UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

September 9, 2015 at 10:00 a.m.

1.	15-25402-B-13 MET-1	THEA ELVIN Mary Ellen Terranella	MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 8-6-15 [15]

Also #24

Final Ruling: No appearance at the September 9, 2015, hearing is required.

The Motion for Order Valuing Collateral 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 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 Debtor's declaration. Debtor is the owner of the subject real property commonly known as 35 Willotta Drive, Fairfield, California ("Property"). Debtor seeks to value the Property at a fair market value of $576,500.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

> use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

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

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued. It appears that Proof of Claim No. 2 filed on August 12, 2015, by Wells Fargo Bank, N.A. is not for the Property in question.

Discussion

The first deed of trust secures a claim with a balance of approximately $717,750.00. Creditor's second deed of trust secures a claim with a balance of approximately $90,324.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall enter an appropriate civil minute order consistent with this ruling.

2. 15-24206-B-13 LEON DOBBINS
RJ-5 Richard L. Jare

MOTION TO VALUE COLLATERAL OF CU FACTORY BUILT LENDING
8-26-15 [49]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, the Motion to Value Collateral of CU Factory Built Lending 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 not value the secured claim of CU Factory Built Lending ("Creditor") at $10,000.00 and sustain the Creditor's objection to the valuation.

The motion filed by Debtor to value the secured claim of CU Factory Built Lending ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2000 Homes of Legend Legacy Single wide mobile home ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $10,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 1 filed on July 18, 2015, by CU Factory Built Lending is the claim which may be the subject of the present motion.

Discussion

The court emphasizes that an owner's valuation of his/her property is presumptively valid, which allows this motion to survive. See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004). Counsel may introduce outside sources to corroborate that valuation, but to be admissible the outside source must be authenticated and fall under a relevant hearsay exception. See Fed. R. Evid. 901, 902 (authentication); see Fed. R. Evid. 802, 803 (hearsay).

Here, the Debtor references NADA valuation without properly authenticating or citing any relevant hearsay exception. Further, the Debtor has not addressed and resolved the court's concerns stated in its prior order of June 16, 2015, denying an earlier motion to value this collateral insofar as the Debtor has not explained or shown how he is qualified to determine the "life span" of the unit or what is or may be necessary as "deferred maintenance" that causes a reduction in value. Consequently, the Debtor has failed to carry his burden under 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The court shall enter an appropriate civil minute order consistent with this ruling..

3. 13-28709-B-13 BETHANY SANDERS
SJS-1 Scott M. Johnson

MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES, INC.
8-11-15 [55]

Final Ruling: No appearance at the September 9, 2015, hearing is required.

The Motion to Value Collateral 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 AmeriCredit Financial Services, Inc. at $3,260.00.

The motion filed by Debtor to value the secured claim of AmeriCredit Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2001 Honda Accord EX Sedan 4D ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $3,260.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 3-1 filed on July 23, 2013, by AmeriCredit Financial Services, Inc. is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on or about July 2007, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $4,652.23. 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 $3,260.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court shall enter an appropriate civil minute order consistent with this ruling.

4. 15-24112-B-13 TAMRA DELELLO
JPJ-1 Frederick H. Schill

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON, TRUSTEE
7-16-15 [18]

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).

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

Subsequent to the filing of the Trustee's objection, the Debtor filed an amended plan on August 14, 2015. The earlier plan filed May 21, 2015, is not confirmed.

Additionally, the Debtor and her counsel appeared at the 341 meeting of creditors held on August 13, 2015.

The court shall enter an appropriate civil minute order consistent with this ruling.

5. 15-23515-B-13 JACQUELINE/ROBERT COONEY MOTION TO CONFIRM PLAN
HDR-3 Harry D. Roth 7-28-15 [49]

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 not confirm the first amended plan.

First, the Debtors are delinquent to the Trustee in the amount of $2,710.00, which represents approximately 1 plan payment. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan payments in the amounts of $2,710.00 for months 2 through 16 and $2,830.00 for months 17 through 45 of the plan do not equal the aggregate of the Trustee's fees, monthly post-petition arrears, contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims and executory contract and unexpired lease arrearage claims. The aggregate of these monthly amounts plus the Trustee's fees is $2,853.93. The plan does not comply with Section 4.02 of the mandatory form plan.

Third, the plan does not provide for treatment for the priority portion of the claim filed by Internal Revenue Service in the amount of $6,216.86. The plan does not comply with 11 U.S.C. § 1322(a)(2).

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

6. 12-27320-B-13 RICHARD/SHERYLE KESTER MOTION TO SELL
RDS-2 Richard D. Steffan 8-18-15 [67]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Allow Short Sale of Real Property 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.

