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: November 13, 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

November 13, 2018 at 1:00 p.m.

1.	18-23101-B-13 JPJ-1	SAVINA HALL Mohammad M. Mokkaram	OBJECTION TO CLAIM OF MID AMERICAN BANK & TRUST, CLAIM NUMBER 2-1 9-6-18 [22]

Final 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 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 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 2 of Mid American Bank & Trust.

Jan Johnson, the Chapter 13 trustee ("Trustee"), requests that the court disallow the claim of Mid American Bank & Trust ("Creditor"), Claim No. 2. The claim is asserted to be unsecured in the amount of $443.98. Trustee objects to the claim because Creditor did not provide the statement required by Federal Rule of Bankruptcy Procedure 3001(c)(3)(A).

Discussion

The starting place is Rule 3001(f), which states that "[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." FED. R. BANKR. P. 3001(f). This rule creates an evidentiary presumption of validity for a **properly filed** proof of claim. *Garner v. Shier (In re Garner)*, 246 B.R. 617, 620 (B.A.P. 9th Cir. 2000).

When a proof of claim is properly filed and presumptively valid, the party objecting to the proof of claim has the burden of presenting a substantial factual basis to overcome the prima facie validity of the 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).

However, in situations in which a proof of claim is not properly filed, it is not entitled to a presumption of validity and the burden of proof is on creditor. *In re Santiago*, 404 B.R. 464, 570 (Bankr. S.D. Fla. 2009). In those instances, a party in interest need only object to the proof of claim on a basis provided by § 502(b) and, upon a proper objection, the burden of proof rests with the creditor to establish validity of its claim. *In re Mazyzk*, 521 B.R. 726, 732 (Bankr. D.S.C. 2014); *In re Porter*, 374 B.R. 471, 483 (Bankr. D. Conn. 2007).

In this case, Creditor's proof of claim is not a properly filed proof of claim because

it is an open-end or revolving consumer credit agreement (POC 2, ln. 8) that does not include the separate statement required by Federal Rule of Bankruptcy Procedure 3001(c)(3)(A). Thus, Creditor's proof of claim is not entitled to a presumption of validity because Creditor's claim is incomplete, and therefore is not a properly filed claim.

Stripped of its presumptive validity, the court construes Trustee's objection to Creditor's proof of claim as one under § 502(b)(1), *i.e.*, that the claim is unenforceable against debtor Savina Hall, and therefore a valid objection. Because Creditor's proof of claim is not complete, the court cannot conclude that the Creditor has carried its burden of proving the validity of its claim.

Therefore, for the foregoing reasons, Trustee's objection is sustained and Creditor's claim is disallowed. However, disallowance of Creditor's claim is without prejudice to the filing of an amended proof of claim and a motion for reconsideration of the disallowance based on the amended proof of claim within fourteen (14) days of the date on which an order disallowing Creditor's claim is entered. *See* 11 U.S.C. § 502(j); FED. R. BANKR. P. 3008.

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

2.	18-25604-B-13 JPJ-1	RHONDA SMITH James A. Shepherd	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 10-25-18 [17]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* LBR 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. LBR 9014-1(f)(2)(C). No written reply has been filed to the objection.

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

Subsequent to Jan Johnson, the Chapter 13 trustee ("Trustee") filing his objection, debtor Rhonda Smith ("Debtor") filed an amended plan on November 9, 2018. Dkt. 22. The confirmation hearing for the amended plan is scheduled for January 8, 2019. Dkt. 23. The earlier plan filed September 17, 2018, is not confirmed.

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

3.	18-24111-B-13 JPJ-1	RICHARD HURT Scott J. Sagaria	OBJECTION TO CLAIM OF NCB MANAGEMENT SERVICES, INC., CLAIM NUMBER 4 9-12-18 [15]

Final 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 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 (9th 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. 4 of NCB Management Services, Inc., and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Trustee"), requests that the court disallow the claim of NCB Management Services, Inc. ("Creditor"), Claim No. 4. The claim is asserted to be unsecured in the amount of $978.93. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1). Dkt. 15.

According to the proof of claim, the underlying debt is a credit card, 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. CODE CIV. PROC. § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about March 2, 2010 (POC 4, part 1, p.1), which is more than four years prior to the filing of this case. Hence, when the case was filed on June 29, 2018, this debt was time barred under applicable nonbankruptcy law and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

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

4. 18-24912-B-13 PLC-3 — ALICE OSEGUERA — Peter L. Cianchetta — MOTION TO VALUE COLLATERAL OF CHRYSLER CAPITAL — 10-16-18 [47]

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 Chrysler Capital at $15,075.00.

Debtor Alice Oseguera's ("Debtor's") motion to value the secured claim of Chrysler Capital ("Creditor") is accompanied by Debtor's declaration. While Debtor's declaration is unsigned (dkt. 50, p. 2), the necessary information is also corroborated by Debtor's schedules. Debtor is the owner of a 2016 Jeep Patriot ("Vehicle"). Dkt. 9, p. 3. Debtor seeks to value the Vehicle at a replacement value of $13,935.00 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. 2 filed by Chrysler Capital is the claim which may be the subject of the present motion. Creditor's Proof of Claim provides a replacement value for the Vehicle of $15,075.00, and values its claim as $30,445.17.

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). The presumption of validity extends to the amount of the claim. *Garner v. Shier (In re Garner)*, 246 B.R. 617, 620 (B.A.P. 9th Cir. 2000) ("There is an evidentiary presumption that a correctly prepared proof of claim is valid as to liability and amount."). That includes the secured portion of a claim based on the collateral's value stated in the proof of claim. *In re Roberts*, 210 B.R. 325, 331 (Bankr. N.D. Iowa 1997). This presumption is rebuttable. *See Litton*, 347 B.R. 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. 2 filed by Creditor states a balance owed of $30,445.17 and a value of the Vehicle at $15,075.00. A proof of claim is presumed valid. No objection to the proof of claim has been filed. Therefore, the court values the Vehicle at $15,075.00 based on Proof of Claim No. 2.

