

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

January 14, 2014 at 3:00 p.m.

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1. [11-43500-E-13](#) MICHAEL PANNELL AND LORI AMENDED MOTION TO MODIFY PLAN
ACW-4 CHERNEY 11-22-13 [78]
Andy Warshaw

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 22, 2013. By the court's calculation, 53 days' notice was provided. 35 days' notice is required.

Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to grant the Motion to Confirm the Modified Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee opposes the plan on the basis that it proposes to decrease the minimum percentage to unsecured creditors from 23% to 1%, where the plan estimates the total unsecured at \$52,160.00, when the dividend would be \$521.60. The Trustee shows the amount as \$62,410.18 and has disbursed 1.18%, which is \$701.80. Trustee states this is \$180.20 over the dividend proposed in the modified plan.

The Trustee does not oppose confirmation, so long as the reduced 1% minimum for a disbursement does not alter or reduce the amounts previously disbursed. The court reads the Plan to provide that there is only a 1% minimum, and that they prior disbursements under the confirmed plan are not altered. The order confirming the Chapter 13 Plan shall so provide.

The modified Plan does comply with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

January 14, 2014 at 3:00 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 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, Debtors' Modified Chapter 13 Plan filed on November 22, 2013, 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. The order confirming shall include a provision that a payments made to creditors holding general unsecured claims are ratified under the Modified Plan.

2. [13-34801-E-13](#) **ESTHER HWANG** **MOTION TO AVOID WAGE**
DCG-1 **Eric Gravel** **GARNISHMENT AND/OR MOTION FOR**
ORDER PERMITTING TURNOVER OF
GARNISHED FUNDS
12-16-13 [[15](#)]

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, respondent creditor, and Office of the United States Trustee on December 16, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Turnover 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 court's tentative decision is to deny the Motion to Avoid Wage Garnishment and for Turnover of Property of the Estate without prejudice. 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. If the court's tentative ruling becomes its final

ruling, the court will make the following findings of fact and conclusions of law:

SERVICE

Debtor does not appear to have properly served National Collegiate Student Loan Trust. The only address served is to a law firm in San Diego. The court is not satisfied that the proper legal entity has been given adequate notice. This is independent grounds for denial of the motion.

MULTIPLE RELIEF

Debtor requests that the San Diego Sheriff's Office turnover the property of the bankruptcy estate pursuant to 11 U.S.C. § 542(b) and further relief against National Collegiate Student Loan Trust to avoiding the wage garnishment pursuant to 11 U.S.C. § 522(f)(1)(a). While Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure allow for a plaintiff to join multiple claims against a defendant in one complaint in an adversary proceeding, those rules are not applicable to contested matter in the bankruptcy case. Federal Rule of Bankruptcy Procedure 9014, which does not incorporate Rule 9018 for contested matters. The Movant have improperly attempted to join a motion to avoid with a motion to turnover property of the estate. Further, the permissive joinder of parties provisions of Federal Rule of Civil Procedure 20 and Federal Rule of Bankruptcy Procedure 7020 are not incorporated into the contested matter practice pursuant to Federal Rule of Bankruptcy Procedure 9014.

As with the present Motion, the reason for not incorporating Rule 7018 into contested matters is in part based on the short notice period for motions and the substantive matters addressed by the bankruptcy court in motions. These include sales of property, disallowing claims, avoiding interests in real and personal property, confirming plans, and compromising rights of the estate - proceedings which in state court could consume years. In the bankruptcy court, such matters may well be determined on 28 days notice. Allowing parties to combine claims and create potentially confusing pleadings would not only be a prejudice to the parties, but put an unreasonable burden on the court in the compressed time frame of bankruptcy case law and motion practice. This is a sufficient ground to deny the Motion.

MOTION

Debtor asserts that before filing the petition, National Collegiate Student Loan Trust delivered an order for garnishment to the San Diego Sheriff's Office, which was instructed to deliver an serve the order on JPMorgan Chase Bank, N.A.

On November 20, 2013, Debtor filed for relief under Chapter 13. However, the San Diego Sheriff's office is holding \$2,615.20 in garnished funds. Debtor states she disclosed an interest in the garnished funds and claimed an exemption in the entire amount in Schedule C.

The court notes that the Trustee has filed an objection to confirmation on several grounds, including that he has continued the 341

meeting to February 20, 2014 has he has not completed his investigation and Debtor has not provided him with sufficient information.

As the 341 meeting of creditors has not been concluded, the motion was not properly noticed on all necessary parties, and the motion combined two separate requests for relief under the Bankruptcy Code, the court denies the motion without prejudice.

Further, the ruling on this Motion is premature. The court cannot identify how the monies if recovered will be part of a Chapter 13 Plan. Further, the court cannot determine if there is a good faith prosecution of this case or that it is merely a device to improperly recover the monies from the Sheriff.

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 Turnover 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. 13-34102-E-13 VITALY KUZMENKO
TSB-1 Christian Younger

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
12-17-13 [18]

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, 2013. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. §341. Attendance is mandatory. 11 U.S.C. §343.

The Trustee opposes confirmation offering evidence that the Debtor is \$940.00 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

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 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.

4. [10-43503-E-13](#) **ROBERT/CHANDAR PAL** **MOTION TO VALUE COLLATERAL OF**
SDB-3 **Scott de Bie** **CWHEQ, INC. DBA CWHEQ REVOLVING**
HOME EQUITY LOAN TRUST
11-27-13 [84]

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 27, 2013. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 225 Delaware Street, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$90,000.00 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 \$265,977.06. CWHEQ, Inc., dba CWHEQ Revolving Home Equity Loan Trust, Series 2006-C's second deed of trust secures a loan with a balance of approximately \$114,234.77. 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 CWHEQ, Inc., dba CWHEQ Revolving Home Equity Loan Trust, Series 2006-C secured by a second deed of trust recorded against the real property commonly known as 225 Delaware Street, Vallejo, 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 \$90,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

5. [13-34303-E-13](#) TSB-1 RAYMOND CLIFFORD AND
RHONDA WILSON
David Ndudim

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
12-17-13 [[18](#)]

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on December 17, 2013. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, 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. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Objection is overruled as moot and confirmation is denied. No appearance required.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on January 7, 2014. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot 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 Confirmation of 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 is overruled as moot and the proposed Chapter 13 Plan is not confirmed.

6. [12-24804-E-7](#) DENNIS/JEANETTE HAMANN MOTION TO CONFIRM PLAN
DRE-8 D. Randall Ensminger 11-8-13 [[128](#)]

CASE CONVERTED TO CH. 7 ON 12/17/13

Final Ruling: The case having been converted to one under Chapter 7 of the Bankruptcy Code, the Motion is dismissed as moot. No appearance at the January 14, 2014 hearing is required.

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 having been presented to the court, the case having been converted to one under Chapter 7 of the Bankruptcy Code, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, the case having been converted to one under Chapter 7 of the Bankruptcy Code.

7. [12-24804-E-7](#) DENNIS/JEANETTE HAMANN CONTINUED MOTION TO DISMISS
TSB-3 D. Randall Ensminger CASE
10-16-13 [[118](#)]

CASE CONVERTED TO CH. 7 ON 12/17/13

CONT. FROM 11-13-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on October 16, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. 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 Dismiss without prejudice. No appearance required.

PRIOR HEARING

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on September 10, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Opposition

Debtors filed an opposition stating that most recent Amended Plan was denied on September 10, 2013. Since then Debtors' counsel has experienced serious and significant disruption in his practice due to relocation. The new proposed plan is complete and has been presented to Debtors' for approval.

The court continued the hearing on the Motion to Dismiss to be heard in conjunction with the Motion to Confirm on January 14, 2014.

CONVERSION

However, on December 17, 2013, the Debtors converted the case to one under Chapter 7 of the Bankruptcy Code. The court will allow the Debtors the opportunity to prosecute this Chapter 7 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 Dismiss the Chapter 13 case 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 Motion to Dismiss is denied without prejudice.

8. [13-23407-E-13](#) **MARK/JENNIFER GALISATUS** **MOTION TO CONFIRM PLAN**
DMD-5 **Daniel Davis** **11-6-13 [94]**

CASE DISMISSED 11/19/13

Final Ruling: The case having previously been dismissed, the Motion is dismissed as moot. No appearance at the January 14, 2014 hearing is required.

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 Plan 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 dismissed as moot, the case having been dismissed.

9. [13-35107-E-13](#) FERNANDO RODRIGUEZ
PLL-1 Peter Lago

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
12-5-13 [[15](#)]

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, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 5, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to deny the Motion to Value Collateral.

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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to value the collateral of Bank of America, N.A. However, service is not proper. Debtor served Bank of America, N.A. at an address in San Francisco, California. The address specified on the FDIC database, which is 100 North Tryon Street, Charlotte, North Carolina.

It appears that the address served was for the entity Bank of America California, National Association. If that is indeed the entity that has the interest in the subject real property, then it was not properly named in the motion. Further, the California Secretary of State website discloses that Bank of America California is listed as "term expired." <http://kepler.sos.ca.gov/>. The FDIC Website lists Bank of America California, National Association as being the entity originally established as Security Pacific State Bank, and then renamed, Bank of America Community Development Bank, Bank of America Community Development Bank, N.A., and ultimately Bank of America California, N.A.

Based on the lack of proper service, 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.

10. [13-33208-E-13](#) TERA KRIDER MOTION TO CONFIRM PLAN
OAG-2 Ognian Gavrilov 11-24-13 [[29](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 24, 2013. By the court's calculation, 51 days' notice was provided. 42 days' notice is required.

Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to continue the hearing on the Motion to Confirm the Amended Plan to 3:00 p.m. on February 15, 2014. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes the plan on the basis that Debtor has not filed her 2010 Federal Tax Return.

The Trustee also notes that the Internal Revenue Service filed a secured claim on December 4, 2013, Claim No. 6, in the amount of \$13,285.00 with the tax ID number ending in 4046. Trustee states this does not appear to be Debtor's social security number. Trustee states that based on a letter provided by the Debtor, it appears portions of the IRS claim may not be accurate. Trustee requests clarification as to the claim filed by the IRS and the letter filed by Debtors.

Opposition

Debtors respond stating that Debtor did not earn any income in the 2010 tax period, as she was in school taking pre-nursing courses. Debtor

states she only received spousal support during the 2010 tax year but it was such a low amount that she was not required to file.

Debtor also states that while the IRS has filed a claim in this case, the social security number listed is not the Debtors but is her ex-husband's. Debtor states she will be filing an objection to the claim due to the mistake. Debtor also received a letter from the IRS which states Debtor is not liable for the balance due because she and her ex-husband did not file joint tax returns for the 2005, 2006 or 2007 tax years, which are the years owing in the claim.

Based on a review of the file, the Debtor filed a Objection to Proof of Claim on January 6, 2014, set for hearing February 15, 2014. Based on the foregoing, the court continues the hearing on the Motion to Confirm to be heard with the pending Objection to Proof of Claim.

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 3:00 p.m. on February 15, 2014.

11. [11-44610-E-13](#) VICTOR/CORNELIA UBANDO
BMV-14 Bert Vega

MOTION TO MODIFY PLAN
11-7-13 [[164](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 7, 2013. By the court's calculation, 68 days' notice was provided. 35 days' notice is required.

Final Ruling: 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). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's tentative decision is to dismiss the without prejudice the Motion to Confirm the Modified Plan. No appearance at the January 14, 2014 hearing is required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects on the basis that the Debtors are paid ahead under the terms of the proposed plan, which calls for payments of \$101.60 for 60 months. The Debtor has paid a total of \$6,714.86 to the Trustee as of month 25 (November 2013) and \$2,540.00 has become due under the proposed plan (\$101.60 x 25). The total proposed plan payments are \$6,096.00. Debtors would be due a refund.

Additionally, the Trustee objects that the debtors plan does not provide for the claim of National Capital Management LLC for a 2008 Toyota Camry. Trustee state he has disbursed \$5,436.34 in principal plus \$825.92 in interest on the claim.

Dismissal of Motion Without Prejudice

On January 9, 2014, the Debtors filed a Notice of Withdrawal of Motion to Modify Plan. The court construes this "Notice" as a motion to dismiss the motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014, 7041. The requested dismissal is consistent with the Trustee's Objection to Confirmation.

The court grants the Debtors' request and dismisses the Motion without prejudice.

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 Chapter 13 Plan filed by the Debtor having been presented to the court, the Debtors having filed a motion to dismiss the present Motion (Notice of Withdrawal, Dckt. 172), and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion to Confirm the Plan is dismissed without prejudice.

12. [12-23611-E-13](#) **GARTH GOSELIN** **MOTION TO MODIFY PLAN**
SLH-1 **Seth Hanson** **11-22-13 [23]**

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, all creditors, parties requesting special notice, and Office of the United States Trustee on November 22, 2013. By the court's calculation, 53 days' notice was provided. 35 days' notice is required.

Final Ruling: 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. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 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 22, 2013 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.

13. [13-33513-E-13](#) **MARLON/REBECCA LAWAS** **OBJECTION TO CONFIRMATION OF**
JHW-1 **Yasha Rahimzadeh** **PLAN BY MERCEDES-BENZ FINANCIAL**
SERVICES USA, LLC
12-12-13 [32]

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 12, 2013. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, the Debtor, 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. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Objection is overruled as moot and confirmation is denied. No appearance required.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on December 10, 2013. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot 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 Confirmation of 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 is overruled as moot and the proposed Chapter 13 Plan is not confirmed.

14. [13-33513-E-13](#) **MARLON/REBECCA LAWAS** **OBJECTION TO CONFIRMATION OF**
JHW-2 **Yasha Rahimzadeh** **PLAN BY MERCEDES-BENZ FINANCIAL**
SERVICES USA, LLC
12-12-13 [\[37\]](#)

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 12, 2013. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, 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. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Objection is overruled as moot and confirmation is denied. No appearance required.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on December 10, 2013. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot 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 Confirmation of 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 is overruled as moot and the proposed Chapter 13 Plan is not confirmed.

15. [13-33513](#)-E-13 MARLON/REBECCA LAWAS
NLE-1 Yasha Rahimzadeh

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
12-11-13 [[28](#)]

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 11, 2013. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, 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. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Objection is overruled as moot and confirmation is denied. No appearance required.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on December 10, 2013. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot 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 Confirmation of 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 is overruled as moot and the proposed Chapter 13 Plan is not confirmed.

16. [13-33914-E-13](#) LAURA BRENNAN
DEF-1 David Foyil

MOTION TO AVOID LIEN OF FEED
BARN
12-3-13 [[22](#)]

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 3, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Avoid a Judicial 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).

The court's decision is to continue the hearing on the Motion to Avoid a Judicial Lien to 3:00 p.m. on January 28, 2014. No appearance required.

Debtor seeks to avoid a judgment entered against the Debtor in favor of "Feed Barn" for the sum of \$3,391.79. The address listed for "Feed Barn" is in Jackson, California. A search of the California Secretary of State shows three separate active entities with the name "Feed Barn." One does appear to have a Jackson, California entity address, The Feed Barn Country Store. Even if the court looked past the incorrect legal name listed in the motion and supporting pleadings ("Feed Barn" is the entity listed on the recorded Abstract of Judgment), the Debtor has not served the agent for service of process as required by Federal Rule of Bankruptcy Procedure 7004(b).

Service in the bankruptcy court is governed by Federal Rule of Bankruptcy Procedure 7004. See Fed. R. Bankr. P. 9014. Service may be made by First Class Mail for most parties. For a corporation, partnership, or other unincorporated association, by mailing the pleadings **to the attention of an officer, managing or general agent, or any other agent authorized to receive service.** Fed. R. Bankr. P. 7004(b)(3) (emphasis added). This is sufficient to deny the motion.

The court will continue the hearing to January 28, 2014, to allow the Debtor to either file a dismissal of the present the motion and the filing (and proper service) of a motion identifying the actual party, or the filing of supplemental pleadings with legal authority that this motion properly named and served the respondent creditor.

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 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 hearing on the Motion is continued to 3:00 p.m. on January 28, 2014. Debtor shall file on or before January 21, 2014, a withdrawal of the motion or supplemental pleadings with legal authority that this motion properly named and served the respondent creditor.

17. [13-33914-E-13](#) **LAURA BRENNAN** **MOTION TO AVOID LIEN OF MARTIN**
DEF-2 **David Foyil** **HORSE AND BOARD CARE**
12-3-13 [27]

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 3, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Avoid a Judicial 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).

The court's decision is to continue the hearing on the Motion to Avoid a Judicial Lien to 3:00 p.m. on January 28, 2014. No appearance required.

Debtor seeks to avoid a judgment entered against the Debtor in favor of Martin Horse and Board Care for the sum of \$7,436.00. The only address served on Martin Horse and Board Care was a post office box.

Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); *see also Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously").

Furthermore, service in the bankruptcy court is governed by Federal Rule of Bankruptcy Procedure 7004. See Fed. R. Bankr. P. 9014. Service may be made by First Class Mail for most parties. For a corporation, partnership, or other unincorporated association, by mailing the pleadings to the attention of an officer, managing or general agent, or any other agent authorized to receive service. Fed. R. Bankr. P. 7004(b)(3). Martin Horse and Board Care was not served to the attention of an officer, managing or general agent, or any other agent authorized to receive service.

The court will continue the hearing to January 28, 2014, to allow the Debtor to either file a dismissal of the present the motion and the filing (and proper service) of a motion identifying the actual party, or the filing of supplemental pleadings with legal authority that this motion properly named and served the respondent creditor.

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 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 hearing on the Motion is continued to 3:00 p.m. on January 28, 2014. Debtor shall file on or before January 21, 2014, a dismissal of the present motion or filing supplemental pleadings with legal authority that this motion properly named and served the respondent creditor.

18. [13-33914-E-13](#) **LAURA BRENNAN** **MOTION TO CONFIRM PLAN**
DEF-4 **David Foyil** **12-3-13 [34]**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 3, 2013. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

Final Ruling: 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 Trustee having filed an opposition, the court will address the merits of the motion. 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 on the Motion to Confirm the Chapter 13 Plan to 3:00 p.m. on January 28, 2014. No appearance required.

The Chapter 13 Trustee opposes confirmation on the basis that the plan relies on two pending motions to Avoid Liens, set to be heard the same day as this confirmation hearing. The court having denied and continued the respective Motions to Avoid Liens, the Trustee's objection is sustained.

The Trustee also objects to the last sentence in paragraph 6.02 of the proposed plan that "The remaining unpaid non-dischargeable balance, shall not be paid by the Debtor until after completion of this plan (upon entry of final decree). Said claims shall not accrue interest during the pendency of this plan." Trustee states that this sentence appears unnecessary and may not be correct as to the accrual of interest during the plan.

Debtors respond, consenting to an order modifying the terms of the proposed plan such that the additional provisions set forth in the plan under Section 6.02 of the plan shall become deleted.

Based on the fact that the Motions to Avoid liens have not been granted, 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 the hearing on the Motion is continued to 3:00 p.m. on January 28, 2014.

19. 13-31916-E-13 DALE/LEILANI MILLER
DLM-5 Pro Se

MOTION TO CONFIRM PLAN
11-8-13 [45]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 8, 2013. By the court's calculation, 67 days' notice was provided. 42 days' notice is required.

Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to deny the Motion to Confirm the Amended Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee object to the plan on the basis that the plan is not the Debtor's best effort. Debtors' joint Declaration filed November 8, 2013, states in part that Leilani Miller has secured employment beginning January 2014. Debtor's Amended Schedule I, filed as an Exhibit on November 8, 2013, Dckt. 48, does not list Leilani's new employer and wage information and a declaration has not been filed stating the current, correct amount of income for the Debtors.

The Trustee also objects that the plan states additional provisions are appended to the plan, when none exist.

The amended 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.

20. [10-29118-E-13](#) **TERRIE WILSON** **MOTION FOR COMPENSATION BY THE**
PGM-3 **Peter Macaluso** **LAW OFFICE OF PETER G. MACALUSO**
FOR PETER G. MACALUSO, DEBTOR'S
ATTORNEY(S), FEES: \$850.00,
EXPENSES: \$0.00
11-22-13 [82]

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, all creditors, and Office of the United States Trustee on November 22, 2013. By the court's calculation, 53 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Compensation 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 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 for Compensation is granted. No appearance required.

Peter G. Macaluso, Counsel for Debtor, seeks additional attorney fees in the amount of \$850.00. Counsel argues that these additional fees are actual, reasonable, necessary and unanticipated as post-confirmation work required.

Description of Services for Which Fees Are Requested

1. Modify the Confirmed Plan. Post-modification work included two motions to modify case as a result of motions to dismiss case filed by the Trustee and subsequent meetings with clients to maintain the case.

The hourly rates for the fees billed in this case are \$200.00/hour for counsel for 4.25 hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$850.00 is approved and authorized to be

paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 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 for Compensation filed by Counsel for 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, and Peter G. Macaluso, Counsel for Debtor, is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Counsel for Debtor
Applicant's Fees Allowed in the amount of \$850.00.

21. 12-38318-E-13 **LESLIE SOLANA**
JT-2 **John Tosney**

**MOTION TO APPROVE LOAN
MODIFICATION
11-18-13 [44]**

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 18, 2013. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i) (5) and 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 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 Approve the Loan Modification is granted. No appearance required.

One West Bank ,FSB, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to \$1,805.74. The modification will capitalize the pre-petition arrears and provides for an interest rate of 6.25% over the next 480 months.

There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 Approve the Loan Modification 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 Leslie Solana, Debtor is authorized to amend the terms of her loan with One West Bank FSB, serviced by Ocwen Loan Servicing, LLC, which is secured

by the real property commonly known as 451 Lakehurst Court, Fairfield, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 47, in support of the Motion.

