

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

January 13, 2015 at 2:00 P.M.

1. [11-38702](#)-C-13 VIRGIL/DIANA LYTAL MOTION TO MODIFY PLAN
RAC-6 Richard Chan 11-13-14 [[73](#)]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 13, 2014. Forty-two days' notice is required. That requirement was met.

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

The court's decision is to grant the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Trustee is uncertain that Debtor can make the proposed plan payment.
 - a. Co-Debtor was recently diagnosed with colon cancer and indicates ongoing monthly medical expenses of \$2,500,

increased from \$301, for the remaining 20 months of the plan. Debtors' Motion explains that insurance requires Debtors to pay 10% of all costs. Debtor has not provided the court with any breakdown of the estimated \$50,000 expenses, potentially representing \$500,000 in medical expenses.

- b. Debtors continue to budget \$660.00 in mortgage payments for their home in Arbuckle, California. While Debtor's also budget monthly expenses of \$26.00 for insurance, \$25.00 for maintenance, \$47.00 for an alarm system, and \$50.00 for lawn care, Debtors do not indicate how this property is being maintained, who is watching the property, how unexpected occurrences will be dealt with, or what their long-term plans are regarding this property.
 - c. Debtors Schedule J reflects one 18-year old dependent daughter. Debtors' Motion and Declaration stated that joint-debtor remained in California with the dependent in order for her to complete high school. Debtors do not indicate whether their daughter intends to gain employment or further her education. Debtors budget does not appear to support any kind of continuing education or travel expenses.
2. The claim amounts in Class 5 for the Internal Revenue Service and Franchise Tax Board appear to be reversed in the proposed modified plan. The Trustee has paid these claims in full, with \$4,191.76 having been disbursed to Franchise Tax Board and \$2,648.58 having been disbursed to the IRS.

DEBTORS' RESPONSE

Debtors state that the projected medical expense of \$2,500 is based on ongoing treatment for Debtor as he undergoes rigorous treatment for colon cancer. The medical expense is also directed to co-Debtor's prescription medicine and dental braces for Debtors' daughter.

Debtors argue that the cost of retention of the California property is offset by the cost of storing their personal property or shipping the property to Hawaii. Debtors assert it would be more expensive to rent the property and pay a third party property management company to handle the renting and maintenance.

Debtors state that their daughter resides with them in Hawaii where she is a full time student. Her education is paid for with a combination of loans and grants.

Debtors request the court permit them to correct the clerical error concerning Class 5 claims in the order confirming the plan.

CHAPTER 13 TRUSTEE RESPONSE

Trustee requests the court grant Debtors' motion

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on November 13, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The Motion to Incur Debt was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f) (2) (iii).

Local Rule 9014-1(f) (2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on December 8, 2014. Fourteen days' notice is required. That requirement was met.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). 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. At the hearing -----.

The Motion to Incur Debt is denied.

The motion seeks permission to purchase a 2010 Toyota Camry, which the total financed price is \$33,865.76, with monthly payments of \$442.58.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In re Gonzales, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c) (1) (B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c) (1) (A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. In re Clemons, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Debtor submitted the declaration of Bonnie Rae Patterson in support of the Motion. The Declaration states that Debtor seeks to purchase a 2010

Toyota Camry with 62,034 miles from Paul Blancos Good Car Company. The total amount financed will be \$33,865.76 and Debtor will make payments of \$442.58 per month. Debtor asserts that the purchase is necessary for her financial well-being because her current vehicle is at the point where her mechanic refuses to repair the vehicle.

Debtor provided a copy of the purchase agreement in Docket 35. The purchase agreement states that the amount being financed is \$18,347 with an annual percentage rate of 19.95%.

Trustee's Objection

Chapter 13 Trustee is not certain the purchase is in the best interest of the estate or Debtor. Debtor's declaration contains no evidence that Debtor "shopped around" for a better purchase price or financing for a similar vehicle. The trustee is not opposed; however if the court finds the purchase in the best interest of the estate.

Discussion

The Debtor does not address the reasonableness of incurring debt to purchase a used vehicle while seeking the extraordinary relief under Chapter 13 to discharge debts. Debtor does not discuss the issues with her current vehicle, but merely states her mechanic refuses to repair the vehicle. The court does not know what the issues are with the vehicle or whether Debtor asked other mechanics to repair the vehicle.

Moreover, Debtor does not testify that she attempted to find the best financing agreement for her vehicle. The court cannot find that the transaction is in best interests of the Debtor, especially when the loan calls for a substantial interest charge – 19%. An interest rate of 19% for a vehicle is commonly associated with sub-prime lending practices.

The motion is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

3. [14-30404](#)-C-13 ISRAEL FORBES
PD-1 Mohammad Mokarram

OBJECTION TO CONFIRMATION OF
PLAN BY JPMORGAN CHASE BANK,
N.A.
12-11-14 [[26](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 11, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
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The court's decision is to sustain the Objection.

JP Morgan Chase Bank, N.A. opposes confirmation of the Plan on the basis that the plan improperly provides for Creditor's claim. Specifically, the Plan does not provide a cure of Creditor's pre-petition claim in full.

Creditor's claim is evidenced by a note executed by Debtors in the original sum of \$279,837. The Note is secured by a Deed of Trust against 961 Perkins Court, El Dorado Hills, California.

Creditor is in the process of finalizing its proof of claim and estimates that its total secured claim is in the approximate amount of \$259,666.04 and that its pre-petition arrearage claim is in the approximate amount of \$1,750.72, representing one pre-petition payment totaling \$1,619.24, and \$131.48 in escrow shortage.

Debtor's plan does not provide for Creditor's pre-petition arrears. 11 U.S.C. § 1325(a)(5)(B)(ii). Debtor's plan does not promptly cure Creditor's pre-petition arrears. 11 U.S.C. § 1322(b)(5).

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by JP Morgan Chase Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2014. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

The Chapter 13 Trustee objects to confirmation on the following grounds:

1. Trustee is not confident the plan was proposed in good faith. 11 U.S.C. § 1325(a)(3). First, no treatment is provided in the plan for the direct payment of the senior lien holder, JP Morgan Chase Bank, N.A. Second, no net income is shown for Debtor's business "Doerr Investigations, on the most recent Schedule I. Third, Debtor does not disclose the differences between this plan and the prior plan, or discuss why the prior plan was denied to allow the court and all parties to determine if this plan is likely to address any prior shortfalls. The prior plan called for total payments of \$49,956, some \$15,180 less than the current plan, with a lump sum at the end of the plan. The estimated total unsecured debts were significantly higher, and to be paid no less than 14.5%. Debtor should explain these discrepancies.
2. Debtor may not be able to afford the payments called for under the plan. 11 U.S.C. § 1325(a)(6). The original schedules I & J were filed on December 6, 2011, and the most recent were filed

on November 17, 2014. Many expenses remain the same as three years ago, both Debtors draw social security, and while Debtors propose to contribute \$500 per month to "Retirement - To IRA," the Debtors have not addressed how long they can continue working to afford the plan.

Wells Fargo Bank, N.A. Opposition

Wells Fargo holds a second deed of trust against 815 Braddock Court, Davis, California.

Under the terms of the proposed plan, Debtor is paying Wells Fargo \$767.34. Wells Fargo objects to this amount on the basis that the actual monthly payment due and owing on Debtor's account is variable. The terms of this payment are set forth in a Stipulation entered into between Wells Fargo and Debtors. (Exh. 1, Dkt. 264). Furthermore, Wells Fargo objects on the basis that the plan does not incorporate the language of the stipulation.

Debtor's Response

Debtors argue they have acted in good faith with regard to the prosecution of this case and a pending adversary (12-02153). Debtor argues that the stipulation with Wells Fargo and refinance on the first deed of trust demonstrate that Debtor is acting for the benefit of the estate by maximizing income available to the trustee for plan payments.

Debtors argue that the claim of J.P. Morgan Chase Bank, N.A. is being paid in Class 4 and was current at all times throughout the case.

Debtors assert that Doerr Investigations was maintained through the plan; however, it did not generate significant income. Debtor is currently active with the business and acknowledges a continuing duty to provide the maximum disposable income to the Chapter 13 plan.

Debtors argue that the plan proposes to pay the same amount to unsecured creditors if it were converted to a Chapter 7 case, namely 64.48% or \$35,887.

Debtors argue they have sufficient monthly disposable income to make the plan payment.

Debtors argue that Wells Fargo's objection should be resolved because it is placed in Class 4 and has a direct payment that may be variable.

DISCUSSION

First, the court notes that Debtors did not submit a declaration attesting to the truth of the statements made in their response to the Trustee. On this ground alone, the court is sustaining the objection of the Trustee that concerns Debtors' good faith and ability to make plan payments. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

As for Wells Fargo's objection, the court notes that paragraph 12 of the stipulation states that "Debtor hereby agrees to amend the Chapter 13 Plan and/or accompanying Schedules, as and if necessary, to ensure that the same conforms with the terms set forth herein." While a payment made through Class 4 may be variable, it appears that the terms of stipulation dictate that the variable nature of the payment be noted in the plan. Debtors could add an

additional provision referencing the Stipulation, its location on the docket, and the variable nature of the interest rate that could affect payment in the future.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

5. [14-29005](#)-C-13 MARIE WILLIAMS
DPC-1 Joseph Canning

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
10-29-14 [[28](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 29, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
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The court's decision is to overruled the Objection.

PRIOR HEARING

The court first heard this matter on November 25, 2014 and continued the matter to ensure Debtor attended the continued Meeting of Creditors Schedule for January 8, 2014. The docket reflects that Debtor did attend the meeting on January 8, 2014.

Chapter 13 Trustee Objection

The Chapter 13 Trustee opposed confirmation of the Plan on the following basis:

1. Debtor did not appear at the First Meeting of Creditors held

on October 23, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. Meeting is continued to January 8, 2015.

2. Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor's plan relies on the Motion to Value the secured claim of Wells Fargo Bank, N.A., which is set for hearing on November 18, 2014. If the court does not grant the Motion, the plan lacks sufficient monies to pay the claim in full.
3. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
4. Debtor cannot make the required payments. 11 U.S.C. § 1325(a)(6). Debtor lists income of \$450.00 on Schedule I from "family support;" however, Debtor does not indicate the specific source of this income and has not provided a Declaration from the source of the income.
5. Debtor's plan does not provide for Wells Fargo Bank, N.A.'s first deed of trust listed on Schedule D, and while treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), the failure to provide the treatment could indicate that Debtor either cannot afford the payments called for under the plan because they have additional debts, or that the Debtor wants to conceal the proposed treatment of a creditor.

DEBTOR'S RESPONSE

Debtor provided the following in response to the Trustee:

1. Debtor did not attend the 341 Meeting due to an unforeseen medical emergency. Debtor will appear at the continued meeting in January.
2. Debtor asserts that if the court does not grant the Motion to Value, she will either re-file the motion to notice for hearing an amended plan.
3. Debtor declares that her personal income situation is such that the filing of tax returns is not necessary.
4. Debtor asserts that on November 5, 2014, Johnie Williams filed a declaration concerning his support of Debtor in the amount of \$450.00 per month.
5. Debtor inherited the real property located at 106 Scotia Avenue, San Francisco, California from her mother. The property is listed on Schedule A. It is encumbered by a first deed of trust held by Wells Fargo Bank, N.A. Debtor asserts that the note and deed of trust are only in the name of

Debtor's deceased mother and it is not an obligation of Debtor. At present, the mortgage is not being paid. Debtor included the obligation on Schedule D to reflect the lack of equity on the date of filing.

DISCUSSION

At the prior hearing the court overruled the remaining objections of the Trustee. The pending Motion to Value was granted at the hearing on November 18, 2014. The Declaration of Johnnie Williams asserts that he resides with his mother and will continue contributing \$450.00 per month to assist with household expenses for the foreseeable future. Debtor provided a declaration (ECF-36) addressing the tax returns and secured claim of Wells Fargo. Debtor explains that she is not required to file tax returns due to her tax and income situation. Debtor further explains that the property secured by a Wells Fargo deed of trust is a property she inherited from her mother and any obligations on the property remain in her deceased mother's name.

As Debtor did attend the 341 meeting on January 8, 2014, the court will overrule that objection and confirm the plan.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on September 19, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

6. [14-30906](#)-C-13 MARKO GRZAN
DNL-1 Scott Sagaria

OBJECTION TO CONFIRMATION OF
PLAN BY JILL STRICKLAND
12-18-14 [[40](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 18, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
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The court's decision is to continue the Objection.