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

5.	18-25613-B-13 JPJ-1 **Thru #6**	JOSE PENA Thomas O. Gillis	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 10-25-18 [22]

No Ruling

6.	18-25613-B-13 TOG-1	JOSE PENA Thomas O. Gillis	MOTION TO VALUE COLLATERAL OF GOLDEN 1 CREDIT UNION 10-16-18 [17]

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 Golden 1 Creditor Union at $13,797.75.

Debtor Jose Pena's ("Debtor's") motion to value the secured claim of Golden 1 Creditor Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Dodge Charger ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $12,868.00 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. 3 filed by Golden 1 Credit Union 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). The presumption of validity extends to the amount of the claim. *Garner v. Shier (In re Garner)*, 246 B.R. 617, 620 (B.A.P. 9th Cir. 2000) ("There is an evidentiary presumption that a correctly prepared proof of claim is valid as to liability and amount."). That includes the secured portion of a claim based on the collateral's value stated in the proof of claim. *In re Roberts*, 210 B.R. 325, 331 (Bankr. N.D. Iowa 1997). This presumption is rebuttable. *See Litton*, 347 B.R. 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. 3 filed by Creditor states a balance owed of $22,434.11. While

Creditor did not provide a value of property, Creditor does state that its claim is secured in an amount of $13,797.75. POC 3, ln. 9. A proof of claim is presumed valid. No objection to the proof of claim has been filed. Therefore, the court values the Vehicle at $13,797.75 based on Proof of Claim No. 3.

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

7.	18-23816-B-13 JPJ-2	LISA SLEDGE Mary Ellen Terranella	OBJECTION TO CLAIM OF CAVALRY SPV I, LLC, CLAIM NUMBER 1 9-6-18 [45]

Final 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 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 (9th 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 of Cavalry SPV I, LLC, and the claim is disallowed in its entirety.

Jan Johnson, the Chapter 13 Trustee ("Trustee"), requests that the court disallow the claim of Cavalry SPV I, LLC ("Creditor"), Claim No. 1. The claim is asserted to be unsecured in the amount of $1,489.23. Objector asserts that the claim should be disallowed because the statute of limitations has run pursuant to California Code of Civil Procedure § 337(1). Dkt. 45.

According to the proof of claim, the underlying debt is a credit card, 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. CODE CIV. PROC. § 337. This statute begins to run from the date of the contract's breach. According to the proof of claim, the last payment was received on or about November 29, 2008 (POC 1, p.5), which is more than four years prior to the filing of this case. Hence, when the case was filed on June 18, 2018, this debt was time barred under applicable nonbankruptcy law and must be disallowed. *See* 11 U.S.C. § 502(b)(1).

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

8. 18-25617-B-13 JOSE/JACQUELINE SEGURA
DBJ-1 Thomas O. Gillis

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-10-18 [20]

BARBARA DOSS VS.

No Ruling

9. 18-25618-B-13 JPJ-1 **Thru #10**
BENJAMEN VERMA
Peter G. Macaluso
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
10-25-18 [18]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* LBR 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. LBR 9014-1(f)(2)(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.

Trustee's Objection

First, debtor Benjamen Verma ("Debtor") has not provided Jan Johnson, the Chapter 13 trustee ("Trustee"), with proof of his social security number. Debtor has not complied with 11 U.S.C. § 521(a)(3) and Federal Rule of Bankruptcy Procedure 4002(b)(1)(B).

Second, the proposed plan does not state a plan payment term under Section 2.03, and does not state a dividend to general unsecured creditors under Section 3.14. Debtor's plan does not comply with 11 U.S.C. § 1325(a)(1).

Third, creditor Capital One Auto Finance appears to be mis-classified as a Class 1 creditor in violation of Section 3.07. Trustee argues that Capital One Auto Finance should be a Class 2 creditor because, according to Proof of Claim 4, the debt will mature on June 12, 2022, which is before the plan is completed. The plan does not comply with Sections 3.07 and 3.08 of the mandatory form plan.

Fourth, creditor Oleg Uvarov appears to be mis-classified as a Class 1 creditor in violation of Section 3.07. Trustee argues that Oleg Uvarov should be a Class 2 creditor because, according to Debtor's testimony at the Meeting of Creditors, this claim is a mortgage that was a "jumbo loan" that has matured and is due and payable now. The plan does not comply with Sections 3.07 and 3.08 of the mandatory form plan.

Fifth, Trustee requested that Debtor provide him with copies of a completed business examination checklist, income tax returns for the two-year period prior to filing the petition, bank account statements for the six-month period prior to filing, and proof of all required insurance, licenses, and permits. Debtor has not provided those items to Trustee, and thus has not complied with 11 U.S.C. § 521.

Sixth, Debtor testified at the Meeting of Creditors that he failed to list delinquent real property taxes on Schedule D, as well as several unsecured creditors on Schedule E/F. Trustee also independently found that Debtor failed to list a prior Chapter 7 bankruptcy on his petition, case no. 12-29090. In addition, Debtor failed to answer questions 7 and 8 on his Statement of Financial Affairs. Trustee requested that Debtor amend his Schedules D, E/F, petition, and Statement of Final Affairs. A review of the court's docket shows these amended documents have not been filed. Debtor has not complied with 11 U.S.C. § 521(a)(3).

Debtor's Reply

Debtor filed a reply on November 6, 2018. Dkt. 32.

Debtor's reply is essentially a non-opposition, in which Debtor's counsel explains that he filed a Substitution of Attorney on October 26, 2018, and that Debtor will file an amended plan to address these concerns.

Discussion

Based on Debtor's non-opposition, and the objections raised by Trustee, the plan filed September 5, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection

is sustained and the plan is not confirmed.

