UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

December 5, 2017 at 1:00 p.m.

1.	16-22402-B-13 PLG-2	GREGORY BILLIE AND EUGENIA JONES-BILLIE Steven A. Alpert	MOTION TO MODIFY PLAN 10-19-17 [47]

Tentative Ruling: Debtors' Motion to Modify Chapter 13 Plan (2nd Modified 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed by the Chapter 13 Trustee.

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

First, the Debtors are delinquent to the Chapter 13 Trustee in the amount of $1,027.00, which represents approximately 1 plan payment. By the time this matter is heard, an additional plan payment in the amount of $1,027.00 will also be due. The Debtors have not made a plan payment to the Trustee since July 25, 2017. The Debtors do not appear to be able to make plan payments proposed and have not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Second, Joint Debtor's projected income from employment or unemployment benefits according to Schedule J is only speculative. The Debtors have not carried their 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.

2. 17-26211-B-13 JPJ-1 — DOUGLAS/KIM JACOBS — Scott D. Shumaker — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 11-8-17 [30]

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

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

First, the Trustee objects to confirmation on grounds that the Debtors have not filed certificates of completion from an approved nonprofit budget and credit counseling agency. The court's docket reflects that the certificates were filed on November 9, 2017.

Second, feasibility depends on the Debtors obtaining the consent of the Internal Revenue Service to pay less than the full amount of its priority claim. A stipulation was filed on November 27, 2017, between Debtors and the IRS stating that the plan shall provide for $12,000.00 to the IRS, that the $28,267.26 balance shall be held in abeyance pending completion of the plan, at which point the IRS may pursue the remainder of its claim against the Debtors, and that nothing in the stipulation shall be construed as a waiver of any sums claimed by the IRS.

The plan filed September 22, 2017, complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan is confirmed.

The court will enter an appropriate minute order.

3. 17-26013-B-13 JPJ-2 — DIANA EVANS, Jonathan D. Matthews — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS, 10-26-17 [49]

Final Ruling: No appearance at the December 5, 2017, hearing is required.

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

The court's decision is to sustain the objection and the exemption is disallowed in its entirety.

The Trustee objects to the Debtor's use of the California exemption § 704.730 for her primary residence in the amount of $277,000.00. The Debtor did not appear at the first meeting of creditors held October 19, 2017, and therefore the Trustee has not been able to verify the Debtor's age, status of her health, or whether she is a member of a family unit. Based on Debtor's schedules, Debtor is unmarried, has no dependents, is not mentally or physically disabled, and is not unable to engage in substantial gainful employment. Because of this, it does not appear that the Debtor is entitled to an exemption on her residence of more than $75,000.00.

The Trustee's objection is sustained and the claimed exemption is disallowed.

The court will enter an appropriate minute order.

4. 17-26529-B-13 JOSE/MAGDALENA CARMONA
Thru #5 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY DEUTSCHE BANK NATIONAL TRUST COMPANY
11-9-17 [29]

Tentative Ruling: The Objection to 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 overrule the objection, deny the request for attorney's fees and costs, and confirm the plan

Deutsche Bank National Trust Company ("Creditor") holds a deed of trust secured by the Debtors' residence. The Creditor has filed a timely proof of claim in which it asserts $92,651.78 in pre-petition arrearages. The plan does not propose to cure these arrearages.

However, a stipulation was approved on November 29, 2017, between Creditor and Debtors that resolves the motion to value collateral filed October 3, 2017, and set for hearing on December 18, 2017. The stipulation states in part that Debtors' plan will provide Creditor a secured principal balance of $7,000.00 at 6.00% interest over five years, that the balance of Creditor's claim shall be deemed unsecured, and that Creditor will share pro-rata with other unsecured Creditors in any distribution to unsecured Creditors in this case.

Provided that the stipulation resolves the Creditor's objection, the plan filed September 29, 2017, will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a). The objection will be overruled and the plan will be confirmed.

