVICING, LLC
7-27-16 [[23](#)]

Tentative Ruling: Debtor's Motion to Value Real Property Located at 1031 Haman Way Roseville, California has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny with prejudice the motion to value collateral of Specialized Loan Servicing, LLC at \$0.00.

Debtor's motion to value the secured claim of Specialized Loan Servicing, LLC ("Creditor") was continued by stipulation from September 13, 2016, so that Creditor could obtain and review an appraisal of the real property and decide its course of action regarding the Debtor's motion. This motion is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 1031 Haman Way, Roseville, California ("Property"). Debtor seeks to value the Property at a fair market value of \$285,000.00 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.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3 filed by The Bank of New York Mellon as trustee, (See 410) c/o Specialized Loan Servicing LLC is the claim which may be the subject of the present motion.

Opposition

Creditor has filed an opposition asserting the value of the Property was \$325,000.00 at the time the bankruptcy petition was filed on May 17, 2016. This valuation is based on the appraisal of Tim P. Schmidt. Dkt. 36, exh. 1.

The Debtor has not filed a response to Creditor's opposition.

Discussion

The Creditor has produced an appraisal indicating that the value of the home is \$325,000.00. Given that the appraisal is based on comparable sales and takes into account the extensive repairs the home needs, the court finds the appraisal more convincing than the Debtor's opinion of value. Therefore, the court values the home at \$325,000.00 for purposes of this motion. Based on that valuation, Creditor's junior lien in the approximate amount of \$41,000.00 is not under-collateralized.

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

The court shall enter an appropriate minute order.

3. [16-25108](#)-B-13 JANE RIVERS OBJECTION TO CONFIRMATION OF
Thru #4 Pro Se PLAN BY U.S. BANK TRUST, N.A.
9-21-16 [[22](#)]

Tentative Ruling: U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust'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 overrule the objection but deny confirmation of the plan for reasons stated at Item #4.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor asserts \$47,195.95 in pre-petition arrearages but has not yet filed a proof of claim. The creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, for reasons stated at Item #4, the plan filed August 17, 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 shall enter an appropriate minute order.

4. [16-25108](#)-B-13 JANE RIVERS OBJECTION TO CONFIRMATION OF
JPJ-1 Pro Se PLAN BY JAN P. JOHNSON
9-22-16 [[25](#)]

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

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

First, the Debtor 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).

Second, the plan is not feasible. Debtor's Schedule J filed August 17, 2016, lists monthly net income of (\$867.00) yet the Debtor is proposing plan payments of \$250.00. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the plan cannot be fully assessed or effectively administered because the plan is incomplete. The plan does not specify a minimum dividend to Class 7 general unsecured creditors.

Fourth, the plan cannot be effectively administered. The plan specifies a monthly dividend of \$0.00 to Wells Fargo Bank in Class 1. It is not possible to pay the claim of this creditor through a plan with a monthly dividend specified at \$0.00.

Fifth, the plan payment in the amount of \$250.00 does not equal the aggregate of the Trustee's fees and monthly post-petition contract installments due on Class 1 claims. The aggregate of these monthly amounts plus the Trustee's fee is \$274.00. The plan does not comply with Section 4.02 of the form plan.

Sixth, 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).

Seventh, 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).

Eighth, the plan will take approximately 600+ 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 plan filed August 17, 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 shall enter an appropriate minute order.

5. [12-28917](#)-B-13 ALBERT WILSON MOTION FOR RELIEF FROM
MJ-1 Peter L. Cianchetta AUTOMATIC STAY
8-25-16 [[78](#)]

DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.
DEBTOR DISMISSED: 09/10/2016

Final Ruling: No appearance at the October 11, 2016, hearing is required.

This case was dismissed on September 10, 2016. The motion is dismissed as moot.

The court shall enter an appropriate minute order.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion for Order Allowing Debtor to Obtain Credit 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 without prejudice.

The motion seeks permission to purchase a 2016 Mazda CX9, the total purchase price of which is \$42,253.01, with monthly payments of \$566.01 and an interest rate of 12.07% for a loan term of 72 months. Debtors state that they shopped around for financing but were turned down by various financial institutions due to their pending Chapter 13. The dealer, Team Chevy Cadillac Hyundai Mazda of Vallejo, finally secured financing for them. Debtors state that Mr. Marin sold 100 shares of his stock to put down \$13,000.00 to reduce the financed loan amount and the monthly loan payment. Debtors assert that Mrs. Marin needs a reliable vehicle to commute to her job and that their remaining 1997 Honda Accord has chronic mechanical problems and is not a reliable means of transportation. The Debtor's 2011 Chrysler Town and Country van was surrendered and their 2003 Honda Odyssey was donated, each due to chronic mechanical problems. The Debtors state that the monthly payment on the new vehicle is only approximately \$41.00 more than what payments had been on their 2011 Chrysler. The Debtors are current on plan payments.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

While the court recognizes that the Debtors were turned down by various financial institutions when seeking financing and that only Team Chevy Cadillac Hyundai Mazda of Vallejo was able to secure financing for them, the Debtors do not address the reasonableness of incurring debt to purchase a brand new vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. Rather than purchase an affordable vehicle, the Debtors seek to borrow an additional \$28,753.01 to purchase a \$42,253.01 vehicle. Dkt. 87, Exh. A, p. 3.