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

10.	18-25618-B-13 MWP-1	BENJAMEN VERMA Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY OLEG UVAROV 10-25-18 [21]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* LBR 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. LBR 9014-1(f)(2)(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.

Trustee's Objection

First, debtor Benjamen Verma ("Debtor") appears to have mis-classified the claim of creditor Oleg Uvarov ("Creditor") as a Class 1 creditor. Creditor argues that his claim should be in Class 2 because, this claim has matured and is due and payable now. The plan does not comply with Sections 3.07 and 3.08 of the mandatory form plan.

Second, Creditor notes that the petition for case no. 18-24343 was filed July 11, 2018, and dismissed on September 20, 2018. Case no. 18-24343, dkts. 1, 36. The petition for the instant case was filed on September 5, 2018. Dkt. 1.

Debtor's Reply

Debtor filed a reply on November 6, 2018. Dkt. 34.

Debtor's reply is essentially a non-opposition, in which Debtor's counsel explains that he filed a Substitution of Attorney on October 26, 2018, and that Debtor will file an amended plan to address these concerns.

Discussion

Based on Debtor's non-opposition, and the objection raised by Creditor, the plan filed September 5, 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.

11.	16-26719-B-13 JTN-2	HENRY NGUYEN AND DANA DINH Jasmin T. Nguyen	MOTION TO MODIFY PLAN 10-3-18 [69]

No Ruling

12.	18-25728-B-13 JPJ-1	JAMES RUELOS AND SUSAN SABADLAB Michael Benavides	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 10-25-18 [17]

No Ruling

13.	18-23532-B-13 JPJ-2	MELODY SIMPSON W. Steven Shumway	CONTINUED MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 9-7-18 [23]

No Ruling

14. 18-24433-B-13 JJC-1 **Thru #15**

THEODORE/LORI RAMIREZ
Julius J. Cherry

CONTINUED MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
9-5-18 [21]

Tentative Ruling

The motion was originally set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The court continued this matter from the scheduled hearing on October 23, 2018, to allow time for service on Wells Fargo Bank, N.A. pursuant to Federal Rule of Bankruptcy Procedure 7004(h). Dkt. 33. Debtor filed a proof of service stating that service was complete on October 26, 2018. Dkt. 36. The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the continued 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 Wells Fargo Bank, N.A. at $9,105.46.

Debtor's Motion

Debtors Theodore and Lori Ramirez ("Debtors'") motion to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2013 Hyundai Sonata, VIN 5NPEB4AC9DH617163 ("Vehicle"). Debtors seek to value the Vehicle at a replacement value of $3,416.00 as of the petition filing date. As the owner, Debtors' 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).

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	$5,500.00
Extended Warranty	($1,489.00)
GAP Insurance	($595.00)
Purchase Money Secured Interest of Creditor's Claim	$3,416.00

Dkt. 24, ¶¶ 6-7.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 11, filed by Creditor on September 21, 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). However, the lien on the Vehicle's title secures a purchase-money loan incurred January 1, 2016, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $9,105.46. POC 11, pp. 1, 9.

In addition, 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). The presumption of validity extends to the amount of the claim. *Garner v. Shier (In re Garner)*, 246 B.R. 617, 620 (9th Cir. BAP 2000) ("There is an evidentiary presumption that a correctly prepared proof of claim is valid as to liability and amount."). That includes the secured portion of a claim based on the collateral's value stated in the proof of claim. *In re Roberts*, 210 B.R. 325, 331 (Bankr. N.D. Iowa 1997). This presumption is rebuttable. *See Litton*, 347 B.R. at 706. 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. 11 filed by Creditor states a balance owed of $9,105.46 and a value of the Vehicle at $9,275.00. A proof of claim is presumed valid. No objection to the proof of claim has been filed. Therefore, the court values the Vehicle at $9,275.00 based on Proof of Claim No. 11.

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

15.	18-24433-B-13 JPJ-1	THEODORE/LORI RAMIREZ Julius J. Cherry	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 8-23-18 [18]

Tentative Ruling

This matter was continued from October 23, 2018, to be heard concurrently with the continued motion to value Wells Fargo Bank, N.A.'s claim. Dkt. 33. The objection and motion were properly filed at least 14 days prior to the original hearing on the motion to confirm a plan. *See* LBR 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. LBR 9014-1(f)(1)(C). No written reply has been filed to the objection.

The court's decision is to sustain the objection, conditionally deny the motion to dismiss, and not confirm the plan filed July 16, 2018.

Trustee's Objection and Motion to Dismiss

Jan Johnson, the Chapter 13 Trustee ("Trustee"), filed an objection to plan confirmation and motion to dismiss on August 23, 2018. Dkt. 18.

First, feasibility of the plan depended on the granting of a motion to value collateral

of Wells Fargo Bank, N.A. Theodore and Lori Ramirez, the debtors ("Debtors"), had not filed, served, or set for hearing a valuation motion pursuant to Local Bankruptcy Rule 3015-1(j).

Second, Debtors had not filed signed declarations from all family members stating their willingness and ability to contribute during the life of the plan as requested by the Trustee. *See In re Deutsch*, 529 B.R. 308 (Bankr. C.D. Cal. 2017). The Debtors had not complied with 11 U.S.C. § 521(a)(3).

Debtor's Opposition

Debtors filed an opposition on September 10, 2018. Dkt. 27.

Debtors argued that the motion to value collateral for Wells Fargo Bank, N.A. was filed on September 5, 2018. The hearing on this item is October 23, 2018. Dkts. 21, 22.

In addition, Debtors stated that they subsequently delivered to Trustee statements from all individuals who will contribute to the plan identified on Schedule I, Line 11. Dkt. 28, exh. 1.

September 11, 2018 Hearing

This matter was continued to October 23, 2018, to allow for proper service, to be heard concurrently with Debtors' motion to value.