Although requested in the objection, Creditor has not stated either a contractual or statutory basis for the award of attorney's fees or costs in connection with this objection. Creditor is not awarded any attorney's fees or costs. The parties also stipulated to pay their own attorney's fees and costs incurred in the resolution of the valuation issue.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

5. 17-26529-B-13 JOSE/MAGDALENA CARMONA
JPJ-1 Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-8-17 [26]

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

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

Feasibility of the plan depends on the granting of a motion to value collateral for Deutsche Bank National Trust Company ("Creditor"). A stipulation was approved on

November 29, 2017, between Creditor and Debtors that resolves the motion to value collateral filed November 28, 2017, and set for hearing on December 18, 2017.

Provided that the stipulation resolves the Deutsche Bank National Trust Company's objection at Item #4, the plan filed September 29, 2017, will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a). The objection will be overruled, motion to dismiss will be denied, and the plan will be confirmed.

The court will enter an appropriate minute order.

6. 17-26138-B-13 TANESHIA WRAY
JPJ-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-8-17 [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). No written reply has been filed to the objection.

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

First, the plan 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 Debtor's schedules, the total value of non-exempt property in the estate is $7,842.32. The total amount that will be paid to unsecured creditors is only $240.57.

Second, Debtor is delinquent to the Chapter 13 Trustee in the amount of $3,040.57, which represents 1 plan payment. The Debtor has not made any plan payments to the Trustee since the filing of this case on September 15, 2017. By the time this matter is heard, an additional plan payment in the amount of $3,040.57 will also be due. The Debtor does not appear to be able to make plan payments proposed with a monthly net income of -$943.61 and she has not carried her burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

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

Fourth, the Debtor has not disclosed on the Statement of Financial Affairs, Questions 4 and 5, incomes for the two months she was employed and for receiving VA Disability Benefits. No income for the previous two years was disclosed on the Statement of Financial Affairs, Questions 4 and 5. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtor has not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan filed October 10, 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.

7. 17-26340-B-13 JESUS SAMUELS
ASW-1 Pro Se
Thru #8

OBJECTION TO CONFIRMATION OF PLAN BY LAKEVIEW LOAN SERVICING, LLC
11-9-17 [28]

Final Ruling: No appearance at the December 5, 2017, hearing is required.

The case having been dismissed on November 30, 2017, the objection is overruled as moot.

The court will enter an appropriate minute order.

8. 17-26340-B-13 JESUS SAMUELS
JPJ-2 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
11-8-17 [24]

Final Ruling: No appearance at the December 5, 2017, hearing is required.

The case having been dismissed on November 30, 2017, the objection is overruled as moot.

The court will enter an appropriate minute order.

9. 17-27341-B-13 DELORES GREY
RJ-2 Richard L. Jare

MOTION TO VALUE COLLATERAL OF REGIONAL ACCEPTANCE CORPORATION
11-21-17 [15]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Value Collateral of Regional Acceptance Corporation 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 Regional Acceptance Corporation at $5,800.00.

Debtor's motion to value the secured claim of Regional Acceptance Corporation ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 Ford Fusion ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $5,800.00 as of the petition filing date. The Declaration of Delores Grey states that this valuation is based on the fact that the windshield is cracked and the Vehicle's mileage is 93,000. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

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

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on April 29, 2015, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $22,675.60. 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 $5,800.00. *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.

10. 17-26249-B-13 JERMAINE FORD — OBJECTION TO CONFIRMATION OF PLAN BY GLOBAL LENDING SERVICES, LLC
MDE-1 Rick Morin — 11-13-17 [19]

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

The court's decision is to overrule the objection.