The motion is denied without prejudice.

The court shall enter an appropriate minute order.

7. [11-48623](#)-B-13 KEVIN/CINDY PEREZ MOTION TO SELL
PGM-1 Peter G. Macaluso 9-8-16 [[50](#)]
Thru #8

Tentative Ruling: The Motion to Sell Personal Property Nunc Pro Tunc 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 defaults of the non-responding parties are entered.

The matter will be determined at the scheduled hearing.

8. [11-48623](#)-B-13 KEVIN/CINDY PEREZ MOTION TO SELL
PGM-2 Peter G. Macaluso 9-8-16 [[55](#)]

Tentative Ruling: The Motion to Sell Real Property 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 defaults of the non-responding parties are entered.

The matter will be determined at the schedule hearing.

9. [16-21924](#)-B-13 ANDREW COLEMAN MOTION TO CONFIRM PLAN
BLG-1 Chad M. Johnson 8-2-16 [[35](#)]
Thru #10

Tentative Ruling: The Motion to Confirm Debtor's First Modified Plan Filed on 8/2/16 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.

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$2,630.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, although the amended plan proposes a cure of the post-petition arrearage owed to Green Planet Mortgage including a specific post-petition arrearage amount, interest rate and monthly dividend, the amount is slightly understated at \$4,308.00. The monthly dividend of \$76.93 will not be enough to pay the post-petition mortgage arrears in full over the remaining life of the plan. The plan cannot be effectively administered and the Trustee cannot comply with § 2.08(b) of the plan.

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

The court shall enter an appropriate minute order.

10. [16-21924](#)-B-13 ANDREW COLEMAN CONTINUED MOTION TO CONVERT
JPJ-2 Chad M. Johnson CASE TO CHAPTER 7 AND/OR MOTION
TO DISMISS CASE
7-19-16 [[27](#)]

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

The court's decision is to convert this Chapter 13 case to a Chapter 7.

This matter was continued from August 16, 2016, to be heard in conjunction with Debtor's motion to confirm first modified plan at Item #9. The Trustee's grounds to convert or dismiss the case were due to Debtor's failure to prosecute the case causing unreasonable delay that is prejudicial to creditors pursuant to 11 U.S.C. § 1307(c)(1) and delinquency in plan payments in the amount of \$4,470.00.

The Debtor has prosecuted this case by filing a first amended plan but has not cured his delinquency. As stated at Item #9, the Debtor is now delinquent in the amount of \$2,630.00

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).

Although the Debtor has prosecuted this case by filing a first amended plan, cause exists to convert this case pursuant to 11 U.S.C. § 1307(c) because the Debtor has not cured his delinquency. Additionally, since there is non-exempt equity in the estate, conversion to a Chapter 7 would be in the best interest of creditors and the estate pursuant to 11 U.S.C. § 1307(c).

The motion is granted and the case is converted to a case under Chapter 7.

The court shall enter an appropriate minute order.

11. [14-26025](#)-B-13 THOMAS/TONYA ROGERS
PLC-5 Peter L. Cianchetta
Thru #12

OBJECTION TO NOTICE OF
POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
8-22-16 [[67](#)]

Tentative Ruling: The Objection to Notice of Postpetition Mortgage Fees, Expenses and Charges, and Request for Attorney's Fees [CCP 1717] has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is to sustain in part and overrule in part the objection.

Debtors object to the Notice of Postpetition Mortgage Fees, Expenses, and Charges filed by Seterus, Inc. ("Creditor") on August 11, 2016. Creditor seeks attorney's fees of \$1,0605.00, filing fees and court costs of \$176.00, property inspection fees of \$930.00, and foreclosure fees and costs of \$973.92. Debtors assert that the Creditor provides no dates for when these services or costs were incurred. Additionally, Debtors state that Creditor did not properly serve the Trustee and that they are entitled to attorney's fees under California Code of Civil Procedure § 1717.

The Creditor has filed a response stating it has filed an amended Notice of Postpetition Mortgage Fees, Expenses, and Charges on September 27, 2016. Creditors further argue that the objection is unnecessary and the request for attorney's fees is excessive.

This Objection is a contested matter to the claim being asserted by Creditor. Federal Rule of Bankruptcy Procedure 3002.1(e) provides that, on motion of the debtor or trustee, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with § 1322(b)(5) of the Code. This contested matter is a core matter arising under Title 11, including 11 U.S.C. § 502. 28 U.S.C. § 157(b)(2)(A), (B), and (O).