Discussion

Based on Debtor's representations, and the resolution of Debtors' motion to value at line item # 11, Trustee's objections have been resolved. No other objections were filed; however, the plan may not now be feasible in light of the increased valuation in item #11. *See* 11 U.S.C. § 1325(a)(6). This issue may be addressed at the hearing and the court may reconsider this tentative ruling. In any case, confirmation of the plan is tentatively denied.

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

16.	18-25739-B-13 JPJ-1	DARIN SUNDAR Joseph Angelo	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 10-25-18 [25]

No Ruling

17.	18-23641-B-13 TBG-1	SIDNEY/CAROLINE JACKSON Stephan M. Brown	MOTION TO CONFIRM PLAN 10-2-18 [23]

Intentionally left blank.

18. 15-26248-B-13 ANDREW/EMILY TWISS — MOTION TO MODIFY PLAN
MET-1 Mary Ellen Terranella — 9-30-18 [77]

No Ruling

19.	18-25750-B-13 CLH-2	THUY-PHUONG TRAN Jasmin T. Nguyen	OBJECTION TO CONFIRMATION OF PLAN BY ROMEO ASILADOR AND SUSAN B. ANCHETA 10-24-18 [15]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* LBR 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. LBR 9014-1(f)(2)(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.

Creditors' Objection

On October 24, 2018, creditors Romeo Asilador and Susan Ancheta ("Asilador" and "Ancheta" individually, "Creditors" collectively) filed an objection to debtor Thuy-Phoung Thi Tran's ("Debtor's") plan. Dkt. 15.

Creditor's Background Facts

Creditor presents certain background facts as the basis of their objection.

Creditors and Debtor were parties to two pre-petition lawsuits in Sacramento County Superior Court, case nos. 34-2017-00214557 and 34-2018-00228464.

Debtor's Meeting of Creditors was originally scheduled for October 18, 2018. Creditor states that Debtor failed to appear, and the meeting was continued to October 25, 2018.

Prior to filing this case, Debtor operated a senior care home under the names Senior Sweet Home LLC, which Debtor was the managing member of from 2017 through dissolution in August 2018, or Tran Sweet Home. Creditor asserts Debtor was operating Senior Sweet Home LLC "as a proprietorship." Dkt. 15, ¶ 4. Debtor now states she closed the care home and is leasing the rooms in her residence to 4 people to earn income, but did not list these lessees on Schedule G. *Id.* at ¶ 7. Debtor also did not list a license to operate a care home on Schedule B. *Id.* at ¶ 8. Creditor is also critical because Debtor lists business income from 2016 through 2018, but does not list what business that income came from and does not list rental income in any of those years. *Id.* at ¶ 9.

Debtor scheduled Ancheta as a disputed claim in the amount of $132,000.00 and Asilador as a disputed claim in the amount of $145,000.00. Creditors assert their claims for wages, interest, and other damages pursuant to state law are $148,168.00 and $95,901.00, respectively.

Creditor's Objections

Creditors' argument is that there are income and expense discrepancies in Debtor's filed documents.

First, Debtor's Statement of Financial Affairs lists $11,247.00 of wage income and $24,881.00 of business income for 2017, and lists $10,487.00 of wage income and $53,832.00 of business income for 2016. Creditors assert none of these entries include a rent payment, which now appears on Debtor's Schedule I.

Second, Creditors argue that Debtor's disposable income should be at least $3,918.00 because her Form 122C-2 "incorrectly deducts all of her business income from her income at line 43." Dkt. 15, ¶ 12.

Third, Creditors assert that Schedules I and J should show all income paid into the household, including other residents that share the expenses and mortgage, and not just

report Debtor's IHSS income of $1,044.00 and "Rent from 3 other residents at house" of $1,200.00 on Schedule I, along with Debtor's share of the mortgage on Schedule J.

Fourth, Creditor argues that the expenses on Schedule J for Debtor's share of the mortgage of $1,313.00, utilities of $75.00, vehicle expenses of $125.00, and $0.00 in taxes are grossly understated.

On these grounds, Creditors request that the plan not be confirmed, or that this matter be set for further hearing to give sufficient time to complete discovery and conduct a 2004 exam. Creditor also asserts that the plan payments are not Debtor's best efforts, and that the plan likely fails the liquidation analysis.

Debtor's Reply

Debtor filed a reply on November 8, 2018. Dkt. 22.

First, Debtor argues that, while Debtor was a party to Sacramento County Superior Court cases listed, that is not a basis for objection to a Chapter 13 plan.

Second, Debtor states that her counsel communicated with the trustee's office and Mr. Michael Harrington, who is co-counsel for Creditors, about the anticipated continuation. Debtor also notes that both Ms. Hill and Mr. Harrington appeared at the October 25, 2018 continued Meeting of Creditors, and that the objection was filed and served the day prior. Debtor believes that the same issues were raised in Creditors' objections were raised at the continued Meeting of Creditors, and Debtor answered them.

Third, Debtor argues that the difference in the scheduled amount and the amount listed in the Proofs of Claim for Creditors is not a basis for objecting to plan confirmation.

Fourth, Debtor states that she closed Senior Sweet Home LLC on or about August 17, 2018, and no longer operates a day or home care. After closing the home care, Debtor's main income is from IHSS for taking care of her father. The rent paid by the other 3 residents are family members who live in the residence and contribute to the mortgage. Debtor asserts there are no leases drafted for this agreement, and it is an informal arrangement.

Fifth, Debtor did not list a license because it was not renewed pre-petition.

Sixth, the businesses operated by Debtor were listed chronologically on the Statement of Financial Affairs. Tran Sweet Home, a sole proprietorship, was operated from 2012 to 2014. Senior Sweet Home, a sole proprietorship, was operated from 2014 to 2017. Senior Sweet Home LLC was operated from 2017 to August 2018, when it was closed. These details were listed on her Statement of Financial Affairs, question 27.

