UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

October 3, 2017 at 1:00 p.m.

1.	11-47105-B-13 TJW-3 **Thru #2**	REX/ASELA DOMINGUEZ Timothy J. Walsh	MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A. 9-19-17 [69]

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 Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

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

This is a request for an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against the Debtors' property commonly known as 115 Breezewalk Drive, Vallejo, California ("Property").

A judgment was entered against Debtor Rex Dominguez in favor of Creditor in the amount of $5,180.03. An abstract of judgment was recorded with Solano County on July 28, 2011, which encumbers the Property. All other liens recorded against the Property total $589,740.20.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $250,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 140(b)(1) in the amount of $100.00 on Schedule C.

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).

The court will enter an appropriate minute order.

2.	11-47105-B-13 TJW-4	REX/ASELA DOMINGUEZ Timothy J. Walsh	MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A. 9-19-17 [74]

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 Debtors, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the

motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

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

This is a request for an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against the Debtors' property commonly known as 115 Breezewalk Drive, Vallejo, California ("Property").

A judgment was entered against Co-Debtor Asela Dominguez in favor of Creditor in the amount of $5,014.48. An abstract of judgment was recorded with Solano County on September 19, 2011, which encumbers the Property. All other liens recorded against the Property total $589,740.20.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $250,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 140(b)(1) in the amount of $100.00 on Schedule C.

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).

The court will enter an appropriate minute order.

3.	15-29507-B-13 JPJ-3	VERONICA DUDIN Bruce Charles Dwiggins	MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE 8-29-17 [38]

Final Ruling: No appearance at the October 3, 2017, hearing is required.

Debtor filed an ex parte motion to dismiss case and the court entered an order dismissing the case on September 27, 2017. The Trustee's motion to convert or alternatively dismiss the case is denied as moot.

The court will enter an appropriate minute order.

4. 17-21810-B-13 MRL-2 — MONTE KLINKENBORG, Mikalah R. Liviakis — MOTION TO CONFIRM PLAN, 8-11-17 [50]

Final Ruling: No appearance at the October 3, 2017, hearing is required.

The Motion to Confirm Debtor's 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 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 August 11, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

5. 17-23516-B-13 DAN KAO MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso 8-21-17 [42]

Final Ruling: No appearance at the October 3, 2017, hearing is required.

The Motion to Confirm Debtor's First Amended Plan Filed on August 21, 2017, has been set for hearing on the 42-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 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 August 21, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

6. 14-26818-B-13 MARIE TABAREZ
JPJ-4 James L. Keenan

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
8-24-17 [64]

Tentative Ruling: The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case 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 convert this Chapter 13 case to a Chapter 7.

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted based on the following grounds.

Movant seeks dismissal of the case on the basis that Debtor has failed to make a lump sum payment of $22,000.00 from the sale or refinance of her condominium in month 37 as stated in her plan dated October 13, 2014, and confirmed on April 11, 2015. The failure of the Debtor to make a lump sum payment timely constitutes an unreasonable delay that is prejudicial to creditors and a material default by the Debtor with respect to a term of the confirmed plan.

Response by Debtor

Debtor filed a response stating that she will file, set for hearing, and serve a modified plan extending the term of her plan so that she is able to obtain the necessary refinance of her property to pay off her plan. No modified plan appears on the court's docket as of October 2, 2017.

Discussion

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c) since Debtor has not made a lump sum payment of $22,000.00 as stated in the confirmed plan, has not filed a modified plan, and the total value of non-exempt equity in the estate is $18,458.50 according to Schedules A, B, and C filed June 30, 2014. The motion is granted and the

case is converted to a case under Chapter 7.

The court will enter an appropriate minute order.

7.	17-24618-B-13 RCO-1	JENNIFER WILKINSON Richard L. Jare	OBJECTION TO CONFIRMATION OF PLAN BY VITEK MORTGAGE GROUP 9-8-17 [16]

Final Ruling: No appearance at the October 3, 2017, hearing is required.

The Objection to Confirmation of the Chapter 13 Plan was not 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 confirmation hearing was set for September 12, 2017. At that hearing, the court confirmed the Debtor's plan filed July 13, 2017. An order confirming was entered on September 12, 2017.

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

The court will enter an appropriate minute order.

8.	17-24924-B-13 JPJ-1	ANITA VERGARA Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON 9-13-17 [21]

Final Ruling: No appearance at the October 3, 2017, hearing is required.

The case having been dismissed on September 26, 2017, the Trustee's objection to confirmation is denied as moot.

The court will enter an appropriate minute order.

9. 17-25127-B-13 KARA TALASKA
JPJ-1 Susan J. Dodds

OBJECTION TO CONFIRMATION OF PLAN BY TRUSTEE JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 9-13-17 [16]

Final Ruling: No appearance at the October 3, 2017, hearing is required.

The Chapter 13 Trustee having filed a Notice of Withdrawal of the Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case, the objection and motion are dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed August 2, 2017, will be confirmed.

The court will enter an appropriate minute order.

10. 17-26031-B-13 ANGEL REYES MOTION TO EXTEND AUTOMATIC STAY
HDR-1 Harry D. Roth 9-14-17 [19]

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 matter will be determined at the scheduled hearing.

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 19, 2017, due to failure to timely file documents (case no. 17-23605, dkt. 11). 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).

Debtor asserts that the previous case and current case were filed in an effort to save his home and obtain a fresh state. Debtor states that the first case was filed in order to stop a pending foreclosure and that he had to file a skeletal case for lack of time to prepare the entire petition, statements, and schedules. Debtor contends that this case was filed in good faith, that a plan will be filed, and that all supplemental documents have been filed. Debtor states that he is sincere in wanting to make his Chapter 13 case succeed and that he wants to protect his home.

The court will determine at the scheduled hearing whether the presumption of bad faith under the facts of this case and the prior case are sufficiently rebutted, by clear and convincing evidence, for the court to extend the automatic stay. The court will hear the matter.

11. 17-23032-B-13 HALSTEAD TOM — MOTION TO DISMISS CASE
RSG-3 Robert S. Gimblin — 8-25-17 [56]

Final Ruling: No appearance at the October 3, 2017, hearing is required.