The court has reviewed both Notices of Mortgage Payment Change filed August 11, 2016, and September 27, 2016, and Proof of Claim No. 5 filed by Creditor. Although the amended notice has removed the attorney's fees, filing fees and court costs, and foreclosure fees and costs, the notice still lists property inspection fees. There is no evidence as to the billing rate or reasonableness of the fees incurred for the property inspection. The court finds no explanation as to how the Creditor computed its property inspection fees.

Because the Debtors' objection is sustained as to Creditor's failure to provide adequate information related to fees incurred, the court need not address the issue regarding ECF service.

Additionally, although the Debtors request attorney's fees under California Code of Civil Procedure § 1717 and provide a billing statement at Exhibit 3 (dkt. 70), the Debtors have not carried their burden of proving the attorney's fees requested are reasonable. *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); see also *In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012) (citations omitted). Therefore, the request for attorney's fees is denied without prejudice.

Based on the evidence before the court, the Objection to the notice of postpetition mortgage fees, expenses, and charges is sustained in part and overruled in part.

The court shall enter an appropriate minute order.

12. [14-26025](#)-B-13 THOMAS/TONYA ROGERS
PLC-6 Peter L. Cianchetta

OBJECTION TO NOTICE OF
POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
8-22-16 [[73](#)]

Tentative Ruling: The Objection to Notice of Postpetition Mortgage Fees, Expenses and Charges, and Request for Attorney's fees [CCP 1717] has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). Opposition was filed. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

The court's decision is to sustain in part and deny in part the objection.

Debtors object to the Notice of Postpetition Mortgage Fees, Expenses, and Charges filed by Seterus, Inc. ("Creditor"). Creditor seeks attorney's fees of \$650.00 related to proofs of claim filed on July 25, 2014, and September 11, 2014. Debtors assert that Creditor failed to serve the notice on their counsel, that the claims register does not reflect any proofs of claim filed on the dates the fees were allegedly incurred, and that the claimed fees are not supported by time and expense records.

A review of the court's claims register does not show that any proofs of claim were filed on July 25, 2014, and September 11, 2014. The court finds that the Creditor has failed to explain the time spent by its counsel to file any proof of claim on July 25, 2014, and September 11, 2014, has not submitted any billing invoices, and has not identified any applicable hourly billing rate to establish or justify the reasonableness of fees requested. Consequently, Creditor has failed to satisfy its burden of demonstrating the fees requested, even if permitted, are reasonable. See *In re Scarlet Hotels, LLC*, 392 B.R. 698, 703 (6th Cir. BAP 2008). Therefore, the Debtors' objection to the request for attorney's fees is sustained.

Because the Debtors' objection is sustained as to Creditor's failure to establish the reasonableness of fees requested, the court need not address the issue regarding ECF service.

Additionally, although the Debtors request attorney's fees under California Code of Civil Procedure § 1717 and provide a billing statement at Exhibit 4 (dkt. 75), the Debtors have not carried their burden of proving the attorney's fees requested are reasonable. See *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); see also *In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012) (citations omitted). Therefore, the request for attorney's fees is denied without prejudice.

Based on the evidence before the court, the Objection to the notice of postpetition mortgage fees, expenses, and charges is sustained in part and overruled in part.

The court shall enter an appropriate minute order.

13. [16-24327](#)-B-13 RACHEL WILLIAMS
BLG-1 Chad M. Johnson

MOTION TO CONFIRM PLAN
8-19-16 [[23](#)]

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The Motion to Confirm the Amended Plan Filed on August 19, 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 August 19, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.

14. [15-28829](#)-B-13 WAGMA SAFI MOTION TO MODIFY PLAN
MLA-5 Mitchell L. Abdallah 8-31-16 [[69](#)]

Thru #15

CONTINUED TO 12/05/16 9:30 A.M. TO BE HEARD IN CONJUNCTION WITH CONTINUED OBJECTION TO CLAIM OF NATIONSTAR MORTGAGE LLC, CLAIM NUMBER 4 AND/OR MOTION TO ESTIMATE CLAIM OF NATIONSTAR MORTGAGE LLC.

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The court shall enter an appropriate minute order.

15. [15-28829](#)-B-13 WAGMA SAFI OBJECTION TO CLAIM OF
MLA-5 Mitchell L. Abdallah NATIONSTAR MORTGAGE LLC, CLAIM
NUMBER 4 AND/OR MOTION TO
ESTIMATE CLAIM OF NATIONSTAR
MORTGAGE LLC
9-7-16 [[74](#)]

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The Objection to claim Number 4-1 and Motion to Estimate claim of Nationstar Mortgage LLC has been set for hearing on at least 30 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(2). When fewer than 44 days' notice of a hearing is given, no party-in-interest shall be required to file written opposition to the objection. Opposition, if any, shall be presented at the hearing on the objection. If opposition is presented, or if there is other good cause, the court may continue the hearing to permit the filing of evidence and briefs.

