

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

July 5, 2016 at 1:00 p.m.

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1. [15-26501](#)-B-13 HILLARY CRINER OBJECTION TO CLAIM OF STATE
SDH-1 Scott D. Hughes BOARD OF EQUALIZATION, CLAIM
Thru #2 NUMBER 41
5-10-16 [[40](#)]

Final Ruling: No appearance at the July 5, 2016, hearing is required.

The Objection to Proof of Claim No. 41 [sic] Filed by State Board of Equalization has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9 Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The court's decision is to sustain the objection to Claim No. 4 of State Board of Equalization and disallow the claim in its entirety.

Hillary Criner ("Debtor") requests that the court disallow the claim of State Board of Equalization ("Creditor"), Claim No. 4. The claim is asserted to be priority in the amount of \$7,488.77. Debtor asserts that the claim is already being paid by the Debtor's ex-husband outside the bankruptcy pursuant to the terms of a divorce. See Dkt. 42, 43. The Declaration of Hillary Criner states that regular payments are being paid on the claim.

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

The court finds that the proof of claim is being paid outside of the bankruptcy based on the terms of the community obligations in the divorce proceeding between Debtor and her ex-husband and as supported by the Debtor's declaration. Debtor has satisfied her burden of overcoming the presumptive validity of the claim.

Based on the evidence before the court, the Creditor's claim is disallowed in its entirety. The objection to the proof of claim is sustained.

July 5, 2016 at 1:00 p.m.

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

The court's decision is to permit the requested modification and confirm the modified plan provided that the order confirming properly account for all payments made by the Debtor to date by stating the following: "The Debtor has paid a total of \$28,725.00 to the Trustee through May 2016. Commencing June 25, 2016, monthly plan payments shall be \$3,245.00 for the remainder of the plan."

Feasibility of the plan depends on sustaining the Debtor's objection to claim of the State Board of Equalization. That matter was heard at Item #1 and sustained.

The modified plan filed May 15, 2016, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

3. [16-20303](#)-B-13 MICHELE REED MOTION TO CONFIRM PLAN
CA-2 Michael David Croddy 5-24-16 [[29](#)]

CONTINUED TO 7/19/16 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH TRUSTEE'S
OBJECTION TO DEBTOR'S CLAIM OF EXEMPTION.

4. [16-22707](#)-B-13 RICHARD CRABTREE
EMM-1 Douglas B. Jacobs
Thru #6
DEUTSCHE BANK NATIONAL TRUST
COMPANY VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-24-16 [[12](#)]

Final Ruling: No appearance at the July 5, 2016, hearing is required.

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

The court's decision is to grant the motion for relief from stay.

Deutsche Bank National Trust Company ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 234 Valley View Drive, Paradise, California (the "Property"). Movant has provided the Declaration of Mike Aleali to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Aleali Declaration states that Movant is the legal owner of the property acquiring title at a trustee's foreclosure sale on January 22, 2016. Exh. 1, 2, Dkt. 15. Movant seeks to proceed with the unlawful detainer action filed in state court on April 6, 2016.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Butte on April 6, 2016, with a Notice to Quit served on February 16, 2016. Exh. 3, Dkt. 15

Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Exh. 3, Dkt. 15. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate and the Property is not necessary for an effective reorganization of the Debtor since the Debtor and the Estate have no interest in the Property. Cause for relief also exists. See 11 U.S.C. §§ 362(d)(1) and (2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

5. [16-22707](#)-B-13 RICHARD CRABTREE OBJECTION TO CONFIRMATION OF
 JPJ-1 Douglas B. Jacobs PLAN BY JAN P. JOHNSON AND/OR
 MOTION TO DISMISS CASE
 6-13-16 [[19](#)]

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

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

First, the plan filed April 28, 2016, proposes a dividend of 100% to non-priority general unsecured claims in class 7. However, the plan underestimates the total amount of non-priority general unsecured claim in Class 7. There is one debt owed to Navient for a student loan and the Internal Revenue Service has filed a proof of claim that includes a non-priority general unsecured claim. Based on the amount of the unsecured debt estimate for the student loan and the proof of claim, the plan will take approximately 122 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 Debtor has not provided the Trustee with a copy of an income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

The plan filed April 28, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

6. [16-22707](#)-B-13 RICHARD CRABTREE OBJECTION TO CONFIRMATION OF
 USA-1 Douglas B. Jacobs PLAN BY INTERNAL REVENUE
 SERVICE
 6-16-16 [[23](#)]

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

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

The Internal Revenue Service has filed a proof of claim in the total amount of \$350,028.12. Of this amount, \$292,151.80 is claimed as a priority unsecured claim and

\$57,876.32 is claimed as a general unsecured claim. The plan does not provide for payment in full of the IRS priority unsecured claim pursuant to 11 U.S.C. § 1322(a)(2) and does not provide for treatment of the general unsecured claim pursuant to 11 U.S.C. § 1325(a)(6).

The plan filed April 28, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Tentative Ruling: The Motion to Confirm First Modified Plan Dated May 27, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

The treatment of creditor John W. Edmondson is unclear. The creditor is listed in Class 2C of the plan filed May 27, 2016, which would indicate that the Debtor's intention is to reduce this creditor's claim to \$0.00. However, the Debtor also proposes to pay a monthly dividend of \$500.00 to this creditor. Until this issue is resolved, the plan cannot be confirmed.