Seventh, Debtor affirms that there is no other income to disclose outside of what is listed on Schedule I, and that the assertion that the plan is not feasible or not filed in good faith is unwarranted.

Eighth, the Statement of Financial Affairs and Forms 122C-1 and 122C-2 do not have discrepancies as Creditor alleges because the year-to-date gross income listed on the Statement is consistent with prior years' income.

Ninth, Debtor believes that business expenses should be deducted at line 43, and not line 5, and that either way the net income of $7,182.00 and $6,069.00 gives $1,113.00 per month. Debtor does not see a basis for disposable income of $3,918.00 because there is no business income going forward. Debtor also listed a change of income or expenses on line 46, which states "Debtor has closed business; will no longer have business income going forward."

Tenth, based on Debtor's informal agreement with her family for household expenses, Debtor does not believe the other members' contributions, such as cable, would be considered income.

Eleventh, Debtor argues that Creditor's objections to "grossly understated expenses" is

unwarranted. Debtor is on the mortgage with her brother, so her share of the total mortgage of $2,3326.00 is properly listed as $1,313.00. The utilities of $75.00 per month for a household of six people is reasonable, as is the $125.00 in vehicle expenses which accounts for Debtor's commuting and traveling expenses incurred in connection with her IHSS income to care for her father. Creditor listed a tax deduction of $97.50 at line 5a for the IHSS income, and does not understand Creditor's argument that Debtor is paying $0.00 in taxes.

Discussion

As to Creditor's argument that Debtor is not proposing her best efforts, the court notes that Debtor's Form 122C-2 lists disposable income of -$2,161.00, with changed circumstances also removing business income of $7,181.00 and business expenses of $6,079.00, giving disposable income of $3,263.00. Dkt. 1, p. 56. Debtor's plan proposes monthly payments of $82.33 based on the net income listed on Schedule J, line 23c. *Compare id.* at p. 37, and dkt. 2, section 2.01. Thus, it appears that Debtor is proposing her projected disposable income through the plan.

However, while Creditor did not present evidence in support of their allegation that the plan fails the liquidation analysis, courts must conduct an independent review of a Chapter 13 plan. *See United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367, 1380-1 (2010) (explaining that bankruptcy courts have an obligation to review a chapter 13 plan to ensure that it complies with all applicable provisions of the Bankruptcy Code). The court's review of the schedules filed shows the following non-exempt equity would be available if this case were converted to one under Chapter 7:

Type	**FMV (Sch A)**	**Secured Debt (Sch D)**	**Exemption (Sch C)**	**Non-Exempt Equity**
7401 Grenfell Court	$552,973.00	$378,000.00	$75,000.00	$99,973.00 (8% costs of sale would result in distribution of approximately $55,735.16 in a Chapter 7 liquidation)
2003 Toyota Avalon	$1,249.00	---	$1,249.00	$0.00
Household goods, electronics, and furnishing	$2,000.00	---	$2,000.00	$0.00
Women's clothing	$250.00	---	$250.00	$0.00
Jewelry	$50.00	---	$50.00	$0.00
Cash	$5.00	---	---	$5.00
Deposits of Money	$400.00	---	$300.00	$100.00
Cosmetology license	$0.00	---	---	$0.00
Total				**$55,840.16**

Dkt. 1, pp. 11-19. Despite the $55,840.16 of non-exempt equity available, the proposed plan lists $0.00 in priority unsecured claims and proposes a 0% distribution to general unsecured creditors. Dkt. 2, p. 5, Sections 3.12(c) and 3.14. Thus, the proposed plan

does not comply with 11 U.S.C. §§ 1325(a)(4).

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

All other objections are overruled.

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

20. 14-30753-B-13 MERLYN BRADY MOTION TO MODIFY PLAN
ADR-3 Justin K. Kuney 9-28-18 [63]

Final Ruling

The motion 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)(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's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, 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.

21.	18-25455-B-13 PGM-1	GWENDOLYN/HORACE SIMPSON Peter G. Macaluso	MOTION TO VALUE COLLATERAL OF CARFINANCE CAPITAL 10-14-18 [21]

Final Ruling

The court's decision is to dismiss this matter as moot, as the case was dismissed on November 6, 2018. Dkt. 30.

THE COURT WILL PREPARE A MINUTE ORDER.

22. 18-25756-B-13 DAVID SIMS
JPJ-1 Peter G. Macaluso
Thru #23

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
10-25-18 [29]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* LBR 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. LBR 9014-1(f)(2)(C). No opposition was filed.

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

Subsequent to the filing of the objection by Jan Johnson, the Chapter 13 trustee ("Trustee"), debtor David Sims ("Debtor") filed an amended plan on November 7, 2018. The confirmation hearing for the amended plan is scheduled for January 8, 2018. Dkt. 33. The earlier plan filed September 12, 2018, is not confirmed.

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

23. 18-25756-B-13 DAVID SIMS
KAZ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY BOSCO CREDIT, LLC
10-5-18 [22]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* LBR 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. LBR 9014-1(f)(2)(C). No opposition was filed.

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

Subsequent to the filing of creditor Bosco Credit, LLC's ("Creditor's") objection, debtor David Sims ("Debtor") filed an amended plan on November 7, 2018. The confirmation hearing for the amended plan is scheduled for January 8, 2018. Dkt. 33. The earlier plan filed September 12, 2018, is not confirmed.

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

24. 18-22662-B-13 RAJINDAR SINGH
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
10-25-18 [62]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* LBR 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. LBR 9014-1(f)(2)(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, debtor Rajindar Singh ("Debtor") has not provided Jan Johnson, the Chapter 13 trustee ("Trustee"), with a copy of an income tax return for the most recent tax year a return was filed. Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Second, Trustee conducted a preliminary investigation and asserts that, collectively, there is $150,502.12 in non-exempt equity that would be distributed to unsecured creditors if the case were converted to a Chapter 7. Trustee notes there are no priority unsecured creditors listed on Debtor's plan, and the proposed plan pays only 33.5% of $103,018.00 to general unsecured creditors. Thus, the plan does not comply with 11 U.S.C. § 1325(a)(4).

