UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

January 23, 2018 at 1:00 p.m.

1.	17-27902-B-13 RJ-2	ROSEMARY SIMMONS Richard L. Jare	AMENDED MOTION TO IMPOSE AUTOMATIC STAY 1-6-18 [46]

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

The court's decision is to deny with prejudice the motion to impose automatic stay.

The court entered an order (dkts. 49, 50) denying with prejudice Debtor's motion to impose automatic stay filed December 26, 2017. As such, this amended motion to impose automatic stay is denied with prejudice.

The court will enter an appropriate minute order.

2. 17-27203-B-13 SETH/SHARLA MAXEY MOTION TO CONFIRM PLAN
EJS-2 Eric John Schwab 12-11-17 [29]

Final Ruling: No appearance at the January 23, 2018, hearing is required.

The Motion to Confirm Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on November 28, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

3. 17-27303-B-13 JAMES SEIBERT MOTION TO DISMISS CASE
PLC-2 Peter L . Cianchetta 1-8-18 [35]

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

The matter will be determined at the scheduled hearing.

Responses have been filed by creditor and Debtor's spouse Dana L. Miller, creditor and Debtor's brother Robert Seibert, Jr., and Chapter 13 Trustee David Cusick.

Ms. Miller supports dismissal of the current cases provided that Debtor is barred from re-filing any other bankruptcy petition for a minimum 1-year period and all claims by Miller related to the dissolution of marriage action pending in Sacramento Country Superior Court are deemed non-dischargeable in any future bankruptcy filed by Debtor. Mr. Seibert also agrees with the dismissal of the current case and is unopposed to any restrictions the court may impose on any future bankruptcy cases initiated by the Debtor. Both Ms. Miller and Mr. Seibert have pending adversary proceedings before the Honorable Ronald Sargis.

The Trustee raises various concerns. First, the Debtor requests dismissal without analyzing the best interest of the creditors pursuant to the court's order. Dkt. 32. Second, Ms. Miller does not explain how her conditions for dismissal can be sought without an adversary proceeding as to dischargability and an injunction. Fed. R. Bankr. P. 7001(6), (7). Third, conversion may be in the best interest of creditors because if all real properties are liquidated based on the Debtor's values, $740,000.00 in proceeds will be generated, which would satisfy Ditech, the Internal Revenue Service, and leave additional proceeds. Although the Debtor has claimed a homestead exemption of $75,000.00, even if it is allowed, only $69,353.94 in equity exists in the Oak Creek property, leaving $40,000.00 in non-exempt equity.

The matter will be determined at the scheduled hearing.

4. 17-27707-B-13 ANTHONY SIPPIO — MOTION TO VALUE COLLATERAL OF
LBG-2 Lucas B. Garcia — KEY BANK, N.A.
Thru #5 — 12-26-17 [25]
See Also #34-35

Final Ruling: No appearance at the January 23, 2018, hearing is required.

The Motion to Value Secured Claim of Key Bank, N.A. has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Key Bank, N.A. at $0.00.

Debtor's motion to value the secured claim of Key Bank, N.A. ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 8472 Winterberry Drive, Elk Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of $442,689.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

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

Discussion

The first deed of trust of Wells Fargo Home Mortgage secures a claim with a balance of approximately $494,240.00. A second deed of trust of Wells Fargo Bank secures a claim with a balance of approximately $84,565.00. Creditor's third deed of trust secures a claim with a balance of approximately $46,470.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

The court will enter an appropriate minute order.

5.	17-27707-B-13 LBG-3	ANTHONY SIPPIO Lucas B. Garcia	MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 12-26-17 [30]

Final Ruling: No appearance at the January 23, 2018, hearing is required.

The Motion to Value Secured Claim of Key Bank, N.A. has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Wells Fargo Bank, N.A. at $0.00.

Debtor's motion to value the secured claim of Wells Fargo Bank, N.A. ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 8472 Winterberry Drive, Elk Grove, California ("Property"). Debtor seeks to value the Property at a fair market value of $442,689.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2-1 filed by Wells Fargo Bank, N.A. is the claim which may be the subject of the present motion.

Discussion

The first deed of trust of Wells Fargo Home Mortgage secures a claim with a balance of approximately $494,240.00. Creditor's second deed of trust secures a claim with a balance of approximately $84,565.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

The court will enter an appropriate minute order.

6. 18-20012-B-13 FLORA NANCA — MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso — 1-8-18 [8]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on March 23, 2017, due to failure to confirm a modified plan within 60 days (case no. 15-25105, dkt. 119). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor assert that the case was filed in order to cure pre-petition arrears owed on a rental property. Debtor states that this case differs from the prior case because in the last case her board and care business was closed and renters were few. Debtor asserts that she now earns enough money from having eight renters and Social Security to cover all necessary obligations and to fund the proposed Chapter 13 plan.