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

Tentative Ruling: The Debtors' Motion for Approval to Incur Secured Debt for Purpose of Refinancing Terms of Existing Deed of Trust has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Chapter 13 Trustee and a conditional non-opposition was filed by creditor Wells Fargo Bank, N.A.

The court's decision is to grant the motion subject to the conditions stated below.

Debtors seek to incur secured debt with Pacific National Lending, Inc. ("Creditor") for purposes of refinancing the terms of an existing secured loan against real property commonly known as 8555 McPhetridge Drive, Elk Grove, California ("Property"). Through the refinance of the mortgage, the Debtors state that they anticipate receiving approximately \$96,058.33 after fees and costs of the refinance are deducted. The Debtors state that they intend to pay the Chapter 13 Trustee the necessary funds to complete their bankruptcy and to pay 100% of their remaining creditors who have filed valid proofs of claim. Furthermore, Debtors assert that within five days of receipt of the funds from the refinance, they will make a request to the Trustee for a payoff amount. The Debtors state that the necessary funds from this refinance will be tendered to the Chapter 13 Trustee within one week of receiving the payoff amount from the Chapter 13 Trustee.

The motion is supported by the Declaration of Arthur A. Harris and the Supplemental Declaration of Arthur A. Harris. The Declarations affirms Debtors' desire to obtain the post-petition financing.

The repayment of the new loan does not appear to unduly jeopardize the Debtors' performance of the plan dated January 1, 2014. The Supplemental Declaration resolves the issues raised by the Chapter 13 Trustee. Wells Fargo Bank, N.A., current holder of the first deed of trust against the Property, has filed a conditional non-opposition requesting that its lien not be released unless and until its loan is paid off in full pursuant to a payoff requested by Debtors. Additionally, Wells Fargo Bank, N.A. requests that it not be bound by the refinance terms set forth in the motion should Debtors refinance with Wells Fargo Bank, N.A., and that it only be bound by the terms of a fully-executed loan agreement.

The motion complying with the provisions of 11 U.S.C. § 364(d) will be granted subject to the following conditions: (1) the order granting the motion shall include Wells Fargo's condition that it is bound by the terms of fully-executed loan documents and not by conflicting terms in the motion and (2) the Debtors authorize payment of the approximately \$96,058.33 they anticipate receiving from the refinancing to the Chapter 13 Trustee, who shall be authorized to deduct all sums necessary to payoff the Debtors' remaining plan obligations, including 100% payment to allowed unsecured creditors and applicable amounts owing the Chapter 13 Trustee, and thereafter remit remaining balance to the Debtors.

9. [16-22820](#)-B-13 MICHAEL/AMANDA NICHOLS
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-8-16 [[13](#)]

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

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

The Joint Debtor failed to submit proof of her social security number at the meeting of creditors held on June 2, 2016. The meeting of creditors was subsequently continued to June 30, 2016, to allow the Joint Debtor to provide evidence of her social security number pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). The Joint Debtor did not appear at the continued meeting of creditors.

The plan filed April 29, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

10. [16-21821](#)-B-13 LAUREN CHERWIN
JPJ-1 Edward A. Smith

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
5-11-16 [[14](#)]

Tentative Ruling: This matter was continued from June 7, 2016, to allow the Debtor to submit additional documents. Nothing new has been filed. The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was originally filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The Debtor's projected disposable income is not being applied to make payments to unsecured creditors. The Means Test shows that the Debtor's monthly disposable income is \$1,189.82 and the Debtor must pay no less than \$71,389.20 to general unsecured creditors. The Trustee calculates that the plan only proposes to pay \$7,213.79 or approximately 5% to Class 7 general unsecured creditors.

The plan filed March 23, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

The court will enter an appropriate minute order.

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

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

The motion filed by Debtor to value the secured claim of Mercedes-Benz Financial Services USA, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Mercedes Benz E350 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$12,300.00 as of the petition filing date. The Debtor also asserts that the Vehicle is "in fair condition with minor paint and body damage to rear bumper and excessive wear and tear throughout the car." Dkt. 9, l. 4. 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).

However, the court finds issue with the Debtor's valuation. The motion states that the valuation of the Vehicle is \$12,300.00 and the Kelley Blue Book printout submitted as an exhibit lists this valuation as a "private party" value. This is the value in which a private party, who is not a retailer, could buy or sell a car. The standard here must be a retail valuation, taking into account the condition of the car. See 11 U.S.C. § 506(a). In the Chapter 13 context, the replacement value of personal property used by debtors for personal, household or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The Debtor has not persuaded the court regarding his position for the value of the Vehicle. The Debtor has not met his burden of proof.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3 filed by Mercedes-Benz Financial Services USA, LLC is the claim which may be the subject of the present motion.

Opposition

Mercedes-Benz Financial Services USA, LLC has filed an opposition asserting that the value of the Vehicle is \$16,500.00 based on the clean retail evaluation of \$17,000.00 provided by NADA Used Car Guide and deducting \$500.00 for any minor paint damage on the rear bumper.