This matter will be continued and set for an evidentiary hearing on December 5, 2016, at 9:30 a.m. Parties shall submit alternate direct testimony pursuant to Local Bankr. R. 9017-1.

The court shall enter an appropriate minute order.

16. [16-25429](#)-B-13 JANET/ROBERT FAWCETT
JPJ-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-22-16 [[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 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).

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on October 5, 2016. The confirmation hearing for the amended plan is scheduled for December 13, 2016. The earlier plan filed August 17, 2016, is not confirmed.

The court shall enter an appropriate minute order.

17. [16-24033](#)-B-13 JOHN PETERSON MOTION TO CONFIRM PLAN
DBJ-1 Douglas B. Jacobs 8-24-16 [[24](#)]
WITHDRAWN BY M.P.

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The Debtor having filed a Notice of Withdrawal for the pending Motion to Confirm Amended Plan, the withdrawal being consistent with any opposition filed to the Motion, the court interpreting the Notice of Withdrawal to be an ex parte motion pursuant to Fed. R. Civ. P. 41(a)(2) and Fed. R. Bankr. P. 9014 and 7014 for the court to dismiss without prejudice the Motion, and good cause appearing, the Motion to Confirm Amended Plan is dismissed without prejudice.

The Debtor has filed an amended plan on September 15, 2016. The confirmation hearing for the amended plan is scheduled for November 1, 2016.

The court shall enter an appropriate minute order.

18. [16-24033](#)-B-13 JOHN PETERSON COUNTER MOTION TO DISMISS CASE
DBJ-1 Douglas B. Jacobs 9-9-16 [[33](#)]

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The Debtor having filed a Notice of Withdrawal for Item #18 Motion to Confirm Amended Plan, the Trustee's opposition and counter motion to dismiss case are dismissed as moot.

The Debtor has filed an amended plan on September 15, 2016. The confirmation hearing for the amended plan is scheduled for November 1, 2016.

The court shall enter an appropriate minute order.

19. [16-25233](#)-B-13 HELEN ZUNIGA
JPJ-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-22-16 [[21](#)]

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

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

First, the Debtor 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).

Second, the terms for payment of the Debtor's attorney's fees are unclear. The plan does not specify 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. Bankr. P. 2002, 2016, and 2017.

Third, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) includes an impermissible expense in the amount of \$532.00 for voluntary retirement contributions. The Debtor's voluntary post-petition retirement contributions are disposable income under 11 U.S.C. § 541(b)(7) and therefore such income must be applied to make plan 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). Without the expense for voluntary retirement contributions, the Debtor's monthly disposable income is \$494.07 and the Debtor must pay no less than \$29,644.20 to unsecured creditors. The proposed plan pays \$0.00 to unsecured creditors.

The plan filed August 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 shall enter an appropriate minute order.

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on September 1, 2016, 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.

First, the plan payment in the amount of \$1,450.00 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. The aggregate of the monthly amounts plus the Trustee's fee is \$1,479.00. The Debtor has stated in her response that she consents to increasing monthly plan payments to \$1,479.00 in the order confirming.

Second, although the modified plan does not specify a cure of the post-petition arrearage owed to Wells Fargo Home Mortgage for the month of July 2016, the Debtor contends that the Trustee had on hand a balance of \$2,648.94 at the time the modified plan was filed and that the Trustee disbursed the payment to Wells Fargo Home Mortgage on August 31, 2016.

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

The court shall enter an appropriate minute order.

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, although the Debtor did not appear at the meeting of creditors set for September 15, 2016, the Debtor did appear at the continued meeting of creditors held on October 6, 2016, as required pursuant to 11 U.S.C. § 343. Nonetheless, the meeting of creditors was subsequently continued to November 3, 2016.

Second, the Debtor's son Michael Overhoff filed the petition on Debtor's behalf using a Durable Power of Attorney ("POA") signed by the Debtor on July 22, 2016. However, the POA does not provide language giving Mr. Overhoff authority to file the bankruptcy and engage in its litigation. Debtor has filed a response stating that the POA shall conform to requirements under California law and shall contain appropriate language allowing Mr. Overhoff the power to appear in a Chapter 13 bankruptcy, engage in litigation, and take all necessary actions to confirm and perform a Chapter 13 bankruptcy plan. But it doesn't. And without an express authorization in the power of attorney itself to file a bankruptcy petition and prosecute a bankruptcy case, a general power of attorney is insufficient to permit either. See *In re Ballard*, 1987 WL 191320 at *1 (Bankr. N.D. Cal. 1987) ("A better view of the allowability of a petition by power of attorney is found in *In re Sullivan* (Bkrctcy.E.D.Pa.1983) 30 B.R. 781. In that case, the court would not allow a petition to be filed using a limited power of attorney, but did allow a filing pursuant to a power of attorney which specifically authorized a bankruptcy filing."); see also *In re Eicholz*, 310 B.R. 203, 207 (Bankr. W.D. Wa. 2004) (power of attorney sufficient if express language of document authorizes bankruptcy filing). No additional documents have been filed by the Debtor.