Creditor, Jill Strickland, opposes confirmation of the Plan on the basis that the Motion to Avoid Creditor's judgment lien was set for an evidentiary hearing on February 17, 2014. If the lien is not avoided, the Debtor will be unable to make all plan payments and comply with the plan. 11 U.S.C. § 1325(a)(6).

The court's decision is to continue the objection to confirmation to February 17, 2014 at 1:30 p.m. to be heard concurrently with the Motion to Avoid lien.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Jill Strickland having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation is continued to February 17, 2015 at 1:30 p.m.

7. [14-30906](#)-C-13 MARKO GRZAN
DPC-1 Scott Sagaria

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
12-16-14 [[34](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 16, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
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The court's decision is to continue the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on the pending Motion to Avoid the judicial lien of Jill Strickland, which is set for an evidentiary hearing on February 17, 2015 at 1:30 p.m. Further, Trustee is not able to determine feasibility of the plan because Debtor did not file a Business Budget detailing the business income and expenses.

The court's decision is to continue the objection to confirmation to February 17, 2014 at 1:30 p.m. to be heard concurrently with the Motion to Avoid lien. During this time, the court encourages Debtor to furnish to the Trustee the required Business income and expense information.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation is continued to February 17, 2015 at 1:30 p.m.

8. [14-30611](#)-C-13 ORLANDO/MYRNA ESTACIO
DPC-1 Eric Vandermey

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
12-8-14 [[21](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 8, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
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The court's decision is to overrule the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on the pending Motion to Value the secured claim of Bank of America, N.A. The hearing on the Motion to Value is set for hearing on January 13, 2015. If the Motion is not granted, Debtor lacks sufficient monies to pay the claim in full. 11 U.S.C. § 1325(a)(6).

The court is prepared to grant the motion to value at the hearing on January 13, 2015. Therefore, the objection is overruled.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled.

9. [14-30611](#)-C-13 ORLANDO/MYRNA ESTACIO
EWV-55 Eric Vandermey

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
11-21-14 [[17](#)]

Tentative Ruling: The Motion to Value 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).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 21, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value 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). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of Bank of America, N.A., "Creditor," is granted.

The Motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 916 Edgewood Circle, Suisun City, California. The Debtors seeks to value the property at a fair market value of \$226,584.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$233,107. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$76,864. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

Creditor's Objection

Bank of America, N.A. argues that the appropriate fair market value for the property is \$295,804. To support this figure, Creditor cites to an "AVM report" attached as Exhibit 1. There are no exhibits attached to the Creditor's filing.

Creditor indicates it intends to obtain an appraisal of the property and requests more time to provide the court with a proper appraisal.

DISCUSSION

The court's decision is to grant the Motion. Creditor requests a continuance to conduct an appraisal on the value of the property. In support of this request, Creditor states an "AVM report" shows the value of the property as \$295,804. Creditor submitted no documents evidencing the report and no declaration authenticating the report.

The only evidence before the court is the Debtors' opinion of value, which the court views as valid evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004). The motion is granted based on the evidence presented.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 916 Edgewood Circle, Suisun City, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirm bankruptcy plan. The value of the Property is \$226,584.00 and is encumbered by senior lies securing claims which exceed the value of the Property.

10. [14-30611](#)-C-13 ORLANDO/MYRNA ESTACIO
PPR-1 Eric Vandermey

OBJECTION TO CONFIRMATION OF
PLAN BY BANK OF AMERICA, N.A.
12-8-14 [[25](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. No proof of service docketed.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to overrule the Objection.

Bank of America, N.A., opposes confirmation of the Plan on the basis that the plan does not provide for its secured claim and attempts to modify its rights as a secured creditor in violation of 11 U.S.C. § 1322(b). Creditor objects under 11 U.S.C. § 1325(a)(5)(B)(ii) on the basis that the plan intends to strip Creditor's lien, but Creditor believes there is at least \$1.00 in equity requiring payment of its claim in full. Finally, Creditor argues that the plan fails to require the maintenance of ongoing post-petition monthly payments, as required under 11 U.S.C. § 1322(b)(5).

The court is prepared to grant Debtors' Motion to Value the secured claim of Bank of America, N.A. at \$0.00 based on the evidence of value presented to the court. As a result of granting that Motion, Creditor's claim is entirely unsecured and the arguments against confirmation are moot.

The plan is not confirmed because the Chapter 13 Trustee has a pending Objection to Confirmation set for hearing on January 13, 2015 at 2:00 p.m.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Bank of America, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled and the plan is not confirmed.

11. [14-25512](#)-C-13 VISHAAL VIRK
PGM-2 Peter Macaluso

OBJECTION TO CLAIM OF RONNY
DHALIWAL, CLAIM NUMBER 9
11-4-14 [[46](#)]

Tentative Ruling: The Objection to Claim 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).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on November 4, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Claim of Ronny Dhaliwal is sustained in part.

Vishaal Virk, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Ronny Dhaliwal ("Creditor"), Proof of Claim No. 9 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be in the amount of \$344,568.66, secured by an abstract of judgment recorded against 9646 Rivage Way, Elk Grove, California. Creditor does not know the amount secured because he does not know the value of other liens on the property. Creditor asserts that \$12,475 of the claim is entitled to priority under 11 U.S.C. § 507(a)(4).

In support of the claim, Creditor filed an unrecorded abstract of judgment issued on October 30, 2013 from the Sacramento Superior Court for a judgment of \$285,000. See Claim No. 9. The Declaration of Sean Gavin, filed with Claim 9, states that the abstract was recorded on October 30, 2014. The Declaration of Sean Gavin, filed in response to this Objection states that the abstract was recorded on December 12, 2013.

Debtor's most recently amended plan proposes to pay a 0.00% dividend to unsecured creditors. The plan does not provide for the alleged priority

claim of Creditor.

History of the Dispute

On May 9, 2011, Claimant filed a state court lawsuit against Debtor and his business, Skymart, and Debtor's father. The complaint concerned money that Debtor, Skymart, and Debtor's father owed Claimant as a result of his employment with them. On the same day, Claimant's wife, Sunita Dhaliwal, filed a lawsuit against Debtor and his father focused on loans made to Debtor and his father that were never repaid.

The parties reached a settlement concerning both cases. The consideration for the settlement was \$270,000, to be paid on behalf of Debtor, Skymart, and Debtor's father, to Claimant and his wife, on or before December 31, 2012. Debtor, Skymart, and Debtor's father did not honor the settlement.

Claimant and his wife filed a Motion to Enforce Settlement Agreement on March 18, 2013. An order granting the Motion was issued on April 12, 2013 and on April 24, 2013, the court signed the proposed order granting the Motion. The Judgment against Debtor and Skymart was entered on May 14, 2013.

Pursuant to the Sacramento County Recorder website, Claimant caused the abstract of judgment to be recorded against Debtor and Skymart on December 12, 2013.

Claimant filed his own bankruptcy case in Arizona in 2007. There is a dispute over whether the present claim is actually property of Claimant or property of the 2007 bankruptcy estate. The Arizona Chapter 7 Trustee has not filed a claim in the instant case, but did file a claim in Debtor's father's bankruptcy case, on behalf of Claimant's 2007 bankruptcy estate, in August 2014. See Claim 9, Case No. 13-25369.

On November 5, 2014, the U.S. Bankruptcy Court for the District of Arizona granted the Chapter 7 Trustee's Motion to Approve the Sale of the Trustee's Claim in the Darshan S. Virk (Claimant's father) case to Claimant's sister.

Debtor's Objection

In 2007, Claimant filed a Chapter 7 bankruptcy case in the District of Arizona (Case No. 07-03340).

Debtor states that the asset that is alleged to be the basis for the claim was an asset that was not disclosed in Claimants 2007 Arizona bankruptcy. Debtor argues that the Creditor's claim; therefor, if determined to be valid, may be property of the Arizona bankruptcy estate and properly belong to the Chapter 7 Trustee in the Arizona case, Brian Mullen.

Debtor argues that when Claimant filed bankruptcy in 2007, he represented to the court that he was separated from his wife. Debtor argues this was a false representation and that this was a scheme that permitted Claimant to divert assets of his wife to purchase the gas station that is the asset allegedly securing Claimants claim.

Claimant's Response

Claimant is unsure whether Debtor intends to pursue the instant objection, as Debtor indicated as recently as November 9, 2014, that the plan is for Debtor to pursue a Motion to Avoid Lien instead.

As to Claim 9, Claimant argues that Debtor has not offered counter evidence against the validity of the claim, but merely argued the claim is owned by the Chapter 7 Trustee in Arizona and is not supported by admissible evidence.

Discussion

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Fed. R. Bankr. P. provides that a proof of claim executed and filed in accordance with the rules constitutes prima facie evidence of the validity and the amount of the claim. Pursuant to FRBP 3001(d), if a security interest in property of the debtor is claim, the proof of claim shall be accompanied by evidence that the security interest has been perfected.

Here, Claim 9 purports to be secured by 9646 Rivage Way, Elk Grove, California. Filed with the claim is an unrecorded abstract of judgment and a declaration of Sean Gavin stating that the abstract was recorded on October 30, 2013.

Recordation of an abstract of judgment is required for Claimant to perfect his security interest. Further, the declaration of Sean Gavin, signed under penalty of perjury, is incorrect. The Sacramento County Recorder's Office shows a date of December 12, 2013 for the recordation of the abstract. Therefore, the proof of claim was not accompanied by evidence that the security interest was perfected, but rather, be evidence that the security interest was not perfected. The claim has not been amended to include the necessary information.

As such, the court does not recognize the claim as secured, but as an unsecured claim. However, Debtor has offered insufficient evidence for the court to determine that the unsecured claim is not valid or should be disallowed. Further, Debtor intends on paying a 0.00% dividend to unsecured creditors and has not plead adequate facts and arguments as to why he has standing to object to the general unsecured portion of the claim.

Based on the evidence before the court, the creditor's claim is allowed as a general unsecured claim in the amount of \$344,568.66 with \$12,475 entitled to unsecured priority status under 11 U.S.C. § 507(a)(4).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Ronny Dhaliwal, Creditor filed in this case by Vishaal Virk, Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 9 of Ronny Dhaliwal is sustained in part and the claim is allowed as a general unsecured claim in the amount of \$344,568.66 with \$12,475 entitled to unsecured priority status under 11 U.S.C. § 507(a)(4).

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 7, 2014. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

The Chapter 13 Trustee objects to confirmation of the plan based on the following:

1. Debtor cannot make the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). Section 1.02 indicates that stepped-up payments will be based on results from a pending audit of the State Board of Equalization. Section 6.01 of the plan indicates that Class 5 priority claim of State Board of Equalization has a pending audit. The balance of the claim is disputed and will be subject to setoff. The Trustee cannot determine how the claim of the State BOE is going to affect the plan payments or whether it will permit Debtor to increase the plan payment.
2. Debtor's Schedule I inaccurately reports Debtor's deductions from payroll. A review of Debtor's payroll stubs shows that Debtor has \$1,572 per month of his payroll deducted for tax reasons. Debtor also has \$348 per month deducted for mandatory retirement, \$191 for health insurance, \$5.10 for life insurance, and \$43.34 per month for union dues. As reported, the figures are either not reported or grossly inaccurate. The good faith of

the Debtor in proposing th plan, or wheter the Debtor's attoreny should eb allowed the "no look fee," are both in question.

3. Debtor cannot make the payment sunder the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor's Schedule D, filed June 9, 2014 lists Ronny Dhaliwal as a secured judgment lien. Debtor's original plan proposed to avoid the secured lien of Dhaliwal. In the proposed plan, Debtor has removed Dhaliwal from Class 2c. Debtor's plan now appears to require a Motion to Avoid lien that has not been filed.
4. It does not appear that the plan provides all of the Debtor's projected disposable income for the applicable commitment period. 11 U.S.C. § 1325(b).
5. Debtor reports income from tax refund of \$6,408 on the Statement of Financial Affairs. On Schedule I, Debtor reports average net income of \$4,656.60 per month. If Debtor contributes tax refunds to his household income, he would have an estimated additional \$534 per month. Trustee requests Debtor provide copies of his 2010, 2011, and 2012 tax returns to determine what refunds were received those years.
6. Debtor's plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). On Schedule B, Debtor lists on line 18 a lawsuit against "R.D." for fraud and on line 21 lists a lawsuit for real property defects. It appears that Debtor did not consider the liquidation analysis when listing these debts. Any non-exempt portion of any settlements realized during the pendency of the case should be paid to the Trustee for distribution to unsecured claims.