Introduction

Debtor Jermaine Ford ("Debtor") filed a Chapter 13 plan on October 3, 2017. *See* Dkt. 11. A Notice of Chapter 13 Bankruptcy Case was filed on October 12, 2017, *see* dkt. 15, and served on October 14, 2017. *See* Dkt. 17. That Notice set a confirmation hearing date of December 5, 2017, and a November 9, 2017, deadline to object to confirmation. *Id.* An order confirming the Debtor's Chapter 13 plan was filed on November 14, 2017. *See* Dkt. 24.

Background

Late in the afternoon on November 9, 2017, secured creditor Global Lending Services, LLC ("Creditor") filed as a single document a notice of hearing, objection to confirmation, exhibits, and a proof of service. *See* Dkt. 20. On the same date and at about the same time, Creditor also filed as separate documents a notice of hearing, exhibits, and a proof of service; however, no objection was filed. *See* dkts. 21-23. The following day, November 10, 2017, was a federal holiday so the documents filed on November 9, 2017, were not docketed until November 13, 2017. Creditor also filed a separate objection (and nothing else) on November 13, 2017, which was docketed the same date. Dkt. 19.

Discussion

Because the court's local rules require documents to be filed separately, it is within the court's discretion to disregard the multiple documents filed as a single document on November 9, 2017. *See* Local Bankruptcy Rules 1001-1(g), 9004-1(a), 9004-2(c)(1), and 9014-1(l). It is also within the court's discretion to disregard the separate objection that Creditor filed late on November 13, 2017. *See* Local Bankruptcy Rule 1001-1(g) and 9014-1(f)(2). That said, most of the documents that make up Creditor's objection to confirmation were timely filed on November 9, 2017, and the delay in docketing those documents appears to be the result of an intervening federal holiday. Nevertheless, for the reasons explained below, Creditor's objection will be overruled.

Creditor's objections to the Debtor's [now confirmed] Chapter 13 plan appear to be twofold: (1) the wrong creditor is named in Class 2 of Debtor's plan, *i.e.*, the plan states "Paul Blanco's Good Car Co." when it should state "Global Lending Services LLC"; and (2) there is a slight discrepancy in the amount of Creditor's claim, *i.e.*, the confirmed plan lists that amount as $16,283.00 in Class 2 whereas the objection states the amount is $16,424.82.

Claim No. 3 is a proof of claim filed by "Global Lending Services, LLC." That proof of claim asserts a claim secured by a 2016 Chevrolet Malibu Limited, VIN ending in -46351, which is the same collateral identified in Creditor's objection. Also consistent with the proof of claim, Creditor's objection asserts a $16,424.82 secured claim, which is a mere $141.82 more than the $16,283.00 stated in Class 2 of the Debtor's confirmed plan.

Creditor's objections appear to be nonmaterial and matters that can be resolved through

the "minor modification" procedure authorized under Local Bankruptcy Rule 3015-1(d)(3). Therefore, the parties are directed to stipulate to a correction of the name of the secured creditor in Class 2 and an adjustment to the amount of Creditor's claim, if Creditor insists on receiving its $141.82.

The parties shall have until December 12, 2017, to file an appropriate stipulation under Local Bankruptcy Rule 3015-1(d)(3) consistent with this tentative. Creditor is cautioned that any attempt to expand its objection beyond the scope stated herein and to attempt to extract additional concessions from the Debtor may result in sanctions that include, but are not limited to, the payment of Debtor's attorney's fees and the expense associated with any necessary court-appointed expert. *See* Fed. R. Evid. 702(c)(2).

The court will issue an appropriate minute order.

11. 17-23654-B-13 SHARON OGBODO MOTION TO MODIFY PLAN
MJD-2 Matthew J. DeCaminada 10-24-17 [59]

Tentative Ruling: Debtor's 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to permit the requested modification and confirm the modified plan provided that the Debtor has cured the delinquency of $3,040.00 and paid the additional plan payment of $3,040.00 by the time this matter is heard.

