UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS

DAY: TUESDAY
DATE: October 16, 2018
CALENDAR: 1:00 P.M. CHAPTER 13

PLEASE REVIEW CAREFULLY AS THE COURT'S ORDER PREPARATION AND SUBMISSION PROCEDURE IN CHAPTER 13 CASES HAS CHANGED EFFECTIVE SEPTEMBER 3, 2018.

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

October 16, 2018 at 1:00 p.m.

---

1. 18-23710-B-13 DWE-1 **Thru #5** — DAVID/EMILINDA VERA, Julius J. Cherry — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY FREEDOM MORTGAGE CORPORATION, 7-27-18 [20]

Tentative Ruling

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

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

August 14, 2018 Hearing

This matter was continued from August 14, 2018.

Discussion

Objecting creditor Freedom Mortgage Corporation ("Creditor") holds a deed of trust secured by the debtors' residence. Creditor timely filed Proof of Claim No. 5 in which it asserts $5,475.02 in pre-petition arrearages. The plan lists Creditor's claim in Class 4, which is reserved for secured claims that a debtor is current on and wants to pay directly to the creditor. However, there are arrearages on Creditor's claim and the plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed June 14, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

2. 18-23710-B-13 JJC-1 — DAVID/EMILINDA VERA, Julius J. Cherry — OBJECTION TO CLAIM OF FREEDOM MORTGAGE CORPORATION, CLAIM NUMBER 5, 8-13-18 [24]

Tentative Ruling

The objection 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 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)(B) 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. The court will address the merits of the motion at the hearing.

The court's decision is to overrule the objection to Claim No. 5 of Freedom Mortgage Corporation without prejudice.

Debtor's Objection to Claim No. 5

David and Emilinda Vera, the debtors and objecting parties ("Debtors"), request that the court disallow the claim of Freedom Mortgage Corporation, the creditor ("Creditor"), Proof of Claim No. 5. The claim is asserted to be secured in the amount of $438,558.52 by a recorded deed of trust against real property commonly known as 852 McCauley Way, Galt, California 95632 ("Property"). Debtors assert that the claim should be disallowed on several grounds.

As an initial matter, Debtors note that Creditor's Proof of Claim states a principal amount of $438,043.39 with an arrearage of $5,475.02, while Debtor's Schedule D asserts a principal amount of $438,558.52 with no arrears. Dkt. 24, p. 2.

First, Debtors argue that there is no interest due of $1,171.77 because "[a]t the time our bankruptcy was filed, we understood that we were current on all mortgage payments." Dkt. 26, ¶ 6.

Second, Debtors assert that there are "Fees, costs due" of $369.89 without itemization or evidence that those fees and costs were Debtors' responsibility.

Third, Debtors argue that Creditor applied credits of $135.35 and $68.18 from "total funds on hand." Debtors argue that these are postpetition seizures that are violations of the automatic stay.

Fourth, Debtors point to a "projected escrow shortage" of $1,772.29 of arrears due. This contradicts with a postpeititon statement that Debtors argue they received that stated, "Based on our review, your account is balanced. This means that there is neither a shortage nor a surplus in your escrow account." Thus, Debtors assert this balance does not exist.

Fifth, Debtors assert that the "Property Inspection" fees charged on December 25, 2017, January 23, 2018, May 11, 2018, and June 11, 2018 were not itemized, are unsupported, and were conducted without Debtors' knowledge. Debtors also note an $0.83 "Property Inspection Fee" that was incurred and later waived.

Sixth, Debtors argue that no notice of a postpetition mortgage change was filed and served by Creditor, as required by Federal Rule of Bankruptcy Procedure 3002.1(b). Without this statement, signed under oath by Creditor's representative, Debtors argue this is evidence that the proof of claim is inaccurate.

Seventh, Debtors assert the proof of claim is incomplete because, as required by Federal Rules of Bankruptcy Procedure 3002(c)(7) and 3001(c)(1) and (d), the appropriate official forms were not used and additional documents evidencing the claim were not filed. Debtors assert this is grounds to disallow the claim in whole or in part.

Eighth, Debtors state that they attempted to continue paying their mortgage in a timely manner, but that Creditor refused postpetition payments twice, totaling $5,135.30.

Ninth, Debtors state that Creditor sent a statement on July 18, 2018, which adds two postpetition fees of "Bankruptcy Expenses" of $250.00 each for unitemized postpetition activities on July 3 2018, and July 12, 2018. Debtors state that they provided $5,135.30 to their attorney to cure the amount owed. However Debtors take the position that "Bankruptcy Expenses" are fees that require a motion for court approval, and that

imposing these charges without court approval deliberately circumvents the court's authority to decide whether fees are appropriate.

Creditor's Opposition

Creditor filed an opposition on October 2, 2018. Dkt. 54.