Discussion

The \$16,500.00 value offered by the Creditor is based on a "clean" retail evaluation by NADA Used Car Guide minus the cost to repaint the rear bumper. Although the Creditor considers the cost of repainting the bumper, the Creditor does not take into account "body damage" to the rear bumper or "excessive wear and tear throughout the car" - which the Creditor acknowledges the Debtor asserts. It is unclear how the Creditor has chosen to consider some of the Debtor's assertions as to wear and tear and not others.

Nor has the Debtor proven to the court's satisfaction the replacement value of the Vehicle. The Debtor has provided a private party valuation. This is not the standard. The standard is what a used car dealer would sell the vehicle for to the Debtor.

While neither parties have persuaded the court regarding their position of the value of the vehicle, the Debtor has the burden of proof. Therefore, the motion will be denied without prejudice.

To the extent valuation remains disputed at the time of the hearing on this motion, the court will set an evidentiary hearing to determine value.

12. [16-21328](#)-B-13 GABRIEL GOMEZ AND MOTION TO CONFIRM PLAN
DEF-1 ANGELICA CERVANTES 5-17-16 [[44](#)]
Thru #13 David Foyil

Tentative Ruling: The Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

Feasibility depends on the granting of a motion to value collateral of Real Time Resolutions for the second deed of trust on the Debtors' residence. That matter is heard at Item #13 and granted.

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

13. [16-21328](#)-B-13 GABRIEL GOMEZ AND MOTION TO VALUE COLLATERAL OF
DEF-2 ANGELICA CERVANTES REAL TIME RESOLUTIONS
David Foyil 5-17-16 [[53](#)]

Final Ruling: No appearance at the June 28, 2016, hearing is required.

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

The court's decision is to value the secured claim of Real Time Resolutions Sub Servicer for RTR Capital II, LP at \$0.00.

The motion to value filed by Debtors to value the secured claim of Real Time Resolutions Sub Servicer for RTR Capital II, LP ("Creditor") is accompanied by the Debtor's declaration. Debtors are the owners of the subject real property commonly known as 2890 Prouty Lane, Camino, California ("Property"). Debtors seek to value the Property at a fair market value of \$214,000.00 as of the petition filing date. As the owner, Debtors' opinion of value is some evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

(a)(1) An **allowed claim of a creditor** secured by a

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1 filed by Real Time Resolutions, Inc. is the claim which may be the subject of the present motion.

Discussion

The first deed of trust secures a claim with a balance of approximately \$250,994.79. Creditor's second deed of trust secures a claim with a balance of approximately \$73,769.85. 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 as stated in the Declaration of Gabriel Gomez (and not \$21,055.49 as stated in the Debtors' motion), 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.

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on May 26, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the plan filed May 26, 2016, does not properly account for all payments made by the Debtors to date. The Debtors have paid a total of \$17,475.00 to the Trustee through May 25, 2016. Commencing June 25, 2016, monthly plan payments shall be \$425.00 for the remainder of the plan.

Second, the Debtors have not amended Schedules I and J to show their new income and expenses. Therefore, feasibility of the plan cannot be fully assessed.

Third, the Debtors proposed duration of payments is only 44 months and does not propose payment in full of the allowed unsecured claims. The applicable commitment period is five years based the Debtors' annual income and California Median Family Income for a 4-person household pursuant to 11 U.S.C. § 1325(b)(4).

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

15. [16-20634](#)-B-13 CARL TINNEY AND EILEEN
PLC-9 RICKENBACH
Peter L. Cianchetta
MOTION FOR COMPENSATION BY THE
LAW OFFICE OF CIANCHETTA AND
ASSOCIATES FOR PETER
CIANCHETTA, DEBTORS ATTORNEY(S)
6-22-16 [[56](#)]

DEBTOR DISMISSED:

04/03/2016

JOINT DEBTOR DISMISSED:

04/03/2016

Final Ruling: No appearance at the July 5, 2016, hearing is required.

The Motion for Compensation by Peter Cianchetta as Debtor's [sic] Attorney (Opting Out of the Guidelines) (First Interim Application for Fees) was not brought pursuant to Local Bankr. R. 9014-1(f)(2) and Fed. R. Bankr. P. 2002(a)(6), which collectively require 21-days' notice for compensation. Only 13-days' notice was provided.

The court's decision is to deny the motion for compensation without prejudice.

16. [16-22841](#)-B-13 DARIEN SWIFT OBJECTION TO CONFIRMATION OF
JPJ-1 Michael David Croddy PLAN BY JAN P. JOHNSON
Thru #18 6-8-16 [[27](#)]

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

The court's decision is overrule the objection as moot based on Item #18 in which the Debtor filed a non-opposition to dismissal of its case.

17. [16-22841](#)-B-13 DARIEN SWIFT OBJECTION TO CONFIRMATION OF
RTD-1 Michael David Croddy PLAN BY SACRAMENTO CREDIT UNION
6-8-16 [[16](#)]

Tentative Ruling: The Objections by Creditor Sacramento Bredit Union to Confirmation of the Chapter 13 Plan Filed April 30, 2016, 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 as moot based on Item #18 in which the Debtor filed a non-opposition to dismissal of its case.