The plan filed August 17, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed. Further, the "debtor" is ordered to show cause in writing by October 18, 2016, why this case should not be dismissed where the power of attorney used to file the petition commencing this Chapter 13 case does not appear to include any provision that expressly authorizes the filing of a bankruptcy petition. The Trustee may file points and authorities in support of or opposition to dismissal by the same date. A hearing on the order to show cause will be held on October 25, 2016, at 1:00 p.m.

The court shall enter an appropriate minute order.

22. [15-29445](#)-B-13 KEVIN MITCHELL
JPJ-1 Matthew J. DeCaminada

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 1
8-10-16 [[51](#)]

Final Ruling: No appearance at the October 1, 2016, hearing is required.

The Trustee's Objection to Allowance of Claim of Cavalry SPV I, LLC 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. 1-1 of Cavalry SPV I, LLC and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Objector"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 1-1. The claim is asserted to be in the amount of \$557.26. 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 June 14, 2011, which is more than four years prior to the filing of this case. Hence, when the case was filed on December 3, 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 shall enter an appropriate minute order.

23. [16-24559](#)-B-13 STEVEN SIPE MOTION TO CONFIRM PLAN
LBG-1 Lucas B. Garcia 8-29-16 [[33](#)]

Thru #23

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The Motion to Confirm the 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 was filed by Wells Fargo Bank, N.A. and the Chapter 13 Trustee. Opposition filed by RSC Development Company, Inc. was withdrawn.

At the Debtor's request, this matter will be continued and set for an evidentiary hearing on October 25, 2016, at 1:00 p.m., at the end of the Chapter 13 calendar on that date. All attorneys and witnesses must be present in court. No phone appearances are permitted.

The court limits the evidentiary hearing to the valuation of the 2013 Chevy Silverado because the court finds the proposed 4.50% interest rate is adequate under *Till vs. SCS Credit Corp.*, 541 U.S. 465 (2004). If Wells Fargo intends to challenge the 4.50% interest rate, it shall be prepared to present live expert witness testimony. It shall also prepare and disclose an expert witness report by no later than October 18, 2016.

Wells Fargo shall also be prepared to present an appraisal of the vehicle and live witness testimony by the individual who prepared the appraisal to rebut the Debtor's lay opinion of the value of the vehicle. See *Enewally v. Washington Mutual Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004); Fed. R. Evid. 701. Of course, nothing prevents the Debtor from also presenting additional evidence of value by testimony of other witnesses if desired.

The objection by Wells Fargo in this case over a difference in the value of a vehicle of only \$153.54 reminds one of the unsavory collection tactics used by "lenders" in the early 1930s fond of wearing striped suits. Therefore, the court cautions Wells Fargo that should it fail to prove that the vehicle is worth \$153.54 more than what the Debtor states it is worth, the court will entertain a motion by the Debtor's attorney for all attorney's fees and costs incurred in connection with or in any way related to Wells Fargo's objection.

The court shall enter an appropriate minute order.

24. [16-24559](#)-B-13 STEVEN SIPE COUNTER MOTION TO DISMISS CASE
LBG-1 Lucas B. Garcia 9-27-16 [[48](#)]

CONTINUED TO 10/25/16 at 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH CONTINUED MOTION TO CONFIRM PLAN.

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The court shall enter an appropriate minute order.

25. [16-25461](#)-B-13 MICHAEL REYNOLDS
JPJ-1 Julius J. Cherry

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-22-16 [[24](#)]

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

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

First, there is a discrepancy between the dividends as listed in the Class 2 table for creditors and dividends as specified in the Additional Provision for the same creditors. The Debtor must clarify which dividends he would like the Trustee to pay.

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) since it appears unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. The Debtor is exempting cash, checking accounts, and savings accounts using \$ 704.070 but this exemption is limited to 75%. The Debtor is also exempting a Quicken Loans Escrow account using \$ 704.210 but this exemption is for property that is not subject to enforcement of a money judgment.

Third, feasibility depends on the granting of a motion to value collateral for Oregon Community Credit Union. That motion was heard on October 4, 2016, and granted.

For the first and second reasons, the plan filed August 18, 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 shall enter an appropriate minute order.

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

The court's decision is to grant the motion to extend automatic stay.

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 August 30, 2016, after Debtor failed to timely file documents (case no. 16-25486, dkt. 10). 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 asserts that the previous plan was filed to prevent foreclosure of her home. At the time, Debtor had filed her petition pro se and was unfamiliar with the documents needed to be filed. Debtor asserts that her circumstances have changed in the present case because she has retained legal counsel who will represent the Debtor and help her propose a viable plan of reorganization.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court shall enter an appropriate minute order.