Creditor's Objection

Creditor, Ronny Dhaliwal, objects to confirmation on the following basis:

1. The Debtor cannot make all payments required. 11 U.S.C. § 1325(a)(6). Debtor's plan reduces the value of Creditor's state court judgment to \$0.00; however, Debtor has not filed a Motion to Value the secured claim.
2. Creditor argues the plan is not proposed in good faith because it does not explain the source of the large step increases in the second, third, and fourth years of the plan. Also, Creditor argues that Debtor has not listed all of his debts, such as a loan made to Debtor by his brother that was testified to at the Debtor's Exam on May 16, 2014.
3. The Plan does not provide for the priority unsecured claim of Claimant.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

13. [14-26512](#)-C-13 AHISHA LEWIS
SJS-3 Scott Sagaria

MOTION TO VALUE COLLATERAL OF
ART BEADLE, ZOE BEADLE AND
ALINE FRIEDA SARGISS
11-21-14 [[62](#)]

Tentative Ruling: The Motion to Value was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on respondent creditor, Chapter 13 Trustee, and Office of the United States Trustee on November 21, 2014. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing -----
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The Motion to Value secured claim of Art Beadle, Zoe Beadle, and Alina Frieda Sargiss, "Creditors," is set for evidentiary hearing on [DATE] at [TIME].
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The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2187 65th Avenue, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$110,000.00 as of the petition filing date. As the owner, the 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).

The first deed of trust secures a loan with a balance of approximately \$125,586.69. Creditors, Art Beadle, Zoe Beadle, and Alina Frieda Sargiss, hold a second deed of trust, securing a loan with a balance of approximately \$170,673.00 (Claim 14 amd). Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-

collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997).

Creditors' Opposition

On January 7, 2015, Creditors filed an opposition to Debtor's Motion to Value. Creditors' Opposition is accompanied by Creditor Art Beadle's declaration. Creditor is a beneficiary under a Note and Second Deed of Trust secured by real property commonly known as 2187 65th Avenue, Sacramento, California. Creditor seeks to value the property at fair market value of \$175,000 based upon a Comparable Market Analysis.

The first deed of trust secured a loan with a balance of approximately \$125,586.69. On October 22, 2014, Creditors hold a second deed of trust, and filed a timely Proof of Claim in the amount of \$170,673.85. Therefore, Creditors contend that there is sufficient equity to collateralize their secured claim.

Discussion

Because there is an issue of fact over the value of the underlying property, the Court will set this matter for an evidentiary for [DATE] at [TIME].

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is set for evidentiary hearing for [DATE] at [TIME] to determine the value of the real property commonly known as 2187 65th Avenue, Sacramento, California.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 11, 2014. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to continue the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Trustee is uncertain that Debtor can make the payments required under 11 U.S.C. § 1325(a)(6). Debtor has a \$23,535.86 post-petition liability to the Internal Revenue Service for 2013 taxes. Debtor does not provide any explanation regarding this post-petition liability. Debtor's Schedule J includes a \$1,000 monthly expense for self-employment taxes.
2. Debtor filed a Declaration in support of the Motion; however, it lacks sufficient evidence to prove all the components of

11 U.S.C. § 1325(a). Debtor does not address the changes in income of the non-filing spouse. The non-filing spouse's gross income decreased for \$7,691.02 at the time of filing to \$3,595.57 currently. The monthly net income decreased from \$3,161.51 to \$2,747.29.

3. Debtor added Class 5 Internal Revenue Service claim for post-petition tax claim in the amount of \$23,535.86. This creditor has not filed a claim for post-petition taxes and only the creditor has the ability to do so under 11 U.S.C. § 1305.

DEBTOR'S RESPONSE

Debtor responds to the trustee and offers the following:

1. Debtor states that when he filed bankruptcy in November 2013, he filed a plan that anticipated the tax liability and set aside \$1,000 to be paid quarterly to the Internal Revenue Service to prevent future post-petition tax liabilities. Debtor asserts that as of October 2014, he has made payments to the IRS of \$8,100.
2. Debtor attached the Declaration of Dianne Vazquez, his non-filing spouse. The Declaration explains that non-filing spouse attended the meeting of creditors and suffered a reduced income amount because her position with the local police force changed and decreased the available over-time pay.
3. The Internal Revenue Service is in the process of filing the 11 U.S.C. § 1305 claim.

October 21, 2014 Hearing

The court held an initial hearing on the Motion and continued the matter to permit Debtor to supplement the record and afford the Internal Revenue Service an opportunity to file its 11 U.S.C. § 1305 claim.

Declaration of Ed Weedman in Support of Trustee's Objection

This declaration was filed on December 30, 2014. The Trustee reiterates that the Internal Revenue Service has not filed a claim for post-petition taxes, as provided for in the proposed plan.

On October 14, 2014, Debtor's non-filing spouse submitted a declaration stating that her new position does not allow her to work eight hours of overtime per month. Overall, the Trustee calculated that from the time the petition was filed to the October 14, 2014, the overall reduction in monthly income from the non-filing spouse totals \$414.22. However, Debtor has still not provided any supporting evidence, such as paystubs, to the Trustee.

Debtor's Supplemental Response

Debtor filed a supplemental response on January 6, 2014. Debtor states that he has provided the payroll records for his non-filing spouse for November and December 2014 to the Trustee. Debtor asserts that the

paystubs support that the income is consistent with gross income reported of \$3,426.18.

DISCUSSION

The court's decision is to continue the Motion to Confirm to February 10, 2015 to give the Internal Revenue Service time to file its claim for post-petition taxes and to ensure the paystubs Debtor provided to the Trustee adequately substantiate the claims made by the Debtor.

Further the court will have this order specifically served on the Internal Revenue Service to ensure it is aware of the need to file a 11 U.S.C. § 1305 claim in this case. The Internal Revenue Service was served with the Motion to Confirm and Plan on September 11, 2014, but was not provided with continued service of all documents on this Motion.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is continued to February 10, 2015 at 2:00 p.m.

Final Ruling: No appearance at the January 13, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2014. Thirty-five days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on November 12, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if

so approved, the Chapter 13 Trustee will submit the proposed order to the court.

16. [14-30418](#)-C-13 WILLIAM/PAMELA DUNBAR
DPC-1 Ashley Amerio

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
12-10-14 [[24](#)]

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on January 6, 2015, no prejudice to the responding party appearing by the dismissal of the Objection, the parties, having the right to dismiss the Objection pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Objection, the court removes this Objection from the calendar.

17. [14-27119](#)-C-13 MASON/MAGIC MUNSON
SJS-1 Scott Sagaria

OBJECTION TO CLAIM OF JPMORGAN
CHASE BANK, N.A., CLAIM NUMBER
3
11-21-14 [[32](#)]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on November 21, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 Objection to Claim of JP Morgan Chase Bank, N.A. is sustained.

Mason and Magic Munson, the Chapter 13 Debtors ("Objector") requests that the court disallow the claim of JP Morgan Chase Bank, N.A. ("Creditor"), Proof of Claim No. 3 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$181,641.12. Objector asserts that it asserts pre-petition arrears due of \$1,792.13; however, Debtor's most recent mortgage statement shows that Debtors' payments on the mortgage are current.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

In support of their contention, Debtors provided copies of mortgage statements showing that they were current on their mortgage payment at the time the case was filed. See Exhibit B, Dkt. 35.

Based on the evidence before the court, the creditor's claim is allowed as a secured claim in the amount of \$181,641.12 and the arrearage claim of \$1,792.13 is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of JP Morgan Chase Bank, N.A., Creditor filed in this case by the Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 3 of JP Morgan Chase Bank, N.A. is allowed as a secured claim in the amount of \$181,641.12 and the arrearage claim of \$1,792.13 is disallowed in its entirety.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 26, 2014. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

The Chapter 13 Trustee opposes confirmation based on the following:

1. The plan relies on a pending Motion to Value the secured claim of Wells Fargo Home Mortgage. 11 U.S.C. § 1325(a)(6). If the Motion is not granted, Debtor's plan lacks sufficient monies to pay the claim in full and should be denied confirmation.
2. Section 6 of the plan does not indicate if additional provisions are appended to the plan, though none appear to be attached.
3. The plan will not complete in 60 months as required by 11 U.S.C. § 1322(d). Class 1 provides for the ongoing mortgage payment to Wells Fargo in the amount of \$1,208 per month. On or about November 18, 2014, Trustee received correspondence from the mortgage creditors indicating that payment is adjusting to \$1,484.44, effective October 15, 2014.

4. Debtor has not used the current form Rights and Responsibilities of Chapter 13 Debtors and their Attorneys revised on May 1, 2012.

Wells Fargo Bank, N.A. Objection

Wells Fargo Bank, N.A. holds a secured claim of \$287,582, including pre-petition arrearage of \$35,513. The claim is secured by real property commonly known as 3724 3rd Avenue, Sacramento, California.

The plan does not provide for the curing of the default on Creditor's claim. The plan provides for arrears in the amount of \$15,473; however, arrears actually exceed \$35,000. Therefore, this also renders payments proposed under the plan insufficient pursuant to 11 U.S.C. § 1325(a)(6).

Discussion

At the hearing on January 13, 2015, the court is prepared to grant the Debtor's pending Motion to Value the secured claim of Wells Fargo Bank, N.A. The granting of this motion resolves part of the objection. However, the remaining issues pointed out by the Trustee and Creditor are still unresolved. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

19. [14-30220](#)-C-13 HELEN KING
TAG-3 Ted Greene

MOTION TO VALUE COLLATERAL OF
WELLS FARGO HOME MORTGAGE
11-26-14 [[31](#)]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 26, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Wells Fargo Bank, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3724 3rd Avenue, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$100,000 as of the petition filing date. As the owner, the 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).

The first deed of trust secures a loan with a balance of approximately \$253,772. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$51,696. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 3724 3rd Avenue, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$100,00 and is encumbered by senior liens securing claims which exceed the value of the Property.

20. [11-49421](#)-C-13 KHAM/KAOMEE XIONG
PGM-6 Peter Macaluso

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTORS'
ATTORNEY
11-24-14 [[82](#)]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on November 24, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion for Allowance of Professional 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 Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Peter Macaluso, the Attorney ("Applicant") for Kham and Kaomee Xiong, the Chapter 13 Debtors ("Client"), requests the court permit additional fees pursuant to Local Bankruptcy Rule 2016-1(c)(3). Counsel requests attitional fees of \$1,880.

Local Bankr. Rule 2016-1(c)(3) provides:

(3) If the fee under this Subpart is not sufficient to fully and fairly compensate counsel for the legal services rendered in the case, the attorney may apply for additional fees. The fee permitted under this Subpart, however, is not a retainer that, once exhausted, automatically justifies a motion for additional fees. Generally, this fee will fairly compensate the debtor's attorney for all preconfirmation services and most postconfirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform it to the claims filed.

Only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation. Form EDC 3-095, Application and Declaration RE: Additional Fees and Expenses in Chapter 13 Cases, may be used when seeking additional fees. The necessity for a hearing on the application shall be governed by Fed. R. Bankr. P. 2002(a)(6).

Local Bankr. R. 2016-1(c)(3)

The Chapter 13 Trustee filed a statement of non-opposition to the Motion.

After a review of the record the court is persuaded that the fees are reasonable under 11 U.S.C. § 330 and are the result of unanticipated post-confirmation work.

The Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Peter Macaluso ("Applicant"), counsel for Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter Macaluso, Professional Employed by Chapter 13 Debtors

Fees in the amount of \$ 1,880.00
Expenses in the amount of \$ 0.00,

IT IS FURTHER ORDERED that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 Plan.

21. [14-30222](#)-C-13 CAMERON ELFORD
DPC-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
11-21-14 [[34](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 21, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the following basis:

1. Debtor's plan may not have been proposed in good faith. No claim amount has been listed in schedule F for a civil suit between Debtor and Creditor David Schoonover. The claim appears to sound in tort and appears unliquidated. The claim is for injuries stemming from a motor vehicle accident, presumably non-dischargeable. The question of good faith is whether filing this bankruptcy to propose a plan solely to reduce the amount of payment to the Creditor over the time of the plan is a good faith use of Chapter 13.
2. Under Cal. Civ. Code § 706.050(a)(1), out of Debtor's wages of \$990.10 per month will be garnished \$247.52 per month. The Plan is proposing payments of only \$150.00 per month.