Debtor's Voluntary Motion to Dismiss Chapter 13 Case 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-BuTrk (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 dismiss the case.

Section 1307(b) of the Bankruptcy Code provides that "[o]n request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable." 11 U.S.C. § 1307(b). A debtor's right to dismiss case is not absolute. As the Ninth Circuit stated in *Rosson v. Fitzgerald (In re Rosson)*, 545 F.3d 764 (9th Cir. 2008): "[W]e hold that the debtor's right of voluntary dismissal under § 1307(b) is not absolute, but is qualified by the authority of a bankruptcy court to deny dismissal on grounds of bad-faith conduct or 'to prevent an abuse of process.'" Id. at 774.

Here, the Debtor has not previously converted his case, there is no pending motion to convert this case, the Debtor has not previously filed a case under the Bankruptcy Code in the past 8 years, the Debtor's filing was not due to a pending foreclosure, and there is no pending motion for relief from stay. Debtor asserts that he has not made any arrangements with any creditor in connection with this request for dismissal and states that he seeks dismissal because plan payments are not feasible in light of the Trustee's objections to the originally proposed plan.

For reasons stated above, the court will grant the motion to dismiss case pursuant to 11 U.S.C. § 1307(b).

The court will enter an appropriate minute order.

12. 15-26933-B-13 PETE GARCIA
JPJ-4 Peter G. Macaluso

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
8-29-17 [110]

Tentative Ruling: The Trustee's Motion to Convert Case to a Chapter 7 Proceeding or in the Alternative Dismiss Case 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 convert this Chapter 13 case to a Chapter 7.

This motion has been filed by Chapter 13 Trustee Jan Johnson ("Movant"). Movant asserts that the case should be converted based on the following grounds.

Movant seeks dismissal of the case on the basis that Debtor is $3,439.00 delinquent in plan payments, which represents 1.92 plan payments. By the time this motion is hear, an additional plan payment in the amount of $1,850.00 will also be due. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

Response by Debtor

Debtor filed a response stating that he will file, set for hearing, and serve a modified plan and be current under the modified plan before the hearing on this matter. No modified plan appears on the court's docket as of October 2, 2017.

Discussion

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

> [O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7th Cir. 1992). Bad faith is not one of the enumerated grounds under 11 U.S.C. § 1307, but it is "cause" for dismissal or conversion. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9th Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9th Cir. 1999).

Cause exists to convert this case pursuant to 11 U.S.C. § 1307(c) since Debtor has not cured the delinquency, has not filed a modified plan, and the total value of non-exempt equity in the estate is $62,333.34 as a result of the available equity in Debtor's residence and a potential cause of action against SLS based on Debtor's Schedules A/B filed September 10, 2015, and Amended Schedule C filed November 18, 2015. The motion is granted and the case is converted to a case under Chapter 7.

The court will enter an appropriate minute order.

13. 17-22634-B-13 WSS-3 **Thru #15**

RANDY RICHARDSON AND JACQUELYN
W. Steven Shumway

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL SERVICES
8-17-17 [58]

Final Ruling: No appearance at the October 3, 2017, hearing is required.

The Motion to Value 2005 Chevrolet Avalanche 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 OneMain Financial Services at $4,813.00.

Debtors' motion to value the secured claim of OneMain Financial Services ("Creditor") is accompanied by Debtor's declaration. Debtors are the owner of a 2005 Chevrolet Avalanche ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $4,813.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Moreover, this is the amount that the Creditor valued the Vehicle in its proof of claim and which the Debtors are willing to accept.

Proof of Claim Filed

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

Discussion

The lien on the Vehicle's title does not secure a purchase-money loan and instead was a lien against the Vehicle and other collateral in exchange for a loan of $15,909.95. Because of this, the requirement that the loan be incurred more than 910 days prior to filing of the petition is not applicable. The Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $4,813.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

14. 17-22634-B-13 WSS-4

RANDY RICHARDSON AND JACQUELYN
W. Steven Shumway

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL SERVICES
8-17-17 [62]

Final Ruling: No appearance at the October 3, 2017, hearing is required.

The Motion to Value 2000 Mariah Boat and 1999 Boat Trailer 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 OneMain Financial Services at $7,870.00 for the 2000 Mariah Boat and $630.00 for the 1999 boat trailer.

Debtors' motion to value the secured claim of OneMain Financial Services ("Creditor") is accompanied by Debtor's declaration. Debtors are the owner of a 2000 Mariah Boat and a 1999 boat trailer. The Debtors seek to value the 2000 Mariah Boat at $7,870.00 and the 1999 boat trailer at $630.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). Moreover, these are the amounts that the Creditor valued the Mariah Boat and boat trailer in its proof of claim and which the Debtors are willing to accept.

Proof of Claim Filed

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

Discussion

The lien on the Mariah boat and boat trailer does not secure a purchase-money loan and instead was a lien in exchange for a loan of $15,909.95. Because of this, the requirement that the loan be incurred more than one year prior to filing of the petition is not applicable. *See* 11 U.S.C. § 1325(a). 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 $7,870.00 for the 2000 Mariah Boat and $630.00 for the 1999 boat trailer. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

15. 17-22634-B-13 WSS-5 — RANDY RICHARDSON AND JACQUELYN — W. Steven Shumway — MOTION TO CONFIRM PLAN — 8-17-17 [66]

Tentative Ruling: The Motion to Confirm Amended 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 amended plan.

First, the Debtors have 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 Debtors have not complied with 11 U.S.C. § 521(a)(1)(B)(iv).

Second, the plan does not comply with 11 U.S.C. § 1325(a)(4) since unsecured creditors would receive a higher distribution in a Chapter 7 proceeding. According to Schedules A/B and Amended Schedule C, the total value of non-exempt property in the estate is

$41,818.00. The total amount that will be paid to unsecured creditors is only $2,799.25. The total amount of unsecured claims filed equals $5,598.50 and the bar date for all creditors to file a proof of claim, except governmental units, passed on August 30, 2017.

Third, the Debtors have failed to amend the petition to correct a social security number as requested by the Trustee at the meeting of creditors. To date the Debtors have not complied with 11 U.S.C. § 521(a)(3).

Fourth, feasibility depends on the granting of two motions to value collateral for Onemain Financial. Those motions to value have been granted at Items #13 and 14.