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

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

The court will enter an appropriate minute order.

7. 17-24418-B-13 CARLOS/KELLY SMITH — MOTION TO CONFIRM PLAN
MCN-3 William F. McLaughlin — 12-9-17 [53]

Tentative Ruling: The Motion to Confirm Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $13,400.00, which represents approximately 1.98 plan payments. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan cannot be effectively administered because the Debtors have mis-classified the Internal Revenue Service as a Class 1 claim. Class 1 includes all delinquent secured claims that mature after the completion of the plan. Based on Claim No. 1 filed by the Internal Revenue Service on August 17, 2017, this creditor does not fit this classification. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Although Debtors assert that they have filed a second amended plan that addresses the Trustee's concerns, there appears to only be a first amended plan filed with the court on November 14, 2017. Any plan must be filed as an amended plan and not as an exhibit.

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

The court will enter an appropriate minute order.

8. 17-26618-B-13 NANETTE CUSTADO MOTION TO CONFIRM PLAN
JMC-1 Joseph M. Canning 12-8-17 [27]

Tentative Ruling: The Motion to Confirm Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

First, although the Debtor filed an amended plan on December 8, 2017, the Debtor failed to utilize the mandatory form plan required pursuant to Local Bankr. R. 3015-1(a) and General Order 17-03, Official Local Form EDC 3-080, the standard form Chapter 13 Plan effective December 1, 2017.

Second, the plan payment in the amount of $653.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $708.50. The plan does not comply with Section 5.2 of the December 1, 2017, mandatory form plan.

The Debtor filed a response stating that it will file an amended plan. No amended plan has yet been filed.

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

The court will enter an appropriate minute order.

9. 17-20020-B-13 BRENDA PEARL
ASW-1 Pro Se
Thru #10
WELLS FARGO BANK, N.A. VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
12-22-17 [82]

Tentative Ruling: The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

The matter will be determined at the scheduled hearing.

Wells Fargo Bank, National Association ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 7598 MacFinley Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Travis Blanchard to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Blanchard Declaration states that there are 9 post-petition defaults from February 1, 2017, through October 1, 2017, with a total of $6,856.25 in post-petition payments past due. The Declaration also states that there exists a pre-petition default of $7,454.86

The Chapter 13 Trustee filed a response stating that the post-petition shortage was due to confusion between the way Select Portfolio Services, Inc. was listed on Schedule D and in the plan as a single debt/mortgage on the Property. The Trustee had been making payments to Select Portfolio Services, Inc. for a second mortgage thinking that it was the first mortgage. Trustee later learned that Select Portfolio Services, Inc. was the servicing agent for both Wells Fargo Bank, N.A. (first mortgage) and Venture Works, LLC (second mortgage). The Trustee has since been working with Select Portfolio Servicing Inc. (Venture Works, LLC) to retrieve the funds.

The matter will be determined at the scheduled hearing.

10. 17-20020-B-13 BRENDA PEARL
MRG-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY
1-5-18 [88]

VENTURE WORKS, LLC VS.

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

The matter will be determined at the scheduled hearing.

Venture Works, LLC ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 7598 MacFinley Way, Sacramento, California (the "Property"). Movant has provided the Declaration of Nick Hawryluk to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

Movant had filed for relief from stay on March 30, 2017, asserting that the Debtor was in default on 2 post-petition payments and 2 late fees for a total of $2,421.16. Movant states that on April 18, 2017, the court denied Movant's request for relief from stay because Movant would receive post-petition monthly mortgage payments through the Chapter 13 plan and there was a 43.27% equity cushion. However, a review of the court's docket shows that this is incorrect. The motion was dismissed without prejudice after Movant withdrew its motion on the record in open court. *See* dkts. 61, 63.

On May 17, 2017, Select Portfolio Servicing, Inc., servicer for Wells Fargo Bank, National Association, filed Claim No. 7. The claim was subsequently amended on December 1, 2017.

Movant contends that with this additional interest against the property, there is no equity cushion to provide Movant with adequate protection. Movant states that the total of all liens encumbering the Property is no less than $322,911.00 and that the value of the property as listed in Schedule A is $260,000.00.

Additionally, Movant states that it has returned all funds received from the Chapter 13 Trustee that were mistakenly paid to Movant. *See also* Item #10. After the return of funds to the Trustee, Movant asserts that there are now 10 post-petition defaults, 10 late fees, and incurred attorney's fees and costs, with a total of $7,972.00 in post-petition payments past due.

The matter will be determined at the scheduled hearing.