22. [10-26819-E-13](#) **JORGE/LINDA JAIME** **MOTION TO VALUE COLLATERAL OF**
JT-5 **John Tosney** **CITIBANK, N.A.**
11-22-13 [80]

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, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 22, 2013. By the court's calculation, 53 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The Debtor is the owner of the subject real property commonly known as 275 Brenda Way, Williams, California. The Debtor seeks to value the property at a fair market value of \$117,000.00 as of the petition filing date. Debtor offers the Declaration of Charles T. Reische, a licensed real estate appraiser with 25 years' experience, who opines that the value of the property is \$117,000.00.

The first deed of trust secures a loan with a balance of approximately \$234,619.65. Citibank, N.A.'s second deed of trust secures a loan with a balance of approximately \$45,109.10. 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

24. [13-33721-E-13](#) **MICHAEL/SHAUNIE BRIGGS** **MOTION TO VALUE COLLATERAL OF**
PGM-1 **Peter Macaluso** **WELLS FARGO BANK, N.A.**
12-9-13 [16]

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, respondent creditor, and Office of the United States Trustee on December 9, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 822 Railroad Avenue, Winters, California. The Debtor seeks to value the property at a fair market value of \$280,000.00 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 \$297,964.01. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$299,975.00. 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 822 Railroad Avenue, Winters, 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 \$280,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

25. [11-21422-E-13](#) **SHMAVON MNATSAKANYAN AND** **MOTION TO APPROVE LOAN**
PGM-5 **YERMONIYA ARTUSHYAN** **MODIFICATION**
Peter Macaluso **12-3-13 [[113](#)]**

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, all creditors, parties requesting special notice, and Office of the United States Trustee on December 3, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 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 court's tentative decision is to continue the hearing on the Motion to Approve the Loan Modification to January 28, 2014. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Green Tree Servicing, LLC, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to \$400.70. A review of the Loan Modification (attached as Exhibit A) shows that Green Tree Servicing, LLC is named as the

"Lender" on the loan. The confirmed plan lists Bank of America as the only creditor with a secured claim on the residence. Proof of Claim No. 17, filed by BAC Home Loans Servicing, LP. A Substitute of Trustee and Assignment of Deed of Trust filed with Proof of Claim No. 17, shows BAC Home Loans Servicing, LP was transferred the interest in the deed of trust on August 13, 2010. FN.1 No assignment or transfer of claim appears on the docket transferring any interest to Green Tree Servicing, LLC.

FN.1. In connection with other proceedings, the court has been provided with a Certificate of Merger filed with the Texas Secretary of State stating that BAC Home Loans Servicing, LP was merged into Bank of America, National Association. This Certificate is dated June 28, 2011, and is stated to be effective July 1, 2011. The California Secretary of State reports that BAC Home Loans Servicing, LP registration with California was cancelled. See, <http://kepler.sos.ca.gov/cbs.aspx>.

The court is not certain how Green Tree Servicing, LLC, can name themselves as "Lender" in a Loan Modification for an obligation that appears to be owed to Bank of America, N.A. The court will not approve an loan modification that will not be effective against the actual owner of the obligation, which here appears to be Bank of America, N.A., successor in interest to BAC Home Loans Servicing, LP.

The court will issue an order to Debtors and Green Tree Servicing, LLC to file on or before January 21, 2014, any and all properly authenticated documents identifying that Green Tree Servicing, LLC is the actual creditor, as defined in 11 U.S.C. § 101(10). The court continues the hearing to January 28, 2014, to allow the parties to file the appropriate documentation. FN.2.

FN.2. This court has previously addressed with Green Tree Servicing, LLC the requirement that it accurately identify its status in a bankruptcy case - whether creditor, loan servicer for the creditor, agent of the creditor, or holder of a power of attorney authorized to act for the creditor in legal proceedings or in executing documents in the name of the creditor. In the *Edwin L. and Cynthia Crane* bankruptcy case, Bankr. E.D. Cal. 11-27005, Dckt. 124, the court entered an order requiring Green Tree Servicing, LLC to correctly identify the creditor in cases, and for Green Tree Servicing, LLC not to identify itself as the creditor,

"unless it is the holder of all legal rights to enforce the claim in its own name, as the assignee for collection, or as the holder of a power of attorney for another and is the agent for service of process for all purposes for any other person who holds any legal rights to enforce the claim. Any proofs of claim shall have attached to them documentation of the assignment, power of attorney, and general agent for service of process for any claims for which Green Tree Servicing, LLC asserts it is a creditor."

See Civil Minutes of the November 8, 2011 hearing in the *Crane* case in which the court addressed and rejected the contention that a mere agent or loan

servicer may present itself as the actual creditor with a claim. *Id.*, Dckt. 111.

Other cases in which the court has issued orders to show cause and Green Tree Servicing, LLC has filed responses and represented that its practices have been modified to correctly identify the creditor include: *John and Susan Jones*, Bankr. E.D. Cal. 11-31713; and *Matthew and Kristi Separovich*, Bankr. E.D. Cal. 11-42848.

The court acknowledges that Green Tree Servicing, LLC has, and most likely will, in connection with this matter be responsive and address the court's concerns - as well as educating the court to the current practical business issues, and challenges, of maintaining a nationwide business providing these types of services. However, it appears that the impact of these changes is limited or fleeting.

Further, if Green Tree Servicing, LLC has expanded its business to purchase notes, how it will provide that information to the federal courts.

The court shall issue an order (not 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 Approve the Loan Modification 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 hearing on the Motion to Approve Loan Modification is continued to 3:00 p.m. on January 28, 2014.

IT IS FURTHER ORDERED that Debtors and Green Tree Servicing, LLC shall file on or before January 21, 2014, any and all properly authenticated documents identifying that Green Tree Servicing, LLC is the actual creditor, as defined in 11 U.S.C. § 101(10).

IT IS FURTHER ORDERED that Green Tree Servicing, LLC shall file and serve on or before January 21, 2014, properly authenticated of all documents, if any, by which it may assert to be the agent of or be granted a power of attorney for Bank of America, N.A. or any other person who is the actual creditor in this case, and any other documents by which Green Tree Servicing, LLC purports to be authorized or have the right to modify the loan at issue.

The Clerk of the court shall serve Green Tree Servicing, LLC copies of this order at the following addresses:

Green Tree Servicing, LLC
C/O CT Corporation, Agent for Service of Process
555 Capital Mall, Suite 1000
Sacramento, CA 95814

Green Tree Servicing, LLC
Attn: Officer or Agent for Service of Process
1100 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102

Green Tree Servicing, LLC
Attn: Keith Anderson
1100 Landmark Towers
345 St. Peter Street
St. Paul, MN 55102

Green Tree Servicing, LLC
Attn: Officer or Agent for Service of Process
P.O. Box 6145
Rapid City, SO 57709-6154
CT Corporation, Agent for Service of Process

Green Tree Servicing, LLC
111 Eight Ave, 13th Floor
New York, NY 10011
CT Corporation, Agent for Service of Process

Green Tree Servicing, LLC
818 W Seventh St
Los Angeles, CA 90017

Informational copy served on:

Malcolm Cisneros, A Law Corporation
Attn: William G. Malcolm
2112 Business Center Drive, Second Floor
Irvine, CA 92612

26. [13-34222-E-13](#) ISAAC WILSON OBJECTION TO CONFIRMATION OF
CJR-1 Pro Se PLAN BY CITIBANK, N.A.
12-11-13 [[21](#)]

CASE DISMISSED 1-11-14

Final Ruling: The case having previously been dismissed, the Objection is dismissed 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 Confirmation 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 Objection is dismissed as moot, the case having been dismissed.

27. [13-34222-E-13](#) ISAAC WILSON OBJECTION TO CONFIRMATION OF
KMR-1 Pro Se PLAN BY U.S. BANK, N.A.
12-12-13 [[25](#)]

CASE DISMISSED 1-11-14

Final Ruling: The case having previously been dismissed, the Objection is dismissed 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 Confirmation 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 Objection is dismissed as moot, the case having been dismissed.

28. [13-34222](#)-E-13 ISAAC WILSON
NLE-1 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
12-11-13 [[17](#)]

CASE DISMISSED 1-11-14

Final Ruling: The case having previously been dismissed, the Objection is dismissed 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 Confirmation 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 Objection is dismissed as moot, the case having been dismissed.

29. 10-42324-E-13 STEVEN/NOREEN GOODIN
CAH-4 C. Anthony Hughes

MOTION TO MODIFY PLAN
12-7-13 [86]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 7, 2013. By the court's calculation, 38 days' notice was provided. 35 days' notice is required.

Final Ruling: 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. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 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 December 7, 2013 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. [13-34624-E-13](#) DEBRA RANDELL
MWB-1 Mark Briden

MOTION TO VALUE COLLATERAL OF
FIVE STAR BANK
12-2-13 [[16](#)]

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, respondent creditor, and Office of the United States Trustee on December 2, 2013. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5648 Mountain View Drive, Redding, California, APN 116-220-032. The Debtor seeks to value the property at a fair market value of \$320,000.00 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 \$336,627.64. Five Star Bank's second deed of trust secures a loan with a balance of approximately \$40,000.00. 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 Five Star Bank secured by a second deed of trust recorded against the real property commonly known as 5648 Mountain View Drive, Redding, California, APN 116-220-032, 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 \$320,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

31. [13-34027-E-13](#) **EILEEN MOFFITT** **OBJECTION TO CONFIRMATION OF**
NLE-1 **Joseph Canning** **PLAN BY DAVID P. CUSICK**
12-11-13 [18]

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, 2013. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor is \$2,500.00 delinquent in plan payments, which represents one month of the plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also objects that he cannot determine if the Debt of Ally Financial is properly classified in the plan and whether it should be listed in section 3 as an assumed lease and paid directly by Debtor. The plan lists the secured debt in Class 2A of the plan, indicating it is a purchase money security interest, but Schedule D indicates the claim is a non-purchase money security leasehold interest and Schedule G indicates it is a lease to be assumed.

The Trustee also states that the Debtor failed to disclose a prior bankruptcy filing in the petition.

Opposition

Debtor responds, stating the delinquency will be cured, that the Debtor will file an amended plan changing the classification of Ally Financial and filed an Amended Petition disclosing the prior filing.

However, no evidence has been presented that the delinquency has been cured to date.

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 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.

32. [13-34027-E-13](#) EILEEN MOFFITT
SW-1 Joseph Canning

OBJECTION TO CONFIRMATION OF
PLAN BY ALLY FINANCIAL, INC.
12-5-13 [[14](#)]

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, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 5, 2013. By the court's calculation, 40 days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor Ally Financial Inc. fka GMAC ("Creditor") opposes confirmation of the Plan on the basis that the plan improperly classifies its claim as secured in violation of 11 U.S.C. § 1123(b) (5). Creditor argues that its claim is based upon an unexpired lease, not a security instrument and that it owns the subject vehicle. The Class 2 Treatment proposed is to value the claim at \$22,559.00 and pay it over 60 months at 0.00% interest.

Proof of Claim No. 1, filed by Ally Financial, has attached to it a copy of a document titled "Lease Agreement." This "Lease Agreement," ¶ 9, states that the Debtor has the right to purchase the vehicle for \$28,956.00 at the end of the lease. There are 39 monthly payments due under the lease, with the first payment due June 18, 2012 (the document is not quite legible whether it is June or August 2012), which would make the final monthly lease payment due, on or about August 2015.

Because Creditor's claim is not a secured claim but a lease, the plan cannot modify the rights of a lessor.

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 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.

33. [09-38529-E-13](#) **VASILIIY/YELENA KUMANSKIY** **MOTION TO VACATE DISMISSAL OF**
MLA-11 **Mitchell Abdallah** **CASE**
12-4-13 [[153](#)]
CASE DISMISSED 12/15/12

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on December 4, 2013. By the court's calculation, 41 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Vacate Dismissal of Case was properly 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 court's tentative decision is to deny the Motion to Vacate Dismissal of Case. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks an Order vacating the Order to Dismiss the Case entered on December 15, 2012. The case was dismissed for a delinquency of \$25,514.87 in plan payments and failure to file a motion to modify plan. See Civil Minutes, Dckt. 138. Debtor argues that they had a pending loan modification, which was granted on December 4, 2012 and that they had not

filed a modified plan due to the pending approval of the loan modification. Debtor states that they had no opportunity to file a properly modified plan after the granting of the motion for approval of the loan modification. Debtor argues that all required plan payments were made both under their confirmed plan and the proposed modified plan.

TRUSTEE'S OPPOSITION

The Trustee filed a response, asserting that the case was properly dismissed. Trustee states the motion to dismiss was filed for delinquency under the confirmed plan. Trustee states the Debtor began to decrease their payments in February 2012, when they began paying \$1,588.41 per month, and then again in May 2012, when they began to pay \$255.96 per month. The Debtor had filed a motion to modify, once on February 23, 2012, Dckt. 84, and then once on July 13, 2012, Dckt. 106; these motions were denied. The Trustee states he contacted the Debtor's attorney by email on September 26, 2012, asking if a new motion to modify was to be filed, and set a motion to dismiss on October 25, 2012, when no such motion as filed.

The Debtor filed a response stating an amended plan would be filed by November 28, 2012, Dckt. 131, which the Court considered, Dckt. 138, and then the Court dismissed the case when the plan was not filed.

Trustee states the Debtor was in fact delinquent and the failure to file a modified plan combined with the delinquency was unreasonable delay.

Lastly, the Trustee states that the Debtor has not provided evidence of mistake or excusable neglect. The Debtor responded to the Trustee's motion to dismiss and then failed to carry through. The Debtor has not explained why they represented a plan would be filed, failed to file the plan, and then waited almost a year to set aside the order dismissing.

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.

Red. R. Civ. P. 60(b). 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.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

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.

First and foremost, Debtor does not provide the legal authority to grant a motion to dismiss.

Second, Debtor does not provide any arguments or grounds as to mistake or excusable neglect of the dismissal order pursuant to Federal Rule of Civil Procedure 60(b) from which the court can grant relief. Debtor does not argue that the order was mistakenly made or that the court did not have newly discovered evidence. The court has no grounds under Rule 60(b) to grant relief.

Third, Debtor has not explained why they have waited over a year to seek to set aside the order dismissing, which was entered December 15, 2012.

Fourth, the court is not satisfied with the evidence presented in support of the motion. The only evidence filed in support of the motion is a declaration filed by Counsel for Debtor, testifying the various loan modification motions and the motion to dismiss. No testimony has been filed by the Debtors. If Debtors wanted the court to consider the motion, they should have provided evidence and legal argument as to why they were unable to file a motion to modify within the parameters set by the court. This reasoning would have to be extraordinary for the court to grant relief over a year after the dismissal order was entered.

The Debtors protestations that they "could not" propose a modified plan ring hollow. The motion to approve the loan modification was filed on September 9, 2012. As of that time, the Debtors knew the exact loan modification terms and could have file a plan. It was not done.

These Debtors have done nothing since the December 5, 2012 hearing on the motion to dismiss at which the court entered its ruling. The Debtors did nothing following the December 2012 entry of the order dismissing the case. It was not until December 4, 2013, almost one full year later, that the Debtors filed the present motion to vacate the order dismissing the case. If the Debtors had a good faith intention to prosecute this Chapter 13 case, they would have immediately filed the motion to vacate.

The Motion to Vacate does not state what grounds under Rule 60(b) the Debtors state are appropriate for the relief requested. Relief must be requested within a reasonable time, and for grounds (b)(1), mistake/excusable neglect; (b)(2), newly discovered evidence; and (b)(3), fraud, that time may be no more than one year after the entry of the order. Fed. R. Civ. P. 60(c)(1). That does not mean that waiting 354 days is *per se* "reasonable time." Waiting that long under the facts of this case, the substantial defaults, and not having filed a modified plan or motion to confirm after the motion to approve the loan modification was filed on September 9, 2012, is not acting within a "reasonable time."

While the Debtors may protest that it is unfair not to let them continue in this plan after having funded it with \$96,050.37 (Trustee's Final Report, Dckt. 143), such an argument is illusory. \$86,002.34. *Id.* 46.83 was paid to the creditors for the claims secured by the Debtors' residence. They were merely making their mortgage payments to stay in their home. An additional \$4,759.41 was paid for the Chapter 13 Trustee's fees. Only \$3,803.17 was paid for general unsecured claims. (3.95% of the total distribution and a 2.5% dividend on \$151,685.79 in general unsecured claims.) *Id.* It is not "unfair" for the Debtors to now start a Chapter 13 Plan for which they will actually make regular monthly payments, timely perform, and provide for payment of creditors' claims.

The Debtors have not provide the court with proper legal grounds, legal argument, admissible evidence or other equitable reasons to grant this motion. Therefore, 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 Reconsider Dismissal 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 to vacate the Dismissal is denied.

34. [13-29429-E-13](#) MARK/EMILY GONZALES
SDB-4 Scott de Bie

MOTION TO APPROVE LOAN
MODIFICATION
12-2-13 [[50](#)]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on December 2, 2013. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i) (5) and 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 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 Approve the Loan Modification is granted. No appearance required.

Wells Fargo Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to \$1,131.97. The modification will capitalize the pre-petition arrears and provides for an interest rate of 4.000% over the next 480 months.

There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 Approve the Loan Modification 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 Mark and Emily Gonzales, Debtors, are authorized to amend the terms of their loan with Wells Fargo Bank, N.A., which is secured by the real property

commonly known as 185 Lomita Avenue, Vacaville, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 53, in support of the Motion.

35. [13-34429-E-13](#) **JORGE/MYRIAM VILLAGRA** **MOTION TO AVOID LIEN OF**
SDB-1 **Scott de Bie** **HOUSEHOLD FINANCE CORPORATION**
OF CALIFORNIA
12-3-13 [17]

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 3, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Avoid a Judicial 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 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 Avoid a Judicial Lien is granted. No appearance required.

A judgment was entered against the Debtor in favor of Household Finance Corporation of California for the sum of \$11,418.71. The abstract of judgment was recorded with Solano County on January 19, 2011. That lien attached to the Debtor's residential real property commonly known as 160 Brandt Court, Vallejo, 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 \$225,000.00 as of the date of the petition. The unavoidable consensual liens total \$391,131.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$26,925.00 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 Household Finance Corporation of California, Solano County Superior Court Case No. VCM109349, recorded on January 19, 2011, Document No. 201100006015, with the Solano County Recorder, against the real property commonly known as 160 Brandt Court, Vallejo, 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.

36. [13-34429-E-13](#) **JORGE/MYRIAM VILLAGRA** **OBJECTION TO CONFIRMATION OF**
TSB-1 **Scott de Bie** **PLAN BY DAVID CUSICK**
12-17-13 [28]

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, 2013. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

Final Ruling: 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). Consequently, the Debtor, 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. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to overrule the Objection. No appearance at the January 14, 2014 hearing is required.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that plan relies on a pending Motion to Avoid Lien. The court having granted the motion, the Trustee's objection is overruled.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan 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 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, Debtor's Chapter 13 Plan filed on November 11, 2013 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.

37. [13-31931-E-13](#) **TRAVIS/KARI MANHART** **MOTION TO CONFIRM PLAN**
WSS-2 **W. Steven Shumway** **11-11-13 [28]**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 11, 2013. By the court's calculation, 64 days' notice was provided. 42 days' notice is required.

Final Ruling: 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 Trustee having filed an opposition, the court will address the merits of the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to grant the Motion to Confirm the Amended Plan. No appearance at the January 14, 2014 hearing is required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes the motion on the basis that the proposed plan relies on a pending Motion to Value Collateral of Bank of New York Mellon. The court having granted the motion, the Trustee's objection is overruled.

The amended 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 11, 2013 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.

38. [13-31931-E-13](#) **TRAVIS/KARI MANHART** **MOTION TO VALUE COLLATERAL OF**
WSS-3 **W. Steven Shumway** **THE BANK OF NEW YORK MELLON**
11-11-13 [34]

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, respondent creditor, and Office of the United States Trustee on November 11, 2013. By the court's calculation, 62 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1601 Grove Creek Court, Roseville, California. The Debtor seeks to value the property at a fair market value of \$350,000.00 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 \$628,284.00. Bank of New York Mellon's second deed of trust secures a loan with a balance of approximately \$85,214.00. 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 the Bank of New York Mellon secured by a second deed of trust recorded against the real property commonly known as 1601 Grove Creek Court, 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 \$350,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

39. [10-24332-E-13](#) TONY/SHANNEN PARK
RWF-1 Robert Fong

MOTION TO SELL
12-17-13 [[54](#)]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 17, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1) and Federal Rule of Bankruptcy Procedure 2002(a) (2). 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 court's tentative decision is to grant the Motion to Permit Debtor to Sell Property. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Here, the Debtor proposes to sell the real property commonly known as 9905 West Taron Drive, Elk Grove, California. The sales price is \$409,012.00 and the named buyer is Truong Quoc Hoa. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 58.

The Chapter 13 Trustee opposes the motion to the extent that it directs the proceeds estimated at \$27,895.23 to be held by the Debtor and used for ongoing living expenses. Trustee states the property had \$1.00 worth of value exempted and the Debtor now wants to use \$27,894.26 of non-exempt equity.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. However, the court cannot allow Debtor to use \$27,895.23 of non-exempt equity for unspecified business expenses.

The court considered such other offers as are stated on the record at the hearing.

Therefore, the non-exempt net proceeds of the sale of the subject real property shall be paid to the Trustee to be held pending further order of the court.

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 sell property 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 Tony Park and Shannen H. Park, the Debtors ("Debtor"), are authorized to sell to Truong Quoc Hoa or nominee ("Buyer"), the residential real property commonly known as 9905 West Taron Drive, Elk Grove, California ("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyer for \$409,012.00, on the terms and conditions set forth in the Purchase Agreement, Dckt. 58.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale.
5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtors. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.
6. The net proceeds of the sale of the subject Real Property shall be paid directly from escrow to the Chapter 13 Trustee, or as the escrow company is directed in writing by the Chapter 13 Trustee, to be held by the Chapter 13 Trustee pending further order

of the court. All claims of exemption, if any, by the Debtors shall attach to the proceeds of the sale.