The Trustee also requests that the Debtor's order specify that the correct plan payments are those listed in the plan and not those listed in the motion. Specifically, that the Debtor has paid a total of $11,341.00 into the plan through September 2017; commencing October 25, 2017, monthly plan payments shall be $6,200.00; and commencing November 25, 2017, monthly plan payments shall be $3,040.00 for the remainder of the plan. The Debtor has filed a response stating that it will make the correction in the order.

Provided that the delinquency is cured, the modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court will enter an appropriate minute order.

12. 16-26158-B-13 HELEN GUNKEL MOTION TO MODIFY PLAN
SDB-1 W. Scott deBie 10-20-17 [26]

Final Ruling: No appearance at the December 5, 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on October 20, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

13. 17-26363-B-13 MICHAEL SCHOOL
JPJ-1 Pauldeep Bains

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-8-17 [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 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.

Feasibility of the plan cannot be fully assessed. According to Schedule I, the Debtor's partner's net income from rental property and/or operation of a business is $1,083.00. However, the Debtor has not filed a detailed statement showing gross receipts and ordinary and necessary expenses.

The plan filed October 10, 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.

14. 17-26564-B-13 JPJ-1 | WESLEY/LAURIE PAMPLONA
Gary Ray Fraley | OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-8-17 [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 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 plan will take approximately 90 months to complete, which exceeds the maximum length of 60 months pursuant to 11 U.S.C. § 1322(d) and which results in a commitment period that exceeds the permissible limit imposed by 11 U.S.C. § 1325(b)(4).

Second, the plan payment in the amount of $2,314.77 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $2,464.39. The plan does not comply with Section 4.02 of the mandatory form plan.

Third, the terms for payment of the Debtors' attorney's fees are unclear. Section 2.07 of the plan specifies a monthly payment of $0.00 for administrative expenses. It is not possible for the Trustee to pay the balance of the Debtors' attorney's fees of $2,000.00 and any other administrative expenses through the plan with a monthly payment specified at $0.00.

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

Fifth, the Debtors have not fully and accurately provide all information required by the petition, schedules, and Statement of Financial Affairs by failing to disclose the filing of a previous bankruptcy, case no. 15-25062. The plan has not been proposed in good faith as required pursuant to 11 U.S.C. § 1325(a)(3) and the Debtors have not fully complied with the duty imposed by 11 U.S.C. § 521(a)(1).

The plan filed October 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.

15. 13-24865-B-13 IAN/PAIGE CASTRO
PGM-2 Peter G. Macaluso

MOTION FOR COMPENSATION FOR PETER G. MACALUSO, DEBTORS' ATTORNEY
11-6-17 [81]

Final Ruling: No appearance at the December 5, 2017, hearing is required.

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

The court's decision is to grant the motion for compensation.

Request for Additional Fees and Costs

Peter G. Macaluso ("Applicant") has served as attorney for the Debtor since November 3, 2015, after substituting into this case from Hughes Financial Law. Hughes Financial Law consented to compensation in accordance with the Guidelines for Payment of Attorney's Fees in Chapter 13 Cases (the "Guidelines"). The court had authorized payment of fees and costs totaling $4,000.00. Dkt. 1. Applicant asserts that the initial agreed-upon fee is not sufficient to fully compensate him for legal services rendered. Applicant now seeks compensation in the amount of $750.00 in fees and $0.00 in costs.

Applicant provides a task billing analysis and supporting evidence of the services provided. Dkt. 81.

To obtain approval of additional compensation in a case where a "no-look" fee has been approved in connection with confirmation of the Chapter 13 plan, the applicant must show that the services for which the applicant seeks compensation are sufficiently greater than a "typical" Chapter 13 case so as to justify additional compensation under the Guidelines. *In re Pedersen*, 229 B.R. 445 (Bankr. E.D. Cal. 1999)(J. McManus). The Guidelines state that "counsel should not view the fee permitted by these Guidelines as a retainer that, once exhausted, automatically justifies a fee motion. . . . Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation." Guidelines; Local Rule 2016-1(c)(3).