18. [16-22841](#)-B-13 DARIEN SWIFT MOTION TO DISMISS CASE
RTD-2 Michael David Croddy 6-8-16 [[21](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Creditor Sacramento Credit Union's Motion for Dismissal of the Case Pursuant to LBR 9014-1(f)(2) 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 court's decision is to dismiss the case. The Debtor has filed a non-opposition to dismissal of its case.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

19. [16-22644](#)-B-13 PETER RODDA
ETL-1 Douglas B. Jacobs
Thru #20

OBJECTION TO CONFIRMATION OF
PLAN BY NATIONSTAR MORTGAGE LLC
6-8-16 [[13](#)]

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). A written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan, the Debtor having filed a response requesting that confirmation of this plan be denied and stating that he will file an amended plan resolving the issues.

The plan filed April 26, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

20. [16-22644](#)-B-13 PETER RODDA
JPJ-1 Douglas B. Jacobs

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-8-16 [[17](#)]

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). A written reply has been filed to the objection.

The court's decision is to sustain the objection and deny confirmation of the plan, the Debtor having filed a response requesting that confirmation of this plan be denied and stating that he will file an amended plan resolving the issues.

The plan filed April 26, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

21. [16-22447](#)-B-13 VIRGIL EVANS
ETL-1 Pro Se
Thru #22

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
6-9-16 [[21](#)]

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 sustain the objection and deny confirmation of the plan

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$28,722.35 in pre-petition arrearages. The plan does not propose to cure these arrearages. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

The plan filed April 29, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

22. [16-22447](#)-B-13 VIRGIL EVANS
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON
6-8-16 [[18](#)]

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

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

First, the Debtor did not appear at the first meeting of creditors set for June 2, 2016, as required pursuant to 11 U.S.C. § 343. The Debtor must be thoroughly examined under oath.

Second, the Debtor has not provided the Trustee with copies of payment advices or other evidence of income received within the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Third, the Debtor has not 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 plan does not propose to pay anything to unsecured creditors and the creditors would receive a higher distribution in a Chapter 7 proceeding. The plan does not comply with 11 U.S.C. § 1325(a)(4).

Fifth, the plan is incomplete and it cannot be determined whether the plan complies with 11 U.S.C. §§ 1325(a)(3)(4) or (6) or § 1325(b)(1)(B). Section 2.15 of the plan does not list a dividend to the unsecured creditors or a total amount for unsecured claims. Additionally, the plan does not list a monthly dividend for paying the arrears

for SPS Mortgage and Terrace Park Village HOA.

The plan filed April 29, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

23. [15-28549](#)-B-13 SHARON WILDEE MOTION TO APPROVE LOAN
PGM-2 Peter G. Macaluso MODIFICATION
Thru #24 5-27-16 [[51](#)]

Final Ruling: No appearance at the July 5, 2016, hearing is required.

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

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

Debtor seeks court approval to incur post-petition credit. PennyMac Loan Services, LLC ("Creditor"), whose claim the plan provides for in Class 4 of the proposed plan filed May 7, 2016, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$1,527.92 a month, as stated in Class 1 of the plan filed on November 2, 2015, and confirmed on January 20, 2016, to \$1,169.94 a month. The Debtor had entered into a trial loan modification plan with Creditor effective March 1, 2016, with payments of \$1,83.78 per month. The reduced payment of \$1,169.94 was scheduled to begin in July 1, 2016, for 360 months at 4.00% interest.

The motion is supported by the Declaration of Sharon Wildee. The Declaration affirms the Debtor's desire to obtain the post-petition financing. Although the Declaration does not state the Debtor's ability to pay this claim on the modified terms, the court finds that the Debtor will be able to pay this claim since it is a reduction from the Debtor's current monthly mortgage payments.

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

24. [15-28549](#)-B-13 SHARON WILDEE MOTION TO MODIFY PLAN
PGM-3 Peter G. Macaluso 5-27-16 [[56](#)]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation Filed on May 27, 2016, has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The Trustee has filed an opposition and the Debtor has filed a response.

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

The modified plan does not specify a cure of the post-petition arrearage including a specific post-petition arrearage amount, interest rate, and monthly dividend owed to Sonora Springs Homeowners Association. This cannot be cured in the order confirming.

Feasibility of the plan depends on the granting of a motion to approve loan modification with PennyMac. That matter was granted at Item #23.

Because the plan does not specify a cure of the post-petition arrearage owed to Sonora Springs HOA, the modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

25. [16-22856](#)-B-13 AARON HUTCHINSON
JPJ-1 Mark A. Wolff

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-8-16 [[18](#)]

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

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

First, the terms for payment of the Debtor's attorney's fees are unclear. Section 2.07 of the plan specifies a monthly payment of \$0.00 for administrative expenses. It is not possible to pay the balance of the Debtor's attorney's fees and any other administrative expenses through the plan with a monthly payment specified at \$0.00.

Second, the Debtor owns and operates a business called Color 5k. The Debtor has not provided to the Trustee copies of certain items including, but not limited to, bank account statements for November 2015 through January 2016, Profit and Loss Statements from November 2015 through April 2016, and proof of all required insurance and proof of required licenses. It cannot be determined whether the business is solvent and necessary for reorganization. The Debtor has not complied with 11 U.S.C. § 521.