40. [11-30435-E-13](#) **FREDERICK QUINN** **CONTINUED MOTION TO INCUR DEBT**
PGM-2 **Peter Macaluso** **11-12-13 [69]**

CONT. FROM 12-10-13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on November 12, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion 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 court's tentative decision is to grant the Motion to Incur Debt. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

The motion seeks permission to purchase a real property located at 1615 Alamo Place, West Sacramento, California, where debt will not exceed \$380,000.00. Debtor's payment will be no more than \$2,394.13 and at more than 4.00% interest. Debtor plans to get the down payment of \$56,051.97 from his 401K. Debtor states the purchase of the real property does not adversely affect creditors because it will not alter the plan payments or the other terms of the plan.

OPPOSITION

The Chapter 13 Trustee filed an opposition to the Motion to Incur Debt because Debtor does not explain an auto installment payment, rent from a sister and overtime income. Trustee states that the Debtor has not explained why they have no auto installment payment, when it was obtained, what vehicle it is for and how long it will exist. Trustee also argues that Debtor has not explained why they are receiving rent from a sister, for which property they are receiving rent and for how long they have been receiving and expect to receive rent. Lastly, Trustee states the Debtor has

not explained when then began receiving overtime, when the began receiving overtime and how long they expect to receive overtime.

REPLY

Debtor requested two additional weeks to explain the objects raised by the Trustee.

DISCUSSION

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 did not address the reasonableness of incurring debt to purchase a new home while seeking the extraordinary relief under Chapter 13 to discharge debts. Debtor provided few sources of new income such as rent from a sister or income from overtime. However, there was inadequate explanation for each of these sources. It is not clear when Debtor began to receive overtime and for how long they expect to receive the overtime. Similarly, it is not clear when Debtor started to receive rent from a sister and for how long it will be receiving the rent.

The court allowed a brief continuance to allow Debtor to provide an explanation for the changes.

SUPPLEMENTAL PLEADINGS

Debtor filed a supplemental declaration stating that the auto installment payment was incurred due to a failing vehicle that became too costly to repair and did not meet the needs of the family. Debtor testifies that in July of 2013, his wife was able to obtain an auto loan solely in her name for a 2007 eight passenger SUV for 66 months.

Debtor also testifies that he will be receiving rent from his sister if the Motion is granted because she is not confident enough to tackle living on her own at the present time. Debtor's sister does not currently pay rent because it would be a violation of the rental agreement and against their values. The sister insisted to help do her part with the new home and offered a portion of her monthly trust to serve as rent in the amount of \$550.00. Debtor testifies that it is expected that his sister will live with them until she is at least 21 (she is currently 18 years old) but states she will be able to reside at the home for as long as she wants.

Debtor states that the majority of the overtime he receives is unplanned. His position at Pacific Gas & Electric Company is Gas Field Service and he supervises 21 first responders that have to be ready to move

at a moment's notice 24 hours a day. Debtors states he never knows when a fire will happen which requires PG&E to be onsite, when they will lose pressure in the distribution lines in the City of Davis which requires a response, or a gas leak reported by a customer on a Sunday. Debtor states that overtime is neither promised nor guaranteed but is a requirement of the job.

Based on the explanations provided by the Debtor, the court finds the proposed debt to purchase the subject real property is reasonable under the circumstances. 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 Frederick Quinn, Debtor, is authorized to incur debt pursuant to the terms of the agreement, Exhibit B, Dckt. 72.

41. [10-26337-E-13](#) CERLITO/LORNA TACULAD **MOTION TO SUBSTITUTE DECEASED**
PAB-5 Peter Bermejo **PARTY**
11-26-13 [[95](#)]

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, all creditors, and Office of the United States Trustee on November 26, 2013. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Substitute Deceased Party 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 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 Substitute Deceased Party is granted. No appearance required.

Lorna Taculad, successor in interest to Debtor Cerlito Taculad, moves the court for an order substituting Lorna Taculad in place of Debtor pursuant to Federal Rule of Civil Procedure 25(a) and Federal Rules of Bankruptcy Procedure 1016 and 7025.

Debtor states that Cerlito Taculad, passed away on April 22, 2012. A Suggestion of Death was filed pursuant to Federal Rule of Civil Procedure 25(a). Lorna Taculad argues that it is necessary and essential for her to be substituted so the case may proceed to conclusion and discharge. Lorna Taculad states that she was able to obtain assistance from a relative in order to make the plan payments and to cover her expenses resulting from the reduced income from the time of death to the time of completion of plan payments. Lorna Taculad states that although there was a life insurance policy it was a term policy for burial and related expenses.

Trustee filed a response stating that where Schedule I shows two adult dependents, a niece and aunt and reflects two contributions from different adult individuals, the Trustee believes Mrs. Taculad was able to complete the plan payments with contributions from relatives and does not oppose the motion.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that, in the event the Debtor passes away, in the case pending under chapter 11, chapter 12, or chapter 13 "the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Consideration of dismissal and its alternatives requires notice and opportunity for a hearing. *Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id.*

Federal Rule of Bankruptcy Procedure 7025 provides "[i]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representation. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed." *Hawkins v. Eads*, 135 B.R. at 384.

The application of Rule 25 and Rule 7025 is discussed in COLLIER ON BANKRUPTCY, 16TH EDITION, §7025.02, which states [emphasis added],

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on

the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

The motion for substitution together with notice of the hearing is to be served on the parties in accordance with Bankruptcy Rule 7005 and upon persons not parties in accordance with Bankruptcy Rule 7004...

See also, Hawkins v. Eads, supra. While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor.

Here, Movant has provided sufficient evidence to show that administration of the Chapter 13 case is possible and in the best interest of creditors after the passing of the co-debtor. Based on the evidence

provided, the court determines that further administration of this Chapter 13 case is in the best interests of all parties. The court grants the Motion to Substitute Party.

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 Substitute After Death 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 Lorna Taculad is substituted as the successor-in-interest to Cerlito Taculad, deceased, and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

42. [13-33338-E-13](#) LINDA NING
TSB-1 Paul Liu

**AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
12-17-13 [20]**

CONT. FROM 12-17-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 19, 2013. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection to Confirmation. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. §341. Attendance is mandatory. 11 U.S.C. §343. Trustee states that the Debtor advised the Trustee that her father passed away in China and the Debtor had to travel back to attend the funeral. The Trustee continued the meeting to December 12, 2013. The Trustee requests a continuance to January 14, 2013.

The court continued the hearing on the Objection to be heard after the continued meeting of creditors.

AMENDED OBJECTIONS

On December 17, 2013, the Trustee filed amended objections to confirmation. The Trustee stated that the Debtor appeared at the continued meeting of creditors on December 12, 2013. However, based on the examination of the Debtor, the Trustee has additional objections to the plan.

First, the Debtor's plan fails to provide a monthly dividend to the attorney to pay attorneys fees.

Second, the plan fails the Chapter 7 liquidation analysis because the Debtor's non-exempt equity totals \$14,880.00 and the Debtor is proposing an 8% dividend to unsecured creditors totaling \$3,409.12.

Third, the Trustee argues that the plan is not the Debtor's best effort. Debtor is under the median income and proposes plan payments of \$230.00 for 60 months with 8% to unsecured creditors. Debtor's tax return for 2012 reflects that Debtor received a tax refund in the amount of \$3,793.00. The Debtor failed to indicate if the income tax deductions on Schedule I have been adjusted so that the Debtor will not receive a tax refund next year. Debtor has failed to propose to pay any and all tax refunds into the plan for the 60 month term.

Lastly, the Trustee argues that the Debtor cannot make the plan payments required. Debtor has failed to list an expense for electricity and heating fuel; water and sewer; telephone; laundry; recreation and health insurance. Debtor admitted at the first meeting of creditors that she did in fact have expenses for these items.

DEBTOR'S RESPONSE

Debtor states that she will increase the monthly plan to \$450.00 per month for 60 months, which should satisfy the chapter 7 liquidation test. Debtor believes that her husband has asked his employer to withhold less from his paychecks so they will no receive a tax refund. Debtor states her

eldest son also agrees to help the debtor with whatever shortage is required to make the plan feasible.

DISCUSSION

Debtor has not addressed the Trustee's objection that the plan fails to provide a monthly dividend to the attorney to pay attorneys fees. Further, while Debtor filed Amended Schedule J, Dckt. 27, it does not address several of the items raised by the Trustee, such as health insurance, telephone, and recreation, which Debtor apparently testified at the 341 meeting of creditors that she had. Further, the court has no evidence before it (either in the form of authenticated exhibits or testimony from a declaration) that Debtor or her non-filing spouse have changed the withholdings on their income for tax purposes.

Based on the foregoing, the court sustains the Trustee's objection to confirmation.

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 the Plan is sustained and the plan is not confirmed.

43. [13-33741-E-13](#) ILUMINADA MILLS
NLE-1 Gary Ray Fraley

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
12-11-13 [16]

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, 2013. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan fails the chapter 7 liquidation analysis. Debtors non exempt assets total \$37,455.13 and Debtor proposes to pay 26% or \$29,906.25 to unsecured creditors.

Trustee also argues that the plan is not the Debtor's best effort. Debtor is over the median income. Schedule I discloses a household of two persons. Form 22C shows a negative \$58.78 of disposable income on Line 59, but the Trustee notes the following items which the Trustee maintains may not be accurate:

GROSS WAGES: \$5,272.02 (Line 2): The Debtor shows details on Page 47, including \$5,961.07 for 09/2013. The Trustee has been provided with some of the Debtor's paystubs, which includes three which cover the September period: one from 09/1/2013 to 9/14/2013, one from 9/15/2013 to 9/28/2013, and one from 9/29/2013 to 10/12/2013: reflecting gross pay of \$2,275.02, \$3,171.80, and \$2,765.44, respectively. This appears to reflect more than \$5,961.07 for September 2013, so the Debtor's average sum for gross wage is suspect.

PENSION AND RETIREMENT INCOME: \$2,064.10 (Line 6): This amounts to \$24,769.20 per year, where the Debtor shows in 2012 they received \$20,544.00

from military retirement and \$5,352.00 from USPS retirement, \$25,896.00 per year. The Debtor has not explained this discrepancy where it appears they maintain their retirement income has gone down since 2012.

TAXES: \$1,991.30 (Line 30): Schedule I reflects only \$1,742.30, and while the Debtor's 2012 federal tax return reflected the Debtor owed \$13,170.00, it reflected a \$93,500.00 IRA distribution and \$11,345.00 of other income (mainly gambling), which if they did not occur would have appeared to result in a tax refund.

TELECOMMUNICATIONS: \$120.00 (Line 37): Schedule J does not itemize the internet expense but lists \$140.00 for cable/internet, so it appears that the Debtor's expense for internet is probably less than the claimed amount.

CHARITY: \$325.00 (Line 45): The Debtor in their 2012 tax return reflected \$1,580.00 in gifts by cash or check, which would be \$131.67 per month. This expense appears either overstated, or not reasonably necessary at \$325.00 per month.

LACK OF DISCLOSURE OF EXPENSES: Disposable income on Schedule J shows net income on line 20c of \$3,765.38, while Debtor proposes a plan payment of \$530.27 per month. A review of Schedule B reveals total cash and bank account balances of \$1,389.67 at the time of filing. At the First Meeting of Creditors held on December 5, 2013, Debtor testified that she within the last six months started to give \$2,000.00 per month to her adult son, who is not employed, as well as her gifts of \$500.00 per month to her family in the Philippines, \$1,200.00 per month to her niece, and \$300.00 per month to her nephew.

The Trustee also objects on the basis that the plan is not filed in good faith under 11 U.S.C. § 1325(a)(3) based on a totality of the circumstances. First, Trustee states a review of Debtors 2012 federal tax return shows gambling income of \$10,345.00. The Statement of Financial Affairs, item #8 shows gambling losses of \$10,345.00. No gambling income is disclosed at item #2. Debtor testified that she still gambles and disclosed she was last at Thunder Valley Casino about two weeks ago. The instant case was filed on October 24, 2013.

Second, Trustee argues that the Statement of Financial Affairs, item #7 discloses gifts of \$75.00 per week to Divine Mercy Catholic Church, but omits any mention of the funds the Debtor admitted to giving her family members each month. Item #10 does not disclose any transfers.

Trustee states that of the Warren factors, factors 1, 4 and 10 are applicable in this case: the amount of the proposed payments and the amounts of the debtor's surplus; the accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt and whether any inaccuracies are an attempt to mislead the court; and the motivation and sincerity of the debtor in seeking Chapter 13 relief.

Trustee argues that where the Debtor is not willing to disclose what they are actually doing with their income to the Court, the proposed plan cannot be relied upon.

DISCUSSION

Good faith, under 11 U.S.C. § 1325(a)(3), is determined based on an examination of the totality of the circumstances. *In re Warren*, 89 B.R. 87, 92 (B.A.P. 9th Cir. 1988) (citing *In re Goeb*, 675 F.2d 1386, 1389-1390 (9th Cir. 1982)). Factors to consider include:

- 1) The amount of the proposed payments and the amounts of the debtor's surplus;
- 2) The debtor's employment history, ability to earn, and likelihood of future increases in income;
- 3) The probable or expected duration of the plan;
- 4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;
- 5) The extent of preferential treatment between classes of creditors;
- 6) The extent to which secured claims are modified;
- 7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;
- 8) The existence of special circumstances such as inordinate medical expenses;
- 9) The frequency with which the debtor has sought relief under the Bankruptcy Reform Act;
- 10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and
- 11) The burden which the plan's administration would place upon the trustee.

Warren, 89 B.R. at 93 (citing *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (quoting *In re Estus*, 695 F.2d 311, 317 (8th Cir. 1982))).

The Court cannot determine if the Debtor can afford the plan payments as proposed, or whether the Debtor is attempting to abuse the bankruptcy code. Where the Debtor asserts she recently increased her payments to charity, admits to recently starting to send gifts to relatives and family in the amount of \$4,000.00 per month, and when the Debtor could pay 100% to unsecured creditors by increasing her plan payment by \$1,000.00 per month, the Court finds that this plan is not proposed in good faith.

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 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.

44. [09-35543-E-13](#) **ROBERT/ASHLEY PLACE** **MOTION TO SELL**
ADR-3 **Justin Kuney** **12-4-13 [62]**

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1) and Federal Rule of Bankruptcy Procedure 2002(a) (2). 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 court's tentative decision is to grant the Motion to Sell Property.

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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Here, the Debtor proposes to sell the real property commonly known as 11016 Rainbow River Court, Rancho Cordova, California. The sales price is \$225,000.00 and the named buyer is Olivia P Hormoz. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 65.

The Chapter 13 Trustee filed a non-opposition on December 13, 2013.

The court considered such other offers as stated on the record at the hearing.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the property.

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 sell property 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 Robert Kenneth Place and Ashley Lee Place, Debtor ("Debtor"), is authorized to sell to Olivia P Hormoz or nominee ("Buyer"), the residential real property commonly known as 11016 Rainbow River Court, Rancho Cordova, California, on the following terms:

1. The Real Property shall be sold to Buyer for \$225,000.00, on the terms and conditions set forth in the Purchase Agreement, Dckt. 65.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale.
5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtors. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing

Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

45. [09-35543-E-13](#) **ROBERT/ASHLEY PLACE** **MOTION TO MODIFY PLAN**
ADR-4 **Justin Kuney** **12-4-13 [67]**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 4, 2013. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to deny the Motion to Confirm the Modified Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that the Debtor is paid ahead. Debtor's plan proposes payments of \$1,066.47 for 51 months, \$300.00 for 9 months. Debtor would need to pay the Trustee \$54,689.97 through November 2013 and Debtor has actually paid \$55,490.00, which indicates Debtor is paid ahead by \$800.03. Trustee state he would have no objection if Debtor corrected this issue in the order confirming.

Debtor has not filed a response to date.

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 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.

46. [12-24543-E-13](#) **CHARLES/CHRISTINE FORD** **MOTION TO MODIFY PLAN**
BSJ-2 **Brandon Johnston** **11-13-13 [43]**

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 13, 2013. By the court's calculation, 62 days' notice was provided. 35 days' notice is required.

Final Ruling: 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. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 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 13, 2013 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.

47. [12-20846-E-13](#) **SALVADOR/AUDRA ACOSTA** **MOTION TO MODIFY PLAN**
KRW-1 **Keith Wood** **11-20-13 [78]**

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 20, 2013. By the court's calculation, 55 days' notice was provided. 35 days' notice is required.

Final Ruling: 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. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 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 20, 2013 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.

48. [11-48248](#)-E-13 RICKY/TANNIA PEREZ
RCO-1 W. Scott de Bie

**CONTINUED HEARING ON CORRECTIVE
SANCTIONS RE: MOTION TO APPROVE
LOAN MODIFICATION AND/OR MOTION
FOR CONSENT TO ENTER INTO LOAN
MODIFICATION AGREEMENT
10-31-13 [[43](#)]**

CONT. FROM 12-10-13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 31, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 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 court's decision is to discharge the Order to Show Cause. No appearance required.

PRIOR HEARING

PROCEDURAL ISSUES

Notice

The Notice of Hearing does not state whether written opposition is required. Local Bankruptcy Rule 9014-1(d)(3) requires that the notice of

hearing state whether and when written opposition must be filed as well as the deadline for filing and serving it. The notice does not advise potential respondents that a failure to file a timely written opposition may result in the motion being resolved without oral argument and untimely written opposition will be stricken. Defective service is grounds for denial of the motion.

Evidence In Support

The moving party filed the notice, motion, declaration, and exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

MOTION

Bank of America, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to \$1,027.49, including the escrow payment. The modification will capitalize the pre-petition arrears and provides for interest rate of 4.375% until maturity in September 1, 2043.

TRUSTEE'S OPPOSITION

The Trustee states he is not opposed to the terms of the loan modification but believes certain matters should be addressed to provide relief.

Trustee argues that the Creditor may not have standing to obtain relief unless Debtor either joins in the motion or files a separate declaration in support of the motion. Trustee states 11 U.S.C. § 364 grants standing in a Chapter 13 only to the Debtor. Trustee also states that the documents filed by the Creditor were not filed separately.

DEBTOR'S JOINDER

Debtor filed a "Joinder in Motion for Order Approving a Loan Modification" stating that Debtors support and join Creditor's motion, as the modification will reduce their ongoing mortgage payments and allow them to continue to retain their home and afford the plan payments. Dckt. 49.

After the Debtor filed supporting documents, there being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification was granted.

IMPOSITION OF CORRECTIVE SANCTIONS

Counsel for Bank of America, N.A., RCO Legal, P.S., appears regularly in this court and is familiar not only with the even and fair application of Federal Rule of Bankruptcy Procedure 7(b), Federal Rule of Bankruptcy Procedure 9013, Local Bankruptcy Rule 9004-1, and the Revised Guidelines for Preparation of Documents. Counsel clearly knows that dumping on the court an omnibus electronic document in which the motion, points and authorities, declarations, and exhibits is not proper. These pleadings are signed by an attorney who personally regularly appears, so it does not appear that "we had a new associate who has never appeared in the Eastern District before" excuse cannot be floated.

The court cannot, and will not, allow counsel and her law firm to place themselves above the rules with which all other attorneys must comply. Commonly, the court would deny the motion without prejudice and require it to be refiled. However, in this situation such would put the Debtors through otherwise unnecessary anguish and emotional distress over whether the attorneys and Bank would reject the modification just to "show the judge who is boss."

The court orders that RCO Legal, P.S. pay to the Clerk of the Bankruptcy Court, for deposit in the United States Treasury \$250.00 in corrective sanctions. Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contemp power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings file with the court. If a party or counsel violates the obligations and duties imposes under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua sponte* by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situation.

A bankruptcy court is also empower to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions

pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

In light of having knowledge of the Rules, it appears that counsel, her firm, and the Bank need to have their conduct corrected.

If counsel believes that the \$250.00 is not a proper corrective sanction amount or that such corrective sanctions are unwarranted, the court will establish a procedure to address the issue. The court will, to create a clear record, issue an Order to Show Cause, requiring counsel and Bank of America, N.A. to each respond to why the Bank and its counsel are filing motions and supporting pleadings which do not comply with the basic pleading requirements and why such Rules do not apply to the Bank and counsel.

CONTINUED HEARING ON SANCTIONS (JANUARY 14, 2014)

Kristi Wells, Esq. An employee of RCO Legal, P.S., counsel for Bank of America, N.A., filed a Declaration in response to the corrective sanctions issued by this court. Ms. Wells states it is the practice of the RCO Legal, P.S. to properly train and supervise staff in their positions to help ensure errors are not made, particularly in electronic filing. Ms. Wells states the specific employee who electronically filed the instant motion improperly is no longer employed with RCO Legal, P.S. and that she personally provided a copy of the Revised Guidelines for the Preparation of Documents to all employees charged with electronic filing.

Ms. Wells requests that in light of the actions taken by her and her firm to prevent future filing errors, the court not impose corrective sanctions. Dckt. 54.

It is clear that Ms. Wells and her law firm understand, and have responded to the court's concerns. Corrective sanctions exist for the express purpose of having counsel and parties comply with the proper procedure, their legal and ethical obligations, and maintain themselves in the manner appropriate for a federal court. Ms. Wells, based on her declaration, has taken appropriate corrective action. The court expresses its appreciation to counsel and her firm for so responding, and discharges the Order to Show Cause. No corrective sanctions are ordered.

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 Order to Show Cause re Corrective Sanctions Concerning the Motion to Approve the Loan Modification filed by 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 the Order to Show Cause is discharged, no sanctions are ordered. The court by separate order has approved the loan modification.

49. [11-34049-E-13](#) NEE LAU
MET-5 Mary Ellen Terranella

MOTION TO MODIFY PLAN
11-19-13 [[148](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 19, 2013. By the court's calculation, 56 days' notice was provided. 35 days' notice is required.

Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to grant the Motion to Confirm the Modified Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that he is uncertain of the status of Debtor's loan modification. The plan states Wells Fargo is to be paid outside the plan and the Debtor is working to modify the loan. Creditor filed a Motion for Relief on May 16, 2012, which was subsequently granted. To date, Debtor has not filed a Motion to Approve Loan Modification.

Trustee also opposes the plan on the basis that Debtor provides for San Mateo Credit Union's claim in Class 2A, for claims not reduced based on value of collateral. However, Debtor filed a motion to value collateral, which was later resolved by stipulation and order. Therefore, this claim should be provided in Class 2B, for claims reduced based on value of collateral.

Lastly, the Trustee states that Debtor is proposing to increase his plan payment from \$365.00 to \$493.00 effective January 2014, but Debtor has not filed current income and expense statements to support this increase. Based on the fact that it has been more than two years since Debtor filed current income and expense statements and Debtor has since obtained different employment, Trustee believes Debtor should file current statements to support the plan payment proposed.

Debtor responds, stating he has been working with NACA to obtain a loan modification of his mortgage. Debtor testifies that while the lender obtained relief from the automatic stay, they are still open to the modification process that he is seeking through NACA. Debtor seeks to provide for the claim of San Mateo Credit Union to be treated as Class 2B claim. Debtor also attached current income and expense statements as requested by the Trustee.

Based on a review of Debtor's response, current income and expenses and explanation regarding the loan modification process, the court grants the motion to confirm. Should circumstances change after the loan modification application has been processed, the court will expect a Motion to Approve Loan Modification.

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 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 19, 2013 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.

50. 13-33049-E-13 JEANNE CHRISTENSON
JT-2 John Tosney

MOTION TO CONFIRM PLAN
11-11-13 [24]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on November 11, 2013. By the court's calculation, 64 days' notice was provided. 35 days' notice is required.

Final Ruling: 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. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 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 11, 2013 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.

51. [11-23451](#)-E-13 CLARENCE ISADORE AND CONTINUED MOTION TO MODIFY PLAN
PGM-3 DEATRA JONES-ISADORE 10-18-13 [40]
Peter Macaluso

CONT. FROM 12/10/13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 18, 2013. By the court's calculation, 61 days' notice was provided. 35 days' notice is required.

Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to deny the Motion to Confirm the Modified Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee objects to the proposed plan on several grounds.

First, the Trustee states that the modified plan may not be proposed in good faith or be Debtors' best effort. The Trustee requested and received six months of bank statements, pay advices and two years of tax returns. The Trustee has found issues after reviewing the documents. Trustee states that the confirmed and modified plan provide for the Timeshare in Class 4 and state the payment is being made by their daughter. However, the Trustee states the bank statements show that the timeshare payments are being made directly from Debtor's checking account. The Trustee also states he is perplexed by numerous deposits above the Debtor's regular employment income as well as large withdrawals. Trustee states on example is \$22,000 deposited on May 20, a \$15,782.19 withdrawal on June 7. Trustee states these deposits and withdrawals are not explained.

Trustee also notes that the income for Debtor Deatra Jones-Isadore appears to be understated. Schedule I indicates her net monthly take home pay as a teacher is \$2,108.03; however, the Trustee states the payroll advice reflects a year to date income of \$31,189.00, which would average to \$3,118.90 per month when divided by 10 months.

Trustee also states after a review of the Debtor's tax returns, Schedule D, Capital Gains and Losses (C-2 and 3), of Debtor's 2011 tax return reflects Debtor purchased US Treasury Notes on January 27, 2009 for \$14,984.00 and sold on April 1, 2011 for \$15,731.00. This was not reported on Debtor's Schedule B filed at the time Debtor's bankruptcy case was filed. Schedule B, Interest and Ordinary Dividends, of Debtor's 2011 tax return reflects interest income of \$1,850.00 in 2011 which Debtor did not report on Schedule I. The Trustee is uncertain what these investments are, how Debtor was able to obtain them, and what happened to the income from them.

Second, the Trustee states he is unable to determine the plan payment proposed. Section 1.01 of Debtor's modified plan proposes a plan payment of \$89,734.15 through October, 2013, then \$1,200.00 for 28 months beginning November, 2013. Debtor's Motion indicates Debtors are proposing a \$1,200.00 plan payment beginning November, 2013. However, Debtor's Declaration indicates Debtor will begin remitting plan payments of \$200.00 per month beginning October 25, 2013. Debtor has submitted a November payment to the Trustee in the amount of \$200.00 which posted on November 5, 2013. Debtor's Amended Schedules I and J filed as Exhibits support a monthly payment of \$1,200.26.

Third, the Trustee is uncertain whether Debtor's modified plan intends for the Trustee to disburse the October mortgage payment to JPMorgan Chase. Section 1.01 of the modified plan proposes plan payments of \$89,734.15 through the month of October, which includes Debtor's October plan payment under the confirmed plan of \$2,804.35. Debtor's modified plan, however, only authorizes ongoing mortgage payments to JP Morgan Chase through September of \$59,020.35. Debtor is currently involved in a trial loan modification which began November 1, 2013.

Fourth, Debtor's modified plan proposes to reclassify JPMorgan Chase regarding the ongoing mortgage and pre-petition arrears from a Class 1 secured creditor to Class 4 secured claim paid directly by the Debtor based on a trial loan modification. Debtor's filed a Motion for Order Approving Trial Loan Modification on October 18, 2013, which was subsequently granted on November 19, 2013. Dckt. 45. Trustee argues that Debtor's modified plan provides no provision should the modified plan be granted and then the Debtor is unsuccessful in obtaining a permanent loan modification.

Fifth, Debtor's Declaration fails to adequately explain the numerous changes regarding their individual expenses. Trustee states Debtor provides no explanation for multiple increases in expenses, including food, laundry/dry cleaning, medical/dental, recreation, charitable contributions, property taxes/rentals, personal care and contributions as principle to school programs.

DEBTOR'S REPLY

Debtor filed a reply, stating that due to the holiday, Counsel has not been able to meet with the Debtors in time to supplement the record. Debtor request additional time to completely and thoroughly respond to the Trustee's objections.

CONTINUANCE

The court continued the hearing to allow the Debtor to fully respond to the Trustee's objections.

On January 7, 2013, the Debtor's Counsel filed a response, stating that the Debtors listed the Variable Annuity Policy on schedule B, with "Ameriprise One", with "loans against" it in the approximate amount of \$19,500. Counsel states the Debtors were not able to repay that amount and stopped making payments, no payment amount was considered in the monthly obligations which caused a capital gains tax of \$15,782.19. Counsel states the Debtors' then moved the remaining funds to First Investors, borrowed \$22,000.00, and paid the I.R.S. so to prevent post-petition claims the amount of \$15,782.19. Counsel states that the money used by Ameriprise Financial to complete various transactions, included the gross proceeds from the sale of Ameriprise investment including the treasury bonds were reinvested and the debtors' did not receive any funds, but were reinvested by Ameriprise with the debtors not receiving any funds in the process directly.

While Debtors have their attorney make the above arguments, no testimony under penalty of perjury has been provided as evidence that any of the above is true. The attorneys' arguments, allegations, and contentions are not evidence of facts. The Debtors being unwilling to so testify under penalty of perjury in a declaration leads the court to believe that such statements are not accurate.

The Debtors acknowledge receiving increases in payroll of approximately \$1,000.00 per month and have increased said payment to the Trustee by \$1,000.00 per month.

DISCUSSION

The court is not satisfied by the response provided by Counsel. First, Debtor's counsel does not address the majority of the arguments by the Trustee. Not only are several of the Trustee's objections not discussed, but the only response is argument from Debtor's Counsel. No evidence has been presented in support of the factual contentions made by counsel. The court allowed ample time for Debtor to provide a "thorough response" to the Trustee's objections and Debtor has come up short both on evidence and legal argument.

Based on the lack of evidence, the court denies the motion to confirm.

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 to Confirm the Plan is denied and the plan is not confirmed.

52. [10-45652-E-13](#) MARIO/RAFAELA GONZALEZ CONTINUED MOTION TO MODIFY PLAN
PGM-6 Peter Macaluso 10-17-13 [[155](#)]

CONT. FROM 12-10-13

Local Rule 9014-1(f) (1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 17, 2013. By the court's calculation, 54 days' notice was provided. 35 days' notice is required.

Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to grant the Motion to Confirm the Modified Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that he is unsure if Debtors' current statement of income is accurate. The Debtors' income has not changed from the statement of income filed 11-1-10, but the ages of the dependants has changed. The Trustee states the only change is that Debtor lists unemployment for 1 month but the declaration does not address if the Debtor is eligible or applied for unemployment benefits. Trustee states the Debtor has not provided current paystubs to support the income reported.

The Trustee also states he is uncertain of which vehicle the Debtors are proposing to surrender. Under the confirmed plan, the Debtors list in class 2 table, section 2.09 (d) Creditor Patelco Credit Union with secured purchase money security interest for 1996 Dodge Ram. The Debtors are now proposing to reclassify creditor to class 3 surrender. According to the Trustee's records, on 1-27-11 the creditor filed a proof of claim (#16) for 2005 Dodge 1500.

DEBTORS' RESPONSE

Debtors respond stating that they have completed a new official form 6I and 6J and filed them as Exhibits, Dckt. 165, to provide the Trustee with the missing information. Debtors suggest continuing the hearing to allow the Trustee to review the updated income and expenses provided.

The Debtors also state that the plan incorrectly listed the collateral of Creditor Patelco Credit Union as the 1996 Dodge Ram, when it is a 2005 Dodge 1500 Ram, which the Debtors are proposing to surrender. The Debtor states this change can be made in the order confirming.

Based on the new information provided to the Trustee recently, the court continued the hearing to allow him to review the requested information.

No response or supplemental pleadings have been filed to date. The Trustee indicating he has no further opposition, the court will grant the motion with the above stated modifications.

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 October 17, 2013 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.

53. [13-34553-E-13](#) **MARCUS/HEIDI MATHAT**
SJS-2 **Scott Johnson**

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
11-22-13 [21]

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 22, 2013. By the court's calculation, 53 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6102 Willowmont Circle, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$77,809.00 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 \$165,223.77. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$70,844.61. 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 6102 Willowmont Circle, 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 \$77,809.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

54. [10-45456-E-13](#) **EUGENE/DIANA MARDAR** **MOTION TO SELL**
SAC-2 **Scott Coben** **12-16-13 [60]**

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 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 16, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1) and Federal Rule of Bankruptcy Procedure 2002(a) (2). 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 court's tentative decision is to grant the Motion to Sell Property.

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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Here, the Debtor proposes to sell the real property commonly known as 8622 Chamonix Way, Antelope, California. The sales price is \$280,000.00

and the named buyer is Andrey Shaynyuk. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 63.

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

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the property.

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 sell property 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 Eugene and Diana Mardar, the Debtors ("Debtor"), are authorized to sell pursuant to 11 U.S.C. § 363(b) to Andrey Shaynyuk or nominee ("Buyer"), the residential real property commonly known as 8622 Chamonix Way, Antelope, California ("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyer for \$280,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 63.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale.
5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtors. Within fourteen (14) days

of the close of escrow the Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

55. [10-44857-E-13](#) IRMA BARRAGAN MOTION FOR COMPENSATION FOR
PGM-8 Peter Macaluso PETER G. MACALUSO, DEBTOR'S
ATTORNEY(S), FEES: \$560.00,
EXPENSES: \$0.00
12-13-13 [[91](#)]

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, all creditors, and Office of the United States Trustee on December 13, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Compensation 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 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 for Compensation is granted. No appearance required.

Peter G. Macaluso, Counsel for Debtor, seeks additional attorney fees in the amount of \$560.00. Counsel argues that these additional fees are actual, reasonable, necessary and unanticipated as post-confirmation work required.

Description of Services for Which Fees Are Requested

1. Modify the Confirmed Plan. Post-modification work included a motion to modify plan to provide for a 1305 claim and subsequent correspondence and meetings with clients to maintain the case.

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

The hourly rates for the fees billed in this case are \$200.00/hour for counsel for 2.8 hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$560.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 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 for Compensation filed by Counsel for 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, and Peter G. Macaluso, Counsel for Debtor, is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Counsel for Debtor
Applicant's Fees Allowed in the amount of \$560.00.

56. [13-33957-E-13](#) MARY AMACKER
Amy Spencer

OBJECTION TO CONFIRMATION OF
PLAN BY SPRINGLEAF FINANCIAL
SERVICES, INC.
12-18-13 [[20](#)]

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, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor has failed to file a motion to value collateral and therefore cannot make payments under the plan to Creditor Springleaf Financial.

Further, the Trustee alleges that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. §341. Attendance is mandatory. 11 U.S.C. §343.

Lastly, Trustee states that the plan does not provide for an attorney monthly dividend.

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 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.

57. [13-33957-E-13](#) **MARY AMACKER** **OBJECTION TO CONFIRMATION OF**
TSB-1 **Amy Spencer** **PLAN BY DAVID CUSICK**
12-18-13 [16]

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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 18, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor Springleaf Financial Services, Inc. ("Creditor") opposes confirmation of the Plan on the basis that Debtor has not properly provided for its claim securing a 2006 Dodge Caravan. Debtor attempts to value the collateral of Creditor in the plan without filing a motion to do so. Creditor objects to the valuation in the plan and the interest rate provided for (0.00%). This is not sufficient to account for Creditor's secured claim (which has not been valued to date).

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 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.

58. 10-25658-E-13 ROD/MELODY TACTAQUIN
PGM-3 Peter Macaluso

MOTION TO APPROVE LOAN
MODIFICATION
11-27-13 [58]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on November 27, 2013. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 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 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 Approve the Loan Modification is granted. No appearance required.

Wells Fargo Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to \$1,484.47. The modification will capitalize the pre-petition arrears and provides for stepped increases in the interest rate from 2.00% to 4.250% over the next 28 years.

There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 Approve the Loan Modification 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 Rodrigo and Melody Tactaquin, Debtors, are authorized to amend the terms of their loan with Wells Fargo Bank, N.A., which is secured by the real

property commonly known as 56 Shoreline Circle, Sacramento, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 61, in support of the Motion.

59. [10-31659-E-13](#) DONALD/THERESA SCHNEIDER MOTION TO MODIFY PLAN
DPR-6 David Ritzinger 11-19-13 [[95](#)]

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 Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 19, 2013. By the court's calculation, 56 days' notice was provided. 35 days' notice is required.

Final Ruling: 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. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 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 19, 2013 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.

60. [11-35060-E-13](#) **ANTONETTE TIN** **MOTION TO MODIFY PLAN**
RK-4 **Richard Kwun** **12-1-13 [101]**

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 1, 2013. By the court's calculation, 44 days' notice was provided. 35 days' notice is required.

Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to deny the Motion to Confirm the Modified Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the plan on the basis that the debtor incorrectly states attorney fees in section 2.06. Per the Order confirming, attorney fees of \$3,500.00 were approved, \$1,500.00 was paid prior to filing and \$2,000.00 was to be paid through the plan. Dckt. 38. The debtor states additional fees of \$2,050.00 shall be paid through the plan which is an estimate of additional fees per Section 6.02. Trustee argues Counsel is attempting to have additional fees approved without setting it for hearing.

The Trustee also states that the debtor has included in section 6.03 proposed treatment of creditor Bank of America, N.A. and the Trustee is not certain this is the proper creditor. Trustee states that the claim was transferred from Bank of America, N.A. to EverHome Mortgage Company on October 24, 2013.

Trustee also states that the proposed plan may not be the Debtor's best effort. The debtor reports on Schedule J \$420.00 for self-employment

tax and includes \$420 as a business expense for taxes. Trustee argues that this expense is included twice.

DEBTOR'S RESPONSE

Debtor responds, stating that the business expense were deducted twice and has filed a declaration and amended statement of expenses. Debtor states she has made her home loan payments directly to Bank of America, N.A., the offeror of the trial period plan.

Counsel states he cannot determine whether the services were necessary or beneficial to the debtor.

DISCUSSION

The court does not follow Counsel's argument regarding attorneys fees. If Counsel has been paid the fees per the Order confirming, any additional substantial and unanticipated fees must be requested from this court. See Local Bankruptcy Rule 2016-1(c)(3).

Furthermore, a review of the Proof of Claim Registrar shows that the Notice of Intent to Transfer Claim from Transferor: Bank of America, N.A. (Claim No. 6) to Everhome Mortgage Company was submitted on October 25, 2013. Dckt. 88. The evidence presented by Debtor that she made payments to Bank of America, N.A. on 10/1/13; 11/1/13 and 12/1/13 pursuant to "Fannie Mae Trial Period Plan" does not negate the fact.

Based on the foregoing, 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 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.

61. [13-33760-E-13](#) JOAN JOHNSON
SW-1 Mark Alonso

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
12-13-13 [20]

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, Debtor's Attorney, Chapter 13 Trustee, on December 13, 2013. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor Wells Fargo Bank, N.A. opposes confirmation of the Plan on the basis that the proposed plan fails to properly value the creditor's claim as required by 11 U.S.C. § 1325.

At the hearing on the Trustee's Motion to Dismiss on January 8, 2013, Counsel for the Debtor appeared and represented that he was prepared to file an amended plan and motion to confirm. The court conditionally granted the Motion to Dismiss if the Debtor has not, by January 27, 2014, filed and served an amended plan and motion and is current with all plan payments.

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 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.

62. [13-33760-E-13](#) **JOAN JOHNSON**
TSB-2 **Mark Alonso**

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
12-18-13 [28]**

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, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

Tentative Ruling: 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). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation on the basis that the Debtor is \$1,133.00.00 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a) (6).

At the hearing on the Trustee's Motion to Dismiss on January 8, 2013, Counsel for the Debtor appeared and represented that he was prepared to file an amended plan and motion to confirm. The court conditionally granted the Motion to Dismiss if the Debtor has not, by January 27, 2014, filed and served an amended plan and motion and is current with all plan payments.

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 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.

63. [13-31261](#)-E-13 TUESDIA JOHNSON CONTINUED AMENDED MOTION TO
MMM-1 Mohammad Mokarram APPROVE LOAN MODIFICATION
10-8-13 [[22](#)]

CONT. FROM 12-10-13, 10-8-13

Local Rule 9014-1(f) (2) Motion - Continued Final Hearing.

Correct Notice Was Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, and Office of the United States Trustee on September 23, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required. The creditor was not served the Motion and supporting pleadings.

Final Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i) (5) and 9014-1(f) (2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to grant the Motion to Approve Loan Modification. No appearance at the January 14, 2014 hearing is required.

PRIOR HEARING

The court continued the hearing on the Motion to Approve the Loan Modification to 3:00 p.m. on October 29, 2013 because of issues related to notice, evidence, and the motion. The court also ordered Wells Fargo Bank,

N.A. to file with the court a copy of the Loan Modification Agreement, which it intends to have the Debtor signed and wants approved by the court.

CONTINUANCE

Notice

The supplemental Proof of Service states that the Motion and supporting pleadings were served on all Creditor, parties requesting special notice, Chapter 13 Trustee, and Office of the United States Trustee on October 8, 2013. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

Motion

The amended motion sets forth sufficient basis for loan modification. Wells Fargo, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to \$1,416.46 (includes escrow payment). The modification will capitalize the pre-petition arrears and provides for interest rate at 4.125% until October 1, 2053.

Evidence

However, Debtor failed to provide a copy of the Loan Modification Agreement as required by Federal Rule of Bankruptcy Procedure 4001(c)(1)(A). It is not clear if the Wells Fargo Bank, N.A. did not provide a copy of the Loan Modification to counsel for the Debtor on or before October 15, 2013 or if the Counsel for the Debtor did not file and serve on the Chapter 13 Trustee the copy of the Loan Modification Agreement on or before October 17, 2013.

SUPPLEMENTAL EXHIBIT

On November 5, 2013, Debtor filed a Loan Modification package, with the Loan Modification Agreement attached. However, these documents have not been properly authenticated. No declaration by a person with personal knowledge has been filed providing what these documents are and whether they are true and correct copies.

SUPPLEMENTAL DECLARATION

On December 13, 2013, the Debtor filed a Declaration in support of the motion, authenticating the loan modification exhibits.

The loan modification will reduce the Debtor's monthly mortgage payment to \$1,416.46. The modification will capitalize the pre-petition arrears and provides for an interest rate of 4.125%.

There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 Approve the Loan Modification 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 Debtor Tuesdia Monique Johnson is authorized to amend the terms of her loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 906 Taft Street, Fairfield, California, and such other terms as stated in the Modification Agreement filed as Docket Entry No. 33, in support of the Motion.

64. [13-31261-E-13](#) TUESDIA JOHNSON CONTINUED OBJECTION TO
TSB-1 Mohammad Mokarram CONFIRMATION OF PLAN BY DAVID
CUSICK
10-10-13 [\[25\]](#)

CONT. FROM 12-10-13, 11-5-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney October 10, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

Final Ruling: 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). Consequently, the Debtor, 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. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to overrule the Objection to Confirmation. No appearance at the January 14, 2014 hearing is required.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending Motion to Approve Loan Modification. The Motion having been granted, the Objection is overruled and the plan 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 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 to confirmation is Debtor's Chapter 13 Plan filed on August 27, 2013 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.

65. [13-31661](#)-E-13 CHARLES/CANDICE WORCH
SDH-1 Scott D. Hughes

OBJECTION TO CLAIM OF CAVALRY
SPV I, LLC, CLAIM NUMBER 9
11-7-13 [[15](#)]

Local Rule 3007-1(c)(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 7, 2013. By the court's calculation, 68 days' notice was provided. 44 days' notice is required. That requirement was met.

Final Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(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 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 Proof of Claim number 9 of Cavalry SPV I, LLC is sustained and the claim is disallowed in its entirety. No appearance required.