First, Creditor points to the presumption of prima facie validity for a proof of claim, as provided by Federal Rule of Bankruptcy Procedure 3001(f), for a properly filed proof of claim. Creditor asserts that the objection should be overruled because Debtors did not present sufficient facts to overcome that presumption.

Second, Creditor asserts that all items for the prepetition arrearage are allowable. Creditor summarizes the prepetition arrears as follows:

Item	**Amount**
May 2018 (principal and interest)	$1,704.51
June 2018 (principal and interest)	$1,704.51
Late Charges	$272.72
Property Inspection Fees	$89.17
Escrow Shortage	$1,772.29
Funds on Hand	($68.18)
Total	$5,745.02

Creditor also acknowledges that it did receive a postpetition payment of $2,186.99.

Creditor argues that the property inspection fees, totaling $89.17, were for inspections that are performed on any account that is 30 days past due. These are drive-by inspections, so the account holders would not be aware of these inspections. Creditor asserts the deed of trust provides for these fees at §§7 and 14. Creditor also argues that Debtors paid late, which gave rise to $272.72 of late charges.

The $135.35 in applied payments are the result of a $68.18 suspended payment upon the petition date, which was applied to prepetition arrearage, and the positive balance of $67.17 as of the petition date, which was accounted for as a credit against the escrow shortage in Creditor's postpetition escrow recalculation.

The $1,772.29 escrow shortage was the result of Creditor reanalyzing the escrow over a new 12-month period starting July 1, 2018. Creditor provided the following accounting for this escrow shortage:

Item	**Amount**
Lowest Point in 12-Month Period	$6,744.52
Total Expected Payment Through Same Period	$7,357.72
Negative Escrow Balance	$613.18
RESPA Cushion of 2 Months of Negative Escrow Balance	$1,226.28
Starting Escrow Balance (RESPA Cushion and Negative Escrow Balance)	$1,839.46
Less Positive Escrow Balance	($67.17)

Total Escrow Shortage	$1,772.29

Creditor argues that the documents provided are sufficient to establish the escrow shortage, and the amounts added to the proof of claim were proper, pursuant to Federal Rule of Bankruptcy Procedure 3001(c)(2)(C). Creditor cites to *In re Rodriguez*, a Third Circuit case, to support its argument that an unpaid escrow needed to cover taxes, insurance and other charges due was enforceable as a prepetition arrearage claim. *In re Rodriguez*, 629 F.3d 136, 138 (3d Cir. 2010) (citing *Campbell v. Countrywide Home Loans, Inc.*, 545 F.3d 348, 351–5 (5th Cir. 2008). Also, Creditor asserts that RESPA allows for it to reanalyze escrow. *See* CFR § 1024.17(f)(1)(ii).

Creditor does not have any records of postpetition payments, but notes that online payment access was shut down on June 16, 2018, due to the bankruptcy.

Creditor notes that the $500.00 in bankruptcy expenses should be provided for by Federal Rule of Bankruptcy Procedure 3002.1, and that the 180-day notice deadline has not yet passed.

Fifth, Creditor asserts that compliance with the 21-day notice period under Federal Rule of Bankruptcy Procedure 3002.1 for the July 2018 payment was impossible to comply with because the case was filed on June 14, 2018. Creditor asserts that not filing this notice was substantially justified and harmless under these circumstances.

Sixth, Creditor acknowledges receipt of payments of $2,186.99 on June 15, 2018 and a payment of $5,135.30 on August 22, 2018. Creditor is willing to credit these payments to pre-petition months, subject to court approval.

Reply

The court notes that Debtors did not file a reply. LBR 9014-1(f)(1)(C).

Discussion

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

The court finds that Debtors have not presented a substantial factual basis to overcome the prima facie validity of the proof of claim. Debtors merely assert that parts of Proof of Claim filed No. 5 filed by Creditor are unsupported or inaccurate, and that certain acts are violations of the automatic stay. This is insufficient to overcome the presumptive validity of the claim. LBR 3007-1(a) ("A mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim."). Debtor has also failed to demonstrate how the use of the Loan Payment History and Mortgage Payment Statement dated June 28, 2018, defeats the claim's prima facie validity. *See Heath v. American Express Travel Related Svc. Co., (In re Heath)*, 313 B.R. 424, 432–33 (B.A.P. 9th Cir. 2005). Official forms were properly used and additional documents properly submitted.

The objection is overruled without prejudice.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

3. 18-23710-B-13 JJC-2 — DAVID/EMILINDA VERA — Julius J. Cherry — MOTION TO VALUE COLLATERAL OF USE CREDIT UNION — 8-14-18 [29]

Final Ruling

The parties submitted a stipulation resolving this matter on September 25, 2018. Dkt. 51. The court approved the terms of the stipulation in an order signed September 26, 2018. Dkt. 53. The court vacated the hearing by that same order. *Id.*

THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.