Debtor's Response

Debtor responds and states that he is now current under the terms of the proposed plan. Debtor notes that David Schoonover has local counsel and recently filed a Motion for Relief from Automatic Stay to proceed with the state court civil suit.

Discussion

On December 16, 2014, the court granted David Schoonover and Thuy Bich Van's Motion for Relief from stay to pursue the civil action to determine the amount of the claim and/or to pursue collection of the liquidated claim against Debtor's third party insurer.

The clear purpose of the plan is to reduce Debtor's payment on the \$337,969 restitution claim for the sixty month term. The debt is likely non-dischargeable as it is for personal injury caused by driving under the influence. The only other debt being treated under the plan is \$102.00 due and owing to Capital One, under a revolving credit account.

Under 11 U.S.C. § 1325(a)(3), to confirm a plan, the court must find that the plan was proposed in good faith. Trustee's objects to the plan on the basis that it may not have been proposed in good faith.

Recently discussed by the Ninth Circuit Court of Appeals in *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120 (9th Cir. 2013),

the bankruptcy court noted that it "reviews the totality of the circumstances to determine whether a plan has been proposed in good faith." The bankruptcy court observed that, in *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219 (9th Cir. 1999), we had looked to four factors to determine whether a plan had been proposed in good faith: "(1) whether debtors misrepresented facts in their plan or unfairly manipulated the [Bankruptcy] Code, (2) the debtors' history of filings and dismissals, (3) whether the debtors intended to defeat state court litigation, and (4) whether egregious behavior is present."

Id. at 1123. Under the totality of the circumstances, the court does not find that the plan was proposed not in good faith. Debtor has not disclosed on Schedule F the claim due to Schoonover and Van because that amount is unliquidated and claimant recently received relief from the stay to pursue the action to determine the amount of the claim. Debtor disclosed the restitution debt and there is no evidence that Debtor has misrepresented facts or is engaging in "egregious behavior."

Debtor is attempting to reorganize his limited financial circumstances in light of the restitution and potential civil award. Chapter 13 is intended to present Debtors with a means of restructuring repayments of debt in a way that minimizes the impact on a debtor's day-to-day life. Debtor's lack of secured debt or other unsecured debts should not preclude him from taking advantage of debtor remedies, such as bankruptcy, so long as he acts in conformity with the code and meets the eligibility requirements.

The court is concerned whether Debtor has sufficient regular income to maintain a chapter 13 plan for sixty months. 11 U.S.C. § 109(e). On Schedule J, Debtor states that he is going into a treatment center for sixty days, after which he will resume his job. Since the filing of the petition, no declaration has been filed confirming that Debtor completed the treatment and has resumed working. The court cannot confirm a plan when it cannot determine whether the debtor can afford the plan payments. 11 U.S.C. § 1325(a)(6).

Further, the court notes a discrepancy on Debtor's schedule regarding his address. The address for Debtor on the petition states that Debtor resides at 2305 Sandcastle Way, Sacramento, California. However, Debtor's Statement of Financial Affairs states that Debtor lived at 8404 Adagio Way, Citrus Heights, California from June 2014 through "present." Debtor should clarify his accurate address. Also, it appears Debtor is a tenant and pays \$450.00 per month in rent. The court queries why Debtor lists no expense for utilities in connection with his rent.

The Chapter 13 Trustee brought up the California Civil Code section concerning wage garnishment. The court has not seen a wage garnishment order from the county and as long as the Debtor is in Chapter 13, his wages will be protected by the automatic stay.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 16, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the following basis:

1. Debtor is \$228.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$228.00 is due on December 25, 2014. Debtor has paid \$0.00 into the plan to date.
2. Debtor cannot make the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor's plan relies on the pending Motion to Value the secured claim of PNC Bank, National Association. If the motion is not granted, Debtor lacks sufficient monies to pay the claim in full.
3. Debtor's plan may not be Debtor's best efforts. 11 U.S.C.

§ 1325(b). Form B22C shows \$1,667.47 for monthly disposable income. Unsecured creditors are entitled to receive \$100,048, but this is after certain deductions to which the Trustee objects.

- a. Debtor deducting of \$250 for life insurance, but on Schedule B he does not include \$250 in life insurance.
 - b. Debtor deducts \$365 for a Honda CRV lease, which is to remain for only 26 months of the plan. Debtor has not amortized this payment and \$206.83 should be added back into the monthly disposable income.
 - c. Debtor deducts \$1,675 for Green Tree Servicing, LLC. Debtor also deducts this amount in Class 4 of the plan, but on Schedule J, Debtor deducts only \$1,604. At the 341 Meeting, Debtor indicated that the amount listed in the plan and means test is correct, at \$1,675, and Schedule J is incorrect.
 - d. Debtor deducts \$311.72 for PNC Bank, National Association. Debtor intends to value the secured claim on his residence and provide for this creditor as a general unsecured claim. Therefore, this deduction should be disallowed and \$311.72 should be added back into monthly disposable income.
4. On Schedule J, Debtor deducts \$435 for health insurance. Both Debtor and his spouse have deductions from their payroll for health insurance. At the Meeting of Creditors, Debtor indicated that he and his wife do not have any other health insurance expense and he did not know why there was a \$435 deduction. Debtor may have an additional \$435 per month to contribute to the plan.

Debtor also deducts \$426 per month for recreation. Trustee argues the amount deducted is not reasonable while only paying \$228 per month into the plan.

The court will sustain the objection on the basis that Debtor is delinquent in plan payments, it is not convinced that the plan reflects Debtor's best efforts, based on the inconsistencies and expense issues highlighted by the Trustee. The court will overrule the objection as to the Motion to Value because at the hearing, the court is prepared to grant the Motion to Value the secured claim of PNC Bank, National Association. On balance, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

23. [14-30822](#)-C-13 JONATHAN SHELEY
JME-2 Julius Engel

MOTION TO VALUE COLLATERAL OF
PNC BANK, N.A.
12-15-14 [[25](#)]

Tentative Ruling: The Motion to Value was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 15, 2014. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing -----
-----.

The Motion to Value secured claim of PNC Bank, National Association, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 9942 Valderama Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$267,555.00 as of the petition filing date. As the owner, the 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).

The first deed of trust secures a loan with a balance of approximately \$342,721.43. PNC Bank, National Association second deed of trust secures a loan with a balance of approximately \$18,161.62. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the

secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of PNC Bank, National Association secured by a second deed of trust recorded against the real property commonly known as 9942 Valderama Way, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$267,555.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 10, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor did not appear at the First Meeting of Creditors held on December 4, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor is \$100.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$100.00 is due on December 25, 2014. Debtor has paid \$0.00 into the plan to date. 11 U.S.C. § 1325(a)(2).
3. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document

exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (1).

4. Debtor's plan payment is insufficient to fund the plan. In Class 1 of the plan, Debtor lists an ongoing mortgage payment to Wells Fargo Bank, N.A. in the amount of \$1,250; however, Debtor only proposes a plan payment of \$100.00.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 19, 2014. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to continue the hearing to February 24, 2015 at 2:00 p.m.

The Chapter 13 Trustee objects to confirmation on the following grounds:

1. Debtor's original plan called for payments of \$2,130 per month for sixty (60) months. Debtor's most recent amended plan calls for payments of \$2,531 per month for sixty (60) months. Under the current plan, Debtor is \$802.00 delinquent in plan payments to the Trustee. The next scheduled payment of \$2,531 is due December 25, 2014. Debtor has paid \$6,791 into the plan to date.

DEBTOR'S RESPONSE

Debtor requests the hearing be continued to February 24, 2015 at 2:00 p.m.

The court will grant the continuance.

The court shall issue a minute order substantially in the following form

holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is continued to February 24, 2015 at 2:00 p.m.

26. [14-30830](#)-C-13 HOLLY BURT
CAH-1 Anthony Hughes

MOTION TO VALUE COLLATERAL OF
SCHOOLS FINANCIAL CREDIT UNION
12-19-14 [[21](#)]

Tentative Ruling: The Motion to Value was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor and Office of the United States Trustee on December 19, 2014. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing -----
-----.

The Motion to Value secured claim of Schools Financial Credit Union, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2007 Hyundai Santa Fe. The Debtor seeks to value the property at a replacement value of \$7,200.00 as of the petition filing date. As the owner, the 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).

The lien on the vehicle's title secures a purchase-money loan incurred in November 28, 2011, more than 910 days prior to the filing of the petition, with a balance of approximately \$11,878.56. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$7,200.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is

granted

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Schools Financial Credit Union secured by a 2007 Hyundai Santa Fe, is determined to be a secured claim in the amount of \$7,200.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$7,200 and is encumbered by liens securing claims which exceed the value of the Property.

27. [14-30830](#)-C-13 HOLLY BURT
DPC-1 Anthony Hughes

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
12-16-14 [[17](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 16, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325 (a)(6). Debtor's plan relies on the pending Motions to Value the secured claim of: (1) Schools Financial Credit Union and (2) Specialized Loan Servicing, LLC. If the motions are not granted, Debtor lacks sufficient monies to pay the claim in full.

Subsequent to the filing of this Objection on December 19, 2014, Debtor filed a Motion to Value the secured claim of Schools Financial Credit Union, which the Court has tentatively granted. However, Debtor has not to date filed a Motion to Value the secured claim of Specialized Loan

Servicing, LLC.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2014. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. The Debtor states in Class 2 B. 2. Americredit Financial Services \$1,329.02 was disbursed to the creditor. The correct amount paid to the creditor was \$4,454.78.

Debtor's Reply

Debtors state they are agreeable to the modified terms as stated by the Trustee.

Discussion

The court is amenable to the Debtors making the suggested changes in the order confirming the plan. The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on November 14, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Final Ruling: No appearance at the January 13, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 6, 2014. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on November 6, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for

approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

30. [14-30232](#)-C-13 RONALD/MARILYN ARNALL
DPC-1 Lucas Garcia

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
11-24-14 [[15](#)]

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on January 5, 2015, no prejudice to the responding party appearing by the dismissal of the Objection, the parties, having the right to dismiss the Objection pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Objection, the court removes this Objection from the calendar.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 9, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee objects on the following grounds:

(1.) Debtor failed to appear and be examined at the First Meeting of Creditors held on December 4, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. The meeting has been continued to January 15, 2015.

(2.) Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002 (b)(3). This is required seven (7) days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

(3.) Debtor did not provide Trustee with Business Documents or

written statements that no such documents exist. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required seven (7) days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

(4.) Debtor has not paid court ordered filing fees. 11 U.S.C. § 1325(a)(2). On October 17, 2014, the Court issued an Order Approving Payment of filing fees in 4 separate installments. Debtor has paid only the first installment on November 17, 2014 in the amount of \$77.00, failing to pay the three (3) subsequent installments.

(5.) Debtor has not provided proper treatment for a secured debt. Although 11 U.S.C. § 1325(a)(5) does not require treatment of all secured claims, failure to provide the proper treatment may be indicative of Debtor's inability to afford the plan payments because of improperly identified debts or because of concealment of the proposed treatment of a creditor.

(6.) The secured debt has not been provided for real property commonly known as 631 Steffan Street, Vallejo, California.

Debtor's Chapter 13 Plan lists this real property in Section 6 additional provisions, stating there is a "lender," but does not identify said creditor. However, Schedule A lists the property value at \$50,000 with no secured debt against it, and Schedule D fails to list any secured debt against the property.

Debtor has not provided proper treatment for a secured debt. Although 11 U.S.C. § 1325(a)(5) does not require treatment of all secured claims, failure to provide the proper treatment may be indicative of Debtor's inability to afford the plan payments because of improperly identified debts or because of concealment of the proposed treatment of a creditor.

(7.) The secured debt has not been provided for real property commonly known as 802 Ohio Street, Vallejo, California.

Debtor's Chapter 13 Plan lists this property in Section 6 additional provisions, stating that Wells Fargo is the alleged creditor. The additional provisions propose "adequate protection payments of \$750 per month to be held in escrow until we can find the real party in interest." However, the plan does not indicate to whom the adequate protection payments shall be paid to or if they shall be paid through the plan or directly by Debtor. However, Schedule A lists the property value at \$75,000 with no secured debt against it, and Schedule D fails to list any secured debt against the property.

(8.) Debtor has failed to provide the necessary Schedule I statement showing gross income and expenses, despite listing a net business income of \$2,575.