Applicant asserts that he substituted into this case, has received no compensation for the work performed in this case, and that additional attorney's fees are reasonable for the legal services rendered. These services include a reviewing the Trustee's motion to dismiss, meeting with clients, filing a modified plan and motion to confirm, reviewing opposition to the motion to modify, filing a response to the opposition to modify, and appearing for the hearing on the motion to confirm modified plan.

The court finds the hourly rates reasonable and that the Applicant effectively used appropriate rates for the services provided. The court finds that the services provided by Applicant were substantial and unanticipated, and in the best interest of the Debtor, estate, and creditors.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Additional Fees	$750.00
Additional Costs and Expenses	$ 0.00
Total	**$750.00**

The court will enter an appropriate minute order.

16. 17-26271-B-13 JPJ-1 — WASFI ORAIKAT AND ELHAM AREIQAT — David P. Ritzinger — OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE — 11-8-17 [25]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the December 5, 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 September 26, 2017, will be confirmed.

The court will enter an appropriate minute order.

17. 17-27471-B-13 RICHARD/IVONNE SCHAFER MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso 11-21-17 [11]

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 extend automatic stay.

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past 12 months. The Debtors' prior bankruptcy case was dismissed on September 8, 2017, due to delinquency in plan payments (case no. 15-29610, dkt. 98, 100). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtors 30 days after filing of the petition.

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

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

The Debtors assert that the instant case was filed in order to cure pre-petition arrears owed on their primary residence and to save the property from a pending foreclosure sale. Debtors state that their circumstances have changed because they were able to close their martial arts school that had stopped being profitable, Debtor has received a small raise in his salary, Joint Debtor has found a part-time job, and they returned a leased vehicle thus ending future car payments. Debtors assert that they are earning enough wages and money to cover necessary obligations and the proposed Chapter 13 plan.

The Debtors have not sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is 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.

18. 15-29573-B-13 SAUNDRA BATTAGLIA
17-2091 BMV-2
BATTAGLIA V. THE BANK OF NEW YORK MELLON ET AL

MOTION TO DISMISS ADVERSARY PROCEEDING
10-30-17 [40]

Final Ruling: No appearance at the December 5, 2017, hearing is required.

This matter was continued to December 19, 2017, at 1:00 p.m. as stipulated by the parties.

The court will enter an appropriate minute order.

19. 16-27674-B-13 STEVEN RENO
HRH-1 Tammie L. Cummins

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-21-17 [21]

WELLS FARGO BANK, N.A. VS.

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

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

Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a Wells Fargo Money Market Savings Account. According to Movant, Debtor executed a "Business Direct Secured BusinessLine Line of Credit Collateral Account Pledge Agreement" whereby he pledged the Money Market Savings Account. Movant holds a security deposit in the amount of $10,000.00 pursuant to the Agreement. The balance in the pledge account is $10,011.78. Movant states that the Debtor had reached out to Movant and asked that Movant set off the security deposit against Debtor's $7,910.91 credit card balance. The moving party has provided the Declaration of Sharon Zimmermann to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtor and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue an order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the Wells Fargo Money Market Savings Account, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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

No other or additional relief is granted by the court.

The court will enter an appropriate minute order

20. 17-24576-B-13 KATHERINE NEWMAN MOTION TO MODIFY PLAN
SJD-1 Susan J. Dodds 10-25-17 [22]

Tentative Ruling: The Motion to Amend 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)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

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

Capital One Auto Finance, A Division of Capital One, N.A. ("Creditor") objects to confirmation on grounds that Debtor's plan does not provide for the full value of its secured claim pursuant to 11 U.S.C. § 1325(a)(5) and does not provide the appropriate interest rate. Creditor holds a security interest in a 2013 KIA Optima Sedan 4D SX Limited I4 Tu, VIN ending in 3192.