The court's decision is to grant the motion to short sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Here, Debtors propose to short sell the property described as 2041 Arliss Way, Sacramento, California ("Property"). The Property is a rental property, is now vacant, and is generating no income. The Property was the subject of a relief from stay motion by the City of Sacramento heard on August 12, 2015, and was granted by the court. The property has been designated a nuisance and the City of Sacramento wishes to abate the nuisance.

The Property had an approximate value of $100,515.00 at the time of filing and is subject to a single deed of trust owing to JP Morgan Chase Bank in the approximate sum of $214,312.73 based on the Proof of Claim No. 14-1 filed July 3, 2012. The Property is a burden on the estate and may incur administrative expenses to the City of Sacramento.

JP Morgan Chase Bank has agreed to accept a minimum of $136,515 from the sale, and will release its lien and waive any deficiency (Dkt. 70, Exh. C). The Debtors will receive no monies or other remuneration from the sale.

Based on the evidence before the court, the court determines that the proposed short sale is in the best interest of the Estate. The Debtors are authorized to enter into the short sale and close escrow in accordance with its terms.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court shall enter an appropriate civil minute order consistent with this ruling.

7. 15-25535-B-13 JORGE/MARTHA HERNANDEZ — MOTION TO VALUE COLLATERAL OF AMERICAN HONDA FINANCE CORPORATION
HLG-1 Kristy A. Hernandez — 8-21-15 [18]

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

The court's decision is to deny with prejudice the motion to value the secured claim of American Honda Finance Corporation ("Creditor") at $30,000.00.

The motion filed by Debtors to value the secured claim of American Honda Finance Corporation ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2014 Honda Pilot ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $30,000.00 as of the petition filing date.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 3 filed on July 31, 2015, by American Honda Finance Corporation is the claim which may be the subject of the present motion.

Discussion

This is a 910 claim. According to the retail installment contract attached to Creditor's proof of claim, Claim No. 3, this debt was incurred on March 30, 2014. This case was filed on July 10, 2015. That is 467 days. As a purchase money claim secured by a vehicle and incurred within 910 days of the filing of the case, the Debtor must pay the claim without application of 11 U.S.C. § 506(a).

The court shall enter an appropriate civil minute order consistent with this ruling.

8. 15-25346-B-13 MICHAEL MILLER
JPJ-1 Michael O'Dowd Hays

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-20-15 [20]

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/s, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

First, the Debtor has not provided the Trustee with 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(c)(3).

Second, the Debtor has not provided the Trustee with the Domestic Support Obligation Checklist pursuant to Local Bankr. R. 3015-1(c)(3). The Debtor has thus hindered the Trustee from performing his duties and therefore has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(c)(3).

Third, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses.

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

9. 15-25547-B-13 TIMOTHY/MONICA BARRY — OBJECTION TO CONFIRMATION OF PLAN BY MERVYN AND JANET MIHAN
HSM-1 Mark W. Briden — 8-20-15 [18]
Thru #10

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

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on August 27, 2015. The confirmation hearing for the amended plan is scheduled for October 14, 2015. The earlier plan filed July 13, 2015, is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

10. 15-25547-B-13 TIMOTHY/MONICA BARRY — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Mark W. Briden — 8-20-15 [21]

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

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an amended plan on August 27, 2015. The confirmation hearing for the amended plan is scheduled for October 14, 2015. The earlier plan filed July 13, 2015, is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

11. 14-31850-B-13 TUA/SHING VANG
PGM-3 Peter G. Macaluso

MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT
8-12-15 [50]

Final Ruling: No appearance at the September 9, 2015, hearing is required.

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

The court's decision is to not permit the loan modification requested.

Tua Vang and Shing Vang ("Debtors") seek court approval to incur post-petition credit. Ocwen Loan Servicing ("Creditor"), whose claim the plan filed August 12, 20215, provides for in Class 4, has agreed to a loan modification which will allow Debtors to pay loan payments of $1,686.01 per month. The first payment is due by August 1, 2015, and each subsequent month. The new principal balance of the loan that will be due and payable is $322,561.69. The interest rate on this new principal balance will 4.00%, which began to accrue as of July 1, 2015. The maturity date will be July 1, 2055. Debtors assert that the modification will not affect the distribution to unsecured creditors or have any direct impact on the estate, Trustee, or other secured creditors.

