UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

December 12, 2017 at 1:00 p.m.

1.	17-21810-B-13 HJH-7	MONTE KLINKENBORG Mikalah R. Liviakis	MOTION TO APPROVE PROPOSED DIVISION OF PROPERTY IN FAMILY LAW ACTION 11-2-17 [65]

Final Ruling: No appearance at the December 12, 2017, hearing is required.

The Motion to Approve Proposed Division of Property in Family Law Action 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 deny the motion without prejudice.

Sara Klinkenborg ("Movant") requests that the court approve a proposed division of property in a family law action between Movant and debtor Monte Klinkenborg ("Debtor"). The claims and disputes to be resolved by the proposed settlement are detailed in the motion. *See* dkt. 65. Movant and Debtor have resolved these claims and disputes, subject to approval by the court.

DISCUSSION

Approval of a compromise that involves or affects property of the estate is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;

2. Any difficulties expected in collection;

3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and

4. The paramount interest of the creditors and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610,

620 (9th Cir. 1988).

Movant has not analyzed any of the factors outlined in *A & C Properties* and *Woodson*. The court cannot determine whether the compromise is in the best interest of the creditors and the Estate. The motion is denied without prejudice.

The court will enter an appropriate minute order.

2.	17-27412-B-13 MRL-1	ENRIQUE/MICHELLE SERRATO Mikalah R. Liviakis	MOTION TO VALUE COLLATERAL OF NEIGHBORWORKS HOMEOWNERSHIP CENTER 11-9-17 [8]

Tentative Ruling: The Motion to Value 8120 Hearthstone Place, Collateral of NeighborWorks HomeOwnership Center has been set for hearing on the 28 days' notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny the motion to value collateral of NeighborWorks HomeOwnership Center at $0.00.

Debtors' motion to value the secured claim of NeighborWorks HomeOwnership Center ("Creditor") is accompanied by the Declaration of Michelle Serrato. Debtors are the owners of the subject real property commonly known as 8120 Hearthstone Place, Antelope, California ("Property"). Debtors seek to value the Property at a fair market value of $300,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

Proof of Claim Filed

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

Opposition

Creditor has filed an opposition asserting that the value of the Property was $345,000.00 to $355,000.00 on the petition filing date. Creditor's valuation is based on the opinion of Linda Bennett, a licensed California real estate salesperson, and

comparable sales of six homes within one-half miles of the Property.

Discussion

The Creditor has produced property details and comparables from licensed California real estate salesperson Linda Bennett that value the Property is between $345,000.00 to $355,000.00. Given that the appraisal is based on comparable sales, the court finds the appraisal more convincing than the Debtors' opinion of value.

Therefore, 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.

3. 17-26714-B-13 JPJ-1 **Thru #4**

ELIZABETH GOMEZ
Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
11-21-17 [26]

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 not confirm the plan.

First, the Debtor did not appear at the first meeting of creditors set for November 16, 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 has failed to provide the Trustee with requested items related to the operation of her business A-1 Paralegal Services including, but not limited to, a completed business examination checklist, income tax returns for the 2-year period prior to the filing of the petition, bank account statements for the 6-month period prior to the filing of the petition, proof of all required insurance, and proof of required licenses or permits. The Debtor has not complied with § 521.

Fourth, the Debtor failed to list two prior bankruptcies on her petition: 10-31725 and 17-22736. The Debtor has not fully and accurately provided all information required by the petition, schedules, and Statement of Financial Affairs. 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).

Fifth, the plan cannot be assessed for feasibility or effectively administered because the plan is incomplete. The plan refers to Additional Provisions but no Additional Provisions have been filed with the plan. The plan does not satisfy 11 U.S.C. § 1322(a)(1) because the plan does not provide for the submission of a portion of the Debtor's future earnings as is necessary to execute the plan. Additionally, but not proposing to pay the ongoing monthly contractual payments on Class 1 debt, the plan modifies the claim, which is impermissible pursuant to 11 U.S.C. § 1322(b)(2) and § 1325(a)(1).