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

The court will enter an appropriate minute order.

16. 17-25134-B-13 DAVID/SAMANTHA HEATON
JPJ-1 Mikalah R. Liviakis
Thru #17

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-13-17 [22]

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 depends on the granting of a motion to value collateral for Schools Financial Credit Union. The motion to value collateral was heard and denied on September 12, 2017.

The plan filed August 2, 2017, 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.

The court will enter an appropriate minute order.

17. 17-25134-B-13 DAVID/SAMANTHA HEATON
RTD-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY SCHOOLS FINANCIAL CREDIT UNION
9-13-17 [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 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 not confirm the plan.

Feasibility depends on the granting of a motion to value collateral for Schools Financial Credit Union ("Creditor"). The motion to value collateral was heard and denied on September 12, 2017.

The Creditor has filed a timely proof of claim in which it asserts a secured claim of $26,279.27 and $635.17 in pre-petition arrearages. Creditor contends that the purchase money loan was incurred within 910 days, that its claim cannot be crammed down, and that the interest rate proposed by the Debtor is too low.

Since Debtor's motion to value collateral was denied on September 12, 2017, the plan filed August 2, 2017, is not feasible and does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

18. 17-23242-B-13 SCOTT/CATHERINE GRAHAM MOTION TO CONFIRM PLAN
HLG-3 Kristy A. Hernandez 8-14-17 [47]

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

The Trustee has filed a response stating that it does not oppose plan confirmation provided that the order confirming includes language increasing the dividend paid to unsecured non-priority creditors to 93.7%.

The plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtors' projected disposable income is not being applied to make payments to unsecured creditors. Debtors' amended Calculation of Disposable Income (Form 122C-2) filed July 3, 2017, shows that the Debtors' monthly disposable income is $1,441.69 and the Debtors must pay no less than $86,501.40 to unsecured non-priority creditors.

The total of the unsecured non-priority filed claims is $92,334.18. The Debtors' amended plan proposes a 39% dividend to the unsecured non-priority creditors, or $36,010.33. In order to pay the required $86,501.40 to the unsecured non-priority creditors, the dividend proposed would need to be increased from 39% to 93.7%. The time for non-governmental units to file a proof of claim has passed.

Provided that the order confirming includes language increasing the dividend paid to unsecured non-priority creditors to 93.7%, the court will find the amended plan to comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and it will be confirmed.

The court will enter an appropriate minute order.

19.	17-20354-B-13 PGM-1	JUAN LOPEZ AND ROSALINA MARTINEZ-MACIEL Peter G. Macaluso	OBJECTION TO NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES 8-10-17 [22]

CONTINUED TO 10/17/17 AT 1:00 P.M.

Final Ruling: No appearance at the October 3, 2017, hearing is required. The court will enter an appropriate minute order.

20.	17-20658-B-13 CA-5	EMILY CLARKVIVIER Michael David Croddy	MOTION FOR COMPENSATION BY THE LAW OFFICE OF CRODDY AND ASSOCIATES, PC FOR MICHAEL D. CRODDY, DEBTOR'S ATTORNEY(S) 9-6-17 [56]
	DEBTOR DISMISSED: 08/11/2017		

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion for Allowance of Professional Fees is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, 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 in part and deny in part the motion for compensation.

FEES AND COSTS REQUESTED

Michael D. Croddy ("Applicant"), the attorney to Chapter 13 Debtor, makes a first interim request for the allowance of $4,912.50 in additional fees and expenses. Prior to the filing of this case, Applicant received $7,810.00 consisting of a $7,500.00 retainer and $310.00 filing fee. With the additional fees and costs, the total fees and costs in this case would be $12,722.50. The Debtor has elected to opt out of the Guidelines. Dkt. 1, p. 69. A plan was not confirmed in this case and no order was entered by the court approving employment of Applicant. No amounts have been previously awarded by this court and no fees have been paid by the Chapter 13 Trustee.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 60.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
>
> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
>
> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based

> on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not--
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

BENEFIT TO THE ESTATE

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant relate to the estate. However, the court finds the services were not necessarily reasonable or to the benefit of the Debtor and bankruptcy estate.

The court initially was inclined to deny all fees paid under Applicant's agreement, dkt. 60, because that fee agreement does not appear to comply with the court's local rules. Particularly, LBR 2017-1 states in relevant part that "[a]n attorney who is retained to represent a debtor in a bankruptcy case constitutes an appearance for all purposes in the case, including, without limitation, motions for relief from the automatic stay, motions to avoid liens, objections to claims, and reaffirmation agreements." Applicant's fee agreement appears to exclude representation in claims objections, judicial lien avoidance motions, and stay relief motions all of which require an additional fee. *See* Dkt. 60 at 13. However, upon review of Applicant's billing statements, it does not appear that Applicant deprived the Debtor of those services or billed the Debtor extra for them. Therefore, the court will proceed to consider the merits of Applicant's request for compensation.

Applicant seeks total compensation of $12,722.50 which includes attorney's fees in the

amount of $12,412.50 (33.10 hours x $375.00 per hour) and expenses in the amount of $310.00 which is the filing fee for this case. Applicant provided services in three distinct periods of this chapter 13 case, which are as follows:

Prepetition Services

3/31/2016	1.00		
4/8/2016	2.20		
4/11/2016	0.80		
5/9/2016	1.50		
7/14/2016	1.80		
7/20/2016	0.80		
9/5/2016	1.50		
9/13/2016	0.70		
12/6/2016	1.70		
12/12/2016	0.20		
1/23/2017	2.90		
	15.10	at $375	$ 5,662.50

Postpetition to Plan Confirmation Services

3/2/2017	0.90		
3/5/2017	0.20		
3/7/2017	0.60		
3/18/2017	1.80		
3/23/2017	2.10		
3/24/2017	1.50		
3/28/2017	0.60		
	7.70	at $375	$ 2,887.50

Post Plan Confirmation Denial to Dismissal Services

4/11/2017	1.10		
4/19/2017	0.50		
5/1/2017	1.50		
5/2/2017	1.00		
5/4/2017	1.00		
1/12/2013*	1.90		
8/7/2017	0.80		
1/3/17**	2.50		
	10.30	at $375	$ 3,862.50