4. 18-23710-B-13 JJC-3 — DAVID/EMILINDA VERA — Julius J. Cherry — MOTION TO VALUE COLLATERAL OF SACRAMENTO CREDIT UNION — 8-14-18 [35]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to value the secured claim of Sacramento Credit Union at $29,362.35.

Debtors' motion to value the secured claim of Sacramento Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2016 Ford Edge, VIN 2FMPK4J98GBB59186 ("Vehicle"). Debtors seek to value the Vehicle at a replacement value of $27,066.88 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. Given the absence of contrary evidence, the Debtors' opinion of value is conclusive. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 12, filed by Creditor on August 15, 2018, is the claim which may be the subject of the present motion.

Discussion

A debtor's ability to value collateral consisting of a motor vehicle is limited by the terms of the hanging paragraph of § 1325(a). *See* 11 U.S.C. § 1325(a) (hanging paragraph). Under this statute, a lien secured by a motor vehicle cannot be stripped down to the collateral's value if: (i) the lien securing the claim is a purchase money security interest, (ii) the debt was incurred within the 910-day period preceding the date of the petition, and (iii) the motor vehicle was acquired for the debtor's personal use. 11 U.S.C. § 1325(a) (hanging paragraph).

Here, Debtors do not argue that the Vehicle is collateral outside the scope of the hanging paragraph. Instead, Debtors argue that only a portion of Creditor's claim, secured by the Vehicle, is unprotected by the hanging paragraph because it resulted from financing for the following items:

Description	Amount
Creditor's Claim	$44,367.41
Theft Deterrent Device	($199.00)
Extended Warranty	($3,500.00)
Negative Equity	($12,706.53)
GAP Insurance	($895.00)
Purchase Money Secured Interest of Creditor's Claim	$27,066.88

Dkt. 35, p. 4; dkt. 39, lns. 1D, 1I, 1K, and 6C.

The Ninth Circuit has held "that a creditor does not have a purchase money security interest in the 'negative equity' of a vehicle traded in during a new vehicle purchase." *In re Penrod*, 611 F.3d 1158, 1164 (9th Cir. 2010). Because of this, the portion of an automobile lender's claim attributable to negative-equity financing is not secured by a purchase money security interest (PMSI). Thus, negative equity debt is not protected by the hanging paragraph. This same line of reasoning has been extended to gap insurance and optional vehicle maintenance contracts. *In re Jones*, 583 B.R. 749, 753–7, n.9 (Bankr. W.D. Wash. 2018) ("Penrod was based on California law. Washington's version of U.C.C. § 9-103 is identical to California's. *Compare* RCW § 62A.9A-103 *with* Cal. Comm. Code § 9103.").

The court adopts the pro-rata approach supported by the cases under which the percentage of the total amount originally financed that was secured by a PMSI is multiplied by the present balance of the debt owed to creditor on its claim. The product is the amount of the present claim that is secured by a PMSI and protected by the hanging paragraph of § 1325(a). The non-PMSI portion of the claim may be treated as unsecured so long as the value of the collateral does not support it.

The total amount of the original financing for the subject collateral was $51,158.55. The portion of the amount originally financed secured by a PMSI, which accounts for the theft deterrent device, extended warranty, negative equity, and GAP insurance, was $33,858.02. This is 66.18% of the total amount financed. It follows that 33.82% is the non-PMSI amount that financed negative equity on the trade-in vehicle.

Multiplying 66.18% by the present claim amount of $44,367.41 equals $29,362.35, which is the PMSI portion of the present claim held by creditor. The negative equity portion of the present claim is not protected by the hanging paragraph and, as a result, may be treated as an unsecured claim if it is uncollateralized.

The Vehicle's value is less than the PMSI-portion of Creditor's claim. The entire PMSI portion of this claim is protected by the hanging paragraph. The entire non-PMSI portion of this claim (negative-equity financing, gap insurance, optional extended warranty, and the theft deterrent device) is unsupported by the collateral's value. Creditor has a secured claim equal to $29,362.35 and an unsecured claim for the balance of the claim.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

5. 18-23710-B-13 JPJ-1 — DAVID/EMILINDA VERA — Julius J. Cherry — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE

Tentative Ruling

The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case were 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). Opposition was filed.

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

Trustee's Objection

Jan Johnson, the Chapter 13 Trustee ("Trustee") filed an objection to the Chapter 13 Plan on July 26, 2018 on two grounds. Dkt. 17.

First, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) because the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. The Calculation of Disposable Income (Form 122C-2) shows that the Debtor's monthly disposable income is $1,586.42 and the Debtor must pay no less than $95,185.20 to unsecured non-priority creditors. The Trustee calculates that the plan will pay only $23,243.20 to unsecured non-priority creditors.

Second, feasibility of the plan depends on the granting of motions to value collateral of Sacramento Credit Union, SAFE Credit Union, and USE Credit Union. To date, the Debtors have not filed, served, or set for hearing the valuation motions pursuant to Local Bankruptcy Rule 3015-1(j).