The Proof of Claim at issue, listed as claim number 9 on the court's official claims registry, asserts a \$24,671.82 claim. The Debtor objects to the Proof of Claim on the basis that collection of Creditor's debt is barred by the statute of limitation on the collection of contract claims in California.

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).

Only a properly completed and filed proof of claim, however, is *prima facie* evidence of the validity and amount of a claim. FRBP 3001(f). A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f), but a lack of prima facie validity is not, by itself, a basis to disallow a claim. The court must look to 11 U.S.C. § 502(b) for the exclusive grounds to disallow a claim. *In re Heath*, 331 B.R. 424, 426 (9th Cir. BAP 2005).

The claim at issue does not qualify for the evidentiary benefit of Rule 3001(f); the claim only consists of the Proof of Claim form, and there is no documentation attached. The face of the form lists the amount owed. Claimant indicates that the basis for the claim as simply "CONSUMER LOAN." Claimant does not attach any documentation related to the loan, nor does it provide an explanation of the amount of debt claimed.

Even assuming the paperwork was sufficient and entitled to the FRBP 3001(f) presumption, however, the claim is barred by the statute of limitations on actions upon contracts in California. California Code of Civil Procedure §337 requires that an action upon any contract, obligation or liability founded upon an instrument in writing, be brought within four years.

C.C.P. §337 includes the additional proviso, however, that the time within which any action for a money judgment for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power of sale upon real property or any interest therein was given as security, following the exercise of the power of sale in such deed of trust or mortgage, may be brought shall not extend beyond three months after the time of sale under such deed of trust or mortgage. Claimant indicates that the basis for the claim is a consumer loan, however, and does not report much else, making it impossible for the court to determine whether the debt resulted from a money judgment due upon an obligation for a payment with the power of sale upon real property as a security interest for the payment.

Debtors state that the date of the last payment and transaction was June 10, 2009. Claimant is attempting to collect on the debt more than four years from the date that the last payment was made under the contract, after the statute of limitations period established by C.C.P. §337 has expired. Because it has been more than four years since the last payment was made on the loan contract, the claim is uncollectible as it is beyond the limitations period for the collection of contracts, open book accounts or accounts stated in California.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

The court 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 Cavalry SPV I, LLC filed in this case 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 objection to Proof of Claim number 9 of Cavalry SPV I, LLC is sustained and the claim is disallowed in its entirety.

66. [13-31661](#)-E-13 CHARLES/CANDICE WORCH
SDH-2 Scott D. Hughes

OBJECTION TO CLAIM OF ASSET
ACCEPTANCE, LLC, CLAIM NUMBER
11
11-22-13 [20]

Local Rule 3007-1(c)(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 22, 2013. By the court's calculation, 53 days' notice was provided. 44 days' notice is required. That requirement was met.

Final Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(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 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 Proof of Claim number 11 of Asset Acceptance, LLC is sustained and the claim is disallowed in its entirety. No appearance required.

The Proof of Claim at issue, listed as claim number 11 on the court's official claims registry, asserts a \$990.28 claim. The Debtor objects to the Proof of Claim on the basis that collection of Creditor's debt is barred by the statute of limitation on the collection of contract claims in California.

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).

Only a properly completed and filed proof of claim, however, is prima facie evidence of the validity and amount of a claim. FRBP 3001(f). A proof of claim that lacks the documentation required by Rule 3001(c) does not qualify for the evidentiary benefit of Rule 3001(f), but a lack of prima facie validity is not, by itself, a basis to disallow a claim. The court

must look to 11 U.S.C. § 502(b) for the exclusive grounds to disallow a claim. In re Heath, 331 B.R. 424, 426 (9th Cir. BAP 2005).

The claim at issue does not qualify for the evidentiary benefit of Rule 3001(f); the claim only consists of the Proof of Claim form, and no documentation is attached. The face of the form lists the amount owed. Claimant indicates that the basis for the claim simply as "MONEY LOANED." Claimant does not attach any documentation related to the loan, nor does it provide an explanation of the amount of debt claimed. The form is electronically signed by the "Bankruptcy Manager" of Asset Acceptance, LLC.

Even assuming the paperwork was sufficient and entitled to the FRBP 3001(f) presumption, however, the claim is barred by the statute of limitations on actions upon contracts in California. California Code of Civil Procedure §337 requires that an action upon any contract, obligation or liability founded upon an instrument in writing, be brought within four years. C.C.P. §337 includes the additional proviso, however, that the time within which any action for a money judgment for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power of sale upon real property or any interest therein was given as security, following the exercise of the power of sale in such deed of trust or mortgage, may be brought shall not extend beyond three months after the time of sale under such deed of trust or mortgage. Claimant indicates that the basis for the claim is a loan, without providing further details on the debt, making it impossible for the court to determine whether the claimed amount resulted from a money judgment due upon an obligation for a payment with the power of sale upon real property as a security interest for the payment.

Debtors state that the date of the last payment and transaction was May 1, 2009. Claimant is attempting to collect on the debt more than four years from the date that the last payment was made under the contract, after the statute of limitations period established by C.C.P. §337 has expired. Because it has been more than four years since the last payment was made on the loan contract, the claim is uncollectible as it is beyond the limitations period for the collection of contracts, open book accounts or accounts stated in California.

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 Asset Acceptance, LLC filed in this case 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 objection to Proof of Claim number 11 of Asset Acceptance, LLC is sustained and the claim is disallowed in its entirety.

67. 13-22362-E-13 ELENITA AQUINO
BMV-2 Bert M. Vega

MOTION TO MODIFY PLAN
11-27-13 [25]

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 27, 2013. By the court's calculation, 48 days' notice was provided. 35 days' notice is required. That requirement was met.

Final Ruling: 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. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 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 27, 2013 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.

68. [13-22362-E-13](#) ELENITA AQUINO MOTION TO MODIFY PLAN
BMV-4 Bert M. Vega 11-27-13 [[33](#)]

Final Ruling: The Debtor having filed a Withdrawal of the Motion to Confirm First Modified Chapter 13 Plan on the basis that the instant motion is a duplicate filing, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Confirm First Modified Plan was dismissed without prejudice, and the matter is removed from the calendar.**

69. [13-34164-E-13](#) ANGELINA ROBINSON MOTION TO VALUE COLLATERAL OF
MMA-1 Mark Alonso PNC BANK, N.A.
12-30-13 [[26](#)]

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 30, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion and determine creditor's secured claim to be \$0.00. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 23564 Sunburst

Lane, Millville, California. The Debtor seeks to value the property at a fair market value of \$325,000.00 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 \$727,000.00. Creditor PNC Bank, N.A. dba National City Bank's second deed of trust secures a loan with a balance of approximately \$101,860.75. 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, N.A. dba National City Bank secured by a second deed of trust recorded against the real property commonly known as 23564 Sunburst Lane, Millville, 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 \$325,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

1. Debtor has not provided Trustee with a tax transcript or copy of her 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 documentation exists under 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). Trustee has received the 2011 tax return, and an application for an automatic extension of a 2012 tax return but no actual 2012 tax return.
2. Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a) (6), as she has proposed to value the secured claims of Joann Robinson for the Second Deeds of Trust on Noah Road and Wall Street, as well as National City's Second Deed of Trust, but Debtor has not filed motions to value collateral.
3. The plan may not be proposed in good faith and may be causing unfair discrimination to unsecured creditors under 11 U.S.C. § 1325(a) (3)1 and 11 U.S.C. § 1322(b) (1), see *In re Sperna* 173 B.R. 654 (9th Cir.

BAP 1994). Debtor is proposing to pay Joann Robinson, Debtor's mother directly for her 2003 Lincoln Aviator listed in Class 4, which is not a secured debt. Debtor is proposing a 12% dividend to unsecured creditors, which totals \$22,325.00.

4. Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because Debtor lists Bank of America in the amount of \$260.00, and Ocwen Loan Servicing in the amount of \$610.00 in Class 4 of the Plan to be paid directly by Debtor; however, Debtor has not listed these expenses on Schedule J.
5. The plan may not be Debtors' best efforts under 11 U.S.C. § 1325(b); Debtor is over median income and proposes plan payments of \$4,755.00 for 60 months at 12% to unsecured, which totals \$22,325.00 to unsecured creditors. Form B22C reflects line #59 to be \$1,734.78 for 60 months totals \$104,086.00.
6. Debtor used deductions for a household of 4 on Form B22C, however Debtor has only claimed 2 dependents on Schedule I, therefore a household of 3 should have been used to calculate Form B22C. Trustee has revised Form B22C, using deductions for a household of 3, which increases Line #59 to \$2,084.78 for 60 months, totaling \$125,086.80.

Thus, 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 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.

71. [09-33265-E-13](#) **ARMANDO/JESSENITH SORIANO** **MOTION TO SET ASIDE DISMISSAL**
DRW-2 **Dennis R. Wheeler** **OF CASE**
12-4-13 [70]

CASE DISMISSED 11/19/13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the Chapter 13 Trustee, and Office of the United States Trustee on December 13, 2013. By the court's calculation, 32 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Set Aside Dismissal of Case 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 Trustee having filed an opposition, 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 tentative decision is to grant the Motion to Set Aside Dismissal of the Case. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Trustee filed a Motion to Dismiss the instant case for failure to make plan payments with a hearing set for November 13, 2013. Debtors' confirmed plan called for 60 monthly payments of \$2,410.00 (according to the trustee, the monthly payment has been adjusted to \$2,519.19 per month, likely to account for mortgage payment changes). Debtors have approximately 7 months remaining to complete their plan; therefore they have completed 53 plan payments, including November 2013.

Trustee's Motion to Dismiss stated that as of September 27, 2013 the Debtors' were delinquent \$4,213.72 in plan payments, not including another \$2,515.19 that would come due prior to the hearing. The Motion stated further that the total debtors needed to pay prior to the hearing was \$6,728.91 and if they failed to pay this amount, their case might be dismissed. On November 13, the court ruled that cause existed to dismiss the case, thereby granting Trustee's Motion and dismissing the case.

Debtors now move to set aside the dismissal and for an order to reinstate the case. Debtors attach a declaration in support of this motion, detailing the reasons for Debtors having fallen behind in their plan payments. Debtors claim that they struggled to meet financial obligations due to the job loss that Joint Debtor Jessenith V. Soriano suffered in 2011, but Debtors expect to be able to make all payments on time in 2014 (Dckt. No. 72). Debtors state that subsequent to the filing of the Trustee's Motion to Dismiss but prior to the hearing, Debtors made a \$2,600.00 payment

by cashier's check dated October 18, 2013. Debtors mailed the payment on that same date, and \$4,200.00 by cashier's check dated November 6, 2013, bringing the total paid of \$6,800.00 paid prior to the hearing held on November 13, 2013. Trustee indicated on the payment system that the Debtors were credited a \$2,600.00 payment on October 22, 2013, and the \$4,200.00 payment on November 12, 2013. Debtors claim then that prior to the hearing, debtors had paid the entire delinquency, including amounts that came due after the Notice of Hearing.

Additionally, prior to the hearing, the Trustee had credited the two payments and brought the debtors current on their plan payments. Debtors's counsel alleges, however, that he was not notified that Debtors had cured the delinquency, and no opposition to the Trustee's motion to dismiss was filed nor was an appearance made at the hearing. According to the Debtor's declaration, they mistakenly believed that since they had brought their plan payments current, no further action was needed.

Trustee's Reply

Trustee states that he does not oppose the requested relief.

The Motion to Dismiss filed by Trustee alleged a \$4,213.72 delinquency on September 27, 2013, and that another payment of \$2,515.19 would come due before the hearing. Dckt. No. 61. No opposition was filed to the motion and the matter was resolved without oral argument. Debtor paid \$2,600.00 on October 22, 2013, and \$4,200.00 on November 12, 2013, the day before the hearing.

The court will construe the motion as a motion to alter or amend the Order, pursuant to Fed. R. Civ. P. 59(e), incorporated herein by Fed. R. Bankr. P. 9023, or in the alternative, as a motion for relief from the Order, pursuant to Fed. R. Civ. P. 60(b)(6), incorporated herein by Fed. R. Bankr. P. 9024. A Rule 59(e) motion "should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law." *389 Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). "[A] motion for reconsideration is not permitted (a) to assert new legal theories that could just as well have been raised before the initial hearing; (b) to present new facts which could have been presented before the initial hearing; or (c) to rehash the same arguments made the first time or simply express an opinion that the court was wrong." *In re Greco*, 113 B.R. 658, 664 (D. Hawaii 1990).

The court finds that Debtors' counsel was derelict in his duty to maintain contact with Debtors regarding their submission of plan payments. A request for relief under Fed. R. Civ. P. 60(b)(6) is typically granted sparingly, in the most extraordinary circumstances in which parties were barred from acting in a timely manner to correct an erroneous judgment. Although Rule 60(b) should be liberally applied to accomplish justice, *Zurich Am. Ins. Co. v. Int'l Fibercom, Inc.* (In re Int'l Fibercom, Inc.), 503 F.3d 933, 941 (9th Cir. 2007), at the same time, it should be "used sparingly as an equitable remedy to prevent manifest injustice and is to be utilized only where extraordinary circumstances prevented a party from

taking timely action to prevent or correct an erroneous judgment." Id. (citations omitted, internal quotation marks omitted).

Here, there were no extreme circumstances under Civ. P. 60(b)(6) that restricted Debtors and Debtors' counsel to come forward and halt the dismissal of their case. Debtors had made the necessary payments to bring them current on their Plan by the date of the hearing. Trustee's Motion to Dismiss was set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1), which advised Debtors that if written opposition were to be filed, Debtors must served and file the opposition with the Clerk of the Court not less than fourteen calendar days preceding the date of the hearing. Based on Debtors' claims, Debtors made a substantial payment of \$2,600.00 payment on October 22, 2013.

Debtors' counsel had ample time to file written opposition, bringing to the Trustee and court's attention that a portion of the past due plan payment had paid, and presenting Debtors' intention to become current by making the larger payment of \$4,200.00 on November 12, 2013. Such opposition was not filed. Debtors' counsel was not aware that all obligations had been fulfilled by the date of the hearing on the Motion to Dismiss. Had Debtors' counsel diligently maintained communications with Debtors regarding their plan payments, Debtors' counsel would not have had to file this instant Motion to Set Aside the Dismissal.

Although the facts of this case would not typically warrant the extraordinary remedies of altering the judgment pursuant to Fed. R. Civ. P. 59(e), or a motion for relief from a court's order under Fed. R. Civ. P. 60(b)(6), the Trustee has stated that he does not oppose the requested relief in this case.

Given this fortuitous lack of opposition, the Motion to Set Aside the Dismissal is granted, and Debtors' case is reinstated.

However, that does not absolve Debtors' counsel from his failure to take any action represent his clients' interests in this case. His failure to act has caused the Chapter 13 Trustee to waste limited time and resources. First, in having to file the Motion to Dismiss, then in having the case dismissed, and finally, in having to address the present motion. The court computes that the Trustee has "wasted" three hours of attorney time because of Debtor's counsel's failure to file an opposition to the motion. At a very discounted rate, the court computes the Chapter 13 Trustee's damages to be \$750.00 - 3 hours x \$250/hour.

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

A bankruptcy court is also empowered to regulate the practice of law in the bankruptcy court. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of

law includes the right and power to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991); see *Price v. Lehitine*, 564 F. 3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehitine*, 564 F.3d at 1058. However, the bankruptcy court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

As a condition of vacating the dismissal the court orders Debtor's counsel to pay \$750.00 in corrective sanctions. The sanctions shall be paid on or before February 5, 2014.

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 Set Aside the Dismissal and Reinstate the Case 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 Motion to Set Aside the Dismissal and Reinstate the Case is granted, and Debtors' case is reinstated.

IT IS FURTHER ORDERED that Dennis Wheeler, counsel for the Debtors, shall pay \$750.00 on or before February 5, 2014, to the David Cusick, the Chapter 13 Trustee, for attorneys' fees incurred in connection with the Motion to Dismiss this Chapter 13 case and the Debtors' Motion to Vacate the Order dismissing the Chapter 13 case.

This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).

72. [13-29769-E-13](#) JOHN JAMES
PGM-3 Peter G. Macaluso

MOTION TO APPROVE LOAN
MODIFICATION
12-13-13 [[57](#)]

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 December 13, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 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 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 Approve the Loan Modification is granted. No appearance required.

Wells Fargo Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment \$2,966.89 at 2.00%. The modification will capitalize the pre-petition arrears and provides for stepped increases in the interest rate from 3.00% in year six to 4.000% in year seven for the balance of the loan.

The modified principal balance of the Note will include all amounts and arrearages that will be past due as of the Modification Effective Date (including unpaid and deferred interest, fees, escrow advances and other costs, but excluding unpaid late charges, collectively, "Unpaid Amounts") less any amounts paid to the Lender but not previously credited to the debtor's Loan. The New Principal Balance of the note is \$181,961.69.

The Debtor states that he understands that by agreeing to add the Unpaid Amounts to the outstanding principal balance, the added Unpaid Amounts accrue interest based on the interest rate in effect under the loan modification. Interest at the rate of 2.000% began to accrue on the Interest Bearing Principal Balance as of August 1, 2013. The Maturity Date of the note will be October 1, 2019.

There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 Approve the Loan Modification 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 Wells Fargo Bank, N.A. are authorized to amend the terms of their loan with John C. James, which is secured by the real property commonly known as 2649 Sierra Vista Road, Rescue, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 60, in support of the Motion.

73. [12-35270-E-13](#) **FELIPE LEPE** **MOTION TO SELL**
SAC-8 **Jingming Cai** **12-16-13 [135]**

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, and parties requesting special notice on December 16, 2013. By the court's calculation, 29 days' notice was provided. 21 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1) and Federal Rule of Bankruptcy Procedure 2002(a) (2). 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 court's tentative decision is to deny the Motion to Sell without prejudice 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Local Bankruptcy Rule 3015-1(i) (4) enables the court to approve an *ex parte* motion by the debtor to sell real or personal property, with a value of \$1,000.00

or more other than in the ordinary course of business if the trustee's written consent is filed with or as part of the motion.

Here, the Debtor proposes to sell the real property commonly known as 2780 Woodmont Drive, Fairfield, California. The sales price is \$260,000.00 and the named buyers are Yitang Zheng. The Real Property shall be sold to Buyer for \$260,000.00. Creditor Ocwen Loan Servicing, LLC, which holds a claim in the amount of \$545,324.20 in the subject property, will consider its claim paid in full in the amount of \$252,000.00, once the property is sold. Additionally, Roundpoint Mortgage Servicing Corp, which has a junior mortgage lien with a claim in the amount of \$60,500, will consider its claim satisfied with a payment of \$5,000 from the proceeds of the sale of property.

On or about August 18, Debtor enlisted a real estate agent to short-sell the Property. Debtor has found a buyer, Yiteng Zhang, who is willing to purchase the Property for a price of \$260,000, a price slightly above the Property's value of \$236,139. Debtor has obtained the consent of both Ocwen Loan Servicing, LLC and Roundpoint Mortgage Servicing Corp, Debtor's creditors who hold secured claims in the property, to short-sell the subject property. The Chapter 13 Trustee has filed a statement of non-opposition to the Motion.

Of concern to the court, however, is that Debtor has not filed a Purchase Agreement for the court's review. The Purchase Agreement allows the court to review the terms of the sale, and to determine whether the proposed sale would be in the best interest of the Estate. The Agreement would also enable the court to determine the specifics of the sale, including the commission that Debtor's real estate broker will receive, the distribution of the sale proceeds and disbursement to creditors, escrow costs, etc.

Pursuant to Local Bankruptcy Rule 3015-1(i)(4), the court must review these terms to certify that the sale price represents a fair value for the subject property, that all creditors with liens and security interests encumbering the property will be paid in full before or simultaneous with the transfer of title or possession to buyer, that the costs of sale will be satisfied with the sale proceeds, and other indicators that the sale is fair and reasonable and in the best interest of the bankruptcy estate.

Junior Mortgage Loan of Roundpoint Mortgage Servicing Corp.

Additionally, Debtor states that the junior mortgage lien of Paul Financial, LLC, which was subsequently transferred to Roundpoint Mortgage Servicing Corp, was "stripped on April 30, 2013" pursuant to Debtor's Motion. This assertion is incorrect. Although the court did grant the Motion to Value the Claim of Paul Financial, LLC, and determined the amount of Paul Financial, LLC's secured claim to be \$0.00, the lien on the subject property, secured by a Paul Financial's Second Deed of Trust, was not "stripped" as a result of Debtor prevailing on his Motion to Value. On previous occasions, this court has addressed the "lien-stripping" process in a Chapter 13 case. See *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011),

aff'd., 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case), and *Martin v. CitiFinancial Services, Inc. (In re Martin)*, Adv. No. 12-2596, 2013 LEXIS 1622 (Bankr. E.D. CA 2013).

As the court explained in *In re Frazier*, the secured claim treatment under the Chapter 13 plan to reconvey a junior lien for a payment equal to the value of the collateral is commonly called a "lien strip." *In re Frazier*, 448 B.R. 803, 807 (Bankr. E.D. Cal. 2011) *aff'd. Frazier v. Real Time Resolutions, Inc.*, 469 B.R. 889 (E.D. Cal. 2012). The term "lien strip," however, is not an accurate statement of the legal effect of the Chapter 13 plan, Bankruptcy Code, and order of the court. In the valuing the amount of the claim pursuant to 11 U.S.C. § 506(a), the court does not remove or "strip" the lien from the property. Rather, **it is only upon the completion of the Chapter 13 plan and payment of the value in the collateral securing the claim**, that the Debtor can then obtain a release of the lien. The secured claim amount has been paid at that point, and there is no remaining obligation secured by the lien. *In re Frazier*, 448 B.R. 803, 807.