(9.) Debtor did not disclose prior bankruptcy filings in the Voluntary Petition. The case numbers for the previous filings are 13-20155 and 11-25844.

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

The court shall issue a minute order substantially in the following form

holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 11, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

Creditor, U.S. Bank National Association with a secured interest in the real property commonly known as 802 Ohio Street, Vallejo, California, opposes confirmation of the plan on the basis that:

1. Debtor's plan may not have been proposed in good faith. 11 U.S.C. § 1325(a)(3).
 - a. Debtor claims to be a partial owner of the real property 802 Ohio Street, Vallejo, California. However, Debtor is not the borrower and the only interest he may claim in the property is derived from an unauthorized grant deed.
 - b. Debtor is not proposing to cure the arrears or provide for the ongoing post-petition payments as required

under the note and deed of trust owed to Creditor for the property. Instead, in the plan Debtor proposes monthly payments in the amount of \$750 to be held in escrow. The plan is unclear as to how the payments will be held.

- c. Debtor's petition does not disclose the Debtor's previous bankruptcy filings. The aforementioned filings have prevented Creditor from lawfully exercising its state law remedies. Creditor believes that the plan proposed by Debtor in the instant case was for the sole purpose of preventing Creditor from lawfully obtaining possession of its property, thereby prejudicing Creditor.
2. Debtor's plan does not provide for the full value of Creditor's claim. 11 U.S.C. § 1325(a)(5)(B)(ii).
 - a. Creditor's plan fails to properly provide a cure for Creditor's pre-petition arrears. Creditor's claim for pre-petition arrears is \$177,891.58. Debtor's plan fails to provide for payment of the pre-petition arrears on Creditor's secured claim.
 - b. Creditor's plan fails to provide for ongoing monthly post-petition payments, and instead provides for monthly payments of \$750 to be held in escrow.
 3. Debtor's plan does not provide a cure for Creditor's pre-petition arrears. 11 U.S.C. § 1322(b)(5). Creditor's secured claim is \$177,891.85 in pre-petition arrears. Debtor will have to increase his monthly payment through the plan to Creditor to approximately \$2,964.86 in order to cure Creditor's pre-petition arrears over a period not to exceed sixty months.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Final Ruling: No appearance at the January 13, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 12, 2014. By the court's calculation, xx days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on November 12, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if

so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 9, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

Creditor, First U.S. Community Credit Union with a secured interest in the Debtor's real property commonly known as 550 West Broad Street, Nevada City, California, opposes confirmation of the Plan on the basis that:

1. Debtor's plan proposes to infringe on Creditor's anti-modification protections as an at least partially secured creditor and second-position deed of trust holder. 11 U.S.C. § 1322(b)(2). The Court denied the Debtor's Motion to Value Creditor's collateral at \$0. However, Debtor's plan nonetheless seeks to value Creditor's interest in its collateral at \$0 and to pay Creditor a monthly dividend of \$0.
 - a. Debtor filed a Motion to Value, claiming that the

property was worth \$241,000 and that the first deed of trust holder held a claim of \$269,350.53. Creditor filed an opposition and the declaration of an appraiser showing that the property had an appraisal value of \$340,000, and that the claim of first deed of trust holder was \$189,350.53 based on the proof of claim filed by first deed of trust holder. On December 3, 2014, the Court denied Debtor's Motion to Value without prejudice.

- b. Creditor is secured by a second deed of trust and is owed not less than \$51,885.12. Creditor is at least partially secured with respect to the real property, and is thus Debtor may not modify Creditor's rights and claim through his proposed plan.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 9, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325 (a)(6). Debtor's plan relies on the pending Motion to Value the secured claim of First U.S. Community Credit Union. This motion was denied by the Court at the hearing held on November 25, 2014. Thus, Debtor lacks sufficient monies to pay the claim in full.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

36. [14-28943](#)-C-13 VAN/LISA LEONARD
DPC-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
10-8-14 [[27](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 8, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to overrule the Objection.

The Chapter 13 Trustee objected to confirmation on the grounds that the Debtors had a pending Motion to Value set for calendar. The court continued the objection to January 13, 2015, to be heard at the same hearing as the Motion to Value.

At the hearing on January 13, 2015, the court is granting the Motion to Value. Therefore, the Trustee's objection will be overruled and the plan will be confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtors' Chapter 13 Plan filed on September 3, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

37. [14-28943](#)-C-13 VAN/LISA LEONARD
PGM-3 Peter Macaluso

MOTION TO VALUE COLLATERAL OF
WILINGTON TRUST, N.A.
11-24-14 [[52](#)]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 24, 2014 Twenty-eight days' notice is required.

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

The Motion to Value secured claim of Wilmington Trust, National Association, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 128 Partridge Drive, Galt, California. The Debtor seeks to value the property at a fair market value of \$200,000 as of the petition filing date. As the owner, the 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).

The first and second deeds of trust secures a loan with a balance of approximately \$399,954.03. Wilmington Trust, National Association's third deed of trust secures a loan with a balance of approximately \$29,236. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wilmington Trust, National Association's secured by a third deed of trust recorded against the real property commonly known as 129 Partridge Drive, Galt, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$200,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

38. [14-29244](#)-C-13 CANDI MALONE
DPC-1 Richard Jare

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
10-22-14 [[16](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 22, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to overrule the Objection.

Prior Hearing

The court held an initial hearing on the Objection on November 18, 2014. The matter was continued to January 13, 2015 for the Debtor to resolve the Trustee's objections.

On December 22, 2014, the Trustee filed a withdrawal of his Objection to confirmation. Therefore, the court will consider the objection withdrawn and confirm the Chapter 13 Plan.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled, Debtors' Chapter 13 Plan filed on September 15, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The Motion to Incur Debt 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).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 30, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Incur Debt 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). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Incur Debt is granted.

The motion seeks permission to incur new debt regarding a promissory note Debtor signed, promising to pay the balance of \$20,563.29 to the Cedarwood Mobile Homeowners Association, Inc.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

By separate ex parte application, the court granted Debtor's request to purchase the subject mobile home on December 29, 2014. In connection with

this transaction, Debtor must pay to become a member of the Cedarwood Mobile Homeowners Association, Inc., which entitles her to occupy a space in the mobile home park.

Chapter 13 Trustee

On January 7, 2015, the Chapter 13 Trustee filed a statement of non-opposition to the court granting the requested relief.

Discussion

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Incur Debt filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Victoria Gokey, Debtor, is authorized to incur debt pursuant to the terms of the agreement, Exhibit 1, Dckt. 186.

40. [13-26747](#)-C-13 RUSSELL/CHERYL DOUGLAS
RLC-1 Stephen Reynolds

OBJECTION TO CLAIM OF GREEN
TREE SERVICING, LLC, CLAIM
NUMBER 7
11-18-14 [[38](#)]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on November 18, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) 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 Objection to Claim of Green Tree Servicing, LLC is overruled as moot.

Russell Douglas and Cheryl Douglas, the Chapter 13 Debtors ("Objector") requests that the court disallow the claim of Gren Tree Servicing, LLC ("Creditor"), Proof of Claim No. 7 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$83,608.37. Debtors object to the claim on the basis that it was untimely filed.

The court's docket includes a second entry (Dkt. 41) for an Objection to the Claim of Green Tree Servicing, LLC. The difference between the instant Objection and the Objection at Docket 41 is that Docket 41 was filed with adequate service on the claimant. Therefore, the court will take up the merits of the Objection with the Docket 41 Objection and overrule the instant Objection (dkt. 38) as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Objection to Claim of Green Tree

Servicing, LLC, Creditor filed in this case by the Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 7 of Green Tree Servicing, LLC is overruled as moot.

41. [13-26747](#)-C-13 RUSSELL/CHERYL DOUGLAS
RLC-1 Stephen Reynolds

OBJECTION TO CLAIM OF GREEN
TREE SERVICING, LLC, CLAIM
NUMBER 7
11-19-14 [[41](#)]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on November 18, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b) (1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (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(b) (1) (A) 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 Objection to Claim of Green Tree Servicing, LLC is sustained and the claim is disallowed in its entirety.

Russell Douglas and Cheryl Douglas, the Chapter 13 Debtors ("Objector") requests that the court disallow the claim of Green Tree Servicing, LLC ("Creditor"), Proof of Claim No. 7 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of \$83,608.37. Debtors object to the claim on the basis that it was untimely filed.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

The claims bar date for non-governmental claims in the Debtors' case was September 18, 2013. The claim of Green Tree Servicing, LLC was filed on September 19, 2013, one day late. The claim form itself was not signed until

September 19, 2014. Federal Rule of Bankruptcy Procedure 3002 contains exceptions for late filed claims. None of the exceptions apply to the Green Tree Servicing, LLC claim.

Green Tree Servicing, LLC was properly served and did not respond to the Objection.

The court finds adequate grounds for disallowing the claim as it was untimely filed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Green Tree Servicing, LLC, Creditor filed in this case by the Chapter 13 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim Number 7 of Green Tree Servicing, LLC is sustained and the claim is disallowed in its entirety.

42. [14-30649](#)-C-13 CHRISTOPHER TAIJERON
AF-1 Arasto Farsad

MOTION TO VALUE COLLATERAL AND
TO AVOID LIEN OF JPMORGAN CHASE
BANK
11-19-14 [[19](#)]

CASE DISMISSED 11/26/14

Final Ruling: No appearance at the January 13, 2015 hearing is required.

The case having previously been dismissed, the Motion is denied as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied as moot, the case having been dismissed.

43. [14-30849](#)-C-13 PATTI MINH-PHUONG TRAN
DPC-1 Mikalah Liviakis

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
12-16-14 [[19](#)]

Tentative Ruling: Although the Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2), notice was not adequately served on Debtor.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f) (2) (iii).

Local Rule 9014-1(f) (2) Motion.

Notice Improperly Served. No Proof of Service was provided. Fourteen days' notice is required. This requirement has not been met. At the hearing ---
-----.

The court's decision is to overrule the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor was delinquent in plan payments to the Trustee. 11 U.S.C. § 1325(a) (2). Debtor is \$1,680 delinquent in plan payments to the Trustee to the date and the next scheduled payment of \$1,680 is due on December 25, 2014. Debtor has paid \$0 into the plan to date.
2. Debtor has not paid court ordered filing fees. 11 U.S.C. § 1325(a) (2). On November 3, 2014, the Court issued an Order Approving Payment of filing fees in 4 monthly installments. The first installment became due on December 3, 2014. On December 11, 2014 Debtor paid her first installment of \$80.00 where an Order to Show Cause had been filed on December 8, 2014, for failure to pay the first installment fee of \$77.

The Court notes that Debtor is up-to-date on payment of filing fees as of January 5, 2015 with a timely payment in the amount of \$100. However, Debtor continues to be delinquent in plan payments to the Trustee, and thus the Plan does not comport with 11 U.S.C. § 1325(a) (2) and cannot be confirmed.

Service Issue

The Objection will be overruled for inadequate service of process on the Debtor. The Chapter 13 Trustee did not provide the court with a certificate of service showing that the Debtor and Debtor's counsel received the Objection and corresponding documents.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled and the plan is not confirmed.

44. [14-23154](#)-C-13 RONALD PIATT AND KATHY MOTION FOR COMPENSATION BY THE
GW-1 PATRONE-PIATT LAW OFFICE OF GERALD L. WHITE
Gerald White FOR GERALD L. WHITE, DEBTORS'
ATTORNEY
12-5-14 [[21](#)]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 5, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion for Allowance of Professional 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 Motion for Allowance of Professional Fees is granted.

FEES REQUESTED

Gerald White, the Attorney ("Applicant") for Chapter 13 Debtors ("Client"), makes an Interim Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period of February 27, 2014 through June 16, 2014.

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant spent 19.55 hours in this category. Applicant reviewed Debtors' financial information and documentation, met and corresponded with Debtors to prepare and file the petition, schedules and plan.

Review of Claims: Applicant spent 2.45 hours in this category. Application reviewed claims filed by creditors and the Trustee's Notice of Filed Claims.

Confirmation of Plan: Applicant spent 3.30 hours in this category.

Applicant reviewed correspondence from the court, communicated with Debtors, prepared for and attended the meeting of creditors, and prepared the confirmation order to obtain confirmation of the plan.