August 14, 2018 Hearing

This matter was continued to October 16, 2018.

Debtors' Response

On September 14, 2018, David and Emilinda Vera, the debtors ("Debtors"), filed a response. Dkt. 46.

Debtors respond that they filed an amended Form 122C-2, where they adjusted their 2018 federal tax payments. Debtors argue they are proposing $387.55 per month through the plan, and the disposable monthly income on the amended Form 122C-2 shows disposable monthly income of $406.42, a difference of $18.88. Debtors propose to pay an additional $20.00 per month to comply with 11 U.S.C. § 1325(b)(1)(B).

Also, Debtors state they filed and served motions to value collateral, Dockets 29 and 36, to resolve Trustee's objections.

Trustee's Reply

Trustee filed a reply on September 25, 2018. Dkt. 49.

Trustee states that the amended Form 122C-2 and increase in plan payments by $20.00 per month resolved their first objection, and their objection to confirmation was limited to whether the motions to value were granted.

Discussion

The court granted the motions to value at Items #3 (DCN JJC-2) and 4 (DCN JJC-3), and the Trustee's other objections were resolved. Dkt. 49. Thus, Trustee's objection is overruled, and the motion to dismiss is denied without prejudice. Nevertheless, the

plan is not confirmed for the reasons stated at Items #1 (DCN DWE-1) and #2 (DCN JJC-1).

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

6. 18-24911-B-13 JEREMY/LINDSAY ARNOLD
MJ-1 Mark Shmorgon

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A.
9-13-18 [28]

Tentative Ruling

The objection 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). 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.

Creditor's Objection

Objecting creditor Wells Fargo Bank, N.A. ("Creditor") holds a deed of trust secured by the residence of Jeremy and Lindsay Arnold, the debtors ("Debtors"). Creditor timely filed Proof of Claim No. 7 on September 12, 2018, in which it asserts $1,647.42 in pre-petition arrearages.

October 2, 2018 Hearing

At the hearing, counsel for Creditor and counsel for Debtor requested a continuance to allow the parties to exchange evidence of payments on this claim. Counsel for Creditor stated he would file a withdrawal of this objection if those payments were made and the arrears cured.

Discussion

The plan does not propose to cure the arrearages for Creditor's claim. Dkt. 2, p. 3. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. *See* 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan filed August 3, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a) and cannot be confirmed. Therefore, the objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, Debtors will be given a further opportunity to confirm a plan. But, if 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 Debtors have not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

7. 18-24912-B-13 JPJ-1 **Thru #8**
ALICE OSEGUERA
Peter L. Cianchetta
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-26-18 [36]

Tentative Ruling

The objection and motion were filed on September 26, 2018, which is only 13 days prior to the hearing on the motion to confirm a plan. Dkt. 36; *see* Local Bankruptcy Rules 3015-1(c)(4) and (d)(1), and 9014-1(f)(2). 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 and motion.

The court's decision is to sustain the objection and deny without prejudice the motion to dismiss as moot based on the court's ruling on line item #8.

First, Jan Johnson, the Chapter 13 Trustee ("Trustee"), argues that the plan depends on a successful motion to value collateral for Santander Consumer USA on a 2016 Jeep patriot. To date, no such motion has been filed or served.

Second, Alice Oseguera, the debtor ("Debtor"), failed to disclose her income from two small businesses that she operates, namely for horseback riding lessons and miscellaneous accounting services for small firms. Because this income is not disclosed on lines 5 and 27 of her Statement of Financial Affairs, Debtor has not cooperated with Trustee to allow him to perform his duties under 11 U.S.C. § 521(a)(3).

However, based on the court's ruling on the Objection to Confirmation filed by John and Elvira Rieschick, dkt. 27 (DCN SMR-2), Trustee's objection is sustained and the request for a conditional dismissal of the case is denied without prejudice as moot as the plan is not confirmable and Debtors must file an amended plan as described at the October 2, 2018 hearing, i.e., 14 days from the order denying the Reischick's motion for relief from the automatic stay or, in other words, by October 18, 2018. Dkts. 40, 41.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

8. 18-24912-B-13 SMR-2
ALICE OSEGUERA
Peter L. Cianchetta
OBJECTION TO CONFIRMATION OF PLAN BY JOHN RIESCHICK AND ELVIRA RIESCHICK
9-25-18 [27]

Tentative Ruling

The objection 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). 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.

Creditor's Objection

John and Elvira Rieschick, the creditors ("Creditors"), primarily object because the plan as filed does not provide adequate assurance that the prepetition and postpetition arrearages will be cured, and the plan provides for curing the arrearages over a 60-month period, which Creditors assert is not prompt.

October 2, 2018 Hearing and Civil Minute Order

At the hearing on Creditors' motion for relief from stay, Debtor's counsel represented that the September and October postpetition rent payments had already been provided. Both parties consented to having these funds deposited into counsel for Creditors' trust account. Dkt. 40, p. 3.