27. [16-25468](#)-B-13 ROBERT DANIEL AND DIANNA OBJECTION TO CONFIRMATION OF
JPJ-1 DANIEL PLAN BY JAN P. JOHNSON AND/OR
Pauldeep Bains MOTION TO DISMISS CASE
9-22-16 [[27](#)]

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

The court's decision is to determine the matter at the scheduled hearing.

First, the Trustee and Debtors disagree as to whether the proposed plan payment in the amount of \$3,020.00 equals 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. Monthly dividends consist of 42,126.17 to Class 1 ongoing mortgage, \$357.87 to Class 1 arrears, \$176.04 to Class 2 Americredit, \$150.00 to attorney's fees, and separate Trustee's fees. The Trustee contends that the aggregate of these amounts plus the Trustee's fee is \$3,072.00 while the Debtor contends the aggregate is \$2,894.39.

Second, the Trustee and Debtors disagree as to whether the plan will complete in 60 months pursuant to 11 U.S.C. § 1322(d). Trustee contends that it will complete in 67 months while the Debtors assert it will complete in 60 months.

Third, the Trustee asserts that the Debtors have not served upon the Trustee a Class 1 Checklist and Authorization to Release Information and thus have not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6). Debtors assert that they emailed this form to the Trustee on September 19, 2016.

Fourth, the attorney's fees as stated in the plan do not match the fees as stated in Rights and Responsibilities of Chapter 13 Debtors and the Disclosure of Compensation of Attorney for Debtor. Debtors acknowledge this mistake in their response and state that it can be corrected in the order confirming, should the plan be confirmable, stating that \$1,000.00 was paid to the Debtors' attorney prior to the filing of the petition and the remaining balance of \$3,000.00 will be paid through the Chapter 13 plan.

Fifth, feasibility depends on the granting of a motion to value collateral for Barclays Bank PLC pursuant to Local Bankr. R. 3015-1(b)(6). That motion was heard and granted on October 4, 2016.

If the plan filed August 18, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a) and 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 Debtor have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

28. [16-25470](#)-B-13 MICHAEL HANKS
JPJ-1 Mary Ellen Terranella

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-22-16 [[23](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 has not provided the Trustee with requested copies of payment advices from the Debtor's non-filing spouse. The Debtor has not cooperated with the Trustee and has not complied with 11 U.S.C. § 521(a)(3).

The plan filed August 18, 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 shall enter an appropriate minute order.

29. [15-29773](#)-B-13 CHARLES HUGHES AND VIRA MOTION TO MODIFY PLAN
PGM-3 EISON 9-2-16 [[59](#)]
Peter G. Macaluso

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on September 2, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to not permit the requested modification and not confirm the modified plan.

First, feasibility depends on the Debtors obtaining a loan modification with CitiMortgage. The hearing on the motion to approval loan modification was heard and granted on October 4, 2016.

Second, feasibility of the plan cannot be fully assessed pursuant to 11 U.S.C. § 1325(a)(3) or (6) because the Debtors' ability to make plan payments is unclear. Debtors amended Schedule J filed on March 8, 2016, shows the Debtors' monthly income is \$6,637.14, which is \$1,036.09 per month more than the amount listed on Schedule I filed December 22, 2015. This results in a monthly net income of \$1,180.00. Although the Debtors have filed as an exhibit a modified Schedule I, no amended Schedule I has been filed with the court indicating what changes have occurred within the Debtors' monthly income.

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

The court shall enter an appropriate minute order.

30. [16-24873](#)-B-13 LYNDA COBURN
JPJ-2 Peter G. Macaluso

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
9-13-16 [[17](#)]

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The Trustee's Objection to Debtor's Claim of Exemption has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The court's decision is to sustain the objection and the exemption is disallowed in its entirety.

Debtor claimed an interest in real property located at 3929 Soaring Eagle Tr, Vacaville, California, as exempt under California Code of Civil Procedure § 704.730. However, Debtor testified at the meeting of creditors held on September 1, 2016, that she did not reside at that real property on the date the petition was filed and has never resided at that property. Therefore, the Debtor is not entitled to claim her interest in the real property as exempt under California Code of Civil Procedure § 704.730 since this property was not her primary residence on the date the petition was filed. The relevant date for determining the status of a homestead exemption is the date of filing of the petition. *Cisneros v. Kim (In re Kim)*, 257 B.R. 680, 685 (B.A.P. 9th Cir. 2000).

The Trustee's objection is sustained and the claimed exemption is disallowed.

The court shall enter an appropriate minute order.

31. [16-24973](#)-B-13 MARTIN/ANNETTE SNEZEK
JPJ-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-22-16 [[26](#)]

CONTINUED TO 11/01/16 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH MOTION TO
VALUE COLLATERAL OF INTERNAL REVENUE SERVICE.

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The court shall enter an appropriate minute order.

32. [16-25374](#)-B-13 KATHLEEN WISDOM OBJECTION TO CONFIRMATION OF
APN-1 Harry D. Roth PLAN BY WELLS FARGO BANK, N.A.
Thru #33 9-12-16 [[19](#)]

CONTINUED TO 11/01/16 at 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH CONTINUED MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The court shall enter an appropriate minute order.