With the obligation satisfied, the creditor is required under the terms of the note, deed of trust, and applicable state law to reconvey the deed of trust. The debtor must obtain a discharge in the Chapter 13 case in order to obtain the release of a lien based on a secured claim valuation performed pursuant to 11 U.S.C. § 506(a). The discharge in a Chapter 13 case is issued upon completion of the Chapter 13 Plan. The entry of the discharge signifies that the debtor has successfully completed the Chapter 13 Plan by paying all creditors the amount required under this new contract embodied in the Plan. *In re Frazier*, 448 B.R. 803, 807-08 (Bankr. E.D. Cal. 2011) *aff'd sub nom. Frazier v. Real Time Resolutions, Inc.*, 469 B.R. 889 (E.D. Cal. 2012).

Here, **the second deed of trust on the subject property, assigned to Roundpoint, is still effective. The Debtor has not completed the Plan, and cannot yet receive the release of the lien. After the secured and unsecured claims are valued under** 11 U.S.C. § 506(a), it is the Chapter 13 Plan, and the Debtor's commitment to the Plan, which creates a new contract between the debtor and creditors. *In re Than*, 215 B.R. 430 (9th Cir. BAP 1997). The debtor pays the full amount of the secured claim that was valued under 11 U.S.C. § 506(a) (in this case, the junior deed of Trust now held by Roundpoint) through the Chapter 13 Plan, resulting in there being no remaining obligation secured by the lien. Upon completion of the Chapter 13 Plan and payment of the § 506(a) claim, the debtor can then demand reconveyance of the deed of trust or release of the lien pursuant to the terms of the underlying note, deed of trust, security instrument, applicable law, or 11 U.S.C. § 506(d). *In re Frazier*, 448 B.R. 803, 810 (Bankr. E.D. Cal. 2011) *aff'd sub nom. Frazier v. Real Time Resolutions, Inc.*, 469 B.R. 889 (E.D. Cal. 2012). Debtor has not completed the Chapter 13 Plan. Thus, Roundpoint's lien has not yet been released, and it is inaccurate to describe the current state of encumbrances and liens on the property as such.

As Debtor has incorrectly characterized the lien of Roundpoint Mortgage Servicing Corp, which holds the second deed of trust on the real property located at 2780 Woodmont Drive, Fairfield, California, Debtor is

advised to redraft the Purchase Agreement and Motion to reflect that the second mortgage lien, originally held by the Quantum Servicing Corporation and transferred to Roundpoint Mortgage Servicing, has not been released. The motion is denied on this basis and on Debtor not providing a copy of the Purchase Agreement for the court's review.

On this latter point, the court will overlook the misstatement of the law in this case based on the representation that Roundpoint is to provide a reconveyance to clear its lien. The court order, if any, approving the sale shall expressly state that no liens have been removed by order of the court or operation of law from the property at this time.

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 Sell property 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 to Sell is denied without prejudice.

74. [10-49971](#)-E-13 RAMON/KELLY YEE
CYB-3 Candace Y. Brooks

MOTION TO APPROVE LOAN
MODIFICATION
12-17-13 [[51](#)]

**APPEARANCE OF CANDACE Y. BROOKS, COUNSEL FOR DEBTORS
REQUIRED FOR JANUARY 14, 2014 HEARING
Telephonic Appearance Permitted**

**To Address Why Modification is With Green Tree
Servicing, LLC
In Light of Proof of Claim No. 19
Filed By Bank of America, N.A.**

See Item No. 25 Above on 01/14/2014 Calendar

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 all creditors on December 17, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i) (5) and 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 court's tentative decision is to deny the Motion to Approve Loan Modification. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Notice to Chapter 13 Trustee

The Certificate of Service, filed on December 17, 2013 (Dckt. No. 55), reflects that the Chapter 13 Trustee, David Cusick, was not served. One of the primary responsibilities of the Trustee is to serve as a disbursing agent, collecting payments from Debtors and distributing funds to creditors pursuant to 11 U.S.C. § 1302, making the Chapter 13 Trustee an integral player in ensuring that the bankruptcy estate is efficiently and properly administered. The Chapter 13 Trustee must also appear and be heard at any hearing that concerns the modification of a plan after confirmation,

under 11 U.S.C. § 1302(b)(2). Thus, in attempting to reduce Debtors' monthly mortgage payment by seeking court approval of Debtors' Loan Modification, Debtors are pursuing a matter in which the Chapter 13 Trustee is a real party in interest.

Notice Requirements for the Internal Revenue Service

Local Bankruptcy Rule 2002-1 also provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

**LOCAL RULE 2002-1
Notice Requirements**

(a) Listing the United States as a Creditor; Notice to the United States. When listing an indebtedness to the United States for other than taxes and when giving notice, as required by FRBP 2002(j)(4), the debtor shall list both the U.S. Attorney and the federal agency through which the debtor became indebted. The address of the notice to the U.S. Attorney shall include, in parenthesis, the name of the federal agency as follows:

For Cases filed in the Sacramento Division:

United States Attorney
(For [insert name of agency])
501 I Street, Suite 10-100
Sacramento, CA 95814

For Cases filed in the Modesto and Fresno Divisions:

United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721-1318

. . .

(c) Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

- (1) United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044
- (2) United States Attorney as specified in LBR 2002-1(a)
above; and,
- (3) Internal Revenue Service at the addresses specified on
the roster of governmental agencies maintained by the
Clerk.

The proof of service lists only the following addresses as those used for service on the Internal Revenue Service:

Internal Revenue Services
PO Box 21126
Philadelphia PA 19114

A motion is a contested matter. See Fed. R. Bankr. P. 9014. The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate.

The court has determined that the defect in serving the Internal Revenue Service, however, is not fatal to Debtors' Motion (as the Internal Revenue Service is not involved with Debtor's loan modification, and the modification will result in the reduction of payment to Secured Creditor Green Tree Servicing). Thus, the court will waive Debtors' problems in serving the Motion to the Internal Revenue Service.

The court is also concerned that Green Tree Servicing, LLC is not the owner of the Note to be modified and no the creditor in this case. Proof of Claim No. 19 filed by Bank of America, N.A. on May 6, 2013, states under penalty of perjury that the Bank is the creditor in this case.

If the Chapter 13 Trustee agrees to waive defective service of the Trustee's office at the hearing and evidence is presented that Green Tree Servicing, LLC is actually the creditor, the court will issue the following alternative ruling:

U 1. The court has determined that the defect in serving the Internal Revenue Service, however, is not fatal to Debtors' Motion (as the Internal Revenue Service is not involved with Debtor's loan modification, and the modification will result in the reduction of payment to Secured Creditor Green Tree Servicing). Thus, the court will waive Debtors' problems in serving the Motion to the Internal Revenue Service.

2. The court is also concerned that Green Tree Servicing, LLC is not the owner of the Note to be modified and no the creditor in this case. Proof of Claim No. 19 filed by Bank of America, N.A. on May 6, 2013, states under penalty of perjury that the Bank is the creditor in this case.

If the Chapter 13 Trustee agrees to waive defective service of the Trustee's office at the hearing and evidence is presented that Green Tree Servicing, LLC is actually the creditor, the court will issue the following alternative ruling:

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 14, 2013 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.

76. [13-34373-E-13](#) **RUSSELL/TINA CALDWELL** **MOTION TO VALUE COLLATERAL OF**
LBG-1 **Stephen J. Johnson** **WELLS FARGO BANK, N.A.**
11-21-13 [14]

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 21, 2013. By the court's calculation, 54 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 20315 Montana Lane, Colfax, California. The Debtor seeks to value the property at a fair market value of \$305,000.00 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 \$338,643.00. Creditor Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$144,983.00. 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 20315 Montana Lane in Colfax, 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 \$305,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

77. [13-34373-E-13](#) RUSSELL/TINA CALDWELL
TSB-1 Stephen J. Johnson

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
12-17-13 [22]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on December 17, 2013. By the court's calculation, 28 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

1. Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a) (6) because the Plan relies on the pending Motion to Value Collateral of Wells Fargo, which is set for hearing on this date. The court, however, is set to grant Debtors' Motion to Value Collateral of Wells Fargo, thereby rendering this part of Trustee's objection moot.
2. Trustee asserts that the Plan is not Debtors' best efforts under 11 U.S.C. § 1325(b), as Debtor is over the median income and proposes plan payments of \$321.00 for 60 months with a 0% dividend to unsecured creditors. Debtor's Form B22C, line #59, reflects \$2,116.19 for 60 months, which totals \$126,960.00; however, based on Trustee's calculations of Form B22C, line #59 reflects \$3,412.00 for 60 month, resulting in a total of \$204,720.00. Trustee has revised the following lines on Form B22C:

Line #30, Taxes: Debtors deduct \$3,632, though Schedule I reflects taxes of \$2,635.40.

Line #47, Future payments on secured claims: Debtors deduct \$2,167.00 for the mortgage payment to Citimortgage. The Form, however, indicates that the payment includes real property taxes and insurance, which is already included in Line #25(A). Debtors have also listed a \$500.00 deduction on Line #26 for property taxes and propane. Debtors have deducted an expense for real property three times on Form B22C.

The Debtor also list expenses on Schedule J which do not appear reasonably and necessary for their support, according to the trustee:

- (1.) \$700.00 for Home Maintenance (Debtors admitted at the First Meeting of Creditors that their residence is 13 years old);
- (2.) \$330.00 Clothing for 2 people;
- (3.) \$600.00 Medical and Dental;
- (4.) \$370.00 for Recreation;
- (5.) \$150.00 for Support (Debtors admitted at the First Meeting of Creditors that they send money to their 27 old daughter, who is married);
- (6.) \$200.00 for Charity (Debtors did not list a charity on their Statement of Financial Affairs)

Thus, 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 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.

78. [10-26175-E-13](#) BRENDA CALHOUN
SDB-9 W. Scott de Bie

MOTION TO MODIFY PLAN
12-2-13 [[137](#)]

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 December 2, 2013. By the court's calculation, 43 days' notice was provided. 35 days' notice is required. That requirement was met.

Final Ruling: 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. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 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 December 2, 2013 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.

79. [13-31975-E-13](#) JACK/LINDA GANAS
PLC-2 Peter L. Cianchetta

MOTION TO CONFIRM PLAN
11-15-13 [[29](#)]

Local Rule 9014-1(f)(1) Motion - 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 15, 2013. By the court's calculation, 60 days' notice was provided. 42 days' notice is required. That requirement was met.

Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to deny the Motion to Confirm the Amended Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee has filed opposition to confirmation of the Plan.

The Trustee opposes confirmation on the basis that attorney fees are not clear, and that the Plan does not address Trustee's prior objection. Debtors' prior Plan and Rights and Responsibilities indicate that the attorney fees of \$4,000 have been charged, with \$0 paid and \$4,000 due through the Chapter 13 Plan. Debtor amended the Plan on November 15, 2013, and changed the attorney fees to \$0.00.

Debtor's attorney has not stated the status of the fees and if he will be filing a motion for the approval of fees, as the Plan states that the attorney will seek court approval by "complying with Local Bankruptcy Rule 2016-1(c)." Debtor's attorney has already been paid \$5,589.00 total for four prior bankruptcies he filed for the Debtors, all of which have been dismissed without completion.

Because there are remaining deficiencies in Debtors' Plan, the current 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 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.

80. [13-32875-E-13](#) ANGELO/LISA OLIVA CONTINUED OBJECTION TO
NLE-1 Stephen C. Ruehmann CONFIRMATION OF PLAN BY DAVID
P. CUSICK
11-7-13 [[19](#)]

Final Ruling: The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation of Plan, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the** Objection to Confirmation of Plan was dismissed without prejudice, and the matter is removed from the calendar.

81. [13-31276-E-13](#) **JAIME AHUMADA**
TOG-2 **Thomas O. Gillis**

MOTION TO CONFIRM PLAN
11-24-13 [[18](#)]

Local Rule 9014-1(f)(1) Motion - 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 24, 2013. By the court's calculation, 51 days' notice was provided. 42 days' notice is required. That requirement was met.

Tentative Ruling: 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 Trustee having filed an opposition, 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 tentative decision is to grant the Motion to Confirm the Amended Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee has filed opposition to the Debtor's proposed Plan confirmation.

The Trustee objections to confirmation of the Plan on the basis that Section 6, the Additional Provisions section of the Plan, are unclear. The Provisions state that "For the first two months of the plan, September 2013 and October 2013, the plan payment shall be \$1986 per month. For the remaining 58 months, commencing in November 201, the plan payment shall be \$2015. Any and all plan payments delinquencies are hereby suspended. The higher amount accounts for nonpayment in September 2013 and cures the arrears produced in that month."

The Trustee would have no objection if the Order Confirming Plan corrected this provision as follows: "The Debtor has paid \$1,986.00 into the plan as of October 2013. The Plan payment shall be \$2,015.00 per month for the remaining 58 months of the plan, beginning in November 2013."

Debtor's Reply

Debtor agrees with Trustee's suggested correction to the Additional Provisions section, which will be added in the court's order confirming the Plan.

The amended Plan, with the correction of the Plan provision in the order confirming 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

IT IS ORDERED that the Additional Provisions section, Section 6 of Debtor's proposed First Amended Plan, be revised to state: ""The Debtor has paid \$1,986.00 into the plan as of October 2013. The Plan payment shall be \$2,015.00 per month for the remaining 58 months of the plan, beginning in November 2013.""

IT IS FURTHER ORDERED that the Motion is granted, and Debtor's Chapter 13 Plan filed on November 24, 2013, with the ordered revised language of the Additional Provisions Section incorporated, 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.

82. [13-33077](#)-E-13 CATHERINE WADE
NLE-2 Joseph Feist

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
12-10-13 [[30](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on December 10, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor having filed an opposition, the court will address the merits of the motion. 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 tentative decision is to grant the Motion to Convert. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee moves the court for an order converting this case pursuant to 11 U.S.C. § 1307(c) as Debtor is causing an unreasonable delay that is prejudicial to creditors.

11 U.S.C. § 1307(c) provides that the court may, on request of a party in interest or the United States trustee and after notice and a hearing, convert a Chapter 7 or Chapter 13 Case or convert the case, whichever is in the best interests of creditors and the estate, for cause. 11 U.S.C. § 1307(c) enumerates the following as some of the factors that constitute cause for the conversion or dismissal of a Chapter 7 or 13 case:

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (4) failure to commence making timely payments under section 1326 of this title...;
- (6) material default by the debtor with respect to a term of a confirmed plan;

The Debtor is \$3,438.00 delinquent in plan payments to Trustee to date, and the next scheduled payment of \$3,438.00 is due on December 25, 2013. The case was filed on October 7, 2013, and the Plan in Section 1.01 calls for payments to be received by the Trustee not later than the 25th day of each month beginning the month after the order for relief under Chapter

13. Debtor has paid nothing into the Plan to date. Debtor's non-payment is cause to convert this Chapter 13 case into a Chapter 7 case.

Trustee states that substantial equity appears to exist on Schedule A in 500 Kapalua Drive, #26P1, Lahaina, Hawaii. Debtor is currently in hospice care.

Debtor must be current under all payments called for by any pending Plan as of the date of the hearing on this motion, or the case may be dismissed. Trustee requests that the court issue an order converting this proceeding unless Debtor is current under all payments called for by any plan as of December 24, 2013 or Debtor files a response no later than December 24, 2013, explaining why delinquency occurred and why it will not occur in the future.

Debtor's Reply

Debtor states that as of the date her response was filed, on December 14, 2013, Debtor was not delinquent on plan payments under the terms of the First Amended Plan. Debtor states that she suffers from multiple sclerosis, and was "given the various manners and degrees in which individuals are afflicted by MS, it is difficult to reasonably predict longevity." Debtor states that her health condition has reached a point where she is hospice care, but she has no way of reasonably predicting how long she may she will stay alive to complete the duration of the Plan. Debtor considers the possibility of passing or surviving throughout the life of the Plan.

Debtor asserts that she has cured her delinquency, and that she will be current on her plan payments pursuant to the terms of the First Amended Plan on the date of the hearing on this Motion.

Although Debtor expresses her intention to be current on her plan payments on the date of the hearing, Debtor has not provided evidence (declarations, account statements, receipts from the Trustee) showing that she has paid anything into the Plan. The court will tentatively grant Trustee's Motion to Convert, and the ruling will stand unless Debtor can prove that she has become current on her plan payments.

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 Convert 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 Convert is granted and the case is converted to a proceeding under Chapter 13 of Title 11, United States Code.

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 20, 2013. By the court's calculation, 55 days' notice was provided. 42 days' notice is required. That requirement was met.

Final Ruling: 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. No appearance required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended 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 20, 2013 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.

84. [13-34181-E-13](#) ROBERT/KRISTEN THOMAS
NLE-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
12-11-13 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on December 11, 2013. By the court's calculation, 34 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: 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). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

1. Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a) (6) because the plan relies on the Motion to Value Collateral of Bank of America, which is set for hearing on this date. Trustee is advised that the court is set to grant Debtors' Motion to Value, thereby rendering this portion of Trustee's objection moot.
2. Section 2.15 of Debtors' Plan proposes to pay 64% of unsecured debts totaling \$74,337.90. A review of Schedules D and F indicates that the total unsecured debt is actually \$169,056.90. The plan will take 107 months to pay 64% of \$169,056.90.
3. The plan does not Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors; Schedule I indicates gross income for Debtor Kristen Thomas of \$2,660.22 per month. Debtor testified at the First Meeting of Creditors held on December 5, 2013, that this amount is the net pay she receives, and not the gross.

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 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.

85. [13-34181-E-13](#) **ROBERT/KRISTEN THOMAS** **MOTION TO VALUE COLLATERAL OF**
SJS-1 **Scott J. Sagaria** **BANK OF AMERICA, N.A.**
11-21-13 [16]

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 21, 2013. By the court's calculation, 54 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1476 Dreamy Way, Sacramento, California. The Debtor seeks to value the property at a fair

market value of \$230,000.00 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 \$254,339.00. Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$105,594.00. 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 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 1476 Dreamy 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 \$230,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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 December 6, 2013. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. That requirement was met.

Final Ruling: 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 court notes that the Notice of Hearing incorrectly advises potential respondents that the Motion is being set on hearing pursuant to "Local Bankruptcy Rule 9014-1(f)(1)(ii)." Local Bankruptcy Rule 9014-1(f)(1)(ii) does not exist. Rather, it appears that Debtors are referring to the deadlines for the procedures governing the submission of oppositions pursuant to Local Bankruptcy Rule 9014-1(f)(1)(b). This erroneously cited rule section, concerning Motions that are set on 14 days' Notice, may give potential respondents the mistaken impression that the motion is set for hearing under Local Bankruptcy Rule 9014-1(f)(2), and that opposition may be presented at the hearing.

As Debtors' counsel should be well aware, Local Bankruptcy Rule 3015-1(d)(1) requires that notice for motions to confirm modified plans be given under Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1). To meet the requirements of Local Bankruptcy Rule 3015-1(d)(2), regarding modified plans proposed after confirmation, the hearing must be set on 35 days' notice (28 days' notice under Federal Rule of Bankruptcy Procedure 2002(b) and the 14-day deadline for written opposition required by Local Bankruptcy Rule 9014-1(f)(1)). Respondents must be advised that written opposition is filed before the hearing date. Because the instant Notice of Hearing meets this requirement, the court will issue a final ruling on the Motion. However, Debtor's counsel is urged to correct the citation in the Notice in future pleadings, lest Debtor's counsel is willing to accept the risk of further confusion in his future Motions to Confirm.

The Motion to Confirm the Modified Plan is granted. No appearance required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended 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 December 6, 2013, 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.

87. 13-34982-E-13 HUGO HERREROS
TOG-1 Thomas O. Gillis

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
11-27-13 [8]

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 27, 2013. By the court's calculation, 48 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6864 Ketterling Cr. Fair Oaks, California. The Debtor seeks to value the property at a fair market value of \$138,000 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 \$148,600.00. Creditor Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$102,400.00. 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 6864 Ketterling Cr. Fair Oaks, 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 \$138,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

88. 13-34982-E-13 HUGO HERREROS MOTION TO VALUE COLLATERAL OF
TOG-3 Thomas O. Gillis WELLS FARGO BANK, N.A.
11-27-13 [13]

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 27, 2013. By the court's calculation, 48 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6864 Ketterling Cr., Fair Oaks, California. The Debtor seeks to value the property at a fair market value of \$138,000 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 \$148,600. Creditor Wells Fargo Bank, N.A.'s third deed of trust secures a loan with a balance of approximately \$102,400. 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 third deed of trust recorded against the real property commonly known as 6864 Ketterling Cr. Fair Oaks, 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 \$138,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

89. [11-29785-E-13](#) JAMES PRICE
JMC-3 Joseph M. Canning

MOTION TO APPROVE LOAN
MODIFICATION
11-25-13 [[52](#)]

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 25, 2013. By the court's calculation, 50 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 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 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 Approve the Loan Modification is granted. No appearance required.

Wells Fargo Bank, N.A., whose claim on the real property commonly known as 160 Arroyo Court, Vacaville, California the Plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's current monthly mortgage payment of \$1,954.10 (representing the principal, interest and tax, and insurance) to \$1,368.14 for the remainder of the Plan.

At the time of the filing of debtor's case the balance on the subject loan was \$286,391.00. The loan was a 30-year fixed with a maturity date of November 1, 2036. The modified principal, interest, taxes and insurance payments will be \$1,368.14 for the remainder of the Plan. Debtor has attached a Loan Modification Proposal Document that shows that Lender has proposed that Debtor's loan be modified to cover a modification term of 480 months, with the estimated post modification payment amount of \$1,368.14. The deferred principal balance will be \$64,141.33. The loan shall have a maturity date of November 1, 2053, and will be paid at 4% interest.

There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 Approve the Loan Modification 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 Debtor James Price is authorized to amend the terms of their loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 160 Arroyo Court, Vacaville, California, and such other terms as stated in the Modification Documents of Wells Fargo, filed as Exhibit "A," Docket Entry No. 55, in support of the Motion.