In addition, the court ordered Debtor to mail rent for November 2018 to Creditors by November 15, 2018, and rent for December 2018 by December 15, 2018. Creditors are allowed to file a declaration of default and an ex parte order terminating the automatic stay, as provided in the civil minute order, if, after Creditors provide notice, Debtor does not file and serve an amended Chapter 13 Plan by October 18, 2018, or if Debtor defaults on the lease payments as ordered by the court and fails to cure those defaults after notice.

Discussion

The plan filed August 17, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

As discussed at the hearing on October 2, 2018, Debtor's plan proposing to cure the arrears to Creditors over a 41-month period is not a prompt cure as required by 11 U.S.C. § 365(b). Based on the court's order dated October 4, 2018, Debtor was given 14 days to file and serve an amended plan to provide for the prompt cure of any prepetition arrears. Dkts. 40, 41. Otherwise, Creditors are entitled to seek relief as described on the record in open court.

COUNSEL FOR THE CREDITOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

9.	14-25618-B-13 DJC-13	SHELDON/MELANIE HIRSCH Diana J. Cavanaugh	MOTION TO MODIFY PLAN 9-11-18 [222]

No Ruling

10. 16-21821-B-13 LAUREN CHERWIN
EAS-3 Edward A. Smith

MOTION TO MODIFY PLAN
9-7-18 [50]

INTENTIONALLY LEFT BLANK

11. 18-21221-B-13 JEFFREY/LORNA FUKUSHIMA
PGM-5 Peter G. Macaluso
Thru #12

CONTINUED MOTION TO CONFIRM PLAN
7-30-18 [50]

No Ruling

12. 18-21221-B-13 JEFFREY/LORNA FUKUSHIMA
PGM-6 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE
8-30-18 [62]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

The court's decision is to grant the motion.

Jeffrey and Lorna Fukushima, the debtors ("Debtors"), filed this motion to value the secured claim of the Internal Revenue Service, the creditor ("Creditor"), which is accompanied by Debtor's declaration. Debtors are the owner of various personal property, with description and value summarized as follows:

Description	**Fair Market Value**
2001 Chevrolet Camaro	$4,500.00
2000 Dodge Truck	$2,476.00
1999 Honda Accord	$1,033.00
1960 Hawaiian Powercat	$100.00
Furniture	$500.00
Appliances	$113.00
Electronic Equipment	$200.00
Kitchen Items	$20.00
Knick-knacks	$10.00
Outdoor items	$10.00
Pictures	$2.00
Books	$2.00
Clothing	$15.00
Costume jewelry	$15.00
Valuable jewelry	$15.00

Cash	$10.00
Golden 1 Checking Account	$50.00
Total	$9,071.00

("Property"). Debtors seek to value the Property at a fair market value of $9,071.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. Given the absence of contrary evidence, Debtors' opinion of value is conclusive. *See* FED. R. EVID. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Amended Claim No. 6-2 filed by Creditor is the claim which may be the subject of the present motion.

Discussion

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for a proof of claim executed and filed in accordance with [the] rules. FED. R. BANKR. P. 3001(f); *see also Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706–07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. *See id.* at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted). "[T]o rebut the prima facie evidence a proper proof of claim provides, the objecting party must produce 'substantial evidence' in opposition to it." *Am. Express Bank, FSB v. Askenaizer (In re Plourde)*, 418 B.R. 495, 504 (B.A.P. 1st Cir. 2009)).

Proof of Claim No. 6-2 states a balance owed of $26,306.87 and the value of the Property at $11,445.36. A proof of claim is presumed valid. That presumption of validity extends to value. *See In re De Leon*, 2014 WL 29558171 (Bankr. N.D. Cal. 2014). Although no objection to the proof of claim has been filed, *Enewally* allows the court to accept the Debtor's opinion of value as conclusive in the absence of contrary evidence and therefore sufficient to rebut any presumptive validity of value. Thus, the motion is granted and the court values the Property at $9,071.00.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

13. 18-25025-B-13 JPJ-1 — CHANEL WILLIS, James P. Mootz — OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 9-26-18 [20]

Tentative Ruling

The objection and motion were 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). 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, deny confirmation of the plan, and conditionally deny the motion to dismiss.

Trustee's Objection

Jan Johnson, the Chapter 13 Trustee ("Trustee"), states that the plan filed August 22, 2018, does not have a signature from Chanel Willis, the debtor ("Debtor"), as required by Local Bankruptcy Rule 9004-1(c)(1)(B), and thus cannot be confirmed.

Debtor's Reply

Debtor filed a reply on September 28, 2018, arguing that Debtor did sign the plan on August 21, 2018, and that the copy that was filed did not have a signature. Debtor attached a copy of the plan with a wet-ink signature as an exhibit to the reply. Dkt. 23.