11. 17-27526-B-13 HIAWATHA HUSBAND — MOTION TO VALUE COLLATERAL OF
PGM-1 Peter G. Macaluso — CAPITAL ONE AUTO FINANCE
See Also #36-37 — 12-22-17 [32]

Tentative Ruling: The Motion to Value Collateral of Capital One Auto Finance has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to value the secured claim of Capital One Auto Finance at $11,000.00.

Debtor's motion to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Infiniti M37 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $11,000.00 as of the petition filing date. This is based on mileage of approximately 75,000 and various items that are damaged or broken in the Vehicle. *See* dkt. 34. 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 Capital One Auto Fiancé, c/o AIS Portfolio Services, LP is the claim which may be the subject of the present motion.

Opposition

Creditor has filed an opposition asserting a valuation of $15,375.00 based on the NADA Used Car Guide. *See* dkt. 44. The valuation provides an adjustment for mileage in the amount of 92,500 and does not account for the Vehicle's particular condition.

Discussion

The value offered by the Creditor, $15,375.00, is based on a "clean" retail evaluation by NADA Used Car Guide, a commonly used market guide. This valuation presumes, as the adjective "clean" suggests, that the car has "no mechanical defects and passes all necessary inspections with ease; paint, body and wheels have minor surface scratching with a high gloss finish; interior reflects minimal soiling and wear, with all equipment in complete working order; vehicle has a clean title history. Because individual vehicle condition varies greatly, users may need to make independent adjustments for actual vehicle condition." Cf. http://www.nadaguides.com.

The clean retail value suggested by the Creditor cannot be relied upon by the court to establish the Vehicle's replacement value. First, this value assumes that the Vehicle is in excellent condition. This is not the case according to the Declaration of Hiawatha Husband, which states that the Vehicle has a service engine light on, the electronic dash gauges do not work, there is leaking fluid from the engine, the brakes squeak, both fenders are dented, and the front bumper is falling off. Second, Creditor utilizes a mileage of 92,500 to reach its valuation, but this is not the mileage according to the Declaration of Hiawatha Husband.

The court can accept a debtor's lay opinion of the value of his or her property and, in the absence of evidence to the contrary, may even accept a debtor's opinion of value as conclusive. *In re Enewally*, 368 F.3d 1165, 1173 (9th Cir. 2004). Because the court does not rely on the Creditor's valuation, the court will accept the Debtor's opinion of value as conclusive.

The lien on the Vehicle's title secures a purchase-money loan incurred in April 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 $22,077.05. 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 $11,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

12. 17-27942-B-13 JOSEPH REIFER
SMR-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
1-8-18 [23]

SKYWAY INVESTMENTS, LLC VS.

CASE DISMISSED 1/10/18

Final Ruling: No appearance at the January 23, 2018, hearing is required.

The motion for relief from automatic stay and from the codebtor stay are dismissed as moot. The case was dismissed on January 10, 2018.

The court will enter an appropriate minute order.

13. 18-20052-B-13 WANDA MOORE MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso 1-8-18 [8]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on July 28, 2017, due to delinquency in plan payments (case no. 16-22863, dkts. 95, 98). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor asserts that her case was filed in order to cure pre-petition arrears owed on her primary residence. Debtor states that her previous case failed due to her daughter's medical illness and hospital stay, income reduction from the end of child support, rental vacancy, and the death of her grandson. Debtor contends that her circumstances have changed because she has adjusted her household budget based on her current financial status. Debtor receives pension income, rental income, and contributions from her son. Debtor asserts that she is earning enough money to cover all necessary expenses and to fund the proposed Chapter 13 plan.

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

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

The court will enter an appropriate minute order.

14. 17-28162-B-13 DAVID BOUNSAVANG
MRL-1 Mikalah R. Liviakis

MOTION TO VALUE COLLATERAL OF THE GOLDEN ONE CREDIT UNION
12-21-17 [8]

Final Ruling: No appearance at the January 23, 2018, hearing is required.

The Motion to Value 2012 Honda Pilot Collateral of the Golden One Credit Union has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Golden One Credit Union at $17,000.00.