Third, Trustee reviewed the schedules and forms filed by Debtor upon conversion of this case from Chapter 7 to Chapter 13. Trustee notes that Debtor did not list her average monthly income for herself and her non-filing spouse on Form 122C-1, filed September 20, 2018. Based on Schedule I, where Debtor held the same job for 11 years and her non-filing spouse held the same job for the past 5 years, Trustee estimates gross monthly income of approximately $8,061.50, plus $1,300.00 of other income, for a total annual income of $112,338.00. Because this income is higher than the median family income for a household of 4, Debtor should file Forms 122C-1 and 122C-2.

Fourth, Debtor testified at the Meeting of Creditors that she did not list 4 bank accounts on her Schedule A/B, and requested pay advices for Debtor and her non-filing spouse. Debtor has not provided those pay advices, and no amended schedules have been filed. Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed September 20, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

25.	18-25566-B-13 JPJ-1	KULWINDER DHALIWAL Richard L. Sturdevant	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 10-25-18 [20]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* LBR 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. LBR 9014-1(f)(2)(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, debtor Kulwinder Dhaliwal ("Debtor") did not appear at the meeting of creditors set for October 18, 2018, as required pursuant to 11 U.S.C. § 343.

Second, 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).

Third, 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).

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

Fifth, while Jan Johnson, the Chapter 13 trustee ("Trustee"), notes that Debtor holds an interest in Norcal Deliveries, LLC, the business did not file for bankruptcy. The maximum fee that may be charged in a nonbusiness case is $4,000.00 pursuant to Local Bankruptcy Rule 2016-1. Debtor's attorney's fees of $6,000.00 exceed this amount.

The plan filed September 19, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

26. 18-25377-B-13 JPJ-2 **Thru #27**

ROSA PELAYO
Peter G. Macaluso

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
10-11-18 [21]

Tentative Ruling

The objection has been set for hearing on at least 28-days, the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). 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 as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed. The court will address the merits of the objection at the hearing.

The court's decision is to overrule the objection.

Jan Johnson, the Chapter 13 trustee ("Trustee"), objects to debtor Rosa Pelayo's ("Debtor's") use of the California exemptions without filing the spousal waiver required by California Code of Civil Procedure § 703.140(a)(2).

Debtor filed replies on October 30, 2018, and November 6 2018. Dkts. 29, 32. Debtor's supplemental reply states that the spousal waiver was filed on November 6, 2018. A review of the court's docket shows that an executed spousal waiver was filed on November 6, 2018. Dkt. 31. Thus, the Trustee's objection has been resolved.

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

27. 18-25377-B-13 PGM-2

ROSA PELAYO
Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL SERVICES, INC.
10-14-18 [24]

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 OneMain Financial Services, Inc. at $2,500.00.

Debtor Rosa Pelayo's ("Debtor's") motion to value the secured claim of OneMain Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2003 Chevrolet Suburban ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of $2,500.00 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. 4 filed by OneMain is the claim which may be the subject of the present motion. Creditor's Proof of Claim contains the same replacement value and balance owed as Debtor's motion and supporting evidence. *Compare* dkt. 26, ¶ 8, *and* POC 4, part 0, p. 2.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred August 19, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $4,644.57. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. Because Debtor's submitted evidence and Creditor's Proof of Claim provide the same value, the Creditor's secured claim is determined to be in the amount of $2,500.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

28. 14-23378-B-13 CHRISTINE KELLERMANN
18-2019 DWE-1
KELLERMANN V. CITIFINANCIAL SERVICING LLC. ET AL

MOTION TO DISMISS ADVERSARY PROCEEDING
10-15-18 [49]

Final Ruling

This matter is dismissed as moot, as the court entered an order dismissing the adversary proceeding on November 6, 2018. Dkt. 61.

THE COURT WILL PREPARE A MINUTE ORDER.

29. 18-23887-B-13 TIMOTHY NEHER MOTION TO CONFIRM PLAN
TLN-16 Pro Se 10-9-18 [162]
DEBTOR DISMISSED: 10/10/2018

Final Ruling

The court's decision is to deny this matter as moot, as the case was dismissed on October 10, 2018. Dkt. 174.

THE COURT WILL PREPARE A MINUTE ORDER.

30. 18-26693-B-13 ANTHONY SIPPIO MOTION TO EXTEND AUTOMATIC STAY
LBG-1 Lucas B. Garcia 10-25-18 [8]

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 deny the motion to extend automatic stay without prejudice.

Debtor Anthony Sippio ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) 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 26, 2018, due to Debtor's failure to propose a confirmable plan after three separate extensions on the confirmation deadline. Case no. 17-27707, dkts. 103, 104. 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.

Discussion

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 (1) a debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse, or (2) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. § 362(c)(3)(C)(i)(I), (III). 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).

Prior Bankruptcies

As an initial matter, the court notes that this is Debtor's fourth bankruptcy in the past four years, with three petitions filed in less than two years. The three prior cases were dismissed for the following reasons:

Case Number	Petition Filing Date	Date Dismissed	Reason for Dismissal	Docket Citations
15-26854	August 31, 2015	April 20, 2017	Debtor's ex parte motion pursuant to 11 U.S.C. § 1307(b). This was filed after Trustee's motion to dismiss when Debtor became delinquent.	111, 115

17-24007	June 15, 2017	September 7, 2017	Trustee's motion to dismiss after Debtor became delinquent.	56, 58
17-27707	November 24, 2017	August 26, 2018	Debtor became delinquent and failed to file a confirmable plan, despite three confirmation deadline extensions.	100, 103

Debtor's Declaration

Debtor asserts that the previous plan failed because he had a recurrence of his congestive heart failure, and he was not paid for time off because he already exhausted his vacation and sick pay. Debtor believes he is mostly stable now, and wants to preserve his family residence and marriage. Dkt. 10, ¶¶ 4, 5.