Discussion

The plan filed August 22, 2018, does not have Debtor's signature as required by Local Bankruptcy Rule 9004-1(c)(1)(B). A review of the court's docket shows there is no amended plan filed to correct this error, and there is no stipulation to correct a minor error between Trustee and Debtor as allowed by Local Bankruptcy Rule 3015-1(d)(3).

The plan filed August 22, 2018, 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, Debtor will be given a further opportunity to confirm a plan. But, if 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 Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE THE APPROPRIATE ORDERS WITHIN SEVEN (7) DAYS.

14.	18-20028-B-13 JPJ-2	DONALD RIDDLE George T. Burke	MOTION TO CONVERT CASE FROM CHAPTER 13 TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 9-14-18 [41]

No Ruling

15. 17-22634-B-13 JPJ-1 **Thru #16**
RANDY RICHARDSON AND JACQUELYN
W. Steven Shumway
CONTINUED MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
3-30-18 [86]

No Ruling

16. 17-22634-B-13 WSS-9
RANDY RICHARDSON AND JACQUELYN
W. Steven Shumway
MOTION TO MODIFY PLAN
9-5-18 [125]

No Ruling

17. 18-25840-B-13 SHAVINA THOMAS
RJ-1 Richard L. Jare

MOTION TO VALUE COLLATERAL OF CHRYSLER CAPITAL
10-2-18 [16]

Tentative Ruling

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

The court's decision is to value the secured claim of Chrysler Capital (Santander) at $4,000.00.

Debtor's Motion to Value

Shavina Thomas, the debtor ("Debtor") filed the motion to value the secured claim of Chrysler Capital (Santander) ("Creditor"), which is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Dodge Dart, with approximately 158,000 miles ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $4,000.00 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).

No Proof of Claim Filed

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

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in August 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $16,042.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $4,000.00. *See* 11 U.S.C. § 506(a). The valuation motion is granted pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a).

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

18. 18-24744-B-13 TANESHA ALLEN MOTION TO CONFIRM PLAN
MS-2 Mark Shmorgon 9-6-18 [30]

Final Ruling

The motion has been set for hearing on the 35-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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

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

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER GRANTING THE MOTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

19. 18-24645-B-13 JPJ-2 MICHAEL/CANDACE TODD
Chad M. Johnson
OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
9-17-18 [27]

Final Ruling

The objection 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)(B) 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 non-responding parties and other parties in interest are entered. The matter will be resolved without oral argument.

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

Trustee's Objection to Claim of Exemption

Jan Johnson, the Chapter 13 Trustee ("Trustee"), objects to Michael and Candace Todd's, the debtors' ("Debtors"), use of the California exemptions provided by California Code of Civil Procedure § 704.080(b)(2) and (4). Trustee argues that the funds described in Debtors' Schedule C filed on August 7, 2018, do not meet the requirements for this exemption.

Discussion

A party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded, or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. 11 U.S.C. § 522(l); FED. R. BANKR. P. 4003(b)(1).

California Code of Civil Procedure § 704.080(b)(2) and (4) provides:

> (b) A deposit account is exempt without making a claim in the following amount:
>
> [...]
>
> (2) Two thousand four hundred twenty-five dollars ($2,425) where one depositor is the designated payee of directly deposited social security payments.
>
> [...]
>
> (4) Three thousand six hundred fifty dollars ($3,650) where two or more depositors are the designated payees of directly deposited social security payments, unless those depositors are joint payees of directly deposited payments that represent a benefit to only one of the depositors, in which case the exemption under paragraph (2) applies.

The court's review of the schedules filed by Debtors reveals that they claimed $1,500.00 of "Cash on Hand" as exempt pursuant to California Code of Civil Procedure §

704.080(b)(4). Dkt. 11, Sch. C, p. 15. This $1,500.00 is only listed as "Cash" on Debtors' Schedule A/B. *Id.*, Sch. A/B, p. 8, ln. 16. While Debtors list Social Security income of $1,621.80 per month on Schedule I, Debtors failed to oppose this motion and did not carry their burden to show this cash is traceable to exempt funds. Cal. Code Civ. P. § 703.080(a)-(b); dkt. 11, Sch. I, p. 30, ln. 8e. On these grounds, Trustee's objection is sustained and the claimed exemption is disallowed.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

20. 18-25646-B-13 CYB-1 THADDEUS/ANGELA FRIDAY
Candace Y. Brooks
MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA INC.
9-27-18 [12]

Tentative Ruling

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

The court's decision is to grant the motion.

Debtors' Motion to Value

Thaddeus and Angela Friday, the debtors ("Debtors"), filed a motion to value the secured claim of Santander Consumer USA, Inc., the creditor ("Creditor"). Debtors' motion is accompanied by Debtors' joint declaration. Debtors are the owners of a 2013 Chevrolet Tahoe Sport with approximately 149,000 miles ("Vehicle"). Debtors seek to value the Vehicle at a replacement value of $18,500.00 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1 filed by Santander Consumer USA, Inc. ("Creditor") is the claim which may be the subject of the present motion.