However, the court had already granted Debtor's Motion to Value Collateral of Capital One Auto Finance, A Division of Capital One, N.A. on November 21, 2017, and valued the secured claim at $13,133.00. Therefore, Creditor's objection to the this motion to confirm modified plan is overruled.

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

The court will enter an appropriate minute order.

21. 12-35684-B-13 STANLEY BOYD
MRP-5 Mohamad R. Pejuhesh

MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE
10-24-17 [86]

Final Ruling: No appearance at the December 5, 2017, hearing is required.

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

The court's decision is to grant the motion.

The Debtor passed away on June 23, 2017. The Debtor has not filed a certification of completion of a post-petition course on personal financial management and is unable to file the remaining documents required by Local Bankruptcy Rule 5009-1. However, it appears that Debtor has completed all plan payments as evidenced from the Notice of Debtor of Completed Plan Payments and of Obligation to File Documents. Dkt. 73. Because the plan in this case has been fully administered, it is not necessary to appoint a successor or representative for the Debtor.

It appears from the electronic record that the Debtor has not received a prior discharge with the time periods specified in 11 U.S.C. § 1328(f), the Debtor had no outstanding domestic support obligations, and the Debtor did not owe obligations of the type described in 11 U.S.C. § 522(q). Therefore a discharge shall be issued.

The court will issue an appropriate minute order.

22. 17-26588-B-13 JPJ-1 **Thru #23**
SOPHIE MAYCHROWITZ
Peter G. Macaluso
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-8-17 [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). 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 for reasons stated below and as supplemented at Item #23.

Feasibility depends on the granting of a motion to value collateral for Washington Mutual Bank. To date, the Debtor has not filed, set for hearing, and served on the respondent creditor and the Trustee a stand-alone motion to value the collateral. *See* Local Bankr. R. 3015-1(j).

The plan filed October 3, 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.

23. 17-26588-B-13 PGM-1
SOPHIE MAYCHROWITZ
Peter G. Macaluso
MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
11-3-17 [17]

Tentative Ruling: The Motion to Value Collateral of JPMorgan Chase Bank, N.A. has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to deny without prejudice the motion to value collateral of JPMorgan Chase Bank, N.A.

Debtor's motion to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by the Debtor's declaration. Debtor is the co-owner of the subject real property commonly known as 609 Lincoln Road, Williams, California ("Property") with Gary Dixson who has also filed for Chapter 13 relief (case no. 17-26589). As stated in the Declaration of Sophie Maychrowitz, Debtor seeks to value the Property at a fair market value of $240,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

the value of a secured claim.

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

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

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

Debtor's motion (dkt. 17, 2:7-10) states that Washington Mutual Bank was merged with JPMorgan Chase Bank. Exhibit A shows that Washington Mutual was "merged or acquired" by JPMorgan according to FDIC BankFind Search Details. If that is the case, that would seem to suggest that the JPMorgan collateral valued at Item #23 is the same Washington Mutual collateral referenced in Item #22 and that would also seem to suggest that if Item #23 is granted then Item #22 should be overruled.

However, even if it is true that Washington Mutual merged or was acquired by JPMorgan as FDIC indicates, there is no evidence at all that JPMorgan acquired this particular Debtor's loan from Washington Mutual and/or that JPMorgan is now the lienholder on the second deed of trust. The Debtor has failed to establish by competent evidence that the collateral being valued is JPMorgan's collateral. The court will not enter an order valuing "someone's" collateral without some evidence as to who that "someone" is or may be. In other words, it may be that JPMorgan is the current lienholder but it may also be that this Debtor's loan was never acquired by JPMorgan and was acquired by some other entity. Not identifying the proper lienholder also affects service and proper notice to the actual lienholder affected by the motion and valuation.

For the reasons stated above, the valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The court will enter an appropriate minute order.

24. 17-26389-B-13 DANIEL MAPLES
JPJ-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-8-17 [26]

DEBTOR DISMISSED: 11/21/2017

Final Ruling: No appearance at the December 5, 2017, hearing is required.