*wrong date, services related to amended plan

**wrong date, services postconfirmation

The court will disallow compensation for services Applicant provided after April 4, 2017, which provided absolutely no benefit to the estate. The court gave the Debtor 75 days to confirm a plan in its order dated April 4, 2017, denying confirmation. *See* dkt. 26. That required the Debtor to confirm a plan by June 18, 2017. She did not. Applicant filed a motion to extend time pursuant to Rule 60(b); however, it was filed five days after the deadline to confirm a plan expired and no notice of the motion was given to creditors. The motion also failed to plead with specificity the grounds for relief under Fed. R. Civ. P. 60(b)/Fed. R. Bankr. P. 9023. As a result, that motion

was denied on August 7, 2017, and the case was dismissed for failure to confirm a plan within the original 75-day period. Dkts. 48, 52. Applicant's noncompliance with a court-ordered confirmation deadline and the filing a motion to extend that deadline after the deadline expired causing the Debtor's Chapter 13 case to be dismissed is of (and provided) absolutely no benefit to the estate or the Debtor. Therefore, the court will disallow time after April 4, 2017. At $375.00 per hour for 10.30 hours that translates to an initial a disallowance of $3,862.50.

That leaves 22.80 hours for the time (1) prepetition and (2) post plan confirmation denial/pre-confirmation.[1] At $375.00 per hour the amount for those services totals $8,550.00 However, applicant has failed to establish that an hourly rate of $375.00 is reasonable in this Chapter 13 case. *See In re Gianulias*, 111 B.R. 867, 869 (E.D. Cal. 1989) (citations omitted); *see also In re Parreira*, 464 B.R. 410, 415 (Bankr. E.D. Cal. 2012) (citations omitted). The court does not find persuasive Applicant's comparison of his hourly rate to the hourly rates charged by the Boutin Jones law firm as cited in Applicant's exhibits. In the absence of any other evidence, $300.00 per hour is not an unreasonable fee in the Sacramento market routinely charged in Chapter 13 cases. Therefore, for the remainder of Applicant's time, the court fixes Applicant's hourly rate at $300.00 per hour. For the referenced 22.80 hours, that translates to **$6,840.00** which the court will allow as reasonable compensation for the services Applicant provided in this Chapter 13 case.

The court will allow the **$310.00** filing fee as an expense.

Prior to the filing of this Chapter 13 case, Applicant received $7,810.00 from the Debtor. From that amount the following are allowed and may be deducted: (1) $6,840.00 for attorney's fees and (2) $310.00 for the filing fee for a total deduction of **$7,150.00.** The balance of $350.00 shall be refunded to the Debtor within ten (10) days of the entry of an order granting in part and denying in part this application. All other requests for compensation are denied.

The court will enter an appropriate minute order.

[1] Prepetition services, if rendered in connection with a Chapter 13 case, may be compensable under § 330(a)(4)(B). *See In re Busetta-Silva*, 314 B.R. 218, 224 & n.30 (10th Cir. BAP 2004); *In re Moratta*, 479 B.R. 681, 689 (Bankr. M.D.N.C. 2012).

21. 16-28259-B-13 PAULA BOYD MOTION TO CONFIRM PLAN
RS-3 Richard L. Sturdevant 8-17-17 [73]

Tentative Ruling: The Motion to Confirm 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 second amended plan.

First, 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).

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $924.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The court will enter an appropriate minute order.

22. 16-27060-B-13 JONATHAN WESTERGAARD
JPJ-1 Mohammad M. Mokarram

MOTION TO CONVERT CASE TO CHAPTER 7 AND/OR MOTION TO DISMISS CASE
8-30-17 [21]

DEBTOR DISMISSED: 09/14/2017

Final Ruling: No appearance at the October 3, 2017, hearing is required.

The case having been dismissed on September 14, 2017, the Trustee's motion to convert or in the alternative dismiss case is denied as moot.

The court will enter an appropriate minute order.

23. 17-25161-B-13 PETER JACOWAY
AP-1 Mark A. Wolff

OBJECTION TO CONFIRMATION OF PLAN BY U.S. BANK, N.A.
9-14-17 [15]

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.

Objecting creditor U.S. Bank, N.A. holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $2,509.52 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 August 4, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

24. 17-24863-B-13 JOSE LOPEZ-NUNEZ
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-13-17 [27]

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 did not appear at the meeting of creditors set for September 7, 2017, as required pursuant to 11 U.S.C. § 343.

Second, 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).

Third, the Debtor is delinquent to the Chapter 13 Trustee in the amount of $1,325.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed August 8, 2017, 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.

25. 16-22265-B-13 JUAN ACOSTA MOTION TO MODIFY PLAN
SDB-2 W. Scott de Bie 8-22-17 [48]

Final Ruling: No appearance at the October 3, 2017, 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 August 22, 2017 complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

26. 17-24765-B-13 KEVIN/KIMBERLEY LEWIS — OBJECTION TO CONFIRMATION OF PLAN BY PACIFIC UNION FINANCIAL, LLC
EAT-1 Gary Ray Fraley — 9-11-17 [35]
Thru #28

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

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

Objecting creditor Pacific Union Financial, LLC holds a deed of trust secured by the Debtors' residence. The creditor has filed a timely proof of claim in which it asserts $37,007.41 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 July 20, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

27. 17-24765-B-13 KEVIN/KIMBERLEY LEWIS — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
JPJ-1 Gary Ray Fraley — 9-13-17 [38]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. *See* Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The 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.

First, the Debtors have not served upon the Trustee a completed 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).

Second, feasibility of the plan cannot be assessed because the plan is mostly unreadable and cannot be administered as it was filed. The court is unable to discern the terms of the plan. The Debtors have not complied with Local Bankr. R. 3015-1(a). The plan filed July 20, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

28.	17-24765-B-13 TGM-1	KEVIN/KIMBERLEY LEWIS Gary Ray Fraley	OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT CORPORATION 8-24-17 [26]

Final Ruling: No appearance at the October 3, 2017, hearing is required.

Toyota Motor Credit Corporation having filed a Notice of Withdrawal of its Objection to Confirmation of the Chapter 13 Plan, 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.