Third, it cannot be determined whether the plan complies with 11 U.S.C. §§ 1325(a)(3) or (6) since the Statement of Financial Affairs is incomplete. The Debtor has not disclosed his interest in a corporation by the name of Color Dash/Body of the Move on Line 27 of the Statement of Financial Affairs.

The plan filed May 2, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

26. [16-20360](#)-B-13 PEDRO/CATALINA ZAMBRANO OBJECTION TO CONFIRMATION OF
JPJ-1 Thomas O. Gillis PLAN BY JAN P. JOHNSON
6-8-16 [[45](#)]

CONTINUED TO 7/19/16 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED § 341 MEETING SET
FOR 7/07/16.

27. [16-22764](#)-B-13 KEVIN COOPER
CAH-1 C. Anthony Hughes
Thru #29

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
6-20-16 [[17](#)]

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

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

The motion to value filed by Debtor 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 4123 Jan Court, Rocklin, California ("Property"). Debtor seeks to value the Property at a fair market value of \$350,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank* (In re *Enewally*), 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 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 secures a claim with a balance of approximately \$434,160.00. Creditor's second deed of trust secures a claim with a balance of approximately

\$50,379.82 based on Claim No. 1. 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.

28. [16-22764](#)-B-13 KEVIN COOPER MOTION TO VALUE COLLATERAL OF
CAH-2 C. Anthony Hughes WELLS FARGO BANK, N.A.
6-20-16 [[22](#)]

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

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

The motion to value filed by Debtor 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 4123 Jan Court, Rocklin, California ("Property"). Debtor seeks to value the Property at a fair market value of \$350,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

controversy requirement for the parties seeking relief from a federal court.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 2 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 secures a claim with a balance of approximately \$434,160.00. The second deed of trust secures a claim with a balance of approximately \$50,379.82 based on Claim No. 1. Creditor's third deed of trust secures a claim with a balance of approximately \$14,409.08 based on Claim No. 2. 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.

29. [16-22764](#)-B-13 KEVIN COOPER
JPJ-1 C. Anthony Hughes
OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-8-16 [[13](#)]

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). A 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 motions to value collateral of Wells Fargo Bank, N.A. for a second deed of trust and of Wells Fargo Bank, N.A. for a third deed of trust, both on real property located at 4123 Jan Court, Rocklin, California. The motions to value were granted at Items #27 and #28.

Second, as stated in Debtor's response, the Debtor has provided the Trustee with a Class 1 Checklist and Authorization to Release Information on June 9, 2016, via e-mail.

Third, in order for plan payments to fund the aggregate of monthly amounts and the Trustee's fee of \$1,960.00, the Debtor has agreed to reduce administrative expenses. Although the Debtor proposes to reduce administrative expenses from \$100.00 to \$72.00, by the court's calculation the Debtor must reduce the amount to \$70.00 in order to pay \$1,960.00 per month.

Fourth, since the Debtor desires to continue contributing 6% into his retirement and to receiving the 3% match from his employer, the Debtor has agreed to paying an additional \$250.00 per month to general unsecured creditors. This would result in an additional \$8,325.00 being paid to general unsecured creditors. The Debtor asserts that he will make adjustments to his lifestyle in order to pay the additional \$250.00 per month.

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 April 29, 2016, is confirmed.

30. [15-27866](#)-B-13 KENNETH/CHRISTINA SHAW MOTION TO MODIFY PLAN
SJS-1 Scott J. Sagaria 5-24-16 [[36](#)]

Final Ruling: No appearance at the July 5, 2016, hearing is required.

The Debtors' Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on May 24, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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 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 June 14, 2016, voluntarily by the Debtor, Dkt. 69. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor 30 days after filing of the petition.

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

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

The Debtor asserts that the previous plan was filed to save his residence and to restructure his vehicle loans. The Debtor was in the previous bankruptcy case for two years before voluntarily dismissing his case. The only change in circumstances identified by the Debtor is the retention of new counsel. By all accounts, the Debtor dismissed his prior Chapter13 case because he did not like the way it was going and now wants a "do-over." That raises the issue of "judge shopping," which is an abuse of the bankruptcy process. The Debtor offers no clear and convincing evidence that suggests otherwise.

The Debtor has not 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 denied and the automatic stay is not extended for all purposes and parties.

32. [16-21967](#)-B-13 JUAN GARCIA
JPJ-1 Thomas O. Gillis
Thru #34

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
5-11-16 [[16](#)]

Tentative Ruling: The Trustee's 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). No written reply has been filed to the objection.

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

First, feasibility of the plan depends on the granting of a motion to value collateral of Ernest Bazinet. That motion is denied without prejudice for reasons stated at Item #34.

Second, the maximum fee that may be charged in nonbusiness cases is \$4,000.00 and in business cases \$6,000.00 pursuant to Local Bankr. R. 2016-1. There is no indication that this case is a business case that would warrant attorney's fees totaling \$6,000.00. Therefore, no attorney's fees or costs are approved and counsel shall proceed to obtain approval of his attorney's fees and costs by separate motion pursuant to 11 U.S.C. § 330.