The motion is supported by the Declaration of Tua Vang and Shing Vang. The Declaration affirms Debtors' desire to obtain the post-petition financing. However, the Declaration does not indicate whether Debtors are able to pay this claim on the modified terms. In fact, Debtors' plan filed December 5, 2014, and confirmed on February 23, 2015, indicates in Class 1 a monthly contract installment of $905.10 with Ocwen Loan Servicing. In comparison, Debtors' plan filed August 12, 2015, indicates in Class 4 a monthly contract installment of $1,686.01 with Ocwen Loan Servicing. Debtors' provide no evidence supporting their ability to pay this increased amount.

Since the court cannot determine Debtors' ability to fund the plan, the motion does not comply with the provisions of 11 U.S.C. § 364(d)and is denied without prejudice.

The court shall enter an appropriate civil minute order consistent with this ruling.

12. 14-28959-B-13 KAY MILLER — MOTION TO MODIFY PLAN
SDB-2 W. Scott de Bie — 7-21-15 [36]

Tentative Ruling: The Motion to Modify Chapter 13 Plan After Confirmation 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 and the Debtor having filed a response, 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 state the following: The Debtor has paid a total of $10,165.00 to the Trustee through July 2015. Commencing August 25, 2015, monthly plan payments shall be $1,550.00 for the remainder fo the plan. Beginning August 2015, the Trustee shall disburse $82.00 per month to Ocwen Loan Servicing for post-petition arrears totaling $1,680.00.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

13. 15-25461-B-13 LONNIE SMITH
MDE-1 Michael O'Dowd Hays

OBJECTION TO CONFIRMATION OF PLAN BY THE BANK NEW YORK MELLON
8-13-15 [22]

Final Ruling: No appearance at the September 9, 2015, hearing is required.

Bank of New York Mellon having filed a Withdrawal of Objection to Confirmation of Plan and Taking the Matter Off Calendar, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no objection to confirmation, the plan filed July 13, 2015, will be confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

14. 11-36163-B-13 KYLE PURVIS CONTINUED MOTION TO MODIFY PLAN
JSO-10 Jeffrey S. Ogilvie 6-17-15 [137]

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 and a response having been filed by the Debtor, the court will address the merits of the motion at the hearing.

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

First, the Debtor's plan does not provide clear and concise plan payments and terms. To resolve this, the Debtor asserts that the order confirming shall provide the following: (1) remove the first part of section 6.01 (Plan Payments are as follows:) and (2) the subsequent paragraph shall state: "Debtor paid a total of $46,314.12 through May 25, 2015. Starting June 25, 2015, payments are $1,368.75 per month."

Second, the modified plan states that the Debtor directly paid Wells Fargo Home Mortgage for months 44-46 to cure post-petition arrears. Debtor asserts that he has provided the Trustee with proof of direct payments made to Wells Fargo Home Mortgage as of September 1, 2015.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

15. 11-48264-B-13 BRIAN/KAREN CESAR MOTION TO MODIFY PLAN
CAH-2 C. Anthony Hughes 7-27-15 [76]

Tentative Ruling: The court issues no tentative ruling.

The Debtors' Motion to Confirm Debtors' Third 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 by the Chapter 13 Trustee and Cam IX Trust, the court will address the merits of the motion at the hearing.

The motion will be determined at the scheduled hearing.

16. 15-23265-B-13 JENNIFER ROSS MOTION TO CONFIRM PLAN
WW-2 Mark A. Wolff 7-28-15 [32]

Final Ruling: No appearance at the September 9, 2015, hearing is required.

The Motion to Confirm First Amended Chapter 13 Plan has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan filed on July 28, 2015, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

17. 13-34068-B-13 RICHARD/CAROL MATHERLY MOTION TO SELL
RAC-1 Richard A. Chan 8-19-15 [29]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Permission to Sell Real Property 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.

The court's decision is to grant the motion to sell.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Here, Debtors propose to sell the property described as 7327 Marani Way, Sacramento, California.

The proposed purchasers of the property are Carmen Moreno and Reynaldo Quezada ("Buyers") at the purchase price of $240,000.00. Debtors assert that the sale price is representative of a fair value for the subject property, that the sale price is all cash, and that the sale is an arm's length transaction. Debtors further assert that on completion of the sale, all lien holders and other creditors with an interest encumbering the residence shall be paid in full in accordance to the agreed upon terms of the sale, as well as all costs of sale. Debtors state that they are aware that any amount received from the proceeds of this sale will be paid over to the Chapter 13 Trustee.

At the time of the hearing the court will announce the proposed sale and request that all other persons interested in submitting overbids present them in open court.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

The court shall enter an appropriate civil minute order consistent with this ruling.