Debtor's declaration is not sufficient to rebut the presumption of bad faith by clear and convincing evidence under the facts of this case and the prior cases for the court to extend the automatic stay. Debtor did not present sufficient evidence that his income, or medical condition, have stabilized to allow him to stay current on plan payments moving forward. According to the filed Schedule I, Debtor is in the same occupation that he has held for the past 12 years which, when compared to Debtor's declaration, suggests that Debtor has few, if any, vacation and sick days in case Debtor has a relapse from the same medical condition in the future. *Compare* dkt. 1, p. 29, *and* dkt. 10, ¶ 5(b).

THE COURT WILL PREPARE A MINUTE ORDER.

31. 18-25595-B-13 JPJ-1 — STEVEN/SHARON COLLINS — Peter G. Macaluso — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON — 10-25-18 [30]

Tentative Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* LBR 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. LBR 9014-1(f)(2)(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, debtors Steven and Sharon Collins ("Debtors") have not provided Jan Johnson, the Chapter 13 trustee ("Trustee"), with a copy of their federal tax return for 2015 and state tax returns for 2014 through 2017 because they had not been filed when Debtors testified at the Meeting of Creditors. Trustee notes that he continued the meeting until November 29, 2018, to give Debtors time to file those returns and provide copies. Without providing those returns, Debtors have not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Second, Mr. Collins has not provided proof of his social security number to Trustee. Mr. Collins has not complied with Federal Rule of Bankruptcy Procedure 4002(b)(1)(B) and 11 U.S.C. § 521(a)(3).

Third, the proposed plan included nonstandard provisions that state "Debtor shall remit contractual mortgage payments to the Class 1 mortgage creditors. These payments will be considered adequate protection payments while loan modifications are being pursued. Debtor shall generate two (2) loan modification applications to resolve all arrears." Trustee notes that a contractual mortgage payment is not the same as an adequate protection payment, which leads to confusion on whether the Wells Fargo Bank debts were mis-classified as Class 1. The Debtors shall make contractual mortgage payments - and not adequate protection payments. Otherwise, as this court routinely (and uniformly) holds, the plan will be deemed unconfirmable as a matter of law inasmuch as this court does not (and will not) confirm a plan that alters a monthly contractual mortgage payment on a debtor's principal residence without the lender's express consent or final approval of a loan modification. Thus, the plan does not comply with 11 U.S.C. §§ 1322(b)(2) and 1325(a)(1).

Fourth, the plan does not state when the loan modifications will be completed, nor does it state an arrears dividend on either Wells Fargo Bank debt. Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. §§ 1325(a)(6).

Fifth, feasibility of the plan depends on the granting of a motion to value collateral of the Internal Revenue Service. However, a review of the court's docket shows that Debtors have filed, served, and set for hearing a valuation motion to be heard on December 4, 2018. Dkt. 34. Until a motion to value is granted, the plan does not comply with Local Bankruptcy Rule 3015-1(i).

Sixth, Trustee notes that Section 3.05 of the plan shows attorney's fees of $5,000.00 paid through the plan, of which $1,000.00 was paid prior to filing the case. However, the Disclosure of Compensation of Attorney for Debtors and the Rights and Responsibilities state that Debtors' counsel agreed to accept $4,000.00 with $1,000.00 received prior to filing. Trustee asserts this is further evidence that Debtors have not proposed a feasible plan as required by 11 U.S.C. §§ 1325(a)(6).

Seventh, Trustee requested that Debtors file an attachment to Schedule I for gross income and expenses of Debtors' business, a profit and loss statement from June through September 2018, and complete copies of their 2016 and 2017 federal tax returns. A review of the court's docket shows that the business income and expense attachment was filed on November 2, 2018. Dkt. 42. However, because Debtors have not provided complete copies of the tax returns and profit and loss statements to Trustee, Debtors

failed to comply with 11 U.S.C. § 521(a)(3).

The plan filed September 4, 2018, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

32. 18-26397-B-13 ALLISON HUNTER MOTION FOR CONTEMPT
RK-1 Richard Kwun 10-30-18 [21]

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 deny the motion without prejudice.

Debtor's Motion

Debtor Allison Hunter ("Debtor") asks the court to award actual and punitive damages against County of Solano ("County") for various acts that violate the automatic stay.

On October 9, 2018, a proposed Abatement Warrant was approved by the honorable Wendy Getty of the Solano County Superior Court. On October 10, 2018, Debtor filed a petition for Chapter 13 relief. Dkt. 1. On October 11, 2018, unidentified individuals "forcibly entered the debtor's residence with the knowledge that she had filed for relief under 11 USC Ch. 7 [sic]." Dkt. 21, ¶¶ 2-4.

Debtor asserts that the "City of Vacaville officials and counsel knew because Deputy City Attorney Andria Borba was directly and verbally informed by counsel on 10/11/2018." *Id.* at ¶ 5. The only evidence Debtor presented that a third party had knowledge of the bankruptcy filing is the declaration of Mr. Richard Kwun, Debtor's counsel, which states:

> On 10/11/2018, I informed Deputy Attorney of the **City of Vacaville** that Allison M. Hunter was my client and that she filed for Ch. 13.

Dkt. 24, ¶ 3 (emphasis added).

County's Opposition

Counsel for County filed an opposition on November 8, 2018. Dkt. 30. In it, County defends the actions of itself and the City of Vacaville ("City") in executing the search warrant, seizing the 32 cats, and sending a letter to collect the balance owed for sheltering the cats. County cites various subsections of California Penal Code § 597.1 as authority for its actions, and asserts three grounds to deny the motion.