90. [13-28985-E-13](#) **SANTINO/JILL VIRAMONTES** **MOTION TO APPROVE LOAN**
CAH-1 **C. Anthony Hughes** **MODIFICATION**
11-26-13 [15]

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 26, 2013. By the court's calculation, 49 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 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 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 Approve the Loan Modification is granted. No appearance required.

Onewest Bank, FSB, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the to \$1,901.09. Onewest Bank, FSB holds a secured claim in real property commonly known as 2625 Blacker Road, West Sacramento,

Local Rule 9014-1(f)(1) Motion - 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 December 6, 2013. By the court's calculation, 39 days' notice was provided. 35 days' notice is required. That requirement was met.

Final Ruling: 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 Trustee having filed an opposition, the court will address the merits of the motion at the hearing. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to grant the Motion to Confirm the Modified Plan.
No appearance at the January 14, 2014 hearing is required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, Trustee opposes confirmation of the Plan because Trustee is uncertain of Debtor's ability to make the payments required under 11 U.S.C. § 1325(a)(6).

Debtor states in her Declaration (Dckt. No. 39), that she was hospitalized on July 12, 2013, and has been unable to return to work. She is not yet receiving disability benefits and is living with her sister who is providing all of her support.

Debtor did not submit statements of her current income or expenses. Debtor did not provide a declaration from her sister; Debtor did file a change of address, indicating that her current address is in St. Joliet, IL. Trustee is uncertain if the change in address will have any bearing on benefits that she has applied for.

The Debtor has provided her declaration testifying to her health conditions and her inability to return to work. She seeks to continue under the Chapter 13 Plan as modified, with monthly payments of \$162.00 for the remaining months of the Plan beginning in January 2014 and continuing through August 2015 (approximately 20 months, as computed by the court). The payments to be made under the Plan are for \$87.00 a month to North Star Credit Union for a claim secured by a 2005 Nissan Altima, fees for Debtor's counsel, and the Chapter 13 Trustee expenses. No other claims are provided to be paid through the Plan.

Trustee's Opposition to Motion

The Trustee's Opposition centers on whether the Debtor can show that the modification is feasible due to her not having any income as of filing

the motion (disability application having been filed, but no award having yet been issued).

Debtor's Reply

Debtor states that she has now moved to Illinois because of her congestive heart failure, after completing three years of this five year Plan. Debtor has been living with her sister who is providing housing and assisting with all of the Debtor's expenses. Declaration of Chantel Brown, Dckt. No. 39.

Debtor asserts that she has "properly serviced" this bankruptcy and has followed this Plan for over three years, and seeks modification to pay off a 2005 Nissan Altima in her Amended Plan. Debtor would like to modify the Plan to begin remitting payments of \$162.00 per month, starting January 25, 2014 and continuing for the remainder of the Plan. Debtor acknowledges that while she is awaiting disability payments, she is receiving \$189.00 in food stamps.

NorthStar Credit Union Motion for Relief

On January 7, 2014, NorthStar Credit Union filed a motion for relief from the automatic stay. Dckt. 45. The motion seek relief based on the Debtor's defaults in the plan payments and that the Debtor has no equity in the vehicle. The hearing on the Motion for Relief From the Automatic Stay is set for hearing at 1:30 a.m. on February 4, 2014.

The declaration of Regina Martynek, collections manager for NorthStar Credit Union states, based on "information and belief," that the vehicle is actually being used by the Debtor's son, not the Debtor. Schedule B filed by the Debtor also lists a 1998 Olds Aurora (+200k miles) owned by the Debtor. The declaration also includes Ms. Martynek testifying as that the NADA pricing guide for the 2005 Nissan Altima, to establish a value of \$4,300.00. NorthStar Credit Union did not provide the court with a copy of the NADA report as an exhibit, rendering the collection manager's testimony unreliable hearsay.

RULING

While the Debtor's evidence of feasibility is minimal, there is some in the reply testimony of the Debtor's sister. The monthly Plan payment is minimal (for which no objection has been raised by the Trustee). The original confirmed plan in this case provided for only a \$175.00 a month payment. Further, it appears that the only reason this case may well be in existence, rather than the Debtor seeking a "hardship discharge" pursuant to 11 U.S.C. § 1328(b), is to provide for paying NorthStar Credit Union more than the vehicle which secures its claim is worth.

In reality the auction value for this creditor is significantly less. Given the modest value to the Creditor, and if a third-party is actually using the vehicle, it appears that an agreed modification of the payment terms or a discounted cash payout should be achievable.

Though confirming the Plan, the Debtor still faces a possible motion for relief from the stay on the grounds that the car is not necessary for an effective reorganization and that it is no longer in the possession and control of the Debtor.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed adequate evidence in support of confirmation. 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 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 First Modified Chapter 13 Plan filed on December 6, 2013, 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.

93. [10-25992-E-13](#) JOHN/GABRIELA SERBAN
PGM-4 Peter G. Macaluso

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTORS'
ATTORNEY(S), FEE: \$620.00,
EXPENSES: \$0.00.
12-2-13 [[82](#)]

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 December 2, 2013. By the court's calculation, 43 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion for Compensation 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 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 for Compensation is granted. No appearance required.

FEES REQUESTED

Peter Macaluso, Counsel for the Debtors John and Gabriela Serban, makes an Additional Request for the Allowance of Fees and Expenses for \$620.00 in fees and \$0.00 in expenses in this case. The period for which the fees are requested is for the period of February 9, 2013 through March 19, 2013.

Description of Services for Which Fees Are Requested

Counsel spent 20.10 hours in obtaining confirmation, and 8.05 hours post-confirmation, 4.95 hours of which were anticipated and 3.10 hours which were unanticipated. Counsel's post-confirmation work included the filing of a motion to approve Debtors' loan modification, and subsequent correspondence and meetings with clients to maintain the case.

DISCUSSION

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 an attorney are "actual," meaning that the fee application reflects time entries properly charged as legal services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the legal services undertaken as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [legal fee] tab 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 is obligated to consider:

(a) Is the burden of the probable cost of legal 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 Counsel's services led to the successful negotiation and court approval of a loan modification their lender to reduce their monthly mortgage payments from \$3,312.50 to \$1,464.89 at 2.00% for a total of sixty months. Counsel's efforts enabled the reduction of Debtors' principal of \$313,611.39, which was deferred with no interest or monthly payments to be made on the amount. The court finds the services were beneficial to the estate and reasonable.

FEES ALLOWED

The hourly rates for the fees billed in this case are \$200.00/hour for counsel for 3.10 unanticipated, post-petition charges related to Counsel's preparation of a Motion to Approve Debtors' Loan Modification. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$620.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

Attorneys' Fees	\$620.00
Costs and Expenses	\$ 0.00

For a total final allowance of \$620.00 in Attorneys' Fees and Costs in this 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 for Allowance of Fees and Expenses filed by 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 Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Counsel for Debtors
Applicant's Fees Allowed in the amount of \$620.00

Applicants Expenses Allowed in the amount of \$0.00,

IT IS FURTHER ORDERED that this is a final award of fees pursuant to 11 U.S.C. § 330, and the Trustee is authorized to pay such fees from funds of the Estate as they are available.

94. [13-31392](#)-E-13 MANUEL HERNANDEZ
TJW-2

MOTION TO CONFIRM PLAN
11-8-13 [[50](#)]

CASE DISMISSED 11/19/13

Final Ruling: 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 Modify Plan 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 already been dismissed.

95. [13-22393](#)-E-13 VALERIE KEYS
UST-2

CONTINUED MOTION FOR ASSESSMENT
OF FINES AGAINST, AND FOR
FORFEITURE OF FEES BY, DIANE
LORE, PURSUANT TO 11 U.S.C.
SECTION 110
11-6-13 [[67](#)]

CASE DISMISSED 6/28/13

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*) and Diane Lore on November 6, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Assessment of Fines Against and for Forfeiture of Fees by Diane Lore 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 Motion for Assessment of Fines Against and for Forfeiture of Fees by Diane Lore is granted. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The United States Trustee ("UST") seeks to assess fines against and require the forfeiture of fees by bankruptcy petition preparer Diane Lore. The UST alleges that Lore is a petition preparer as defined by §110(a). A "bankruptcy petition preparer" is defined under 11 U.S.C. § 110(a), as follows,

(a) In this section--

(1) "bankruptcy petition preparer" means a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing; and

(2) "document for filing" means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

This definition is very broad in scope, excluding only an attorney for a debtor or an employee of, and directly supervised by, that attorney

for a debtor. The UST claims that Lore charged Valerie Keys \$5,600 to prepare the instant bankruptcy case for the Debtor, to do loan modification work, and to help her and her sisters obtain title to their family residence. The fee presumably also included preparation of a second bankruptcy for Valerie, which she was apparently not aware of, and a first bankruptcy for her sister Kimberly, which Kimberly was not aware of. See Declaration of Valerie J. Keys (Dckt. No. 69) and Declaration of Kimberly Watson (Dckt. No. 70).

The UST asserts that all of the fees charged by Lore should be subject to 11 U.S.C. § 110, as all services rendered were in furtherance of a scheme to file multiple incomplete bankruptcies to ward off a foreclosure against the family residence. The serial bankruptcies, states the UST, were designed to buy time in order to obtain a loan modification; clearing the title to the property was probably a condition to secure a loan modification. Trustee describes the services as "one ball of wax."

None of the fees charged by Lore were disclosed in the bankruptcy paperwork. The court sees no mention of Lore's name in any of Debtor's filings. UST states that although Lore may have given a portion of her fees to another person who "played a supporting role" in preparing the multiple bankruptcies, Lore had control of the money and she took credit for being the person in control of the operations. See Declaration of Valerie J. Keys (Dckt. No. 69) and Declaration of Kimberly Watson (Dckt. No. 70).

VIOLATIONS OF 11 U.S.C. § 110

Trustee asserts that Lore did not comply with the provisions of the five subsections of 11 U.S.C. § 110, and should be fined for each violation of the statute. The UST alleges the following violations:

(a.) 11 U.S.C. § 110(b)(1), which requires that a bankruptcy petition preparer sign and print the preparer's name and address on the document which was prepared for a debtor to be filed with a United States bankruptcy court or United States district court.

A review of the court docket, and Debtor's petition, schedules, Statement of Current Monthly Income and Means-Test Calculation, etc., show that Lore did not place her name, signature, and address on the bankruptcy documents that she prepared for filing on Debtor. Thus, Lore did not meet the requirements of 11 U.S.C. § 110(b)(1). Although Lore's signature should have appeared in more than one place, the UST is considering this as a single violation.

(b.) 11 U.S.C. § 110(c)(2) and (c)(2)(A), which require that a bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer's signature, an identifying number that identifies individuals who prepared the document. 11 U.S.C. § 110(c)(2)(A) states that the identifying number of the bankruptcy petition preparer shall be the Social Security account number of the officer, principal, responsible person, or partner of the bankruptcy petition preparer.

In violation of the requirements of 11 U.S.C. § 110(c)(2)(A), Lore did not provide her social security number and did not list the number on

the bankruptcy documents that Lore filed on Valerie's behalf. Again, the UST is treating this as a single violation.

(c.) In violation of 11 U.S.C. § 110(e)(2)(A) and (e)(2)(B), Lore offered Valerie Keys legal advice. 11 U.S.C. § 110(e)(2)(A) states that a bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, with legal advice defined by 11 U.S.C. § 110(e)(2)(B) as whether to file a petition, whether commencing a case under Chapter 7, 11, 12, or 13 is appropriate, whether the debtor's debts will be discharged, and debtor will be able to retain his/her car, home, or other property, and other legal assistance.

(d.) In violation of 11 U.S.C. § 110(f), which prohibits the use of the word "legal" or any similar terms in any advertisements by a bankruptcy petition preparer, Lore used the word "legal" on the letterhead for her business, "Lores Legal Services."

(e.) In violation of 11 U.S.C. § 110(h)(2), Lore did not file a declaration disclosing her receipt of \$5,600 or any part of that amount from Valerie Keys. Trustee argues that the \$800 per month which she charged was excessive. 11 U.S.C. § 110(h)(2) requires that a declaration under penalty of perjury by the bankruptcy petition preparer shall be filed together with the petition, disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor.

Lore did not disclose the fees that she charged Valerie Keys by declaration, and no such declaration was filed with the petition.

TREBLE DAMAGES

The UST requests that Lore's fines be tripled because Lore did not disclose her identity anywhere on the bankruptcy documents prepared for Keys. Section 110(l)(2)(D) provides that where the Court finds that a bankruptcy petition preparer "prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer", the "court shall triple the amount of a fine assessed" for violations of 11 U.S.C. § 110(b) through (h).

Because Lore did not list her name in any of Debtor's bankruptcy documents, UST argues that the fines assessed should be tripled, which Trustee calculates as the following: 5 violations, multiplied by the \$500.00 fine, and then tripled--arriving at a total of \$7,500.00.

FORFEITURE OF FEES

UST also requests that Lore forfeit her fees. Section 110(h)(3)(B) provides that all fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with subsections (b), (c), (d), (e), (f), or (g). As indicated above, UST maintains that Lore has violated subsections (b), (c), (e), and (f) of 11 U.S.C. § 110, and that Lore should be required to disgorge the \$5,600 she has received from Valerie Keys.

STATUTORY DAMAGES

Section 110(i)(1) provides, in relevant part that

If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on the motion of the . . . United States trustee . . . , and after notice and a hearing, the court shall order the bankruptcy petition preparer to pay to the debtor

(A) the debtor's actual damages; [and]

(B) the greater of -- (i) \$2,000; or (ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services . . .

Trustee argues that Lore committed acts in connection with this case which were fraudulent, unfair, and deceptive, warranting an order requiring Lore to pay statutory damages pursuant to 11 U.S.C. § 110(i)(1). Lore did not identify herself on Debtor's bankruptcy documents; did not disclose her receipt of \$5,600 fees from Valerie Keys; instructed that if anyone asked the sisters regarding their cases, and that they should state that they did their own work and did not receive assistance; filed bankruptcies for Valerie and Kimberly without their knowledge, consent, and signed their names on those petitions; and told Valerie Keys to ignore notices sent by the court.

Based on these acts, Trustee requests statutory damages assessed in the amount of \$2,000. In total, Trustee requests that Lore be ordered to pay Valerie Keys statutory damages of \$11,200 (twice the \$5,600 fees she received from Keys).

On December 3, the UST continued the hearing to January 14, 2013, to extend the deadline for Lore to respond by December 31, 2013. The court, however, has not received any opposition or evidence disputing Trustee's version of events. Trustee offers the Declaration of Valerie Keys, who states that a man named William Dedman contacted her when her family residence, located at 2011 Berg Avenue, Sacramento, was about to be foreclosed on. Dedman represented himself as a lawyer, and told Debtor that he knew a "'great lady' who did loan modifications" and could help Debtor and her sister keep their home. ¶4 of the Declaration of Valerie J. Keys (Dckt. No. 69). FN.1.

FN.1. The court notes that the California State Bar reports that a William Dedman, CSB # 39050, located in Sacramento, California, and the only person with that name listed with the California State Bar, was determined Not Eligible to Practice Law effective September 23, 2012, and disbarred effective February 8, 2013. The Debtor's declaration states that the Mr. Dedman she communicated with represented that he was an attorney and provided her with bankruptcy papers to sign.
[http://members.calbar.ca.gov/fal/Member/Detail/39050.](http://members.calbar.ca.gov/fal/Member/Detail/39050)

Debtor recounts how Lore collected Debtor's birth certificate, social security card, pay stubs, bank account information, tax returns, and other items, and instructed Debtor and her sister to inform people that she had prepared her bankruptcy petition on her own, and that she had not received any assistance from others. ¶9 of the Declaration of Valerie J. Keys (Dckt. No. 69). Lore charged Debtor a total of \$5,600.00, and demanded that Debtor pay Lore \$800.00 immediately for the first month. Debtor questioned the charges and Lore insisted that Debtor pay, though Lore did not monitor and stay active in Debtor's case.

Lore instructed Debtor to make plan payments to Lore, and not the Chapter 13 Trustee, and filed multiple bankruptcies on Debtor and Debtor's sister's behalf, of which both women were not aware. Debtor continued Notices of Incomplete Filings from the court, and probate documents for a case in the Sacramento County Superior Court that was not explained to Debtor by Lore. Debtor claimed that Lore and Dedman actively gave her legal advice and prepared legal documents throughout the bankruptcy and probate proceedings, much of which were inadequate and incorrect. Lore gave Debtor misleading legal advice and appeared to forge signatures on Debtor's petition paperwork and her statement of financial affairs. Declaration of Valerie J. Keys (Dckt. No. 69).

The Motion for Assessment of Fines Against, and for Forfeiture of Fees for Diana Lore, was properly noticed and served on Lore's home office (at the address identified by Debtor as Lore's home office, and additionally at the address that appears on Lore's driver's license), according to the UST's Certificate of Service (Dckt. No. 73). Lore has not, however, filed an opposition or a response to the Motion by the extended deadline of December 31, 2013. There has been nothing filed by way of opposition, and nothing to dispute Debtor, Debtor's sister, and the UST's factual contentions of what transpired.

The court has reviewed Debtor's paperwork, and finds that Lore did not properly identify herself, sign the bankruptcy documents, or disclose her fees in violation of the provisions of 11 U.S.C. § 110. She has misrepresented herself as a legal entity and dispensed misleading legal advice that hurt Debtor in her bankruptcy case. The court finds that Lore is a bankruptcy petition preparer, and that she has engaged in fraudulent and deceptive conduct in connection with her preparation of Debtor's bankruptcy.

The court shall issue an order (not 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 Assessment of Fines Against and for Forfeiture of Fees by Diane Lore filed by the U.S. 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 Motion for Assessment of Fines Against, and for Forfeiture of Fees by Diane Lore, is granted.

IT IS FURTHER ORDERED that Diane Lore pay the sum of \$5,600.00 to Valerie Jean Keys, the Debtor, as successor to the Chapter 13 Trustee, upon the dismissal of this case, upon the entry of this order. This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).

IT IS FURTHER ORDERED the court imposes \$7,500.00 in fines which shall be paid by Diane Lore to the United States Trustee for Region 17. The fines are due upon the issuance of this Order. This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).

IT IS FURTHER ORDERED that statutory damages in the amount of \$11,200.00 are awarded Valerie Jean Keys, the Debtor, and against Diane Lore, payment of which is due upon the issuance of this order. This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014).

Interest shall accrue and is payable on all of the obligations set forth in this order in the same manner and amount as provided for a judgment issued by the bankruptcy court.

96. [11-45395-E-13](#) **NADER SHAHCHERAGHI**
CAH-2 **C. Anthony Hughes**

MOTION TO MODIFY PLAN
11-20-13 [53]

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 20, 2013. By the court's calculation, 55 days' notice was provided. 35 days' notice is required. That requirement was met.

Final Ruling: 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. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 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 20, 2013 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.

97. 11-48695-E-13 DALE GAGEL AND SUZANNE CONTINUED OBJECTION TO CLAIM OF
JT-2 MAY MARY BRYAN, CLAIM NUMBER 8
John A. Tosney 8-29-13 [37]

Local Rule 3007-1(c) (1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 29, 2013. By the court's calculation, 61 days' notice was provided. 44 days' notice is required.

Final Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c) (1) and (d). 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 court's tentative decision is to continue the hearing on the Objection to Proof of Claim number 8 of Mary Bryan to 3:00 p.m. on March 4, 2014. No appearance at the January 14, 2014 hearing is required.

The Proof of Claim at issue, listed as claim number 8 on the Court's Official Registry of Claims, was filed by Mary Bryan and asserts a \$48,717.01 priority claim (11 U.S.C. § 507(a) (1) (A) or (B) Domestic Support Claim). Dale Gagel and Suzanne May ("Debtor") filed an objection to the claim which states with particularity the following grounds,

- A. Though filed as a secured claim and a priority claim, there is evidence of neither.
- B. The \$48,718.01 claim is based on money owed for a credit card obligation. The Debtor was to make the credit card payments.
- C. The Debtor's obligation to make the credit card payment is not a "support" obligation.

Objection to Claim, Dckt. 37.

Both Debtors filed a declaration testifying under penalty of perjury, based on their personal knowledge, to the following.

- A. The obligation owed to Creditor is from the dissolution of the marriage between Dale Gagel and the Creditor. (Though both Debtors are testifying, the court is presuming that when the reference is made to "ex wife" and "our marriage," it is Dale Gagel speaking and not Suzanne May. The parties can correct the court as to any mischaracterization of the testimony.)

B. The claim is not secured.

Declaration, Dckt. 39. No copies of any of the marital dissolution proceeding documents are provided by Debtor.

CREDITOR'S OPPOSITION

Creditor Mary Bryan opposes the Objection and argues that Debtor needs to fulfill his agreement that was determined in the Family Court in their divorce from 2007. Creditor states that Debtor Dale Gagel was to pay her \$825.00 a month to pay his portion of medical insurance, student loan, car loan, credit card and other charges generated during the marriage that she was obligated to pay pursuant to a divorce agreement. Creditor states Debtor Gagel defaulted on his payments to her in October of 2008.

Creditor explained she had some difficulty in filing a claim and accidentally filed both 7-1 and 8-1, 8-1 being the one with the supporting documents and 7-1 being solely the cover page. Creditor believes the debt should be secured and cannot be dismissed in a bankruptcy.

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).

Here, the Proof of Claim filed by Creditor indicates both a secured and a priority debt. Such could be possible, and is commonly seen with the Internal Revenue Service and the California Franchise Tax Board. Proof of Claim Number 8 filed by Creditor does not have any documents evidencing either a judicial or consensual lien having been granted.