Nonetheless, the objections at Items #26 and #27 having been sustained, the plan filed July 20, 2017, will not be confirmed.

The court will enter an appropriate minute order.

29. 16-24873-B-13 LYNDA COBURN
PGM-2 Peter G. Macaluso

MOTION TO TRANSFER INTEREST IN REAL PROPERTY
9-6-17 [64]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Transfer Interest in 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 transfer interest to Jamie L. Rippey.

Debtor seeks to transfer her interest in real property commonly known as 3929 Soaring Eagle Trail, Vacaville, CA ("Property") to her daughter Jamie L. Rippey. At the time of filing, this Property was listed on Schedule A of the petition indicating co-ownership with William and Verda Conway and was provided for in Class 4 of the plan. Debtor and her parents purchased this property for Debtor's daughter, Jamie L. Rippey.

The Declaration of Lynda Coburn states that Ms. Rippey has made all mortgage payments and maintained the property since the purchase in June 2011. From the time of purchase, all parties agreed that Ms. Rippey would assume the mortgage loan once she became more financially stable. Debtor had paid $5,000.00 to open escrow and made a down payment of $16,941.76 for the purchase of the Property. Debtor lived with Ms. Rippey from the time of purchase to July 2014 and paid no rent since it was agreed that her down payment on the Property would cover her share.

Ms. Rippey is now in a financial position to assume the loan. However, Ocwen Loan Servicing will not allow her to begin assumption of the loan without permission of the court.

Debtor seeks to transfer her interest in the Property, which will reduce her liability, and continue in the Chapter 13 plan for the remaining 47 months. Debtor contends that the transfer of the real property does not affect her ability to complete the plan.

Discussion

The confirmed plan creates a duty on the part of a debtor to obtain prior court authorization before transferring property. Ch. 13 Plan § 5.02, dkt. 31. The Local Rules also require court authorization when property with a value of $1,000.00 or more is to be transferred other than in the ordinary course of business. Local Bankr. R. 3015-1(b)(1).

Based on the motion and supporting papers, the Debtor will no longer owe a debt to Ocwen Loan Servicing after the transfer. The court finds a proper purpose for this transfer. The motion will be granted.

The court will enter an appropriate minute order.

30. 17-24774-B-13 CCR-1 **Thru #32**

BRIAN ROYER
Stephen N. Murphy

OBJECTION TO CONFIRMATION OF PLAN BY JOHN GAJKOWSKI
9-18-17 [32]

Tentative Ruling: The Objection to Confirmation of Debtor's 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 in part and overrule in part the objection, and not confirm the plan.

John Gajkowski ("Creditor") objects to confirmation on various grounds.

First, Creditor asserts that the Debtor is ineligible for Chapter 13 relief under 11 U.S.C. § 109(e) because the Debtor's unsecured debt exceeds the debt limit of $394,725.00. Creditor contends that its unsecured claim alone is in the amount of $385,469.55. However, the only evidence to support this amount is Creditor's own spreadsheet which calculates an accrual of interest at 8.00% per annum. The Creditor has not filed a proof of claim. As to this point, the Creditor's objection is overruled.

Second, Creditor states that the Debtor's projected disposable income is not being applied to make payment to unsecured creditors pursuant to 11 U.S.C. § 1325(b)(1)(B). Creditor contends that Forms 122C-1 and 122C-2 show a monthly disposable income of $8,708.37. However, Schedule J shows a monthly net income of $100.00. As to this point, the Creditor's objection is overruled.

Third, Creditor contends that the plan does not comply with 11 U.S.C. § 1325(a)(4) because it is unclear whether unsecured creditors will receive at least as much as they would receive in a Chapter 7 liquidation. Debtor proposes to make a lump sum payment to Creditor contingent on the sale of Debtor's real property. However, the Debtor has not provided evidence that he has made efforts to sell the property. As to this point, the Creditor's objection is sustained.

Fourth, Creditor alleges that the 11 U.S.C. § 1325(a)(6) is not satisfied but does not explain why the Debtor will not make all payments under the plan and comply with the plan. As to this point, the Creditor's objection is overruled.

Fifth, Creditor states that the plan has not been proposed in good faith pursuant to 11 U.S.C. § 1325(a)(3) because the Debtor has not properly scheduled all assets and liabilities. Creditor contends that Debtor owns additional personal property not listed in the schedules, that Creditor's claim is not provided for in its full amount, and that Creditor's state court action is not listed in the Statement of Financial Affairs. As to this point, the Creditor's objection is sustained.

The plan filed August 16, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The plan is not confirmed.

The court will enter an appropriate minute order.

31. 17-24774-B-13 SNM-1

BRIAN ROYER
Stephen N. Murphy

MOTION TO CONFIRM PLAN
8-16-17 [22]

Tentative Ruling: The Motion to Confirm Chapter 13 Plan has been set for hearing on the 42-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other

parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 John Gajkowski.

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

The Trustee objects to confirmation on grounds that the Debtor has failed to provide the Trustee with copies of the non-Debtor spouse's payment advices for the 60-day period prior to the filing of the petition. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

Creditor John Gajkowski also objects to confirmation on grounds detailed in his objection to confirmation at Item #30.

The plan filed August 16, 2017, does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court will enter an appropriate minute order.

32.	17-24774-B-13 TGM-1	BRIAN ROYER Stephen N. Murphy	OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY 8-30-17 [27]

Tentative Ruling: The Objection of Deutsche Bank 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.

Objecting creditor Deutsche Bank National Trust Company holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts $2,802.21 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 August 16, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

33. 14-29375-B-13 JAMES FETTY MOTION TO MODIFY PLAN
RJ-8 Richard L. Jare 8-25-17 [116]

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, 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.

Feasibility depends on the Debtor selling or refinancing his double wide mobile home prior to the end of the plan. The Debtor has not presented any evidence that he is able to sell or refinance the property. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

The court will enter an appropriate minute order.

34. 17-23780-B-13 MELANIE PAULY MONTERROSA — MOTION FOR RELIEF FROM AUTOMATIC STAY
MJ-1 W. Scott de Bie — 7-11-17 [35]
Thru #35
WELLS FARGO BANK, N.A. VS.

Tentative Ruling: The Motion for Relief From Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(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 for relief under § 362(d)(1) as moot and deny *in rem* relief under § 362(d)(4) for reasons stated below.