33. [16-25374](#)-B-13 KATHLEEN WISDOM MOTION TO VALUE COLLATERAL OF
HDR-1 Harry D. Roth WELLS FARGO BANK, N.A.
9-8-16 [[14](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, the Motion to Value Collateral of Wells Fargo 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. Nonetheless, an objection to the valuation of the 2012 Honda Civic was filed by Wells Fargo Bank, N.A.

At Wells Fargo Bank, N.A.'s request, this matter will be continued and set for an evidentiary hearing on November 1, 2016, at 1:00 p.m. Additional evidence of value shall be due by October 25, 2016. No Local Bankr. R. 9017-1 direct testimony declarations required.

The court shall enter an appropriate minute order.

34. [16-25374](#)-B-13 KATHLEEN WISDOM OBJECTION TO CONFIRMATION OF
JPJ-1 Harry D. Roth PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
9-22-16 [[27](#)]

CONTINUED TO 11/01/16 at 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH CONTINUED MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The court shall enter an appropriate minute order.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Incur Debt 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 without prejudice.

The motion seeks permission to lease a 2016 BMW 3 series with monthly payments of \$673.69 for a 36-month lease with 12,000 miles per year allowed. BMW of Roseville has offered to cut the down payment from \$2,500.00 to \$1,500.00. The \$1,500.00 down payment will be gifted by a family member. Debtors assert that they require a vehicle to drive to work and that they don't have any significant funds for a down payment on the purchase of a car. Debtors state that the lease is a \$16.64 increase from their previous monthly lease payment and that they can afford the increased payment by reducing their food budget as accounted for in amended Schedule J filed September 30, 2016.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

While the court recognizes that the Debtors intend to decrease their food budget to fund the increased monthly lease payments, the Debtors do not address the reasonableness of incurring debt to lease a luxury vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts.

The motion is denied without prejudice.

The court shall enter an appropriate minute order.

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The Application and Declaration Re: Additional Fees and Expenses in Chapter 13 Cases 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 compensation.

REQUEST FOR ADDITIONAL FEES AND COSTS

Applicant Stephen Murphy submits this motion after the court had denied his previous motion without prejudice for failure to explain why his services were sufficiently greater than a typical Chapter 13 case so as to justify additional compensation under the Guidelines. Dkt. 109.

As part of confirmation of the Debtors' Chapter 13 plan, Applicant had consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court authorized payment of fees and costs totaling \$4,000.00, which was the maximum set fee amount under Local Bankruptcy Rule 2016-1 at the time of confirmation]. Dkt. 57. Applicant now seeks additional compensation in the amount of \$1,000.00 in fees and \$0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 118.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999) (J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

The Applicant asserts that it provided services greater than a typical Chapter 13 case because it was unanticipated that the Debtors would default on plan payments, that the case would be dismissed, that Applicant would have to file a motion to vacate order dismissing case, and that the Applicant would have to draft, file, and set for hearing a modified plan. Additionally, Applicant contends that communication with the Debtors was challenging since they were confused upon the realization that their case was dismissed. Applicant state that his office expended 15.3 hours of substantial, unanticipated post-confirmation work but has agreed to seek fees of \$1,000.00, which is a reduction from fees of \$5,000.00 due to the Debtors' financial condition.

The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	\$1,000.00
Additional Costs and Expenses	\$ 0.00

The court shall enter an appropriate minute order.

37. [15-25582](#)-B-13 ASHWANI MAYER AND POOJA CONTINUED MOTION TO DISMISS
JPJ-2 VERMA CASE
Thru #37 Peter G. Macaluso 7-13-16 [[114](#)]

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The case was continued from August 30, 2016, to be heard in conjunction with Debtors' motion to confirm second amended plan. The second amended plan filed August 24, 2016, is confirmed at Item #37. The motion to dismiss case is dismissed as moot.

The court shall enter an appropriate minute order.

38. [15-25582](#)-B-13 ASHWANI MAYER AND POOJA MOTION TO CONFIRM PLAN
PGM-5 VERMA 8-24-16 [[121](#)]
Peter G. Macaluso

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The Motion to Confirm Debtors' Second Amended Plan Filed on August 24, 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 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 August 24, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate minute order.

39. [16-22094](#)-B-13 JEFFREY MAYHEW CONTINUED MOTION TO DISMISS
JPJ-2 Peter G. Macaluso CASE
Thru #39 7-18-16 [[73](#)]

Tentative Ruling: The case was continued from August 30, 2016, to be heard in conjunction with Debtor's motion to confirm first amended plan. That matter is heard at Item #39.

This matter will be determined at the scheduled hearing.