First, the actions taken of executing the search warrant and seizing the 32 cats are exempt from the automatic stay under 11 U.S.C. § 362(b)(1) and (4).

County cites to 11 U.S.C. § 362(b)(1), and argues that the search warrant, seizure of the cats due to serious welfare concerns, and the letter to collect shelter costs are all mandatory components of a criminal action or proceeding, and these are exercises of state police powers that should not be disturbed in bankruptcy proceedings. *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074 (9th Cir. 2000).

Alternatively, County relies on 11 U.S.C. § 362(b)(4), in that the actions taken were "the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's . . . police and regulatory power[.]" County believes its enforcement of California Penal Code § 597.1 is strictly within the "public safety and welfare" and "public policy test" exceptions addressed by the Ninth Circuit case *In re Universal Life Church*, 128 F.3d 1294, 1297 (9th Cir. 1997).

Second, the County did not willfully or knowingly violate the automatic stay. County argues that it was completely ignorant of the bankruptcy filing when it sent the letter

to Debtor. County is silent as to the actions preceding the letter. Dkt. 30, p. 5.

Finally, Debtor is not entitled to the relief requested because City obtained the search warrant and seized the cats, not County. County asserts that it merely held the cats in its animal shelter consistent with a long-standing agreement with City, and thus Debtor's request for the return of the cats and for actual damages should be directed at City, not County. County argues that the proper relief for sending the letter is an order declaring the action taken void, rather than actual and punitive damages.

Discussion

The filing of a bankruptcy petition creates an automatic stay. *See* 11 U.S.C. § 362(a). Unless an exception enumerated in § 362(b)(1)-(28) applies, the automatic stay prohibits, among other things, "the commencement or continuation, including the issuance or employment of process, of a judicial . . . proceeding against the debtor that was or could have been commenced before the commencement of the case . . . to recover a claim against the debtor that arose before the commencement of the case[,]" 11 U.S.C. § 362(a)(1), and "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title[.]" 11 U.S.C. § 362(a)(6).

The "[movants] ha[ve] the burden of proof under § 362(k), which requires a showing (1) by an individual debtor of (2) injury from (3) a willful (4) violation of the stay." *Harris v. Johnson (In re Harris)*, 2011 WL 3300716, at *4 (B.A.P. 9th Cir. 2011) (citing *Fernandez v. G.E. Capital Mortg. Servs. (In re Fernandez)*, 227 B.R. 174, 180 (B.A.P. 9th Cir. 1998)). A violation of the automatic stay is willful when the creditor knows of the automatic stay and intentionally performs the action violating the stay. *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1215 (9th Cir. 2002).

Focusing on the determinative element of willfulness, the court and finds that Debtor failed to prove a willful violation of the automatic stay by County because Debtor did present evidence showing that County had knowledge of the bankruptcy case when it sent the letter to Debtor. Debtor presented evidence of a communication with a representative of City, not County. Dkt. 24, ¶ 3. A review of the petition mailing list shows that notice was sent to City of Vacaville, c/o Melinda Christine Heusser Stewart, Vacaville, CA 95688-6908. County was not listed in the Debtor's petition or in the Verification of Master Address List. Dkt. 1, p. 8, and dkt. 5. In sum, Debtor did not submit evidence of County's knowledge of the stay, which is a necessary component of willfulness. Absent a willful violation, the court will award no damages.

But even if the County had knowledge of the bankruptcy filing, there still would be no § 362(a) violation. That is because the County's action is exempted from the automatic stay of § 362(a) by § 362(b)(4) which exempts,

> under paragraph (1), (2), (3), or (6) of subsection (a) of [§ 362(a)], of the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power[.]

11 U.S.C. § 362(b)(4).

The County is a municipality under § 101(40), *see In re County of Orange*, 183 B.R. 594, 600 (Bankr. C.D. Cal. 1995), making it a governmental unit under § 101(27), *In re Polk*, 2012 WL 8123378, *4 (Bankr. E.D. Cal. 2012), for purposes of § 362(b)(4).

The Debtor and her attorney acknowledge that the County's seizure of the Debtor's 32 cats is an "abatement" action. *See* dkts. 23 at ¶ 5, 21 at ¶ 6. That characterization

is accurate.

Although not produced, the Debtor acknowledges (and the County confirms) that the County seized the Debtor's 32 cats pursuant to a judicial abatement warrant. That warrant was obtained to permit the investigation of potential criminal violations of the Vacaville Municipal Code and the California Penal Code regarding the Debtor's improper care of animals. That makes the County's action taken pursuant to the abatement warrant an action to protect the health and safety of the community and its animals and, thus, an action by a governmental unit exercising its police and regulatory powers. In other words, the County is acting to effectuate its public policy regarding the care of animals within its jurisdiction and not to adjudicate private rights. Under those circumstances, the County's action is exempted from §§ 362(a)(1), (2), (3), and (6) by § 362(b)(4).

The court is aware that the County's action includes a claim against the Debtor for abatement costs. However, the demand for payment from the Debtor for the cost of the cats' shelter care, *i.e.*, monetary relief associated with the County's abatement action, does not remove the County's action from the § 362(b)(4) exemption. *Universal Life Church, Inc. v. U.S. (In re Universal Life Church, Inc.)*, 128 F.3d 1294, 1298-99 (9th Cir. 1997); *see also U.S. v. Federal Resource Corp.*, 525 B.R. 759, 767 (Bankr. D. Idaho 2015). The County's assessment and demand for payment of costs is not solely for the benefit of any discrete and identifiable individual but, rather, is to effectuate the County's public policy regarding proper animal care. *See* Cal. Penal Code § 597.1(h); *see also Universal Life Church*, 128 F.3d at 1299.

For the foregoing reasons, the Debtor's motion for contempt is denied.

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