Debtor's motion to value the secured claim of Golden One Credit Union ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Honda Pilot Touring 4WD ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $17,000.00 as of the petition filing date. This is based on the Vehicle's fair condition, standard options, and mileage of 153,000. 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 Golden 1 Credit Union is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on February 15, 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 $21,000.00. 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 $17,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

15. 17-26564-B-13 WESLEY/LAURIE PAMPLONA MOTION TO CONFIRM PLAN
FF-2 Gary Ray Fraley 12-11-17 [34]

Tentative Ruling: The Motion to Confirm Amended Chapter 13 Plan Dated December 11, 2017, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan understates the amount of pre-petition arrears owed to Wells Fargo Bank, N.A. in Class 1 at $24,182.32. The proof of claim shows pre-petition arrears of $30,241.85. The plan will take approximately 81 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Second, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $4,786.50, which represents approximately 2 plan payments. The Debtors have not made any plan payments to the Trustee since the petition was filed on October 2, 2017. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

Fourth, the Debtors have not accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. Specifically, the Debtor's petition states that a previous case was filed on July 12, 2015, but the court's electronic record (PACER) indicates that the previous case was filed on June 24, 2015. The Debtors have not complied with the duty imposed by 11 U.S.C. § 521(a)(1).

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

The court will enter an appropriate minute order.

16. 17-24765-B-13 KEVIN/KIMBERLEY LEWIS — MOTION TO CONFIRM PLAN
FF-3 Gary Ray Fraley — 12-11-17 [66]
Thru #17

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan Dated December 8, 2017, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

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

Second, the plan payments in the amount of $4,092.00 for months 1 and 2, $4,091.47 for months 3 and 4, and $4,157.00 for 56 months do not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $4,202.82. The plan does not comply with Section 5.2 of the mandatory form plan.

Third, feasibility of the plan cannot be assessed since the Debtors may not have proposed the plan in good faith. Specifically, Debtors and the Trustee stipulated that the Debtors are not entitled to a discharge in this case. *See* dkts. 55, 56. However, Section 7.03 of the plan states that "upon the Debtor's obtaining a discharge in this case, the claim of United Bank . . . is satisfied and Debtors will be entitled to reconveyance of the subject deed of trust." A discharge may not be necessary to effectuate the reconveyance as the Debtors propose, but the current language in the plan is in contradiction to the stipulation.

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

The court will enter an appropriate minute order.

17. 17-24765-B-13 KEVIN/KIMBERLEY LEWIS — OBJECTION TO CONFIRMATION OF PLAN BY FORD MOTOR CREDIT COMPANY, LLC
JHW-1 Gary Ray Fraley — 1-2-18 [76]

Tentative Ruling: The Objection to Confirmation of the Chapter 13 Plan was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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 not confirm the first amended plan.

Objecting creditor Ford Motor Credit Company, LLC holds a claim secured by a 2015 Ford Fiesta ("Vehicle"). The creditor has filed a timely proof of claim, Claim No. 6. The collateral is listed in Debtors' schedules, but the Creditor's claim is not provided

for in the plan. Schedules A/B, C, and D read in conjunction with Schedule H state that Codebtor is on title as co-signor but that the property is held for her son Cody A. Lewis, who makes monthly payments.

Creditor requests that the Vehicle be paid directly by the Debtors or a third party, and that the plan be amended to provide for its claim in Class 4 of the plan.

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

The court will enter an appropriate minute order.

18. 17-27572-B-13 JOHN WHITE
DJC-1 Diana J. Cavanaugh
Thru #23

MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB
1-1-18 [23]

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

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

This is a request for an order avoiding the judicial lien of American Express Bank, FSB ("Creditor") against the Debtor's property commonly known as 616 E. N. Street, Benicia, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $16,977.01. An abstract of judgment was recorded with Solano County on December 12, 2012, which encumbers the Property. The first and second mortgages against the Property total $527,243.24.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $683,693.00 as of the date of the petition. After deducting the forgoing liens from the gross value of the Property, Debtor's equity in the residence is $156,449.76.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000.00 on Schedule C. Debtor's basis for claiming this exemption is that he is over 65 years old.

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

The court will enter an appropriate minute order.

19. 17-27572-B-13 JOHN WHITE
DJC-2 Diana J. Cavanaugh

MOTION TO AVOID LIEN OF AMERICAN EXPRESS CENTURION BANK
1-1-18 [31]

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

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

This is a request for an order avoiding the judicial lien of American Express Centurion Bank ("Creditor") against the Debtor's property commonly known as 616 E. N. Street, Benicia, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $25,558.58. An abstract of judgment was recorded with Solano County on January 25, 2013, which encumbers the Property. The first and second mortgages against the Property total $527,243.24.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $683,693.00 as of the date of the petition. After deducting the forgoing liens from the gross value of the Property, Debtor's equity in the residence is $156,449.76.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000.00 on Schedule C. Debtor's basis for claiming this exemption is that he is over 65 years old.

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

The court will enter an appropriate minute order.