Case Management: Applicant spent .75 hours in this category. Applicant Reviewed and responded to correspondence from the court, creditors, the trustee, and Debtors in the normal course and general management of the case.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work

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

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

Applicant requests the court to approve \$6,615 in fees and \$281.00 in costs. Applicant was paid \$6,146 for pre-petition fees and the court filing fee. The sum of \$675.00 is held in trust for post-petition fees and/or costs.

The Interim Costs in the amount of \$ pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee under the confirmed plan from the available funds of the plan in a manner consistent with the order of distribution in a Chapter 13 case.

Applicant is allowed, and the chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$ 6,615
Costs and Expenses	\$ 281.00

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Gerald White ("Applicant"), chapter 13 Debtor counsel having been presented to the court, and upon review of the

pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Gerald White is allowed the following fees and expenses as a professional of the Estate:

Gerald White, Professional Employed by chapter 13 Debtors

Fees in the amount of \$ 6,615

Expenses in the amount of \$ 281.00,

IT IS FURTHER ORDERED that the chapter 13 Trustee is authorized to pay the fees allowed by this Order from the available funds of the plan funds in a manner consistent with the order of distribution in a chapter 13 case.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 10, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the following basis:

1. Debtor did not appear at the First Meeting of Creditors held on December 4, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.
2. Debtor is \$300.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$300.00 is due on December 25, 2014. Debtor has paid \$0.00 into the plan to date.
3. The plan may not comply with 11 U.S.C. § 1325(a)(1). Debtor did not provide a commitment period.

4. Debtor's plan may not comply with 11 U.S.C. § 1325(a)(1). The plan does not provide a dividend to unsecured creditors.
5. The plan filed is blank and may not comply with 11 U.S.C. § 1325(a)(1).
6. Debtor's plan does not pass chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$54,300 and Debtor has not proposed an unsecured dividend.
7. Debtor did not used the new Official Form B6I and B6J.
8. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).
9. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

46. [14-28261](#)-C-13 JAVIER CAMPOS LOPEZ AND MOTION TO VALUE COLLATERAL OF
PLC-2 IRMA CAMPOS WILMINGTON TRUST, N.A.
Peter Cianchetta 12-16-14 [[41](#)]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 16, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Wilmington Trust, National Association, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 9572 Wadena Way, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$355,000 as of the petition filing date. As the owner, the 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).

The first deed of trust secures a loan with a balance of approximately \$395,691. Wilmington Trust, National Association's second deed of trust secures a loan with a balance of approximately \$45,262. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wilmington Trust, National Association's secured by a second deed of trust recorded against the real property commonly known as 9572 Wadena Way, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$355,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

47. [14-28261](#)-C-13 JAVIER CAMPOS LOPEZ AND MOTION TO VALUE COLLATERAL OF
PLC-3 IRMA CAMPOS OCWEN LOAN SERVICING/DEUTSCHE
Peter Cianchetta BANK NATIONAL TRUST COMPANY
12-16-14 [[46](#)]

Tentative Ruling: The Motion to Value 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).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 16, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value 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). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of Deutsche Bank National Trust Company, "Creditor," is denied without prejudice.

Identity of Creditor

Debtor requests that the court enter an order altering the legal rights of Ocwen Loan Servicing/Deutsche Bank National Trust Company; however, the court cannot ascertain the name of the proper lender. As far as the court is aware, Ocwen Loan Servicing is a loan servicer and not the rightful owner of the loan. A search on the FDIC website for an institution named "Deutsche Bank National Trust Company" renders no results. A search on the FDIC website for "Deutsche" renders two potential results. The first is Deutsche Bank Trust Company Americas and the second is Deutsche Bank Trust Company Delaware. Although Debtor served both of these institutions in compliance with Fed. R. Bankr. P 7004(h), the court lacks adequate information to enter an order specifically altering the legal rights of either entity.

Therefore, because the court cannot determine who the proper creditor is in this matter, the motion will be denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

48. [14-25165](#)-C-13 MARK ALLEN
GG-3 Gerald Glazer

OBJECTION TO NOTICE OF
POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
12-2-14 [[46](#)]

Tentative Ruling: The Objection to Notice of Post-Petition Mortgage Fees, Expenses, and Charges 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).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 2, 2014. Twenty-eight days' notice is required. That requirement was met.

The Objection to Notice of Post-Petition Mortgage Fees, Expenses, and Charges 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). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Notice of Post-Petition Mortgage Fees, Expenses, and Charges is sustained.

Debtor objects to Lehman XS Trust Mortgage Pass-Through Certificates, Series 2006-18N, U.S. Bank, N.A.'s Notice of Postpetition Mortgage Fees, Expenses and Charges in the amount of \$350.00.

The Notice states that \$350.00 is owing for "Bankruptcy/Proof of claim Fees." Debtor objects on the basis that Claimant should have to file a motion with the court for the requested fee. There is no explanation of the fee or any indication whether the fee was previously awarded by this or some other court, or that the fee is properly allowable under the terms of the contract between the parties. There is no showing that this fee is reasonable.

Pursuant to FRBP 3002.1(e), on a motion of the Debtor, filed within one year after service of a Notice of Fees, Expenses, and Charges, the court shall, after notice and hearing, determine whether payment of any claimed fee, expense, or charge is required by the underlying agreement and applicable nonbankruptcy law to cure a default or maintain payments in accordance with 11 U.S.C. § 1322(b)(5) of the Code.

Pursuant to the proof of service, responding claimant was properly served and did not respond to the pending Objection. The court finds the expense of \$350.00 to be improper without further explanation of the basis for the fee. If the \$350.00 is for legal work or is supported by an underlying contract, the claimant needs to address the reasonableness of the fee or direct the court to the contractual basis for the fee.

The \$350.00 charge is disallowed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Notice of Post-Petition Mortgage Fees, Expenses, and Charges filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

49. [14-31068](#)-C-13 JEFFERSON/PRISCILLA GRACE MOTION TO VALUE COLLATERAL OF
HDR-1 BAGALAY MERCHANT ACCEPTANCE CORP.
Harry Roth 12-5-14 [[15](#)]

Tentative Ruling: The Motion to Value 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).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 6, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value 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). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Value secured claim of Merchants Acceptance Corp., "Creditor," is denied without prejudice.

Service Issue

The motion will be denied for inadequate service of process on the respondent creditor. A search on the California Secretary of State Business Entity module shows the following addresses as adequate for service of process on Merchants Acceptance Corp.:

11400 SE 8th Street, Suite 270
Bellevue, WAS 98004

Agent for Service of Process
Corporation Service Company DBA CSC - Lawyers
Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

Debtor served an entity it calls "Merchant Acceptance Corp." at the following address:

Merchants Acceptance Corp
c/o Shannon Sperry *registered agent*
601 Union Street #2600
Seattle, WA 98101-4000

Due to inadequate service of process, the motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 17, 2014. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Debtor is \$1,299.92 delinquent under the proposed plan.
2. There is no current statement of income and statement of expenses on file. Debtors are proposing a reduced plan payment of \$1,800 from \$2,585 for approximately seven months. According to Trustee, the last statement of income and expenses was filed on April 30, 2014 and changes in circumstances since that time require updated statement to be filed.

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

and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 24, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor failed to appear and be examined at the First Meeting of Creditors held on November 20, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. The meeting was continued to January 8, 2015. Debtor's attorney appeared at the Meeting and advised that the Debtor's were in a boating accident, hence the non-appearance. Trustee notes, however, that Debtor's do not list a boat on Schedule B and Trustee has not been advised of the repercussions of the accident.
2. Debtor did not propose a monthly dividend for payment of attorney's fees in Section 2.07 of the plan, despite calling for \$5,000 in attorney fees to be paid by the Trustee. Trustee notes

that there appears to be approximately \$200 per month available to pay toward attorney fees per month.

3. Trustee is unable to ascertain the feasibility of the plan. Debtor failed to file a Business Budget detailing business income and expenses. On Schedule I, Debtor reports his business operations income at \$5,535.77. On Schedule J, Debtor's only business expense appears to be reported as "work clothing" for \$25. Trustee is unable to determine whether the income reported is gross or net income, or whether the Debtor has additional business expenses that have not been reported in the schedules.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

52. [13-23170](#)-C-13 OSCAR/BENITA QUEZADA
UST-1 Scott Shumaker

OBJECTION TO CLAIM OF GREEN
TREE SERVICING, LLC, CLAIM
NUMBER 8
8-28-14 [[72](#)]

Tentative Ruling: The Objection to Claim 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).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 3007-1 Objection to Claim - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Debtor, Debtor's Attorney, Chapter 13 Trustee on August 28, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Objection to Claim of Green Tree Servicing, LLC is overruled.

The United States Trustee ("Objector") requests that the court disallow the claim of Green Tree Servicing, LLC ("Creditor"), Proof of Claim No. 8 ("Claim"), Official Registry of Claims in this case. The US Trustee objects on the basis that Green Tree Servicing, LLC did not comply with FRBP 3001(c)(2)(C), which provides, in pertinent part, "[i]f an escrow account statement prepared as of the date the petition was filed and in a form consistent with applicable nonbankruptcy law shall be filed with the attachment to the proof of claim." Green Tree did not attach an escrow statement to support the alleged escrow shortage of \$12,870.89. The US Trustee further argues the claim appears overstated based on a late charge of \$613.20 for a date exceeds the calculation of a late charge in the Note; an advertisement cost of \$811.68 for a single date exceeding the 2013 Freddie Mac guideline; and the assertion of a "miscellaneous" charge of \$11.86.

AMENDED PROOF OF CLAIM

On September 30, 2014, Green Tree Servicing, LLC filed an amended proof of claim (Claim 8). This proof of claim includes no amount for escrow shortage, removes the late fee, removes the advertising fee, and removes the miscellaneous fee that formed the basis for the United States Trustee's objection.

CHAPTER 13 TRUSTEE Response

On December 1, 2014, the Chapter 13 Trustee filed a response stating that it has already disbursed \$10,466.63 on the claim and if the court decides to disallow the claim, to allow it at least in the amount disbursed.

Discussion

The court's decision is to overrule the objection on the basis that subsequent to the objection, Creditor filed an amended proof of claim that resolved the Objection of the United States Trustee.

Based on the evidence before the court, the creditor's claim is allowed in its entirety as represented to the court in Amended Proof of Claim 8.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Green Tree Servicing, LLC, Creditor filed in this case by the United States Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection is Claim 8 is overruled and the claim is allowed as a secured claim in the amount \$193,463.52 with arrearage of \$36,517.54.

53. [11-32472](#)-C-13 CARSON BATES
PGM-3 Peter Macaluso

MOTION TO RECONSIDER DISMISSAL
OF CASE
11-26-14 [[76](#)]

CASE DISMISSED 11/17/14

Final Ruling: No appearance at the January 13, 2014 hearing is required.

Local Rule 9014-1(f) (1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 26, 2014. Twenty-eight days' notice is required. That requirement was met.

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

Pursuant to Federal Rules of Civil Procedures 50 and 60, Debtor requests the court reconsider the dismissal of his Chapter 13 case and vacate the order dismissing the case.

Debtor's case was dismissing after the Chapter 13 Trustee file an Application to Dismiss for Debtor not completing plan payments. Prior to the Motion to Dismiss, Debtor suffered a stroke, in July 2014, after the death of her mother. Debtor asserts that due to her health, she was unable to manage her daily affairs and this resulted in missed plan payments.

A hearing was held on November 12, 2014 on the Motion to Dismiss. At the hearing, the motion was granted and on November 17, 2014, the court issued a Civil Minute Order granting the Motion.

Debtor now asserts that she has the assistance of a friend who will help her with daily affairs and ensure her plan payments are brought current. Debtor's confirmed plan term is for 43 months, the final payment being due on or before December 25, 2014. Debtor has paid \$3,315 to the Trustee prior to the dismissal of the case. Debtor has submitted funds to her counsel sufficient to pay her case in full, which will be turned over to the Trustee, upon the granting of this motion.

CHAPTER 13 TRUSTEE

On December 1, 2014, the Chapter 13 Trustee filed a statement

indicating he has no opposition to the requested relief.