The plan filed March 30, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

33. [6-21967](#)-B-13 JUAN GARCIA
PCB-1 Thomas O. Gillis

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY ERNEST
BAZINET AND THE E.E. BAZINET
FAMILY TRUST
5-12-16 [[19](#)]

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

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

Feasibility of the plan depends on the granting of a motion to value collateral of Ernest Bazinet. That motion is denied without prejudice for reasons stated at Item #34.

The plan filed March 30, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

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

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

The motion to value filed by Debtor to value the secured claim of Ernest Bazinet ("Creditor") is accompanied by the Debtor's declaration. Debtor states that he is the owner of the subject real property commonly known as 1805 Del Paso Blvd., Sacramento, California ("Property"). Debtor seeks to value the Property at a fair market value of \$72,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

Proof of Claim Filed

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

Opposition

Creditor objects to the motion on two grounds. First, the Creditor argues that the Debtor is neither the obligor on the Bazinet loans nor the owner of the Property. The Creditor has submitted evidence showing that two installment notes, two deeds of trust, an insurance policy, and an appraisal all list the trustor of the Property as J&R

Amigos, LLC. Dkt. 21. One installment note and one deed of trust list the Debtor as a co-manager of J&R Amigos, LLC. Dkt. 21, Ex, 2, 4. Second, the Creditor argues that the Property is worth at least \$480,000.00, which was the appraised value of the property in 2007.

Discussion

To the extent that the Creditor objects to the Debtor's ownership interest in the Property, that objection is sustained. The Debtor states in his motion and declaration that he is the owner of the Property but provides no supporting evidence to this assertion. On the other hand, the Creditor has provided contrary evidence in the form of two installment notes, two deeds of trust, an insurance policy, and an appraisal that each list the trustor of the Property as "J&R Amigos, LLC." "Juan Garcia" appears only as a "manager" with manager Evelia Sanchez. A review of the Debtor's petition shows no mention of or identification with J&R Amigos, LLC.

Additionally, no where in the Creditor's exhibits is it stated that the Debtor is the obligor or is held personally liable on the Bazinet loans.

Given the evidence presented, the court can conclude only that the Debtor is a co-manager of J&R Amigos, LLC, has no ownership interest in the Property, and is not personally liable on the Bazinet loans. A manager of a limited liability company is not personally liable for any debts, obligations, or liabilities of the LLC whether arising in tort, by contract, or otherwise, solely by reason of being a manager of the LLC. *In re McCormick*, 381 B.R. 594, 600 (Bankr. S.D.N.Y. 2008) (citation omitted). J&R Amigos, LLC, and not the Debtor, owns the Property and is liable on the Bazinet loans. The motion to value is denied without prejudice.

35. [16-22573](#)-B-13 DAVID CIERELY
JPJ-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-8-16 [[27](#)]

CONTINUED TO 7/19/16 AT 1:00 P.M. TO BE HEARD AFTER CONTINUED § 341 MEETING SET
FOR 7/07/16.

36. [12-28576](#)-B-13 THOMAS/TASHA BRENNAN
PGM-1 Peter G. Macaluso

MOTION TO VACATE DISMISSAL OF
CASE
5-31-16 [[82](#)]

DEBTOR DISMISSED:
05/05/2016
JOINT DEBTOR DISMISSED:
05/05/2016

Final Ruling: No appearance at the July 5, 2016, hearing is required.

The Motion to Reconsider Order Dismissing Chapter 13 and Request to Vacate Dismissal has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion to vacate dismissal.

Debtor argues that either mistake or excusable neglect justify the court vacating the order dismissing the case. Debtor Thomas Brennan states that in March 2016 he forgot to schedule a plan payment due to unexpected expenses related to his vehicle. Debtor asserts that that was the first time since 2012 that a plan payment was missed. The Debtors realized their delinquency when they received notice from their attorney. In response to this, the Debtors assert that they made a double payment of \$2,400.00 that was cashed by the Trustee on April 8, 2016. The Debtors state that they thereafter made a regular payment of \$1,200.00 on April 30, 2016, that was cashed by the Trustee on May 9, 2016. The deadline to cure their delinquency of \$3,557.39 was April 29, 2016. The court will analyze the motion under Fed. R. Civ. P. 60(b) and 9024.

DISCUSSION

The court finds that the motion is supported by both cause and excusable neglect. Cause exists because, although payments were late, the Debtors cured their delinquency and the payments were cashed by the Trustee. Considering the four factors of *Pioneer Investment Services v. Brunswick Associates, Ltd.*, 507 U.S. 380 (1993), the court also finds the Debtors' request is supported by a showing of excusable neglect because the Debtors missed their plan payment due to the unanticipated car expense. Furthermore, the Debtors have completed 48 months of their 60-month plan. Vacating dismissal will not result in prejudice to any party.

Given the unique circumstances of the Debtor, the court will grant the motion to reconsider and vacate the order dismissing the case.

37. [13-31486](#)-B-13 CHARLES/CARMEN PUENTES MOTION TO AVOID LIEN OF
RAC-2 Richard A. Chan HOUSEHOLD FINANCE CORP. OF
Thru #38 CALIFORNIA
6-7-16 [[35](#)]

Final Ruling: No appearance at the July 5, 2016, hearing is required.