20. 17-27572-B-13 JOHN WHITE — MOTION TO AVOID LIEN OF AMERICAN EXPRESS BANK, FSB
DJC-3 Diana J. Cavanaugh — 1-2-18 [39]

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

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

This is a request for an order avoiding the judicial lien of American Express Bank, FSB ("Creditor") against the Debtor's property commonly known as 616 E. N. Street, Benicia, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $5,876.99. An abstract of judgment was recorded with Solano County on March 18, 2013, which encumbers the Property. The first and second mortgages against the Property total $527,243.24.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $683,693.00 as of the date of the petition. After deducting the forgoing liens from the gross value of the Property, Debtor's equity in the residence is $156,449.76.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000.00 on Schedule C. Debtor's basis for claiming this exemption is that he is over 65 years old.

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

The court will enter an appropriate minute order.

21. 17-27572-B-13 JOHN WHITE
DJC-4 Diana J. Cavanaugh

MOTION TO AVOID LIEN OF AMERICAN EXPRESS CENTURION BANK
1-2-18 [47]

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

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

This is a request for an order avoiding the judicial lien of American Express Centurion Bank ("Creditor") against the Debtor's property commonly known as 616 E. N. Street, Benicia, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $14,113.62. An abstract of judgment was recorded with Solano County on March 26, 2013, which encumbers the Property. The first and second mortgages against the Property total $527,243.24.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $683,693.00 as of the date of the petition. After deducting the forgoing liens from the gross value of the Property, Debtor's equity in the residence is $156,449.76.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000.00 on Schedule C. Debtor's basis for claiming this exemption is that he is over 65 years old.

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

The court will enter an appropriate minute order.

22. 17-27572-B-13 JOHN WHITE
DJC-5 Diana J. Cavanaugh

MOTION TO AVOID LIEN OF NEGHERBON CAPITAL MANAGEMENT, LLC
1-6-18 [59]

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

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

This is a request for an order avoiding the judicial lien of Negherbon Capital Management, LLC ("Creditor") against the Debtor's property commonly known as 616 E. N. Street, Benicia, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $46,061.15. An abstract of judgment was recorded with Solano County on July 7, 2015, which encumbers the Property. The first and second mortgages against the Property total $527,243.24.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $683,693.00 as of the date of the petition. After deducting the forgoing liens from the gross value of the Property, Debtor's equity in the residence is $156,449.76.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000.00 on Schedule C. Debtor's basis for claiming this exemption is that he is over 65 years old.

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

The court will enter an appropriate minute order.

23. 17-27572-B-13 DJC-6 — JOHN WHITE, Diana J. Cavanaugh — MOTION TO AVOID LIEN OF 1357 N. MAIN STREET, LLC, 1-6-18 [67]

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

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

This is a request for an order avoiding the judicial lien of 1357 N. Main Street, LLC ("Creditor") against the Debtor's property commonly known as 616 E. N. Street, Benicia, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $104,647.81. An abstract of judgment was recorded with Solano County on February 11, 2016, which encumbers the Property. The first and second mortgages against the Property total $527,243.24.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $683,693.00 as of the date of the petition. After deducting the forgoing liens from the gross value of the Property, Debtor's equity in the residence is $156,449.76.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000.00 on Schedule C. Debtor's basis for claiming this exemption is that he is over 65 years old.

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

The court will enter an appropriate minute order.

24. 17-26573-B-13 FRANCESCA PENROSE MOTION TO CONFIRM PLAN
DPR-2 David P. Ritzinger 12-12-17 [36]

Tentative Ruling: The Motion to Confirm the Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 having been filed, the court will address the merits of the motion at the hearing.

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

First, the Debtor has not served upon the Trustee a Class 1 Checklist and Authorization to Release Information. This problem was also raised and sustained on December 12, 2017. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $1,590.00, which represents approximately .22 plan payments. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Trustee requested at the meeting of creditors and in an objection to confirmation of plan that the Debtor provide the written declarations from her sisters and brother regarding their ability and willingness to contribute to the Debtor over the life of her plan. Written declarations were filed on January 15, 2018, by Debtor's sisters and brother stating their ability and willingness to contribute to the Debtor over the life of her plan.

Nonetheless, for the first and second reasons stated above, the amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

25. 13-35778-B-13 FRANK/JOSIE OLIVAS
WW-4 Mark A. Wolff

OBJECTION TO DEUTSCHE BANK NATIONAL TRUST COMPANY'S RESPONSE TO NOTICE OF FINAL CURE
12-6-17 [53]

Tentative Ruling: The Debtors' Objection to Deutsche Bank National Trust company's Response to Notice of Final Cure 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 having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to continue the matter to February 20, 2018, at 1:00 p.m. to provide Debtors and Deutsche Bank National Trust Company additional time to work toward a resolution as requested by creditor.

The court will enter an appropriate minute order.