DISCUSSION

Federal Rules of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable;
or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). A Rule 60(b) motion may not be used as a substitute for a timely appeal. *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. La. 1993). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

Here, the court finds grounds to grant the Motion as requested. First, the dismissal was on the motion of the Chapter 13 Trustee and now the Chapter 13 Trustee does not oppose the court vacating the order granting his motion to dismiss. Second, at the time the case was dismissed, Debtor was deep into her confirmed plan, with the final payment being due on or before December 2014. Finally, the court is reassured that the situation resulting in Debtor's delinquency, while very unfortunate, is manageable and Debtor will be able to complete the term of the plan from here on out. The court's decision is to grant the motion and vacate the order dismissing the case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Reconsider filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Reconsider is granted and the Order Dismissing the Case (Dkt. 73) is to be vacated and the case reinstated.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 17, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

CHAPTER 13 OBJECTION

Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor's plan may not be Debtor's best efforts. 11 U.S.C. § 1325(b).
 - a. Debtor is over median income. Form 22C shows the Debtor's disposable income is (\$417). Trustee objects to Debtor's deduction of \$5,434 for tax withholding, which is approximately 37% of Debtor's reported gross wages on Schedule I.
 - b. Debtor deducts \$260 per month for telecommunications. Debtor has not provided a breakdown of the expenses and shown eligibility for the deduction. Debtor deducts \$260 for

telephone, cell phone, internet, satellite, and cable services on Schedule J. Debtor should not be allowed this deduction until he clarifies what amount he is eligible to deduct.

- c. Debtor deducts \$300 for education expenses for dependent children. This line requires counsel to provide the Trustee with documentation of the expense and explain why the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards. Debtor has not provided any such documentation or explanation.
 - d. Debtor deducts \$500 for actual and necessary housing costs in excess of allowance. Debtor offers no explanation or documentation to support this deduction.
2. Debtor may be "over withholding" and may be eligible to receive a tax refund each year, which may be contributed to general unsecured claims as an additional payment into the plan each year.
- a. Debtor has deducted \$5,434 for tax withholding, which is approximately 37% of Debtor's reported gross wages on Schedule I. Debtor at the 341 has indicated that he had been advised by an accountant to withhold this amount due to prior year's tax obligations. Based on the percentage of income being withheld, Debtor may be over withholding.
 - b. Trustee requests that the Debtor be ordered to turn over any future tax refunds to pay general unsecured claims into the plan. Trustee also asks that Debtor turn over annual tax returns and updated pay advices at the time of the tax refund.
3. Debtor's child support obligation will be reduced in approximately 2 years, when his eldest child will turn 18. Debtor has failed to propose to increase his plan or to provide the amount the support will change over time.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2014. Forty-two days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Plan.

Three parties oppose confirmation of the Debtors' plan.

Creditor Wells Fargo Bank, N.A. Opposition

Wells Fargo Bank, N.A. opposes confirmation of Debtors' plan on the following basis:

1. The \$182.00 monthly contractual payment offered under the plan is well below the actual monthly payment due and owing of \$323.79.
2. As of the filing date, Debtors are delinquent \$16,609.66 in pre-petition arrears; however, Debtors have incorrectly provided ofr arrears in the amount of \$6,555.00.

Chapter 13 Trustee Opposition

The Chapter 13 Trustee object to confirmation based on the following:

1. The case was filed July 22, 2014 and assigned to Trustee Jan

Johnson. Around September 10, 2014, the case was transferred to Department C and reassigned to Trustee Cusick. Debtors Motion indicates that Debtor have paid in a total of \$15,131.48 as of November 25, 2014. The current plan indicates in Section 6 that Debtors propose to pay in \$18,131.48 by November 25, 2014. A review of the Final Report and Account filed by Trustee Johnson on October 9, 2014 shows that Debtors paid \$5,058 to Trustee Johnson before the case was transferred to Trustee Cusick. Adding the \$5,058 paid to Trustee Johnson to the \$15,766 paid to Trustee Cusick, makes the total paid by the Debtors \$20,824 to date.

2. Debtors may not be able to comply with the plan or make the plan payments under 11 U.S.C. § 1325(a)(6). Section 2.09 of the plan lists a Class 2C debt to an unnamed creditor for \$79,202.01. Where Debtors' prior plan indicated this debt was to Wells Fargo for a Third Deed of Trust on Debtors' residence, the current plan is not clear as to what entity should be paid or how this claim is to be treated.
3. A review of the Final Report and Account filed by Trustee Johnson on October 9, 2014 indicates that \$254.00 was disbursed to creditor Ascension Capital Group, and \$2,752 was disbursed to Wells Fargo Bank, N.A. prior to the transfer of the case. These disbursements are not addressed in the current plan. On or amount September 22, 2014, Trustee Johnson turned over remaining funds of \$2,957.28 to Trustee Cusick.

Creditor Robert Guerra Objection

Creditor Objects on the following grounds:

1. Creditor argues that not all of Debtors's disposable monthly income is included in the plan because at a recent hearing he testified that soon he will receive a \$1,000 per month increase in income. This amount is not provided for in the plan. 11 U.S.C. § 1325.
2. Creditor reiterates the objection of Wells Fargo Bank, N.A.
3. Creditor argues the plan was not submitted in good faith because it does not include the additional income, there is double counting of expenses, and the understatement of monthly payments due to Wells Fargo Bank, N.A.

The court will sustain all three of the objections, but does not find that the plan was not proposed in good faith. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 8, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor is \$2,700 delinquent in plan payments to the Trustee to the date and the next scheduled payment of \$2,700 was due on December 25, 2014. Debtor has paid \$0 into the plan to date.
2. Debtor did not provide Trustee with her Employer Payment Advices received 60 days prior to filing. 11 U.S.C. § 521(a)(1)(B)(iv).
3. Debtor cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor's plan relies on the pending Motion to Value the secured claim of [Creditor]. If the motion is not granted, Debtor lacks sufficient monies to pay the claim in full.

DEBTOR'S REPLY

On December 29, 2014, Debtor filed a reply to the Objection to Confirmation filed by Trustee. Debtor's response stated that she would be current and provide Trustee with the missing documentation on or before the hearing.

DISCUSSION

At the hearing on January 13, 2015, the Court is prepared to grant the Debtor's pending Motion to Value the secured claim of Bank of America, N.A. The granting of this motion resolves part of the objection. However, the remaining issues pointed out by the Trustee are still unresolved, including the delinquent plan payments and failure to provide documentation of Employer Payment Advices. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 11, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

Creditor, The Bank of New York Mellon, opposes confirmation of the Plan on the basis that:

1. Creditor filed a Proof of Claim in the amount of \$628,363.01. Creditor's claim is secured by the real property commonly known as 320 Europa Street, Roseville, California.
2. Debtor's Plan does not provide for the curing of the default on Creditor's claim. 11 U.S.C. § 1322(b)(5). Creditor filed its Proof of Claim, including arrearage in the amount of \$217,490.27. However, the plan only provides for arrears in the amount of \$60,000.
3. Debtor's Plan does not provide how Debtor will be able to make all payments under the Plan. 11 U.S.C. § 1325(a)(6). According

to the filed Plan, Debtor will make monthly payments of \$2,700 for 60 months to Trustee for a base plan amount of \$162,000. However, according to Debtor's Schedules, Debtor has a monthly net income of only \$2,700, and does not list any ongoing mortgage payments. This amount is insufficient to fund the plan and especially infeasible once the arrears on Creditor's claim, an additional \$157,490.27, is fully provided for.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

58. [14-30376](#)-C-13 MICHELE MCFERRAN
PGM-1 Peter Macaluso

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
12-5-14 [[19](#)]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 5, 2014. Twenty-eight days' notice is required. This requirement has been met.

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

The Motion to Value secured claim of Bank of America, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3206 Europa Street, Roseville, California. The Debtor seeks to value the property at a fair market value of \$400,000 as of the petition filing date. As the owner, the 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).

The first deed of trust secures a loan with a balance of approximately \$422,250. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$122,600. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A.'s secured by a second deed of trust recorded against the real property commonly known as 3206 Europa Street, Roseville, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$400,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 16, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

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

Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. The First Meeting of Creditors, scheduled for December 11, 2014, was not held and was continued to February 12, 2015 due to inclement weather conditions. Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation with respect of 11 U.S.C. § 1325.
2. Debtor's Plan may not comply with applicable provisions of 11 U.S.C. § 1325(a)(1):
 - a. Section 2.08 plainly requires that mortgages in default at the time of filing must be listed in Class

1 and Trustee is too maintain all payments falling due after the filing of the case. Here, Debtor lists Carrington Mortgage in Class 1 of the Plan, showing arrearage of \$32,283. However, Debtor fails to propose an ongoing monthly payment.

- b. Debtor's Plan proposes to pay interest on arrears to Carrington Mortgage in Class 1. However, this creditor may not be entitled to interest under 11 U.S.C. § 1322(e) unless the note provides for interest on late payments or applicable non-bankruptcy law requires it.
 - c. Debtor lists Stanislaus County Tax Assessor in Class 5 of the Plan treating the claim as priority unsecured. However, generally claims for property tax are secured by a lien on real property and should be provided for in Class 2 of the plan.
 - d. Debtor's Plan has not properly provided for each secured creditor. Instead in Class 4, Debtor lists "All mortgage on house (rental and home) and car payment." Debtor should specify each lender and the property each lender is secured by and also specify the amount paid monthly to each lender in Class 4. Trustee cannot determine if each payment is accounted for on Debtor's budget, or if Debtor has the means to make all payments.
3. Debtor does not provide sufficient monthly dividend toward arrears. Debtor proposes to repay Carrington Mortgage the default amount of \$32,283 over the life of the plan, but has proposed a monthly dividend toward arrears of only \$400 per month. The month dividend must be no less than \$538.05 per month to pay the creditor the proposed amount within 60 months.
 4. Debtor has failed to provided a Business Budget detailing his business income and expenses. Debtor's Schedule I reports income of \$2,500. Trustee is unable to determine what of this income is derived from rents and what is from business operations. Debtor's Schedule J reports \$4,672 in business expenses, but Debtor did not include an attachment breaking down these expenses.
 5. Debtor's Plan does not provide how Debtor will be able to make all payments under the Plan. 11 U.S.C. § 1325(a)(6).
 - a. Debtor's projected disposable monthly income listed on Schedule J is (\$158) and Debtor's Plan proposes payments of \$500.
 - b. Debtor's household budget lacks normal household expenses such as water, sewer, and trash expenses, medical/dental expenses, and personal care and services. Moreover Debtor has allocated only \$25 for recreation and entertainment, \$300 for food/housekeeping for a household of two, and \$90 per month for services including telephone, cable,

internet, and cell phones.

6. Debtor did not sign the voluntary petition filed on October 9, 2014.
7. Debtor did not file a Rights and Responsibilities, which is required in authorizing the Trustee to disburse funds to Debtor's counsel. Debtor's Plan indicates that Debtor paid counsel \$1,000 in attorney's fees prior to filing and that a balance of \$700 in fees are to be paid by the Trustee through the plan at \$35 per month.
8. Debtor did not provide Trustee with Business Documents or proof of income for the 60 days preceding filing of their bankruptcy. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). These are required seven (7) days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(i).

DEBTORS' RESPONSE

Debtors filed a first amended plan on January 12, 2015 and also filed updated Schedules. Debtors request the hearing on the Objection be continued until after the meeting of creditors.

Discussion

The docket indicates the Debtors filed an amended plan on January 12, 2015. The filing of a new plan is a *de facto* withdrawal of the pending plan. The court will overrule the Objection as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation is overruled as moot.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 19, 2014. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to grant the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Trustee is uncertain of the Debtor's ability to make plan payments. 11 U.S.C. § 1325(a)(6). Debtor did not submit current Schedules I & J. The most recent Schedules were filed on May 1, 2013.

On January 8, 2015, the Debtor filed Amended Schedules I & J. The Schedules indicate that Debtor's net monthly income is \$891.00. This amount is sufficient for Debtor's current monthly plan payment of \$884.10. The objection of the Trustee is overruled and the plan is confirmed.

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

confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on November 19, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 16, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
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The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor did not report four (4) prior bankruptcy cases on her petition. The case numbers for these prior cases are: 13-27271 filed on November 29, 2013; 12-34671 filed on August 10, 2012; 09-47849 filed on December 21, 2009; and 06-24743 filed on November 13, 2006.
2. Debtor did not complete the Means Test form. By failing to complete the form, Trustee is unable to determine what the Debtor's average income is and whether she is over median income or not. Debtor reports on Schedule I her employment at Oakland Military Institute, but fails to report how long she

has been employed there. On her Statement of Financial Affairs, Debtor reports having earnings for 2011, 2012, and 2013, which would cause one to believe that Debtor had employment for the 6 months prior to filing.