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

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

This is a request for an order avoiding the judicial lien of Household Finance Corp. of California ("Creditor") against the Debtors' property commonly known as 8149 Dillard Road, Wilton, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of \$11,703.14. An abstract of judgment was recorded with Sacramento County on March 13, 2012, which encumbers the Property. All other liens recorded against the Property total \$636,125.01.

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$360,837.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on amended Schedule C. Dkt. 34.

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 Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

38. [13-31486](#)-B-13 CHARLES/CARMEN PUENTES MOTION TO AVOID LIEN OF ASSET
RAC-3 Richard A. Chan ACCEPTANCE, LLC
6-7-16 [[40](#)]

Final Ruling: No appearance at the July 5, 2016, hearing is required.

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

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

This is a request for an order avoiding the judicial lien of Asset Acceptance, LLC ("Creditor") against the Debtors' property commonly known as 8149 Dillard Road, Wilton, California ("Property").

A judgment was entered against Debtors in favor of Creditor in the amount of \$15,177.87. An abstract of judgment was recorded with Sacramento County on May 1, 2013, which encumbers the Property. All other liens recorded against the Property total \$647,828.15 (and not \$636,125.01 as stated in the motion).

Pursuant to the Debtors' Schedule A, the subject real property has an approximate value of \$360,837.00 as of the date of the petition.

Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 on amended Schedule C. Dkt. 34.

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 Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

39. [16-22090](#)-B-13 JOSHUA/MARILYN JOHNSON
JPJ-1 Candace Y. Brooks

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-8-16 [[42](#)]

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

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

Feasibility of the plan depends on the Debtors obtaining a permanent loan modification with SPS Mortgage for the first deed of trust on real property located at 7645 Clement Circle, Sacramento, California. Additionally, the Additional Provisions of the plan state that plan payments will increase to \$8,004.00 per month beginning in month 7 of the plan in the event the mortgage is not modified. The Debtors have not provided evidence of their ability to increase their plan payment from \$3,665.00 to \$8,004.00 in month 7 of the plan, have not provided evidence of a permanent loan modification, and have not filed a motion to approve any loan modification agreement. The plan does not comply with 11 U.S.C. § 1325(a)(6).

The plan filed April 1, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtors will be given a further opportunity to confirm a plan. But, if the Debtors are unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtors have not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.

Final Ruling: No appearance at the July 5, 2016, hearing is required.

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

The court's decision is to sustain the objection and the exemptions are disallowed in their entirety.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure § 703.140(a)(2). California Code of Civil Procedure §703.140(a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal waiver has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

41. [16-22790](#)-B-13 ALVIN/JOAN MENDIOLA
JPJ-1 Stephen N. Murphy
Thru #43

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-8-16 [[40](#)]

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

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

Feasibility of the plan depends on the granting of motions to value collateral of Internal Revenue Service for personal property and of Consumer Portfolio Services for a 2012 Nissan Altima. These motions are granted at Items #42 and #43.

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 April 29, 2016, is confirmed.

42. [16-22790](#)-B-13 ALVIN/JOAN MENDIOLA
SNM-3 Stephen N. Murphy

MOTION TO VALUE COLLATERAL OF
INTERNAL REVENUE SERVICE
6-7-16 [[31](#)]

Final Ruling: No appearance at the July 5, 2016, hearing is required.

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

The court's decision is to value the secured claim of Internal Revenue Service at \$16,477.00.

The motion to value collateral of Internal Revenue Service was first heard on June 7, 2016, and denied without prejudice. Dkt. 44. The claim of Internal Revenue Service ("Creditor") is secured by a 2013 BMW 328i, 2012 Nissan Altima, household goods, electronics, bank deposits, and business interests (collectively "Personal Property"). The Debtors' earlier motion was denied without prejudice since the value of the BMW and Nissan Altima could not be determined.

The Debtors have filed a new motion stating that the BMW was purchased within 910 days and has a value of \$28,006.00. This claim is fully provided for in the plan filed April 29, 2016. The Nissan Altima was purchased more than 910 days prior to the filing of the petition and a motion to value the collateral was scheduled for hearing on this calendar and granted at Item #43.

The Debtors seek to value their Personal Property at a replacement value of \$68,883.00 as of the petition filing date. As the owners, Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In*

re *Enewally*), 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

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

Discussion

In the Chapter 13 context, the replacement value of personal property used by a debtor for personal, household, or family purposes is "the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined." See 11 U.S.C. § 506(a)(2).

The total dollar amount of the obligation represented by the financing agreement with Internal Revenue Service is \$79,033.63 as stated in Claim No. 1. The Debtors' motion and declaration state the price a retail merchant would charge for the Personal Property, the secured interests held against the Personal Property, the superior lien to that of the Creditor, and the remaining equity available to the Creditor. By the court's calculation, the equity available to secure the Internal Revenue Service is \$16,477.00. 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 \$16,477.00. 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.

43. [16-22790](#)-B-13 ALVIN/JOAN MENDIOLA MOTION TO VALUE COLLATERAL OF
SNM-4 Stephen N. Murphy CONSUMER PORTFOLIO SERVICES,
INC.
6-7-16 [[35](#)]

Tentative Ruling: The Motion to Value Collateral of Consumer Portfolio Services, Inc. has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Consumer Portfolio Services, Inc. at \$9,877.00.