26. 17-24479-B-13 TERRY SMITH
PGM-1 Peter G. Macaluso

OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES
12-6-17 [32]

Final Ruling: No appearance at the January 23, 2018, hearing is required.

Debtor's Objection to Notice of Post-Petition Mortgage Fees, Expenses and Charges, Filed November 16, 2017, by Deutsche Bank National Trust Company as Trustee for Indymac Indx Mortgage Loan Trust 2005-AR2, Mortgage Pass-Through Certificates Series 2005-AR2 and Request for Attorney Fees in Defense Thereof 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. 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 sustain in part and overrule in part the objection.

Debtor objects to the Notice of Postpetition Mortgage Fees, Expenses, and Charges filed by Deutsche Bank ("Creditor") on November 16, 2017 in the amount of $900.00 for review of plan and notice of appearance, proof of claim, and payment history review. Dkt. 34, pp. 49-50. Debtor asserts that the fees are unreasonable since there is no statement of billing hours by counsel. Additionally, Debtor states that it is entitled to attorney's fees under California Code of Civil Procedure § 1717.

No response has been filed by the Creditor.

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

The court has reviewed the Notice of Mortgage Payment Change filed November 16, 2017, filed by Creditor. There is no evidence as to the billing rate or reasonableness of the fees incurred for the review of plan and payment history. The court finds no explanation as to how the Creditor computed its proof of claim fee. Therefore, the objection is sustained.

Additionally, although the Debtor requests attorney's fees under California Code of Civil Procedure § 1717 and provides a billing statement (dkt. 34, p. 53), the Debtor has not carried its burden of proving the attorney's fees requested are reasonable. *In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); see also *In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012) (citations omitted). Therefore, the request for attorney's fees is denied without prejudice.

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

The court will enter an appropriate minute order.

27. 17-28379-B-13 JAMES STRAIN MOTION TO EXTEND AUTOMATIC STAY
MJD-1 Matthew J. DeCaminada 1-5-18 [10]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on September 6, 2017, for failure to make plan payments (case no. 17-28379, dkt. 62). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). This court does not utilize the *Sarafoglou* factors as urged by the Debtor. *See In Re Sarafoglou*, 345 B.R. 19 (Bankr. D. Mass. 2006).

The Debtor asserts that his case was filed in order to cure pre-petition arrears owed on his mortgage and HOA dues. Debtor states that his previous case failed because Debtor's girlfriend had to use funds, otherwise set aside as income for the Debtor, toward repairing her vehicle. *See* 16-25492, dkt. 75. Debtor asserts that his circumstances have changed because the vehicle issues have been resolved and he does not anticipates any future hindrance in making plan payments.

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

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

The court will enter an appropriate minute order.

28. 17-26193-B-13 JOHN/HELENA MOEHRING MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso 12-8-17 [34]

Final Ruling: No appearance at the January 23, 2018, hearing is required.

The Motion to Confirm Debtors' First Amended Plan Filed on December 8, 2017, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 first amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on December 8, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

29. 17-26493-B-13 DAVID LANE
DEF-4 David Foyil
Thru #31

MOTION TO VALUE COLLATERAL OF CALIFORNIA FRANCHISE TAX BOARD
12-22-17 [56]

Final Ruling: No appearance at the January 23, 2018, hearing is required.

The Motion to Value Collateral of California Franchise Tax Board has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of California Franchise Tax Board at $0.00.

Debtor's motion to value the secured claim of California Franchise Tax Board ("Creditor"), the holder of the third deed of trust, is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 112 N. Summit Drive, Ione, California ("Property"). Debtor seeks to value the Property at a fair market value of $90,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

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

Discussion

The first deed of trust of Nationstar Mortgage, LLC, formerly held by Ditech Financial, LLC, secures a claim with a balance of approximately $79,841.08. The second deed of trust of Ditech Financial, LLC, secures a claim with a balance of approximately $39,696.25. Creditor's third deed of trust secures a claim with a balance of approximately $1,431.86. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

The court will enter an appropriate minute order.

30.	17-26493-B-13 DEF-5	DAVID LANE David Foyil	MOTION TO VALUE COLLATERAL OF EMPLOYMENT DEVELOPMENT DEPARTMENT 12-22-17 [61]

Final Ruling: No appearance at the January 23, 2018, hearing is required.

The Motion to Value Collateral of Employment Development Department has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Employment Development Department at $0.00.