3. Debtor's Plan does not provide how Debtor will be able to make all payments under the Plan. 11 U.S.C. § 1325(a)(6). In Class 1 of the Plan, Debtor lists payments to Consumer Portfolio Services in the amount of \$349. However, Debtor proposes a plan payment of only \$300 per month.
4. Debtor has not designated a treatment for claims of a particular class. 11 U.S.C. § 1322(a)(3). The Plan does not provide a dividend to unsecured creditors, and does not state 0%, but has left the dividend blank. Failure to provide a treatment may result in a failure to discharge unsecured debts under 11 U.S.C. § 1328(a).
5. Debtor has doubly treated a claim for Consumer Portfolio Services in both Class 1 and Class 4. At the 341 hearing, Debtor indicated that the creditor holds a secured interest in a vehicle which she intends to retain and pay through the Plan. Consumer Portfolio Services filed a claim showing that Debtor purchased the vehicle on October 26, 2013 under a 60 month contract. Based on this information, it appears the claim should be provided for in Class 2, as the term will expire within the life of the Plan.
6. Debtor has erroneously classified a claim. Debtor lists A-L Financial in Class 4 of the Plan. However, at the 341 hearing, Debtor indicated that she intends to surrender the vehicle.
7. Debtor has provided special treatment for certain unsecured creditors over other unsecured creditors without explanation. Debtor lists Ace Cash Advance and Dollar Loan Center in Class 6 of the Plan. Trustee object to the special unsecured treatment of these claims.
8. Debtor's Plan does not provide how Debtor will be able to make all payments under the Plan. 11 U.S.C. § 1325(a)(6). Debtor's projected monthly disposable income listed on Schedule J is \$273.15 and Debtor proposes a plan payment of \$300.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 7, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
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The court's decision is to sustain the objection.

Prior Hearing

The first hearing on this matter was held on December 9, 2014. At that hearing, the court continued the matter for Debtor to finalize a stipulation with Capital One Auto Finance regarding a Motion to Value secured claim.

As of January 8, 2015, no new documents were filed on the court's docket, indicating that the stipulation resolved the Trustee's objection.

Chapter 13 Trustee Objection

The Chapter 13 Trustee opposed confirmation based on the following:

1. Debtor cannot make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor is proposing to value the secured claim of Capital One Auto Finance; however, a motion to that effect has not been filed. Without that motion being filed and granted, Debtor lacks sufficient monies to fund the plan.
2. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).
3. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

DISCUSSION

Debtor stated in a response to the Trustee's objection that she provided the Trustee with pay stubs and the tax transcripts. However, the Objection concerning the Motion to Value remains outstanding and the plan is not confirmable.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation of the Plan is sustained and the plan is not confirmed.

63. [14-31586](#)-C-13 DENNIS/CHRISTINE LUPTON MOTION TO AVOID LIEN OF CACH,
EAT-1 Ethan Turner LLC
12-5-14 [[14](#)]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on December 5, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Avoid Lien 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 Motion to Avoid Lien is granted.

A judgment was entered against the Debtor in favor of Cach, LLC for the sum of \$2,940.32. The abstract of judgment was recorded with Amador County on September 23, 2014. That lien attached to the Debtor's residential real property commonly known as 4332 Camanche Road, Ione, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$450,000 as of the date of the petition. The unavoidable consensual liens total \$515,915 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Cach, LLC, Amador County Superior Court Case No. 14CV8707, Document No. 2014-0006350-00, recorded on September 23, 2014, with the Amador County Recorder, against the real property commonly known 4332 Camanche Road, Ione, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

64. [14-31586](#)-C-13 DENNIS/CHRISTINE LUPTON MOTION TO VALUE COLLATERAL OF
EAT-2 Ethan Turner BANK OF AMERICA
12-5-14 [[19](#)]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 11, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Bank of America, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4332 Camanche Road, Ione, California. The Debtor seeks to value the property at a fair market value of \$450,000 as of the petition filing date. As the owner, the 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).

The first deed of trust secures a loan with a balance of approximately \$470,673. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$40,209.86. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are
stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A.'s secured by a second deed of trust recorded against the real property commonly known as 4332 Camanche Road, Ione, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$450,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

65. [14-27989](#)-C-13 GENTRY/MARIA LONG
APN-1 Peter Macaluso

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY WELLS
FARGO AUTO FINANCE
9-25-14 [[40](#)]

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 25, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to overrule the Objection.

Wells Fargo Auto Finance ("Creditor") opposes confirmation of the Plan on the basis that Creditor takes issue with the value assigned to its collateral under the plan.

The Debtors' plan proposes to value the secured claims of Creditor as to two items of collateral: a 2004 Infiniti G35 and a 2007 Chrysler 300C. Creditor's objection is to the proposed values of these secured claims.

The court issued two orders on October 14, 2014, valuing the secured claims of Creditor pursuant to two Motions to Value filed by the Debtors. The court held that the 2004 Infiniti G35 loan is secured in the amount of \$5,625 (Dkt. 70) and that the 2007 Chrysler 300C loan is secured in the amount of

\$8,872.

Prior Hearing

At the hearing on October 28, 2014, counsel for Wells Fargo Bank, N.A. appeared and advised the court that his failure to appear at the hearing on the Motion to Value was caused by excusable error and that an evidentiary hearing on both motions may be necessary. The court continued the hearing to permit the parties to meet and confer on the value issue, and for Wells Fargo Bank, N.A. to file a motion to vacate the valuation orders, if necessary.

As of January 8, 2015, Wells Fargo Bank, N.A. has not filed any updated documents on the court's docket.

On December 1, 2014, Debtors' son, Gentry Long, submitted a declaration testifying to his use of the Infiniti G35 to drive to and from work. He was recently hired a Rose Billing Services in Los Angeles.

The court's decision is to overrule the Objection to Confirmation as the valuation issue is the only issue Creditor argues and that matter was determined via the two orders entered by the court on October 14, 2014. Creditor was given an opportunity to file a Motion to Vacate the orders, but has taken no obvious steps in that direction.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is overruled, Debtor's Chapter 13 Plan filed on October 31, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 16, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325 (a)(6). Debtor's plan relies on a Motion to Avoid Lien of State of California Department of Industrial Relations, which was heard on December 16, 2014. If the motion is not granted, Debtor lacks sufficient monies to pay the claim in full.

The Court notes that Debtor's Motion to Avoid Lien was denied without prejudice by Civil Minute Order on December 29, 2014. Therefore, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is

sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 14, 2014. Thirty-five days' notice is required. That requirement was met.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan for the following reasons:

1. Trustee is uncertain that Debtors can make the plan payment as proposed. Debtors are \$787.20 delinquent under the confirmed plan with plan payments of \$262.40 for 36 months. Debtors are now proposing plan payments of \$262.40 for 20 months, \$0.00 for three months, and then \$262.40 for sixteen months, for a total commitment period of 39 months.

Throughout the life of the case, Trustee has filed a motion to dismiss for delinquency on February 5, 2013, and Notices of Default on August 15, 2013, July 11, 2014, and October 17, 2014. Debtors' Motion and Declaration indicate that the

delinquency stems from unexpected automobile expenses, which are now paid. Debtors filed copies of automobile repair bills and receipts over a period of time from October 15, 2014 through November 14, 2014, totaling \$917.12. While Debtors' exhibits may support unexpected automobile repairs recently, it does not sufficiently explain Debtors' continued struggle with delinquency over the life of the case.

2. Debtors are proposing to increase the commitment period from 36 months to 39 months. Debtors are under median income with an applicable commitment period of 3 years pursuant to Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, B22C. The Trustee calculates that the plan will not complete in 39 months, but will take approximately 41 months to complete.
3. Debtors have not filed Amended Schedules I & J to support the proposed plan payment. Debtors most recent Schedules I & J were filed on November 9, 2012, more than 2 years ago.

Debtors' Response

Debtors provide the following response to the Trustee's objection:

1. Debtors admit they have previously been delinquent on their plan payments; however, they argue each delinquency was cured within the time frame indicated in each of the Trustee's Notices of Default. The last Notice of Default was filed October 17, 2014 (Dkt. 35) and stems from unexpected automobile expenses that Debtors were not able to cure within the time frame indicated. This is what caused Debtors to file the Motion to Modify the Chapter 13 plan.
2. Debtors are amenable to extending the life of the plan to 41 months.
3. Debtors are not requests a change in the in-going payments, but rather for the court to "excuse" the three prior non-payments due to unexpected automobile expenses that occurred during that time. However, Debtors did recently file Amended Schedules I & J. Since the first Schedules were filed, Debtors have experienced a reduction in income of \$178.87 net per month. To offset the decrease, Debtors tightened their budget and reduced food, clothing, laundry, and recreation expenses.

Amended Schedules I & J show net monthly income of \$262.73. Debtor are proposing plan payments of \$262.40 for months 1-20, \$0.00 for months 21-23, and \$262.40 for months 24-39. The court reviewed Debtors Amended Schedules and response. While the court finds the reduction in expenses reasonable, Debtors did not submit a declaration testifying to the changes, but only submitted an opposition not signed under penalty of perjury. The court has no evidence from the Debtor upon which it may rely in overcoming the Trustee's objection.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 10, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtors cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325 (a)(6).
 - a. Debtors' have proposed to file a Motion to Value the secured claim of Springleaf Financial. However, Debtors have not said motion, and Debtors lack sufficient monies to pay the claim in full.
 - b. Debtors' propose to file a Motion to Value the secured claims of Aarons. However, Debtors have not filed said motion, and Debtors lack sufficient monies to pay the

claim in full.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

69. [14-28797](#)-C-13 DALE/SHEILA PETITT
BLG-2 Bruce Dwiggin

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
12-5-14 [[35](#)]

Final Ruling: No appearance at the January 13, 2015 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 5, 2014. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of Bank of America, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1087 Moss Creek Road, Redding, California. The Debtor seeks to value the property at a fair market value of \$159,000 as of the petition filing date. As the owner, the 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).

The first deed of trust secures a loan with a balance of approximately \$ 172,180.31. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$40,380.84. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Real Time Resolutions' secured by a second deed of trust recorded against the real property commonly known as 1087 Moss Creek Road, Redding, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$159,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 10, 2014. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
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The court's decision is to sustain the Objection.

Chapter 13 Trustee opposes confirmation of the Plan on the basis that:

1. Debtor failed to appear and be examined at the First Meeting of Creditors held on December 4, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. The meeting has been continued to January 15, 2015.
2. Debtor was \$1,093.02 delinquent in plan payments to the Trustee as of the date of filing the Objection, and the next scheduled payment of \$1,093.02 was due on December 25, 2014. Debtor has paid \$0 into the plan to date.
3. Debtor's Plan exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). According to Trustee's

calculations, the Plan will complete in 202 months, not 60 months proposed. The cause of the overextension is the amount of debts proposed to be paid in the 60 month term.

4. Debtor's Plan proposes to pay Class 2 creditors an interest in excess of that required by law under *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). Debtor proposes to pay in Class 2 a 2012 Buick Enclave at 11.99% interest in the amount of \$696.98 per month. Assuming the Debtor is proposing to pay the creditor at the contract interest rate and at the contract rate of monthly payment, Debtor appears in default to the claim as no payments to the creditor is listed in the Statement of Financial Affairs.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

Tentative Ruling: The Objection to Plan was properly set for hearing on the notice required by 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 4, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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. At the hearing -----
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The court's decision is to sustain the Objection.

Creditor, James Shimp opposes confirmation of the Plan on the basis that:

1. On November 11, 2011, Debtor executed a Note to Creditor in the original principal amount of \$70,000. The Note is secured by a Deed of Trust recorded against Debtor's real property commonly known as 3135 Rio Linda Boulevard, Sacramento, California. Creditor filed a claim showing a pre-petition default of \$9,131.48.
2. Debtor's Plan cannot be completed within 60 months, and is therefore not feasible. 11 U.S.C. § 1322(d).
 - a. Debtor's Plan lists Class 1 mortgage pre-petition arrears in the amount of \$5,500. However, the Proof of Claim indicates mortgage arrears of \$9,131.48. The

Plan does not fully provide for Creditor's claim.

- b. Debtor proposes a Plan payment of \$656.35. However, Debtor's Plan shows a monthly disposable income of \$655. Additionally, the Creditor's Proof of Claim shows that Debtor has not allocated sufficient funds to compensate the full amount of Creditor's pre-petition mortgage arrears. Creditor has calculated that in order to make the Plan feasible, Debtor would be required to make Plan payments of \$721.25 per month.

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

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.