Sixth, it cannot be determined whether the plan complies with 11 U.S.C. § 1325(a)(4) since unsecured creditors may receive a higher distribution in a Chapter 7 proceeding. Debtor listed real and personal property on Schedule A/B but did not claim any exemptions on Schedule C. The total value of non-exempt property in the estate is $193,976.00, which includes an 8% cost-of-sale on the real property listed in Schedule A/B. No priority unsecured creditors are listed in the plan and the plan fails to state a dividend to general unsecured creditors.

Seventh, it is uncertain whether the Debtor will be able to make all payments under the plan and comply with the plan. Schedule J, Line #23a, shows that the Debtor has the ability to pay $1.00 per month toward plan payments. However, $1.00 does not appear to be sufficient to pay pre-petition arrears, a vehicle listed in the plan, and Trustee's administrative fee.

The plan filed October 24, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The court will enter an appropriate minute order.

4. 17-26714-B-13 ELIZABETH GOMEZ — OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 11-10-17 [19]
MJ-1 — Pro Se

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 not confirm the plan.

Objecting creditor Wells Fargo 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 $6,347.72 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 October 24, 2017, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Although requested in the objection, Creditor has not stated either a contractual or statutory basis for the award of attorneys' fees in connection with its objection. Creditor is not awarded any attorneys' fees.

The court will enter an appropriate minute order.

5. 17-26618-B-13 NANETTE CUSTADO
JPJ-1 Joseph M. Canning

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-21-17 [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 Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

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

The plan payment in the amount of $653.00 does not equal the aggregate of the Trustee's fees, monthly post-petition contract installments due on Class 1 claims, the monthly payment for administrative expenses, and monthly dividends payable on account of Class 1 arrearage claims, Class 2 secured claims, and executory contract and unexpired lease arrearage claims. The aggregate of the monthly amounts plus the Trustee's fee is $918.05. The plan does not comply with Section 4.02 of the mandatory form plan.

The plan filed October 19, 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.

6. 17-22740-B-13 KELLI REYNOLDS MOTION TO CONFIRM PLAN
SLH-3 Seth L. Hanson 10-30-17 [55]

Final Ruling: No appearance at the December 12, 2017, hearing is required.

The case having been dismissed on November 28, 2017, the motion to confirm plan is denied as moot and the objection to confirmation is overruled as moot.

The court will enter an appropriate minute order.

7. 17-27445-B-13 BRIAN/WENDY NICKLE — MOTION TO VALUE COLLATERAL OF SIERRA CENTRAL CREDIT UNION
MJD-1 Matthew J. DeCaminada — 11-13-17 [8]

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

The court's decision is to dismiss the motion to value as moot.

Debtors and creditor Sierra Central Credit Union entered into a stipulation on December 8, 2017, valuing a 2003 Chevrolet Silverado at $14,194.00. Creditor's remaining claim shall be treated as unsecured and Debtors shall file an amended Chapter 13 plan that conforms to the terms of the stipulation.

The court will enter an appropriate minute order.

8. 17-27348-B-13 DEBORAH REIFER
SMR-1 Pro Se

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
11-13-17 [10]

SKYWAY INVESTMENTS, LLC VS.

CASE DISMISSED 12/05/17

Final Ruling: No appearance at the December 12, 2017, hearing is required.

The case having been dismissed on December 5, 2017, the motion for relief from automatic stay is denied as moot.

The court will enter an appropriate minute order.

9. 16-28351-B-13 SHASHI MANI MOTION TO MODIFY PLAN
GTB-2 George T. Burke 10-18-17 [51]

Final Ruling: No appearance at the December 12, 2017, hearing is required.

The Motion to Confirm First Amended Chapter 13 Plan 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 18, 2017, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

10. 17-26558-B-13 SALOMON HERRERA
JPJ-1 Richard L. Sturdevant

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-21-17 [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 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 has not submitted proof of his social security number to the Trustee as required pursuant to Fed. R. Bankr. P. 4002(b)(1)(B).