Discussion

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for a proof of claim executed and filed in accordance with [the] rules. FED. R. BANKR. P. 3001(f); *see also Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. *See id.* at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted). "[T]o rebut the prima facie evidence a proper proof of claim provides, the objecting party must produce 'substantial evidence' in opposition to it." *Am. Express Bank, FSB v. Askenaizer (In re Plourde)*, 418 B.R. 495, 504 (B.A.P. 1st Cir. 2009)).

Proof of Claim No. 1 filed by Creditor states a balance owed of $25,458.14 and a value of the Vehicle at $23,950.00. A proof of claim is presumed valid. That presumption of validity extends to value. *See In re De Leon*, 2014 WL 29558171 (Bankr. N.D. Cal. 2014). Although no objection to the proof of claim has been filed, *Enewally* allows the court to accept the Debtor's opinion of value as conclusive in the absence of contrary evidence and therefore sufficient to rebut any presumptive validity of value. Thus, the motion is granted and the court values the Vehicle at $18,500.00.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

21.	18-25053-B-13 JPJ-1	MICHAEL MENZER Grace S. Johnson	OBJECTION TO CONFIRMATION OF PLAN BY JAN P JOHNSON 9-26-18 [16]

Final Ruling

Jan Johnson, the Chapter 13 Trustee, having filed a notice of withdrawal of his objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed August 10, 2018, will be confirmed.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER OVERRULING THE OBJECTION WITHIN SEVEN (7) DAYS AND A SEPARATE ORDER CONFIRMING WHICH SHALL BE TRANSMITTED TO THE TRUSTEE FOR REVIEW AND APPROVAL.

22.	18-25156-B-13 JPJ-1	LAJUAN ANDREWS Richard L. Jare	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 9-26-18 [22]

No Ruling

23.	18-20871-B-13 DBJ-5	VICTORIA RUGG Douglas B. Jacobs	MOTION TO CONFIRM PLAN 8-16-18 [51]

No Ruling

24.	18-23472-B-13 WSS-1	JERIMIAH CANNADAY W. Steven Shumway	MOTION TO AVOID LIEN OF JEFF GARCIA & FIDELIS MARKETING, INC. 8-29-18 [36]

Final Ruling

The motion 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)(B) 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. The matter will be resolved without oral argument.

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

This is a request for an order avoiding the judicial lien of Jeff Garcia & Fidelis Marketing, Inc. ("Creditor") against the Debtor's real property commonly known as 1141 Southbridge Circle, Lincoln, California 95648 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $55,442.24. An abstract of judgment was recorded with Placer County on October 18, 2017, which encumbers the Property. All other liens recorded against the Property total $515,967.78. POC 7.

Pursuant to the Debtor's Schedule A, the Property has an approximate value of $525,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of $14,479.00 on Schedule C. Dkt. 1, Sch. C, p. 16.

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

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

25. 14-26074-B-13 MICHAEL LOZANO
LBG-501 Lucas B. Garica

MOTION TO MODIFY PLAN
8-14-18 [90]

No Ruling

26. 16-20783-B-13 JAMES/AMANDA DOMSIC MOTION TO REFINANCE
TLA-3 Thomas L. Amberg 9-28-18 [49]

Tentative Ruling

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

The court's decision is to grant the motion and approve the loan between James and Amanda Domsic and Catalyst Mortgage.

This motion is brought to refinance the mortgages secured by the principal residence of James and Amanda Domsic, the debtors ("Debtors"). The previous loans were a first mortgage held by Wells Fargo Home Mortgage and a second mortgage held by Spirit of Texas Bank. Dkt. 1, Sch. D, p. 21, 23. The second mortgage held by Spirit of Texas Bank has a variable interest rate. The new loan states monthly payments of $1,290.86 which includes principal, interest, taxes, and insurance. Dkt. 52, p. 3. The new loan will pay off both the first and second mortgages on the residence and replace it with one new mortgage. The offer is being made by Catalyst Mortgage and is secured by a new first position deed of trust on the Debtors' residence at 8904 Carlisle Avenue, Sacramento, California 95829.

The motion is supported by the Joint Declaration of James and Amanda Domsic. The Declaration affirms Debtors' desire to obtain the post-petition financing, and Debtors believe the new mortgage will allow them to maintain consistent plan payments by fixing the interest rate at 4.625%, rather than the variable rate of the prior Spirit of Texas Bank second mortgage. Dkt. 51, ¶¶ 6, 8.

The repayment of the new loan does not appear to unduly jeopardize Debtors' performance of the plan dated February 12, 2016. The conditional non-opposition of Wells Fargo Bank, N.A. only requests full payment, or a lesser payment with consent of Creditor, to be provided for in the order. Dkt. 54, p. 2. There being no other 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 will be granted.