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (4) with respect to the real property commonly known as 14602 State Highway 113, Woodland, California (the "Property"). Movant has provided the Declaration of Peggy S. Morrow to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Morrow Declaration states that Movant holds the original Promissory Note dated July 26, 2012, which is secured by the Deed of Trust of the same date as signed by Dennis S. Reynolds ("Original Borrower"). Movant asserts that on June 5, 2017 - the same day that Debtor filed her petition - Mr. Reynolds transferred his interest in the Property to Debtor via an unauthorized Grant Deed. Mr. Reynolds himself had filed for Chapter 13 relief on December 2, 2016, but the case was dismissed on April 13, 2017 (case no. 16-27999).

Movant asserts that Debtor's bankruptcy was filed as part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcies and the transfer of all or part of ownership of the Property without the consent of Movant or court approval. *See* 11 U.S.C. § 362(d)(4).

Response by Debtor

Debtor filed a response stating that she has no knowledge of the subject property, is not acquainted with Mr. Reynolds, and did not list the Property in her bankruptcy schedules or her plan because she has no interest in the Property. Debtor also asserts that an examination of the Yolo County Recorder's records discloses that the Grant Deed purporting to give Debtor an interest in the property was never recorded and, thus, it has no legal effect. Because the Grant Deed was never recorded nor provided to the Debtor, the interest in the Property never vested in the Debtor and thus is not part of her bankruptcy case.

Debtor's counsel contacted both Movant's attorney and the U.S. Trustee's office to inform them of the matter as an apparent attempt at "dumping," wherein the interest in property is transferred to an unwitting person in bankruptcy in an attempt to trick the mortgage holder into staying collection actions such as foreclosure or auction.

Response by Movant

Movant acknowledges that it is now informed of the fact that Debtor has no knowledge of the property or that the Grant Deed was executed to her. Movant states that it agreed to withdraw the objection to confirmation but would not withdraw the motion for relief from stay because it seeks an *in rem* order as to the subject property pursuant to § 362(d)(4). The Movant also has not withdrawn its proof of claim.

Discussion

To prevail under § 362(d)(4), Movant must prove that all three elements are satisfied: (1) the debtor's bankruptcy filing was part of a scheme, (2) the object of the scheme

was to delay, hinder, or defraud creditors, and (3) the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval or (b) multiple bankruptcy filings affecting the real property.

Here, the Movant has not proven all three elements. Movant presents no evidence that Debtor's bankruptcy was filed as part of a scheme to delay, hinder, or defraud Movant of its interest in the Property. In fact, Movant admits that the Debtor "was not involved in the scheme." Any alleged effort to delay, hinder, or defraud Movant was done by Mr. Reynolds alone and not the Debtor. As stated in the Declaration of Melanie P. Monterrosa, the Debtor does not know of any Dennis S. Reynolds, did not receive any Grant Deed, and has no interest in the Property. The Property is not part of Debtor's bankruptcy case and the court has no jurisdiction to affect the Property and impose its relief from stay for a two-year period under § 362(d)(4).

Movant's motion for relief from stay pursuant to § 362(d)(1) is denied as moot and *in rem* relief pursuant to § 362(d)(4) is denied.

Although Debtor's counsel has requested an award of attorney's fees, the court finds no contractual or statutory basis for the award of attorneys' fees in connection with its response. Debtor's counsel is not awarded any attorneys' fees.

No other or additional relief is granted by the court.

35.	17-23780-B-13 SDB-2	MELANIE PAULY MONTERROSA W. Scott de Bie	OBJECTION TO CLAIM OF WELLS FARGO BANK, N.A., CLAIM NUMBER 5 8-10-17 [67]

Final Ruling: No appearance at the October 3, 2017, hearing is required.

Debtor's Objection to Allowance of Claim of Wells Fargo Bank, N.A. 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. 5-1 of Wells Fargo Bank, N.A. and disallow the claim in its entirety.

Melanie P. Monterrosa ("Objector") requests that the court disallow the claim of Wells Fargo Bank, N.A. ("Creditor"), Claim No. 5-1. The claim is asserted to be in the amount of $217,647.14. Objector asserts that the claim should be disallowed because it presents no evidence that the Debtor is obligated on the loan for real property located at 14602 State Highway 113, Woodland, California (the "Property"). Dennis S. Reynolds had transferred his interest in the Property to Debtor via an unauthorized Grant Deed. Debtor is not acquainted with any Dennis S. Reynolds, is not familiar with the Property, and has no interest in the Property. Debtor's counsel advised Creditor's counsel of these facts and that the claim was unfounded. Although the Creditor stated that it would withdraw its proof of claim, the claim has not been withdrawn.

Discussion

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to

overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the proof of claim is unfounded given that the Debtor has no interest in the Property and Creditor acknowledges this fact. Objector has satisfied its 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.

The court will enter an appropriate minute order.

36. 17-25982-B-13 TERRIE KENT MOTION TO EXTEND AUTOMATIC STAY
DPR-1 David P. Ritzinger 9-17-17 [8]

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on September 7, 2017, due to delinquency in plan payments (case no. 17-22005, dkt. 24). 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 she fell behind on plan payments due to the loss of two payments that were mailed to the Chapter 13 Trustee, each in the amount of $2,856.40 for a total arrearage of $5,712.80. This triggered a motion to dismiss case by the Trustee. Debtor contends that with less than 30 days available to replace these two missing payments, she was unable to bring her plan current unless Chase Bank refunded her money to her, which was anticipated to occur sometime in November 2017. Debtor states that her inability to satisfy plan payments was not related to any interruption of income or unforeseen expense, but was due to the loss of these two payments. Debtor states that she intends to make all payments for this case electronically through the Nationwide TFS, LLC ("TFS") bill pay system to ensure she will not become delinquent in plan payments.

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

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

The court will enter an appropriate minute order.

37. 17-25090-B-13 MARTHA RAMIREZ
FWP-1 Peter G. Macaluso
Thru #38

OBJECTION TO CONFIRMATION OF PLAN BY SUTTER COUNTY TAX COLLECTOR
9-14-17 [40]

Tentative Ruling: The Opposition of Sutter County Tax Collector to 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.