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 has failed to provide the Trustee with requested items related to the operation of his business Herrera's Pest Control including, but not limited to, a completed business examination checklist, income tax returns for the 2-year period prior to the filing of the petition, bank account statements for the 6-month period prior to the filing of the petition, proof of all required insurance, and proof of required licenses or permits. The Debtor has not complied with § 521.

Fourth, the Debtor has not amended Schedule A/B and J or filed an attachment to Schedule I to reflect all his personal property including tools of trade and business expenses. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

The plan filed October 16, 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.

11. 16-21470-B-13 RONALD BROOKS MOTION TO MODIFY PLAN
SS-1 Scott D. Shumaker 11-2-17 [42]

Tentative Ruling: Debtor's Motion to Confirm First Modified Chapter 13 Plan Filed November 2, 2017, 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). A response was filed by the Chapter 13 Trustee.

The court's decision is to permit the requested modification and confirm the modified plan provided that the order confirming state the following: The plan shall be considered current with $54,522.00 paid into the plan through October 2017 (month 19). Commencing November 25, 2017, monthly plan payments shall be $3,251.00 for the remaining 41 months of the 60-month plan.

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. 17-26573-B-13 FRANCESCA PENROSE
JPJ-1 David P. Ritzinger

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON
11-21-17 [28]

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 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 plan does not provide treatment for the priority claim filed by the Franchise Tax Board in the amount of $685.25. The plan does not comply with 11 U.S.C. § 1322(a)(2).

Third, the Debtor has not provided the Trustee with declarations from a sister and brother regarding their ability and willingness to contribute to the Debtor over the life of the plan. The Debtor has not complied with 11 U.S.C. § 521(a)(3).

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.

The court will enter an appropriate minute order.

13.	17-26480-B-13 JPJ-1	TORREAN TYUS Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE 11-21-17 [34]

CONTINUED TO 1/16/17 AT 1:00 P.M. TO BE HEARD AFTER THE EVIDENTIARY HEARING ON THE MOTION TO VALUE COLLATERAL FOR SANTANDER USA, INC.

Final Ruling: No appearance at the December 12, 2017, hearing is required. The court will enter an appropriate minute order.

14. 17-26881-B-13 RAQUEL SMALLS
JPJ-1 Gabriel E. Liberman

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-22-17 [14]

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

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

Chapter 13 Trustee objects to confirmation of the plan on grounds that Debtor's projected disposable income is not being applied to make payments to unsecured creditors and does not comply with 11 U.S.C. § 1325(b)(1)(B). According to the Trustee, the marital adjustment for Debtor's non-filing spouse is overstated by the sum of $556.01. Trustee contends that $556.01 is available for the non-filing spouse's contribution to household expenses. This would increase Form 122C-2, Line #45 (monthly disposable income) from $518.09 to $1,074.10 and the Debtor must pay no less than $64,446.00 to unsecured non-priority creditors.

Debtor has filed a response stating that she proposes to pay an additional $556.01 starting in month 2. Debtor states that this increases plan payment from $842.00 to $1,398.01, and that unsecured non-priority creditors will be paid 100% of their allowed claims.

The plan filed October 18, 2016, 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.

15. 13-34891-B-13 MICHAEL/KATHERINE HOLLIDAY
DWE-1 Eamonn Foster
THE BANK OF NEW YORK MELLON
VS.

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-7-17 [95]

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)(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 grant the motion for relief from stay.

The Bank of New York Mellon f/k/a The Bank of New York ("Movant") seeks relief from the automatic stay under § 362(d)(1) with respect to real property commonly known as 15625 West Wallen Road, Red Bluff, California (the "Property"). Movant has provided the Declaration of Mary Gracia to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property. The Gracia Declaration states that there are 15 post-petition defaults with a total of $29,244.18 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the total debt secured by this Property is determined to be $243,894.91 as stated in the Gracia Declaration. The value of the Property according to Movant is $235,000.00 as stated in Schedules A and D filed by Debtors.