40. [16-22094](#)-B-13 JEFFREY MAYHEW MOTION TO CONFIRM PLAN
PGM-4 Peter G. Macaluso 8-24-16 [[85](#)]

Tentative Ruling: The Motion to Confirm Debtor's First Amended Plan Filed on August 24, 2016, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$11,400.00, which represents approximately 3 plan payments. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the proposed amended plan does not specify a cure of the post-petition arrearage owed to Pennymac Loan Services for months May, August, and September 2016 in \$2,743.18 for each month (\$8,229.54 total). The plan cannot be effectively administered as the Trustee is unable to fully comply with § 2.08(b) of the plan.

Third, § 1.02 of the plan is unclear since it states that the Debtor is to turn over "all income funds" received during the life of the plan. Debtor has stated in his response that this means all "income tax refunds" for "all years."

Fourth, it cannot be assessed whether the plan complies with 11 U.S.C. § 1325(b)(1)(B) as it does not appear that the Debtor's projected disposable income is being applied to make payments to unsecured creditors. It appears that the Debtor and his non-filing spouse earn an annualized income of \$201,185.78. The median household income for a family of four in California is \$81,837.00. The Debtors are above the medium income and are required to fill out the Means Test in its entirety. Debtor has stated in his response that he will file an amended Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period (Form 122C-1).

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

The court shall enter an appropriate minute order.

41. [16-24996](#)-B-13 VONETTA BENOIT
JPJ-1 Michael Benavides

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
9-22-16 [[22](#)]

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 plan payment in the amount of \$1,505.00 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 \$1,722.00. The plan does not comply with Section 4.02 of the mandatory form plan.

Second, 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).

Third, the Debtor has not amended her Schedules as requested by the Trustee to reflect the value of her 2010 Mazda CX-9. If there is equity in the vehicle, it could affect the liquidation amount required to be paid to unsecured creditors. The current plan proposes 0% payment to unsecured creditors. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Fourth, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$555.00, which represents approximately 0.37 plan payments. By the time this matter is heard, an additional plan payment of \$1,505.00 will also be due. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed August 12, 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 shall enter an appropriate minute order.

42. [16-25996](#)-B-13 FRED A SHEPPARD
MRL-1 Mikalah R. Liviakis
Thru #43

MOTION TO VALUE COLLATERAL OF
U.S. BANK, N.A.
9-8-16 [8]

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The Motion to Value 7464 Amherst Street, Collateral of US Bank, N.A., As Trustee for C-Bass 2006-SL1 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 US Bank, N.A., As Trustee for C-Bass 2006 at \$0.00.

Debtor's motion to value the secured claim of US Bank, N.A., As Trustee for C-Bass 2006 ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7464 Amherst Street, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of \$180,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately \$185,385.00. Creditor's second deed of trust secures a claim with a balance of approximately \$62,392.00. 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 shall enter an appropriate minute order.

43. [16-25996](#)-B-13 FREDA SHEPPARD MOTION TO VALUE COLLATERAL OF
MRL-2 Mikalah R. Liviakis QUALITY FIRST HOME IMPROVEMENT,
INC.
9-9-16 [[11](#)]

Final Ruling: No appearance at the October 11, 2016, hearing is required.

The Motion to Value 7464 Amherst Street, Collateral of Quality First Home Improvement 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). 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 Quality First Home Improvement Inc. at \$0.00.

Debtor's motion to value the secured claim of Quality First Home Improvement Inc. ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 7464 Amherst Street, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of \$180,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount

subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The first deed of trust secures a claim with a balance of approximately \$185,385.00. A second deed of trust secures a claim with a balance of approximately \$62,392.00. Creditor's third deed of trust secures a claim with a balance of approximately \$10,000.00. 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 shall enter an appropriate minute order.

44. [16-24931](#)-B-13 LINDA BECK
JPJ-1 Mikalah R. Liviakis

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
9-8-16 [[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 matter will be determined at the scheduled hearing.

This matter was continued from October 4, 2016, to allow Kristen Koo to confirm with Chapter 13 Trustee Jan P. Johnson whether the pay stubs provided by Debtor to the Trustee are sufficient.

The Debtor has submitted proof of her social security number to the Trustee.

Final Ruling: No appearance at the October 11, 2016, hearing is required.

This matter was continued from October 4, 2016, to allow Debtor to submit evidence of the permanent loan modification agreement with Bank of America, N.A. The permanent loan modification agreement was filed on October 5, 2016. The Motion for Order Approving Loan Modification has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to permit the loan modification requested.

Debtor seeks court approval to incur post-petition credit. Debtor asserts that Bank of America, N.A. ("Creditor"), whose claim is provided for in Section 6 Additional Provisions of the plan confirmed May 17, 2016, has agreed to a permanent loan modification in the same amount as Debtor's trial loan modification payments of \$1,628.87 per month. The trial loan modification was granted by the court on May 13, 2016.

The motion is supported by the Declaration of Feliciano Rios. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim since it is the same amount as Debtor's trial loan modification payments.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtor's ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

The court shall enter an appropriate minute order.