Sutter County Tax Collector holds first-priority tax liens secured by the Debtor's real properties commonly known as 906 Almond Street, Yuba City, CA ("Almond Property") and 930 Franklin Avenue, Yuba City, CA ("Franklin Property") as a result of the non-payment of real property taxes. The creditor has filed a timely proof of claim in which it asserts a secured claim of $5,195.13. The plan should list a secured claim in the amount of $2,220.40 for the Almond Property, and $2,974.73 for the Franklin Property. Because the plan does not provide for the surrender of the collateral for this claim, the plan must provide for payment in full. *See* 11 U.S.C. § 1325(a)(5)(B)(ii). Because it fails to provide for the full payment, the plan cannot be confirmed.

The plan filed August 15, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

38. 17-25090-B-13 MARTHA RAMIREZ
JPJ-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
9-13-17 [35]

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 to sustain the objection and deny confirmation of the plan.

First, the Debtor has failed to provide the Trustee with requested copies of certain items in connection with Debtor's businesses including, but not limited to, a completed business examination checklist, bank account statements for the 6-month period prior to the filing of the petition, proof of all required insurance/bonds, and proof of required licenses and permits. The Debtor has not complied with 11 U.S.C. § 521.

Second, feasibility of the plan cannot be fully assessed. According to Schedule I, the Debtor's net income from the operation of a business is $8,222.00. The Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses.

Third, the Debtor has not provided the Trustee with copies of the terms of a Caltrans contract or any details regarding the sale of Debtor's three properties. The Debtor has not carried her burden to show that the plan complies with 11 U.S.C. § 1325(a)(6).

The plan filed August 15, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

39. 17-25092-B-13 JPJ-1 **Thru #40**
RHIANNON NICHOLS
Aubrey L. Jacobsen
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-13-17 [23]

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.

Feasibility of the plan depends on the granting of a motion to value collateral for Flagship Credit Acceptance LLC. The motion to value collateral is granted at Item #40.

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 August 11, 2017, is confirmed.

The court will enter an appropriate minute order.

40. 17-25092-B-13 TAG-1
RHIANNON NICHOLS
Aubrey L. Jacobsen
MOTION TO VALUE COLLATERAL OF FLAGSHIP CREDIT
8-29-17 [16]

Final Ruling: No appearance at the October 3, 2017, hearing is required.

The Motion to Value Collateral Pursuant to 11 U.S.C. § 506(a)(2) 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 Flagship Credit Acceptance LLC at $7,500.00.

Debtor's motion to value the secured claim of Flagship Credit Acceptance LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Hyundai Sonata ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $7,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

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

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14,304.00. 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 $7,500.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

41. 17-24893-B-13 JAMES/DEBORAH LARSON
DAO-1 Dale A. Orthner
Thru #42

MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION
9-11-17 [15]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, the Motion to Value Collateral is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtors, 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 without prejudice.

Debtors' motion to value the secured claim of Schools Financial Credit Union ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2012 Ford Escape ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $10,000.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 6-1 filed by Schools Financial Credit Union is the claim which may be the subject of the present motion.

Discussion

The attachment to Claim No. 6-1 includes a lien/title information sheet showing a lien start date of September 19, 2016. This is less than 910 days prior to filing of the petition on July 26, 2017. The purchase money debt on a motor vehicle acquired for a debtor's personal use cannot be lien stripped if the debt was incurred within 910 days before the bankruptcy filing. 11 U.S.C. § 1325(a)(9). Where the § 1325 lien stripping prohibition applies, the entire amount of the debt on the motor vehicle must be paid under a plan and not just the collateral's replacement value. Accordingly, the Debtors' motion is denied without prejudice.

The court also notes that, apparently with the assistance of counsel who obviously prepared the declaration, the Debtors appear to be lying in their declaration. The Debtors state in their declaration at dkt. 17 that "[they] have owned [the 2012 Ford Escape] for several years[.]" However, according to the attachments to Claim No. 6-1, the contract for that Vehicle is dated September 19, 2016, which is consistent with the Creditor's lien start date. Inasmuch as this case was filed on July 26, 2017, that is not quite "several years."

The court will enter an appropriate minute order.

42. 17-24893-B-13 JAMES/DEBORAH LARSON
JPJ-1 Dale A. Orthner

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
9-13-17 [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 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 granting of a motion to value collateral for Schools Financial Credit Union. The motion to value collateral was denied without prejudice at Item #41.

The plan filed July 26, 2017, 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.

The court will enter an appropriate minute order.

REVISED

43. 17-25899-B-13 CARLOS/ROBIN ROBLES — MOTION TO VALUE COLLATERAL OF SYNCHRONY BANK
CYB-1 Candace Y. Brooks — 9-14-17 [12]
Thru #46

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Value Collateral of Synchrony Bank 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 continue the matter to October 24, 2017, at 1:00 p.m. to allow for proper service.

Debtors Carlos and Robin Robles have filed a motion to value the collateral of Synchrony Bank. Dkt. 12, CYB-1. Synchrony Bank is an insured depository institution which means, absent exceptions not applicable here, it must be served "by certified mail addressed to an officer of the institution[.]" Fed. R. Bankr. P. 7004(h). The certificates of service that correspond with the motion reflect that Synchrony Bank was served as follows: "TO THE ATTENTION OF AN OFFICER, A MANAGING OR GENERAL AGENT, OR OTHER AGENT AUTHORIZED BY APPOINTMENT OR LAW TO RECEIVE SERVICE OF PROCESS." Dkts. 16, 33. In other words, service on Synchrony Bank was not solely to an officer.[1]

Service on Synchrony Bank in the manner above fails to comply with Bankruptcy Rule 7004(h). Bankruptcy Rule 7004(h) requires service solely to the attention of an officer of an insured depository institution. Nothing in Bankruptcy Rule 7004(h) or its legislative history suggests that Congress intended the term "officer" to include anything other than an officer of the respondent creditor. *See Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342, 345-46 (4th Cir. 2003)(examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor).