Opposition was filed by the Debtors. Debtors acknowledge that they are delinquent in payments but argue that Movant is not entitled to relief from stay because there exists a 26% equity cushion to adequately protect Movant. This equity cushion is based on the Property's fair market value of approximately $330,000.00. Debtors argue that the Creditor did not supply a more recent valuation, appraisal, or broker's price opinion to establish the current fair market value of the property and that Creditor's reliance on Debtors' four-year-old evaluation is without merit.

Discussion

Under § 362(d)(1), the lack of adequate protection for a creditor's property interest is cause for granting relief from the automatic stay. Adequate protection can be met by showing that the existing lienholder is oversecured with a substantial equity cushion. *Wells Fargo Bank, N.A. v. Sonora Desert Dairy, L.L.C. (In re Sonora Desert Dairy, L.L.C.)*, 2015 Bankr. LEXIS 18, at *32 (Bankr. 9th Cir. 2015), *Pistole v. Mellor (In re Mellor)*, 734 F.2d 1396, 1400 (9th Cir. 1984). To assess this, the valuation of the property securing the creditor's lien must be determined.

Movant and Debtors dispute the valuation of the Property. Movant asserts a value of $235,000.00 while Debtors assert a value of $330,000.00. Movant's value is based on Schedules A and D filed by Debtors on November 22, 2013, the date this bankruptcy commenced. The Debtors swore under penalty of perjury in their schedules that the Property was worth $235,000.00. This statement qualifies for use as an admission by a party-opponent under Federal Rule of Evidence 801(d)(2) as it is (a) intended by the debtor declarant as an assertion, (b) relevant to the question of value, and (c) being used against the party declarant. This statement is evidence on the face of the record. *In re Applin*, 108 B.R. 253, 257-58 (Bankr. E.D. Cal. 1989). Moreover, the petition date is the date to establish value for motions for relief from the automatic stay. *In re Farmer*, 257 B.R. 556, 563 (Bankr. D. Mont. 2000); *see also* Charles, 2013 Ann. Sur. of Bankr. Law 21, § IV.C. ("Logically if the creditor is seeking relief form the automatic stay, which commences on the petition date, the valuation date must also be the petition date."). Therefore, the court determines that the value of the Property is $235,000.00. With this valuation coupled with Movant's claim of $243,894.91 and 15 post-petition payments due, there exists no equity cushion and the

Movant is not adequately protected under § 362(d)(1).

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the Property.

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

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

16. 17-26493-B-13 DAVID LANE
DEF-1 David Foyil
Thru #18
And #20

MOTION TO VALUE COLLATERAL OF DITECH FINANCIAL, LLC
10-24-17 [15]

Tentative Ruling: The Motion to Value Collateral of Ditech Financial, LLC 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 value the secured claim of Ditech Financial, LLC at $10,158.92.

Debtor's motion to value the secured claim of Ditech Financial, LLC ("Creditor") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 113 North Summit Drive, Ione, California ("Property"). Debtor seeks to value the Property at a fair market value of $90,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

No Proof of Claim Filed

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

Discussion

The first deed of trust held by Nationstar Mortgage LLC, assignee in interest to PNC Bank, N.A. Formerly Known As National City Bank Successor In Interest To National City Mortgage CO DBA Accubanc Mortgage, secures a claim with a balance of approximately $79,841.08 according to Claim No. 3. Creditor's second deed of trust secures a claim with a balance of approximately $39,696.25. Therefore, Creditor's claim secured by a junior deed of trust is partially under-collateralized. Creditor's secured claim is

determined to be in the amount of $10,158.92, and therefore payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted in part and denied in part. The secured claim of Ditech Financial, LLC shall be valued at $10,158.92 and not at $0.00.

The court will enter an appropriate minute order.

17. 17-26493-B-13 DEF-2 — DAVID LANE, David Foyil — MOTION TO VALUE COLLATERAL OF EMPLOYMENT DEVELOPMENT DEPARTMENT, 10-24-17 [20]

Final Ruling: No appearance at the December 12, 2017, hearing is required.

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

The court's decision is to deny without prejudice the motion to value secured claim of Employment Development Department.