The case having previously been dismissed, the objection to confirmation and conditional motion to dismiss case are overruled and dismissed as moot, respectively.

The court will enter an appropriate minute order.

25. 17-26589-B-13 JPJ-1 **Thru #26**
GARY DIXSON
Peter G. Macaluso
OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-8-17 [24]

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 for reasons stated below and as supplemented at Item #26.

First, the Debtor did not submit proof of his social security number to the Trustee at the meeting of creditors as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B). The Debtor has not cooperated with the Trustee as necessary to enable the Trustee to perform his duties as required pursuant to 11 U.S.C. § 521(a)(3).

Second, feasibility depends on the granting of a motion to value collateral for Washington Mutual Bank. To date, the Debtor has not filed, set for hearing, and served on the respondent creditor and the Trustee a stand-alone motion to value the collateral. *See* Local Bankr. R. 3015-1(j).

The plan filed October 3, 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.

26. 17-26589-B-13 PGM-1
GARY DIXSON
Peter G. Macaluso
MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
11-3-17 [18]

Tentative Ruling: The Motion to Value Collateral of JPMorgan Chase Bank, N.A. has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's decision is to deny without prejudice the motion to value collateral of JPMorgan Chase Bank, N.A.

Debtor's motion to value the secured claim of JPMorgan Chase Bank, N.A. ("Creditor") is accompanied by the Debtor's declaration. Debtor is the co-owner of the subject real property commonly known as 609 Lincoln Road, Williams, California ("Property") with Sophie Machrowitz who has also filed for Chapter 13 relief (case no. 17-26588). As stated in the Declaration of Gary Dixson, Debtor seeks to value the Property at a fair market value of $240,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

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

Debtor's motion (dkt. 18, 2:7-10) states that Washington Mutual Bank was merged with JPMorgan Chase Bank. Exhibit A shows that Washington Mutual was "merged or acquired" by JPMorgan according to FDIC BankFind Search Details. If that is the case, that would seem to suggest that the JPMorgan collateral valued at Item #26 is the same Washington Mutual collateral referenced in Item #25 and that would also seem to suggest that if Item #26 is granted then Item #25 should be overruled in part.

However, even if it is true that Washington Mutual merged or was acquired by JPMorgan as FDIC indicates, there is no evidence at all that JPMorgan acquired this particular Debtor's loan from Washington Mutual and/or that JPMorgan is now the lienholder on the second deed of trust. The Debtor has failed to establish by competent evidence that the collateral being valued is JPMorgan's collateral. The court will not enter an order valuing "someone's" collateral without some evidence as to who that "someone" is or may be. In other words, it may be that JPMorgan is the current lienholder but it may also be that this Debtor's loan was never acquired by JPMorgan and was acquired by some other entity. Not identifying the proper lienholder also affects service and proper notice to the actual lienholder affected by the motion and valuation.

For the reasons stated above, the valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The court will enter an appropriate minute order.

27. 17-26493-B-13 DAVID LANE
JPJ-1 David Foyil

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-8-17 [33]

Final Ruling: No appearance at the December 5, 2017, hearing is required.

The matter is continued to December 12, 2017, at 1:00 p.m. to be heard in conjunction with three motions to value collateral.

The court will enter an appropriate minute order.

28. 17-24198-B-13 NAITA SAEFONG
FF-1 Paramprit Bindra

MOTION TO VALUE COLLATERAL OF ONEMAIN FINANCIAL SERVICES, INC.
11-13-17 [27]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion to Value Secured Portion of Claim of Onemain Financial Services, Inc. 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 Onemain Financial Services, Inc. at $9,548.00.

Debtor's motion to value the secured claim of Onemain Financial Services, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2008 Toyota Tacoma, VIN ending in 7568 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $9,548.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 3-1 filed by Onemain Financial Services, Inc. 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 refinance on the Vehicle on May 25, 2017. 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 $9,548.00. *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.