COUNSEL FOR THE DEBTORS SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS WHICH SHALL BE TRANSMITTED TO ALL PARTIES FOR REVIEW AND APPROVAL.

27. 18-25884-B-13 LEON GRAY
TLA-1 Thomas L. Amberg

MOTION TO VALUE COLLATERAL OF NISSAN MOTOR ACCEPTANCE CORPORATION
9-18-18 [10]

Tentative Ruling

The motion 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)(B) 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. The court will address the merits of the motion at the hearing.

The court's decision is to grant the motion.

Debtor's motion to value the secured claim of Nissan Motor Acceptance Corp ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Nissan Sentra with approximately 77,000 miles ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $9,820.00 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).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1 filed by Nissan Motor Acceptance Corp is the claim which may be the subject of the present motion.

Discussion

A proof of claim is "deemed allowed, unless a party in interest . . . objects." 11 U.S.C. § 502(a). Federal Rule of Bankruptcy Procedure 3001(f) creates an evidentiary presumption of validity for a proof of claim executed and filed in accordance with [the] rules. Fed. R. Bankr. P. 3001(f); *see also Litton Loan Servicing, LP v. Garvida (In re Garvida)*, 347 B.R. 697, 706-07 (B.A.P. 9th Cir. 2006). This presumption is rebuttable. *See id.* at 706. "The proof of claim is more than some evidence; it is, unless rebutted, prima facie evidence. One rebuts evidence with counter-evidence." *Id.* at 707 (citation omitted) (internal quotation marks omitted). "[T]o rebut the prima facie evidence a proper proof of claim provides, the objecting party must produce 'substantial evidence' in opposition to it." *Am. Express Bank, FSB v. Askenaizer (In re Plourde)*, 418 B.R. 495, 504 (B.A.P. 1st Cir. 2009)).

Proof of Claim No. 1 filed by Creditor states a balance owed of $11,927.26; no value is stated for the Vehicle. POC 1, p. 2, lns. 7, 9. A proof of claim is presumed valid. That presumption of validity extends to value. *See In re De Leon*, 2014 WL 29558171 (Bankr. N.D. Cal. 2014). Although no objection to the proof of claim has been filed, *Enewally* allows the court to accept the Debtor's opinion of value as conclusive in the absence of contrary evidence and therefore sufficient to rebut any presumptive validity of value. Therefore, the court values the Vehicle at $9,820.00.

COUNSEL FOR THE DEBTOR SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

28. 18-24985-B-13 JOSEPH BOTSCH
JPJ-1 Marc Voisenat

OBJECTION TO CONFIRMATION OF PLAN BY JAN P JOHNSON
9-27-18 [17]

Tentative Ruling

The objection and motion were 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). 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, deny confirmation of the plan, and conditionally deny the motion to dismiss.

First, Jan Johnson, the Chapter 13 trustee ("Trustee"), states that Joseph Botsch, the debtor ("Debtor"), testified at the meeting of creditors that he was current on all mortgage payments. However, the plan lists a pre-petition arrearage. Thus, Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan provides for $0.00 per month to pay for administrative expenses, but also requires $3,500.00 in attorney's fees to be paid through the plan. This is further evidence that Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, Trustee calculates that the plan will take 151 months to complete, which exceeds the maximum 60 month duration required by 11 U.S.C. §§ 1325(b)(4). Trustee does not present evidence of his calculation for the plan completion period.

Fourth, the plan payment of $1,303.00 per month does not equal the aggregate of administrative expenses, Class 1 and 2 creditors, and priority and general unsecured creditors. Trustee calculates the plan payments must be $1,942.67. Thus, the plan fails to comply with Section 5.02(a) of the mandatory form plan.

Fifth, Trustee argues the plan does not meet the "best interest of creditors" test because Debtor's schedules show estimated non-exempt equity of $38,859.27, while the plan only provides for $6,996.00 of the $7,950.00 to general unsecured creditors. Thus, the plan does not comply with 11 U.S.C. §§ 1325(a)(4).

Sixth, while Debtor has provided his pay advices as required, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income for Debtor's non-filing spouse received within the 60-day period prior to the filing of the petition. Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Seventh, Debtor testified at the meeting of creditors that he did not include a supplemental life insurance policy and certain income he received in 2016 and 2017. A review of the court's docket shows that Debtor has not amended Schedule A/B and his Statement of Financial Affairs to account for these omitted items. Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed 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, Debtor will be given a further opportunity to confirm a plan. But, if 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 Debtor has not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

THE CHAPTER 13 TRUSTEE SHALL LODGE AN APPROPRIATE ORDER WITHIN SEVEN (7) DAYS.

29.	18-24795-B-13 JPJ-2	MAURICE PRINGLE Michael Avanesian	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 9-17-18 [31]

Final Ruling

This matter is dismissed as moot, as the case was dismissed on October 5, 2018. Dkt. 40.

THE COURT WILL PREPARE AN APPROPRIATE MINUTE ORDER.