This court has previously dismissed matters without prejudice as non-compliant with Bankruptcy Rule 7004(h) where service was not solely to the attention of an officer of an insured depository institution. *See In re Chaney*, No. 16-24101 (Bankr. E.D. Cal. 2016) (Dkts. 24, 26). Other judges in this district have as well. *See In re Easley*, No. 16-27435 (Bankr. E.D. Cal. 2016) (McManus, J.) (Dkts. 62, 64). This court has also continued matters where service was not solely to an officer of an insured depository institution and provided the moving party with an opportunity to re-serve in compliance with Bankruptcy Rule 7004(h). *See In re Petty*, No. 12-24999 (E.D. Cal. 2012). In this case, for reasons of judicial economy and to permit the motion to be heard before the plan confirmation hearing date, the court will do the latter.

Therefore, for the foregoing reasons, it is ordered that in lieu of a dismissal without prejudice the hearing on the Debtors' motion to value the collateral of Synchrony Bank, dkt. 12, which is currently set for October 3, 2017, at 1:00 p.m. is continued to October 24, 2017, at 1:00 p.m.

It is further ordered that the Debtors shall re-serve Synchrony Bank by certified mail to the attention of an officer of the institution (and only to an officer of the institution) by no later than October 6, 2017.

The court will enter an appropriate minute order.

[1] Compare the certificate of service for a similar motion to value the collateral of Wells Fargo Bank, N.A., dkt. 17, which is served solely to an officer of the institution. *See* Dkts. 21, 35.

REVISED

44. 17-25899-B-13 CARLOS/ROBIN ROBLES — MOTION TO VALUE COLLATERAL OF SYNCHRONY BANK
CYB-2 Candace Y. Brooks — 9-15-17 [22]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Value Collateral of Wells Fargo Bank, N.A. aka Wells Fargo Financial National Bank 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 continue the matter to October 24, 2017, at 1:00 p.m. to allow for proper service.

Debtors Carlos and Robin Robles have filed a motion to value the collateral of Synchrony Bank. Dkt. 22, CYB-2. Synchrony Bank is an insured depository institution which means, absent exceptions not applicable here, it must be served "by certified mail addressed to an officer of the institution[.]" Fed. R. Bankr. P. 7004(h). The certificates of service that correspond with the motion reflect that Synchrony Bank was served as follows: "TO THE ATTENTION OF AN OFFICER, A MANAGING OR GENERAL AGENT, OR OTHER AGENT AUTHORIZED BY APPOINTMENT OR LAW TO RECEIVE SERVICE OF PROCESS." Dkts. 26, 33. In other words, service on Synchrony Bank was not solely to an officer.[1]

Service on Synchrony Bank in the manner above fails to comply with Bankruptcy Rule 7004(h). Bankruptcy Rule 7004(h) requires service solely to the attention of an officer of an insured depository institution. Nothing in Bankruptcy Rule 7004(h) or its legislative history suggests that Congress intended the term "officer" to include anything other than an officer of the respondent creditor. *See Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342, 345-46 (4th Cir. 2003)(examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor).

This court has previously dismissed matters without prejudice as non-compliant with Bankruptcy Rule 7004(h) where service was not solely to the attention of an officer of an insured depository institution. *See In re Chaney*, No. 16-24101 (Bankr. E.D. Cal. 2016) (Dkts. 24, 26). Other judges in this district have as well. *See In re Easley*, No. 16-27435 (Bankr. E.D. Cal. 2016) (McManus, J.) (Dkts. 62, 64). This court has also continued matters where service was not solely to an officer of an insured depository institution and provided the moving party with an opportunity to re-serve in compliance with Bankruptcy Rule 7004(h). *See In re Petty*, No. 12-24999 (E.D. Cal. 2012). In this case, for reasons of judicial economy and to permit the motion to be heard before the plan confirmation hearing date, the court will do the latter.

Therefore, for the foregoing reasons, it is ordered that in lieu of a dismissal without prejudice the hearing on the Debtors' motion to value the collateral of Synchrony Bank, dkt. 12, which is currently set for October 3, 2017, at 1:00 p.m. is continued to October 24, 2017, at 1:00 p.m.

It is further ordered that the Debtors shall re-serve Synchrony Bank by certified mail to the attention of an officer of the institution (and only to an officer of the institution) by no later than October 6, 2017.

The court will enter an appropriate minute order.

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[1] Compare the certificate of service for a similar motion to value the collateral of Wells Fargo Bank, N.A., dkt. 17, which is served solely to an officer of the institution. *See* Dkts. 21, 35.

REVISED

45. 17-25899-B-13 CYB-3 — CARLOS/ROBIN ROBLES, Candace Y. Brooks — MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A. 9-14-17 [17]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Value Collateral of Wells Fargo Bank, N.A. aka Wells Fargo Financial National Bank 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. aka Wells Fargo Financial National Bank at $425.00.

Debtors' motion to value the secured claim of Wells Fargo Bank, N.A. aka Wells Fargo Financial National Bank ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of exercise equipment consisting of an inversion table ($75.00), elliptical machine ($200.00), and a bike ($100.00) (collectively, "Asset"). The Debtors seek to value the Asset at a replacement value of $425.00 as of the petition filing date. As the owner, Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

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

Discussion

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 time limitation to offer the fair market value of personal property, including furniture, appliances, and boats, is more than one year prior to the filing of the petition. *See* 11 U.S.C. § 1325(a).

The total dollar amount of the obligation represented by the financing agreement with Creditor is $2,540.00 as stated in the Debtors' declaration. Debtors assert that the Asset has been used since 2015, that it is in fair to good condition, that it has undergone daily use, and that the price a retail merchant would charge for the Asset is $425.00. 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 $425.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

46. 17-25899-B-13 CYB-4 — CARLOS/ROBIN ROBLES, Candace Y. Brooks — MOTION TO VALUE COLLATERAL OF FORD MOTOR CREDIT COMPANY, LLC 9-15-17 [27]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Value Collateral of Ford Motor Credit Company, LLC 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 Ford Motor Credit Company, LLC at $12,900.00.

Debtors' motion to value the secured claim of Ford Motor Credit Company, LLC ("Creditor") is accompanied by Debtors' declaration. Debtors are the owner of a 2014 Ford Focus ("Vehicle"). The Debtors seek to value the Vehicle at a replacement value of $12,900.00 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).

No Proof of Claim Filed

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

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred in July 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $21,150.42. 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 $12,900.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.