Debtor's motion to value the secured claim of Employment Development Department ("Creditor"), the holder of the fourth deed of trust, is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 112 N. Summit Drive, Ione, California ("Property"). Debtor seeks to value the Property at a fair market value of $90,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

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

No Proof of Claim Filed

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

Discussion

The first deed of trust of Nationstar Mortgage, LLC, formerly held by Ditech Financial, LLC, secures a claim with a balance of approximately $79,841.08. The second deed of trust of Ditech Financial, LLC, secures a claim with a balance of approximately $39,696.25. The third deed of trust of California Franchise Tax Board secures a claim with a balance of approximately $1,431.86. Creditor's fourth deed of trust secures a claim with a balance of approximately $4,782.18. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

The court will enter an appropriate minute order.

31.	17-26493-B-13 DEF-7	DAVID LANE David Foyil	MOTION TO VALUE COLLATERAL OF DITECH FINANCIAL, LLC 12-22-17 [74]

Final Ruling: No appearance at the January 23, 2018, hearing is required.

The Motion to Value Collateral of Ditech Financial, LLC has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Ditech Financial, LLC at $10,158.92.

Debtor's motion to value the secured claim of Ditech Financial, LLC ("Creditor"), the holder of the second deed of trust, is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 112 N. Summit Drive, Ione, California ("Property"). Debtor seeks to value the Property at a fair market value of $90,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

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

Discussion

The first deed of trust of Nationstar Mortgage, LLC, formerly held by Ditech Financial, LLC, secures a claim with a balance of approximately $79,841.08. Creditor's second deed of trust secures a claim with a balance of approximately $39,696.25. Therefore, Creditor's claim secured by a junior deed of trust is <u>partially</u> under-collateralized. Creditor's secured claim is determined to be in the amount of $10,158.92, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

The court will enter an appropriate minute order.

32. 17-28198-B-13 JUDITH ALLEN — MOTION TO VALUE COLLATERAL OF DITECH FINANCIAL, LLC
RK-1 Richard Kwun — 12-20-17 [8]

Final Ruling: No appearance at the January 23, 2018, hearing is required.

The Motion to Value the Secured Claim of Ditech Financial LLC has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to value the secured claim of Ditech Financial LLC at $0.00.

Debtor's motion to value the secured claim of Ditech Financial LLC("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4268 Bridge Road, Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of $450,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

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

Discussion

The first deed of trust secures a claim with a balance of approximately $534,505.00. Creditor's second deed of trust secures a claim with a balance of approximately $22,926.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

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

The court will enter an appropriate minute order.

33. 16-20018-B-13 JOJIE GOOSELAW MOTION TO REFINANCE O.S.T.
PGM-7 Peter G. Macaluso 1-11-18 [120]

Tentative Ruling: The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). Since the time for service is shortened to fewer than 14 days, no written opposition is required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues that are necessary and appropriate to the court's resolution of the matter.

The court's decision is to grant the motion.

Debtor seeks court approval to refinance her residence located at 1701 Baines Avenue, Sacramento, California ("Property"). Wells Fargo Bank, N.A. holds the first deed of trust against the property secured by a note. The current monthly mortgage payment is $2,311.85. Debtor has been offered to refinance the first mortgage by Finance of America Mortgage, LLC. The refinance of the residence will be on the following terms: amount refinanced $430,772.40; term of 30 years; interest rate of 4.250%; payment of $3,100.50 (inclusive of taxes and insurance). The Debtor intends to use the refinance to pay her Chapter 13 plan at 100% in month 24.

The motion is supported by the Declaration of Paula Raquel. The Declaration affirms Debtor's desire to obtain the post-petition financing. Additionally, this motion was previously granted on October 17, 2017, but the amount financed was not sufficient to pay off the plan. Debtor reapplied for a higher amount in order to pay off her plan successfully.

The repayment of the new loan does not appear to unduly jeopardize the Debtor's performance of the plan dated January 10, 2017. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion will be granted.

The court will enter an appropriate minute order.

34. 17-27707-B-13 DWE-1 **Thru #35** **See Also #4-5**
ANTHONY SIPPIO
Lucas B. Garcia
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
12-13-17 [18]

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

The court's decision is to overrule the objection but deny confirmation of the plan for reasons stated at Item #5.

Objecting creditor U.S. Bank, N.A. holds a deed of trust secured by the Debtor's residence. The creditor asserts $78,000.51 in pre-petition arrearages but has not yet filed a proof of claim. Although the creditor states that it will file a proof of claim prior to the claims bar deadline, the creditor provides no evidence to support the basis for the claimed pre-petition arrears. The creditor does not provide a Declaration from any individual who maintains or controls the bank's loan records or any other supporting evidence. Without a proof of claim or evidence to support its assertion, the creditor's objection is overruled.

Nonetheless, for reasons stated at Item #35, the plan filed November 24, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled but the plan is not confirmed.

The court will enter an appropriate minute order.