With respect to the contention that the claim is entitled to priority status, the situation has been made murky by the parties. 11 U.S.C. § 507(a)(1) allows first priority for allowed unsecured claims for domestic support obligations that as of the date of the filing of the petition are owed to or recoverable by a spouse, former spouse or child of the debtor. 11 U.S.C. § 101(14A) provides that a "domestic support obligation" means a debt that accrues before, on or after the date of the order for relief, that is owed to a former spouse in the "nature of alimony, maintenance, or support...without regard to whether such debt is expressly so designated" of such former spouse.

Whether an obligation is in the nature of support and thus qualifies as a support under bankruptcy law is a question of federal law. *In re Sternberg*, 85 F.3d 1400, 1405 (9th Cir. 1996), *rev'd on other grounds, In re Bammer*, 131 F.3d 788 (9th Cir. 1997). In determining whether an

obligation is a domestic support obligation entitled to priority under § 507(a), the court looks to the interpretation of domestic support obligation discussed in cases relating to the dischargeability of support under former § 523(a)(5). *In re Chang*, 163 F.3d 1138, 1142 (9th Cir. 1998).

The issue to be determined is whether the obligation is in the nature of support. In making that determination, "the court must look beyond the language of the decree to the intent of the parties and to the substance of the obligation." *Shaver v. Shaver*, 736 F.2d 1314, 1316 (9th Cir. 1984). When the obligation is created by a stipulated dissolution judgment, the intent of the parties at the time the settlement agreement is executed is dispositive. *Sternberg*, 85 F.3d at 1405. Factors to be considered in determining the intent of the parties include whether the recipient spouse actually needed spousal support at the time of the divorce, which requires looking at whether there was an "imbalance in the relative income of the parties" at the time of the divorce. *Id.* Other considerations are whether the obligation terminates on the death or remarriage of the recipient spouse, and whether payments are made directly to the spouse in installments over a substantial period of time. *Id.*; *Shaver*, 736 F.2d at 1316-17. The labels the parties used for the payments may also provide evidence of the parties' intent. *Sternberg*, 85 F.3d at 1405.

Here, the parties have chosen language for the Dissolution Judgment which are cryptic at best. Part 1 of the attached agreement states,

"1. Spousal Support:

a. Spousal Support is reserved for purposes of enforcement of the payment of debt only, until debts are paid in full on April 30, 2011 (as set forth in Section 2.h.(i), the date of which is contingent on no missed payments."

b. If necessary for payment of debts, any spousal support ordered shall be without tax consequences to either party.

2. Division of Property

h. Equalization Payment:

i. To equalize the payment of the community debts, beginning May 1, 2007, Husband shall pay to wife \$825 per month (\$412.50 on the 5th of the month and \$412.50 on the 21st of the month) for a period of 48 months. This amount includes Husband's share of the community debt, Husband's separate debt and reimbursements owed to Wife. The last payment to Wife shall be made in April 2011, irrespective of the balances on the credit cards awarded to Wife.

ii. Should Wife decide, at any point during the 48 month, to file bankruptcy and the debts are discharged, Husband shall no longer owe the \$825 per month and shall only owe a total of \$3,261.18 to Wife for the reimbursement portion of the total. If Wife

files for Chapter 13 bankruptcy, Husband's share of the debt will need to be recalculated pursuant to what is actually being paid by Wife. If Wife does file bankruptcy, she shall notify Husband, in writing, within 72 hours of filing."

Proof of Claim Number 8, attachment.

This court does not understand what it means to say that "Spousal support is reserved for purposes of the payment of debt only...." Possibly, as the Debtors argue, the debt payments required by the Debtor were only for purposes of equalizing the assets and liabilities, and not support. On the other hand, the State Court judge may have been saying that so long as the debts are being paid by the Debtor, the State Court judge was reserving requiring support payments. For state law purposes, it is not necessary for characterize an obligation as support for the recipient spouse being able to enforce the monetary obligation.

There is little judicial economy or the economy of the parties to try and recreate the specialized State Court dissolution proceedings before this bankruptcy judge. Further, these family law, support matters are ones in which the federal courts give due deference to the state courts, so long as the state court proceedings can be diligently prosecuted in a timely manner.

At the initial hearing of October 29, 2013, the court ordered the parties to proceed in state court to obtain the issuance or determination of the obligations of the parties and any spousal support obligation pursuant to paragraph 1 of the Judgment of Dissolution in California Superior Court, for the County of Sacramento, case no. 05FL08596.

The court ordered that on or before December 16, 2013, Mary Bryan should file such motions or other proceedings to obtain a determination that the monetary obligations, or whatever portion there is so ordered by the State Court judge, is a Spousal Support obligation, and the necessary findings of fact and conclusions of law for this court to apply that determination to federal law in this bankruptcy case. As the court was unable to interpret the meaning of spousal support as set forth in the state court judgment, the court allowed a continuance of 60-90 days for the parties to return to family court and have the judge retaining jurisdiction clarify the judgment.

Clarification of Judgment Hearing Date Set

On December 13, 2013, Mary Bryan filed a document from the Family Law Court of the Sacramento County Superior Court, showing that a hearing date on Creditor Bryan's request for a clarification of judgment from the family law court has been set for January 22, 2014. The document shows that Bryan has requested a clarification of the Judgment of Dissolution dated October, 2007. The family court is being asked to determine whether or not the obligation arising out of Joint Debtor Dale Gagel and Bryan's settlement agreement, where Debtor agreed to pay half of the outstanding credit card and other obligations, constitutes spousal support.

The court will further continue this Objection to allow Creditor and Debtor to obtain a clarification of the judgment of dissolution from the originating family court. The court continues the hearing to March 4, 2014, at 3:00 p.m. to afford the state court and parties the ability to address any supplemental pleading and evidentiary issues, and for the state court to issue its ruling prior to another hearing.

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 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 Objection to Claim is continued to 3:00 p.m. on March 4, 2014.

98. [09-32596-E-13](#) **ALEJO/MARIA GUTIERREZ** **MOTION TO APPROVE LOAN**
WW-1 **Mark A. Wolff** **MODIFICATION**
11-25-13 [49]

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 25, 2013. By the court's calculation, 50 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 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 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 Approve the Loan Modification is granted. No appearance required.

Green Tree Servicing, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to \$938.15. Green Tree has proposed a loan modification with the following terms: a new principal balance of \$139,976.94, with a commitment term of 240 months. the monthly payment, principal, and interest will be \$733.98 without escrow, with an interest rate of 2.750% for 5 years; then 3.750% for 1 year, and 4.250% for the remainder of the term. The property taxes and insurance per month will be \$204.17, with a monthly payment of \$938.15 beginning on November 1, 2013.

Debtors' previous plan payment was \$1,500.00; Debtors will be modifying their Plan to pay for the mortgage directly. Debtors' payment under the First Modified Plan will be \$500.00. The total Debtors will be paying for the mortgage and plan payment will not change.

There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification 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 Approve the Loan Modification 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 Debtors are authorized to amend the terms of their loan with Green Tree Servicing, LLC, which is secured by the real property commonly known as 8134 Primoak Way, Elk Grove, California, and such other terms as stated in the Modification Agreement filed as Exhibit "B," Docket Entry No. 52, in support of the Motion.

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 25, 2013. By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

Final Ruling: 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. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 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 25, 2013 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.

100. [13-30296-E-13](#) EUBLOGIO OLIVARES
SJS-3 Scott J. Sagaria

MOTION TO VALUE COLLATERAL OF
RBS CITIZENS, N.A.
12-11-13 [[40](#)]

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, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 428 Caldarella Circle, Roseville, California. The Debtor seeks to value the property at a fair market value of \$393,821.00 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 \$398,685.00. Creditor RBS Citizens, N.A.'s second deed of trust secures a loan with a balance of approximately \$19,264.00. 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 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 RBS Citizens, N.A. secured by a second deed of trust recorded against the real property commonly known as 428 Caldarella Circle, 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 \$393,821.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

101. 10-34398-E-13 JASON/PRISCILLA MOORE
JT-2 John A. Tosney

MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK, N.A.
12-10-13 [33]

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 10, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 is granted and creditor's secured claim is determined to be \$0.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2446 Freitas Way, Fairfield, California. The Debtor seeks to value the property at a fair market value of \$315,000.00 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 \$402,637.00. Creditor JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$79,000.00. 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 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 JPMorgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 2446 Freitas Way, Fairfield, 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 \$315,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(1) Motion - 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, 2013. By the court's calculation, 69 days' notice was provided. 42 days' notice is required. That requirement was met.

Tentative Ruling: 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). Both the Trustee and Creditor Bank of New York Mellon having filed an opposition, 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 tentative decision is to deny the Motion to Confirm the Amended Plan. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee and Creditor Bank of New York Mellon have filed opposition to confirmation of the Plan.

Creditor's Opposition

Creditor holds a security interest in the real property commonly known as 7337 Hartley Road, Vacaville, California. Pursuant to 11 U.S.C. §1322(b)(5), the plan does not provide for the curing of the default on Creditor's claim. Debtor has not provided for any arrears. The arrearage on Secured Creditor's claim is in the approximate amount \$19,973.11. Debtor states that she will submit an application for loan modification that will address the arrears. According to Creditor's records, however, there is no loan modification under review.

Additionally, the Plan does not provide how Debtor will be able to make all payments under the Plan and to comply with the Plan under 11 U.S.C. § 1325(a)(6). According to the plan, Debtor will make monthly payments of \$150.00 for 2 months, then \$1,400.00 for 58 months to the Trustee for a base plan amount of \$81,500.00. However, based on Debtor's Schedules, Debtor has a monthly net income of only \$159.00; this amount is insufficient to fund the plan once the arrears on Creditor's claim, an additional \$19,973.11, is fully provided for.

Trustee's Opposition

Trustee opposes confirmation of the Plan on the following grounds:

1. The Amended Plan calls for total payments of \$150.00 through October 2013, then \$1,400 per month beginning on November 25, 2013. Debtor is \$1,400.00 delinquent in Plan payments to Trustee to date, and the next scheduled payment of \$1,400.00 is due on December 25, 2013. The case was filed on August 19, 2013, and the plan in Section 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13.
2. Debtor has paid \$150.00 into the Plan to date. The Plan does not provide for the secured claim of the Franchise Tax Board. Creditor filed a secured Proof of Claim on November 22, 2013, listing a secured debt of \$16,382.59. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment may indicate that Debtor either cannot afford the Plan payments because of additional debts, or that Debtor wishes to conceal the proposed treatment of a creditor.
3. Debtor may have not filed all pre-petition tax returns required for the four years preceding the filing of the petition pursuant to 11 U.S.C. § 1308 and 1325(a)(9). The Proof of Claim filed by Franchise Tax Board indicates that returns have not been filed for 2001, 2002, 2003, 2004, 2005, 2006, and 2010.
4. Section 2.09 of the Amended Plan lists a 2003 Dodge in Class 2A. This vehicle is not listed on Debtor's Amended Schedules B and C, and the debt is not listed on the Amended Schedule D.

Debtor's Reply to Trustee and Creditor's Opposition

Debtor states that she retained counsel and filed a Substitution of Attorney on October 25, 2013. Debtor claims that she provided 2011, 2012 taxes and pay advices to the Chapter 13 Trustee on October 25, 2013. Debtor will provide the allegedly missing returns for 2001-2006, & 2010.

Debtor states that the Plan provides a Adequate Protection Payment while the creditor processes the TARP loan modification. Debtor intends to be current under the proposed plan on or before the date of this hearing. Debtor also acknowledges that she must re-file the missing tax returns with the Franchise Tax Board, and then after they are processed, file a new plan as appropriate.

Debtor's Reply does not, however, address the entirety of Creditor and Trustee's concerns. The court is uncertain that Debtor can afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's First Amended Plan proposes monthly plan payments of "\$ 150.00 through 10/13, \$1,400.00 X 58 months starting 11/13," but Debtor's Schedule I shows that Debtor's monthly net income is only \$159.00. Debtor's Plan also does not provide for the arrearage on Creditor Bank of New York Mellon's claim, which is the holder of a deed of trust on Debtor's property

located at 7337 Hartley Road, Vacaville, California. The arrearage on that claim is in the approximate amount \$19,973.11.

Additionally, as Trustee states, the vehicle listed in the Amended Plan is not provided for in Debtor's Amended Schedules B and C, and the debt is not listed on Debtor's Amended Schedule D. Based on the manifold deficiencies that have not been corrected or addressed by Debtor's response and supplementary evidence, the amended 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.

103. [10-27399-E-13](#) DAN GOODLOW
PGM-3

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTOR'S
ATTORNEY(S), FEES: \$9,465.00,
EXPENSES: \$0.00
11-26-13 [[68](#)]

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 26, 2013. By the court's calculation, 49 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion for Compensation 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 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 for Compensation is granted. No appearance required.

FEES REQUESTED

Peter Macaluso, Counsel for the Debtor Dan Goodlow, makes an Additional Request for the Allowance of Fees and Expenses for \$9,465.00 in fees and \$0.00 in expenses in this case for an adversary proceeding and in connection with the modified plan. The period for which the fees are requested is for the period of April 11, 2012 through September 4, 2013.

Counsel has accepted a "flat fee" of \$3,500.00 in this case for representing the Debtor. Local Bankruptcy Rule 2016-1(c)(1), Order Confirming Plan, Dckt. 17. However, due to additional substantial and unanticipated work legal services which were required, Counsel asserts the right to additional fees pursuant to Local Bankruptcy Rule 2016-1(c)(3). The Chapter 13 Trustee has filed a statement of non-opposition. January 10, 2014 Docket Entry.

Description of Services for Which Fees Are Requested

Debtor's case was confirmed on May 27, 2010. Counsel asserts this motion to modify the Chapter 13 Plan was unanticipated, as the Trustee filed a Motion to Dismiss case. Debtor sought to modify his previously confirmed plan because of a state court restraining order that was entered against

him. Title to his property was allegedly transferred to others without his knowledge.

The fees relating to the modified plan, which was complicated by the Adversary Proceeding, total \$1,620.00, which consists of 8.10 hours billed by counsel at a \$200.00 hourly rate.

To modify the plan, it was necessary for the Debtor to commence an adversary proceeding to determine the estate's interest in real property commonly identified as the "Bald Creek Road Property." Adv. No. 12-02195. This Adversary Proceeding involved eight parties (including the Plaintiff-Debtor). Counsel and the other attorneys worked through the parties, dismissing those as appropriate to focus the litigation. This litigation involved ex-spouses and children, all apparently asserting various interests in the property.

Though the parties appeared to be nearing a settlement a year into the litigation, one of the key parties was unable to proceed. Due to lack of communication, her counsel sought and was authorized to withdraw from the representation of her in this Adversary Proceeding. 12-02195, Civil Minutes and Order authorizing withdrawal of counsel, Dckt. 72, 74. At the hearing on the motion to withdraw, the court was advised that it was likely that this issue between the Debtor and his ex-spouse (and children) may well likely have to be resolved in the California Superior Court. The Fees requested for the Adversary Proceeding are \$7,845.00, which are computed for 26.15 hours at the hourly rate of \$300.00.

DISCUSSION

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

- (a) Is the burden of the probable cost of legal 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 Counsel has been assisting Debtor in unanticipated issues arising from the injunction issued against him, and a property transfer that was effected without Debtor's knowledge. Debtor claims that a domestic restraining order was issued against him, and an unknown transfer of title to the property (property of the bankruptcy estate) occurred, and Debtor has hired an attorney to represent him, presumably with respect to the restraining order and title issue. In support of the Motion the Debtor has provided current financial information using the Schedule I and J forms filed as Exhibits 1 and 2. Dckt. 40.

Although unresolved issues raised by the Chapter 13 Trustee have not yet been addressed by Debtor, and the issues surrounding the ownership of the real property in the associated adversary proceeding case have not been resolved, Counsel is attempt continued settlement negotiations over the ownership interest of the Bald Creek Road Property.

The Chapter 13 Trustee has filed a statement of non-opposition to Counsel's request for additional fees in this case.

FEES ALLOWED

The hourly rates for the fees billed in this case are \$200.00/hour for counsel. Counsel spent 8.10 hours on preparing and attending hearings for the Motion to Modify Plan, and 26.15 hours to pursue the Adversary Proceeding. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$9,465.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

Attorneys' Fees	\$9,465.00
Costs and Expenses	\$ 0.00

For a total final allowance of \$9,465.00 in Attorneys' Fees and Costs in this 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 for Allowance of Fees and Expenses filed by 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 Peter Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Counsel for Debtor
Applicant's Fees Allowed in the amount of \$9,465.00
Applicants Expenses Allowed in the amount of \$0.00,

IT IS FURTHER ORDERED that this is a final award of fees pursuant to 11 U.S.C. § 330, and the Trustee is authorized to pay such fees from funds of the Estate as permitted by the Chapter 13 Plan and Bankruptcy Code. Counsel may make supplement application for additional substantial and unanticipated fees, if any. The court

approves the fees pursuant to 11 U.S.C. § 330 to avoid counsel and the estate incurring the expense of a "final approval" of these fees if no other substantial fees are incurred in this case.

104. [10-34099-E-13](#) JULIAN/VERONICA CERVANTES MOTION TO DISMISS CASE OR TO
IRS-1 John M. O'Donnell CONVERT CASE FROM CHAPTER 13 TO
CHAPTER 7
11-19-13 [[93](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on November 19, 2013. By the court's calculation, 56 days' notice was provided. 28 days' notice is required. That requirement was met.

Final Ruling: The Motion to Convert has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtors having filed an opposition, 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 hearing on the Motion to Convert is continued to February 4, 2014, at 3:00 pm. No appearance is required.

The Internal Revenue Service moves, pursuant to 11 U.S.C. § 1307, for a dismissal for cause of Debtors' Chapter 13 Case, or in the alternative, conversion to a Chapter 7. The Internal Revenue Service ("Service") filed a claim in this case on July 14, 2010, and has subsequently amended the claim on a few occasions, with the last amendment made on June 24, 2011. The claim totals \$32,393.97. The basis for the claim is unpaid taxes. The United States seeks to dismiss this case for cause pursuant to 11 U.S.C. § 1307(c).

11 U.S.C. § 1307(c) provides that the court may, on request of a party in interest or the United States trustee and after notice and a hearing, convert a Chapter 7 or Chapter 13 Case or convert the case, whichever is in the best interests of creditors and the estate, for cause. 11 U.S.C. § 1307(c) enumerates the following as factors that constitute cause for the conversion or dismissal of a Chapter 7 or 13 case:

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28...;

- (4) failure to commence making timely payments under section 1326 of this title...;
- (6) material default by the debtor with respect to a term of a confirmed plan;

Additionally, as the United States explains, Local Rule 3015-1(b) (4) and Debtors' plan requires them to comply with their duties under applicable non-bankruptcy to timely file tax returns and pay taxes due. The United States claims that Debtors have not done so. Specifically, Debtors incurred an income tax liability for the 2011 year. Debtors have also incurred an employment tax liability for the third quarter of 2012. Debtors have not filed an income tax return for the 2012 year and several employment tax returns. Declaration of Insolvency Specialist Rhonda Roberts (Dckt. No. 95).

Debtors owe \$43,761.63 for 2011 income tax and \$9,571.28 for the employment tax liability. Debtors not made any estimated tax payments on their income tax liabilities and have not made any tax deposits with respect to their employment tax liabilities. Debtors have not paid their federal income tax liabilities, rendering them in violation of their plan and Local Bankruptcy Rule 3015-1(b) (4).

Federal law additionally requires that debtors and trustees to operate businesses within the bounds of other applicable laws and to pay taxes to the same extent as a taxpayer not operating under the control or authority of a United States Court. 28 U.S.C. §§ 959(b) and 960. The United States asserts that on this basis, Debtors are in violation of sections 959(b) and 960, and that the case should be converted for their non-payment on the Service's claim, and their default with respect to the terms of the confirmed plan. The United States argues that Debtors should not be allowed to benefit from one portion of federal law, the Bankruptcy Code, while at the same time ignore their duties under other federal law, i.e., the Internal Revenue Code.

Debtor's Opposition

Debtors file an opposition to the Motion to Dismiss, stating that they had an issue with their prior Certified Public Accountant preparing and filing all appropriate personal and business tax returns. Debtors now submit that all necessary and appropriate returns have now been prepared and filed.

Stipulation, filed on January 7, 2014

The Internal Revenue Service and Debtors entered a stipulation, dated January 7, 2014, to continue the hearing on the Motion to Dismiss to February 4, 2014, so that Debtors can become current in filing and payment of the post-petition liabilities.

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 Convert 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 Convert is continued to February 4, 2014, at 3:00 pm.

105. [13-35991](#)-E-13 RAMON CRUZ

**STATUS CONFERENCE RE: CHAPTER
13 VOLUNTARY PETITION
11-22-13 [[1](#)]**

Debtor's Atty: Karl-Fredric J. Seligman

Notes:

Status Conference set by order filed 1/3/14 [Dckt 38] [amended order clarifying time of hearing filed 1/6/14, Dckt 40]

Order Transferring Case from the Northern District of California filed 12/13/13 [Dckt 19]

Motion to Extend Automatic Stay as to All Creditors filed 12/13/13 [Dckt 17]; Ex Parte Motion to shorten time filed 12/13/13 [Dckt 18]; Order denying motion to shorten time filed 1/3/14 [Dckt 38]

Amended Application to Pay Filing Fees in Installments filed 12/13/13 [Dckt 22] [six previous applications filed 11/22/13, 11/29/13, 12/4/13, 12/6/13, 12/9/13, 12/11/13]

Ex Parte Motion to Vacate Order to Transfer Case and Discharge Order to Show Cause filed 12/14/13 [Dckt 23]

Application/Motion to Extend Time to file required documents filed 12/16/13 [Dckt 25] [two previous applications filed 12/6/13, 12/13/13]

Order to Show Cause re Dismissal of Case or Imposition of Sanctions Combined with Notice Thereof re failure to pay one or more installments filed 12/30/13 [Dckt 36]