Debtor's motion to value the secured claim of Employment Development Department ("EDD") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 113 North Summit Drive, Ione, California ("Property"). Debtor seeks to value the Property at a fair market value of $90,000.00 as of the petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

> Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

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

No Proof of Claim Filed

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

Discussion

The first deed of trust held by Nationstar Mortgage LLC, assignee in interest to PNC Bank, N.A. Formerly Known As National City Bank Successor In Interest To National City Mortgage CO DBA Accubanc Mortgage, secures a claim with a balance of approximately $79,841.08 according to Claim No. 3. The second deed of trust is held by Ditech Financial, LLC as identified in Item #16 and Schedule D filed September 29, 2017. Ditech Financial's secured claim was determined to be $10,158.92 at Item #16.

Problematic with this motion is that it states that EDD is the second deed of trust holder. This contradicts the motion and declaration filed at Item #16 and Schedule D. Additionally, there is no indication as to when this debt was incurred and whether it is senior or junior to the lien held by California Franchise Tax Board at Item #18.

Therefore, 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.

18.	17-26493-B-13 DEF-3	DAVID LANE David Foyil	MOTION TO VALUE COLLATERAL OF CALIFORNIA FRANCHISE TAX BOARD 10-24-17 [27]

Final Ruling: No appearance at the December 12, 2017, hearing is required.

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

The court's decision is to deny without prejudice the motion to value secured claim of California Franchise Tax Board.

Debtor's motion to value the secured claim of California Franchise Tax Board ("FTB") is accompanied by the Debtor's declaration. Debtor is the owner of the subject real property commonly known as 113 North Summit Drive, Ione, California ("Property"). Debtor seeks to value the Property at a fair market value of $90,000.00 as of the

petition filing date. Given the absence of contrary evidence, the Debtor's opinion of value is conclusive. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

Proof of Claim Filed

It appears that Claim No. 2 filed by Franchise Tax Board is the claim which may be the subject of the present motion.

Discussion

The first deed of trust held by Nationstar Mortgage LLC, assignee in interest to PNC Bank, N.A. Formerly Known As National City Bank Successor In Interest To National City Mortgage CO DBA Accubanc Mortgage, secures a claim with a balance of approximately $79,841.08 according to Claim No. 3. The second deed of trust is held by Ditech Financial, LLC as identified in Item #16 and Schedule D filed September 29, 2017. Ditech Financial's secured claim was determined to be $10,158.92 at Item #16.

Problematic with this motion is that it states that FTB is the second deed of trust holder. This contradicts the motion and declaration filed at Item #16 and Schedule D. Additionally, there is no indication as to whether this claim is senior or junior to the lien held by Employment Development Department at Item #17.

Therefore, 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.

19. 17-26694-B-13 TAMARA GEREN
JPJ-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF PLAN BY JAN P. JOHNSON AND/OR MOTION TO DISMISS CASE
11-21-17 [23]

CONTINUED TO 12/19/17 AT 1:00 P.M. TO BE HEARD IN CONJUNCTION WITH THE MOTION TO VALUE COLLATERAL FOR WELLS FARGO BANK, N.A.

Final Ruling: No appearance at the December 12, 2017, hearing is required. The court will enter an appropriate minute order.

20. 17-26493-B-13 DAVID LANE
JPJ-1 David Foyil
See Also #16-18

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

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

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

This matter was continued from December 5, 2017, to be heard in conjunction with motions to value collateral for Ditech Financial, LLC, Employment Development Department, and California Franchise Tax Board. The motion to value collateral of Ditech Financial, LLC was granted in part and denied in part at Item #16. The motions to value collateral of Employment Development Department and California Franchise Tax Board were denied without prejudice at Items #17 and #18, respectively. Feasibility depends on the granting of all three motions. This did not occur. Therefore, the plan cannot be confirmed.

The court notes that the Debtor has disclosed in an Amended Statement of Financial Affairs that he sold a 1967 Chevelle within the 2-year period prior to filing this petition, thus resolving the second issue raised by the Chapter 13 Trustee.

Because feasibility of the plan depends on the granting of the motions to value collateral, the plan filed September 29, 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.