18. 15-23473-B-13 RODNEY/CHRISTINE HOLLAND MOTION TO CONFIRM PLAN
BLG-3 Pauldeep Bains 7-23-15 [44]

Tentative Ruling: The Motion to Confirm First Amended Plan Filed on July 23, 2015, has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

First, the Debtors are delinquent to the Trustee in the amount of $4,390.00, which represents approximately 1 plan payment. The Debtors have not carried their burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, the plan will take approximately 85 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).

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

19. 12-32174-B-13 SANDRA HOLLIS MOTION TO MODIFY PLAN
WW-4 Mark A. Wolff 7-24-15 [53]

Tentative Ruling: The Motion to Confirm Second 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 not permit the requested modification and not confirm the modified plan.

First, although the Debtor's Additional Provisions provide payment of post-petition arrears to JP Morgan Chase Bank, the modified plan does not clearly specify the post-petition arrearage amount or a specific monthly dividend for the months of July, August, and September 2015.

Second, the modified plan includes a discrepancy with regard to Debtor's income. The Debtor stated in her declaration that she lost her job in May 2015 and has been approved to receive disability income. However, the amended Schedule I filed July 24, 2015, shows that the Debtor is still employed and does not include projected disability income.

Third, the Debtor has not provided a declaration or other supporting documents showing that her parents are able and willing to contribute $1,000.00/month to her household income, as stated at line 8h of amended Schedule I, or the duration of time that her parents are able and willing to do so. The Debtor has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Fourth, the plan overstates the monthly contract installment to JP Morgan Chase at $966.74. The new monthly payment amount effective October 1, 2014, is $888.32 according to the Notice of Payment Change filed August 20, 2014.

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

The court shall enter an appropriate civil minute order consistent with this ruling.

20. 15-26374-B-13 FAITH/STEPHEN BAKER MOTION TO EXTEND AUTOMATIC STAY
SLH-1 Seth L. Hanson 8-13-15 [8]

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

The court's decision is to grant the motion.

Faith Marie Baker and Stephen Mark Baker ("Debtors") seek 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 Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case (No. 12-20700) was dismissed on August 7, 2015, upon Debtors' request. Debtors were unable to make their mortgage payments, which they were paying outside of the plan (No. 12-20700, Dkt. 44). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 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 Debtors assert that there is good cause for granting of the extension of the stay based on changed circumstances, overcoming the presumption of bad faith, and likelihood of success.

Debtors asserts they made all plan payments under the prior Chapter 13 case, paying 100% of the general unsecured debt. They were unable to make the mortgage payments, which were paid outside the plan. Debtors filed this present Chapter 13 case to save their home from foreclosure. Debtors further assert they have the ability to cure the mortgage arrears under the terms of the present Chapter 13 plan, which allows the Debtors to cure the mortgage arrears over the life of the proposed plan rather than in one lump sum payment.

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

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

The court shall enter an appropriate civil minute order consistent with this ruling.

21. 14-21394-B-13 PP-2 — PATRICK/SUZANNE CLARK, Arthur Samuel Humphrey — CONTINUED MOTION TO APPROVE VALUATION AND TRANSFER OF STOCK PURSUANT TO CONFIRMED PLAN 6-10-15 [105]

Tentative Ruling: The Motion to Approve Valuation and Transfer of Stock Pursuant to Confirmed Chapter 13 Plan 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 was filed.

The motion will be determined at the scheduled hearing.

22. 15-24295-B-7 GREGORY/TRISHA LUND
JPJ-1 Bruce Charles Dwiggins

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
7-16-15 [14]

CASE CONVERTED 8/12/15

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

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

Subsequent to the filing of the Trustee's objection, the Debtors filed an Ex Parte Application to Convert Case from Chapter 13 to 7 on August 12, 2015. The earlier plan filed May 28, 2015, is not confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

23. 12-27597-B-13 JEFFREY RECHT
SDB-1 W. Scott de Bie

MOTION TO MODIFY PLAN
7-21-15 [28]

Final Ruling: No appearance at the September 9, 2015, 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 July 21, 2015, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.

24. 15-25402-B-13 THEA ELVIN
JPJ-1 Mary Ellen Terranella

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
8-12-15 [21]

Also #1

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

The court's decision is to overrule the objection and grant confirmation of the plan.

Feasibility of the plan depends on the granting of a motion to value collateral for Wells Fargo Bank for the second deed of trust on the Debtor's residence. That motion was heard at Item #1 and was granted. Granting that motion resolves the Trustee's objection to confirmation at Dkt. 21.

The plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed July 6, 2015, is confirmed.

The court shall enter an appropriate civil minute order consistent with this ruling.