The motion to value collateral of Consumer Portfolio Services, Inc. was first heard on June 7, 2016, and denied without prejudice. Dkt. 45. In that motion, the Debtors asserted that the replacement value of their 2012 Nissan Altima ("Vehicle") was \$9,600.00 as of the petition filing date. Consumer Portfolio Services, Inc. ("Creditor") objected to the valuation and provided a "clean" retail evaluation by Kelley Blue Book at \$11,335.00. The court found that the Creditor's clean valuation did not take into account the condition of this particular Vehicle. The court also found that the Debtors did not provide any evidence as to the particular condition of their Vehicle. Because the Debtors bear the burden to persuade the court regarding their position and did not do so, the motion was denied without prejudice.

The Debtors have filed a new motion to value and value their Vehicle at \$9,877.00. This valuation is based on the Vehicle's condition at 53,000 miles, electrical issues causing the gauge and brake lights to work intermittently, scratches all over the body and particularly around the rear bumper, and regional adjustment. The condition of the Vehicle is supported by the Declaration of Alvin Mendiola and Joan Mendiola.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 5 filed by Consumer Portfolio Services Inc. is the claim which may be the subject of the present motion.

Opposition

Creditor has filed an opposition asserting that the replacement value of the Vehicle is \$11,235.00 based on the lower value of the "fair market range" provided by Kelly Blue Book. Dkt. 41, Exh. 1. This range is based on the Vehicle's mileage at 53,000 and its condition as "good condition or better," which is described as a vehicle that may need some servicing, the paint and bodywork may require minor touch-ups, the engine compartment may have minor leaks, has only minor rust, if any, the body may have minor scratches or dings, the interior has minor blemishes characteristic of normal wear, wheels may have minor repairable scratches or scrapes, all tires match and have at least 50% of tread remaining, has a clean title history and will pass a safety and smog inspection, and some service records are available. Cf. <http://www.kbb.com>. However, it appears that the "good condition or better" does not take into account any electrical issues, which Debtors state is an issue with their Vehicle.

Discussion

While the Creditor's valuation of \$11,235.00 does take into account the "paint scratches [that] do not make a vehicle un-drivable" and that are "purely cosmetic" as stated in the Creditor's motion, the Kelley Blue Book "good condition or better" valuation does not take into account the electrical issues that exist as asserted by the Debtors. Peculiarly, despite asserting that the Vehicle has a retail value of \$11,235.00, the Creditor's Proof of Claim No. 5 states that the Vehicle has a value of \$16,834.05. The Creditor has provided contradictory valuations to the court. The court cannot rely on the valuations suggested by the Creditor, which means the Debtors' evidence is the only credible evidence of value before this court.

The Debtors have provided a retail valuation from Edmonds that takes into account the Vehicle's 53,000 miles, regional adjustment, and average condition. As the owner, Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). The Debtors have persuaded the court regarding their position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

44. [11-29591](#)-B-13 BRIAN SAECHAO
[16-2030](#)
SAECHAO V. FEDERAL NATIONAL
MORTGAGE ASSOCIATION ET AL
Thru #45

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
2-16-16 [[1](#)]

CONTINUED TO 7/19/16 AT 1:00 P.M.

45. [11-29591](#)-B-13 BRIAN SAECHAO
[16-2030](#) TRF-1
SAECHAO V. FEDERAL NATIONAL
MORTGAGE ASSOCIATION ET AL

CONTINUED MOTION TO DISMISS
CAUSE(S) OF ACTION FROM
COMPLAINT
4-1-16 [[7](#)]

CONTINUED TO 7/19/16 AT 1:00 P.M. COURT WRITTEN DECISION TO BE FILED BEFORE
THE CONTINUED HEARING ON 7/19/16. THE CONTINUED HEARING WILL BE VACATED AND NO
APPEARANCE ON 7/19/16 WILL BE REQUIRED.

Final Ruling: No appearance at the July 5, 2016, hearing is required.

The Motion to Modify Chapter 13 Plan After Confirmation has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on May 24, 2016, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

47. [16-22797](#)-B-13 JAYWAUN CLARK
JPJ-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF
PLAN BY JAN P. JOHNSON AND/OR
MOTION TO DISMISS CASE
6-9-16 [[14](#)]

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

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

First, the Debtor testified at the § 341 meeting on June 2, 2016, that he intends to retain a 2015 Nissan Altima that is encumbered by a lien held by Santander Consumer USA but has given no indication of what the monthly plan payment on this vehicle will be and does not indicate how he would be able to make monthly payments toward this vehicle. The Debtor further indicated at the meeting of creditors that he would file a new plan to remedy this discrepancy. It does not appear that the Debtor intends to move forward with the prosecution of this plan.

Second, the Debtor does not appear to be paying all of his disposable net income into the plan pursuant to 11 U.S.C. § 1325(a)(3). The Debtor testified at the § 341 meeting that he receives credit through his employer for CPU purchases and that this expense would be paid in full in approximately 6 months. However, the Debtor has not provided an explanation for the additional disposable net income that will result from the cessation of these payments within 6 months.

The plan filed April 29, 2016, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Because the plan is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor has not confirmed a plan within 75 days, the case will be dismissed on the Trustee's ex parte application.