35. 17-27707-B-13 JPJ-1
ANTHONY SIPPIO
Lucas B. Garcia
CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
12-27-17 [36]

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

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

First, the Debtor appeared at the continued meeting of creditors held on January 4, 2018, as required pursuant to 11 U.S.C. § 343.

Second, Debtor is delinquent to the Chapter 13 Trustee in the amount of $4,350.00, which represents approximately 1 plan payment. The Debtor has not made any plan payments since this petition was filed on November 24, 2017. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the plan payment in the amount of $4,350.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, and monthly dividends payable on account of Class 1 arrearage claims for months 3-6. The aggregate of the monthly amounts plus the Trustee's fee is $4,537.00. The plan does not comply with Section 5.2 of the mandatory form plan.

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

Fifth, according to Schedule J, Line #18, the Debtor owes a domestic support obligation. Pursuant to Local Bankr. R. 3015-1(b)(6), the Debtor is required to serve upon the Trustee no later than 14 days after filing the petition a Domestic Support Obligation Checklist. The Debtor has not provided the Trustee with this checklist, thus hindering the Trustee from performing his duties under 11 U.S.C. §§ 1302(b)(6) and (d)(1). The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

Sixth, the Debtor has claimed an interest in a vehicle, household items, one bicycle, exercise equipment, books, records, pictures, DVDs, a handgun, clothing, cash on hand, two Bank of America checking accounts, one Bank of America savings account, a Thrift Savings Plan retirement, and a DFAS Pension Plan as exempt under California Code of Civil Procedure § 703.140(b). However, the Debtor is married and has not filed a spousal waiver of right to claim exemptions pursuant to California Code of Civil Procedure § 703.140(a)(2). Without the spousal waiver, the Debtor may not claim exemptions under § 703.140(b).

Feasibility also depends on the granting of the motions to value collateral for Key Bank, N.A. and Wells Fargo Bank NV NA. Those motions to value were granted at Items #4 and #5.

For the second through sixth reasons stated above, the plan filed November 24, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

36. 17-27526-B-13 HIAWATHA HUSBAND
BDA-1 Peter G. Macaluso
Thru #37
See Also #11

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
12-19-17 [25]

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

The court's decision is to overrule the objection and confirm the plan.

Feasibility depends on the granting of the motion to value collateral of Capital One Auto Finance. The motion was granted at Item #11.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed November 28, 2017, is confirmed.

The court will enter an appropriate minute order.

37. 17-27526-B-13 HIAWATHA HUSBAND
JPJ-1 Peter G. Macaluso

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
12-27-17 [38]

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

The court's decision is to overrule the objection, deny the motion to dismiss, and confirm the plan.

First, feasibility depends on the granting of the motion to value collateral of Capital One Auto Finance. The motion was granted at Item #11.

Second, the Debtor filed amended Schedule A/B and Statement of Financial Affairs on January 15, 2018, to reflect: a) a retirement account and life insurance policies for herself and non-filing spouse; b) income for 2016 and 2017; and c) a closed Wells Fargo Bank account. The Debtor has complied with 11 U.S.C. § 521(a)(3).

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled, the motion to dismiss is denied, and the plan filed November 28, 2017, is confirmed.

The court will enter an appropriate minute order.

38. 17-24880-D-13 JESSE NIETO
CJO-1 Rick Morin

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
9-26-17 [16]

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

Final Ruling: No appearance at the January 23, 2018, hearing is required.

This matter was transferred from Department D by the Honorable Robert S. Bardwil. The motion is dismissed as moot.

The Debtor and U.S. Bank Trust, N.A. entered into a stipulation on January 4, 2018, affecting real property commonly known as 540 E. Frisbee Road, aka 10751 Wayne Court, French Camp, California 95231 ("Property"). The parties stipulated that, in the event the case re-converts to a Chapter 7, U.S. Bank Trust, N.A. shall have relief from the automatic stay as to the Property effective the date of re-conversion, without further order from the court.

The court will enter an appropriate minute order.

39. 13-20816-B-13 MARTIN WEBER
17-2054 DSB-1
WEBER V. DEUTSCHE BANK NATIONAL TRUST COMPANY ET AL

MOTION TO COMPEL AND/OR MOTION FOR SANCTIONS, MOTION TO EXTEND TIME
1-19-18 [27]

Final Ruling: No appearance at the January 23, 2018, hearing is required.

Deutsche Bank National Trust Company et al's motion to compel discovery and deposition has been set for hearing on 4-day's notice. This shortened notice is permissible pursuant to the court's scheduling order dated June 7, 2017. Dkt. 13. *See also* Rule 9006(a)(1). Nonetheless, the matter is continued to January 30, 2018, at 1:00 p.m.

The court will enter an appropriate minute order.