

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Chief Bankruptcy Judge  
Sacramento, California

February 24, 2015 at 2:00 P.M.

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1. [15-20002](#)-C-13 BRIAN SANCHEZ MOTION TO VALUE COLLATERAL OF  
FF-1 Gary Fraley NATIONAL NOTE EQUITIES, LLC  
1-14-15 [[10](#)]

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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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 January 14, 2015. Twenty-eight days' notice is required.

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

**The Motion to Value secured claim of National Note Equities, LLC, "Creditor," is granted.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7110 Gladwin Way, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$350,000 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 \$440,842.33. Therefore, the respondent National Note Equities, LLC's 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 National Note Equities, LLC's secured by a second deed of trust recorded against the real property commonly known as 7110 Gladwin Way, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$350,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

2. [14-32012](#)-C-13 BENJAMIN CAPULONG  
APN-1 Diana Torres-Brito

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
1-28-15 [[26](#)]

**Also #3**

**Also #3**

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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The case having previously been dismissed, the Objection is 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 of the plan by Wells Fargo Bank, N.A., 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 moot, the case having been dismissed.

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3. [14-32012](#)-C-13 BENJAMIN CAPULONG  
DPC-1 Diana Torres-Brito

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
1-28-15 [[22](#)]

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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The case having previously been dismissed, the Objection is 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 of the plan by Chapter 13 Trustee, 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 moot, the case having been dismissed.

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4. [14-23313](#)-C-13 PAUL/LYNDA FANFELLE  
DPC-2 Peter Macaluso

OBJECTION TO DEBTORS' CLAIM OF  
EXEMPTIONS  
1-12-15 [[89](#)]

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 12, 2015. Twenty-eight days' notice is required. That requirement was met.

The Objection to Debtors' Claim of Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Objection to Debtors' Claim of Exemptions is sustained.**

The Chapter 13 Trustee objects to two exemptions claimed by Debtors, including:

(1) Bank Accounts. Trustee objects to Debtors' claim of exemption for nine (9) bank accounts listed in trust with a combined value of \$2,949.84 listed on Debtors' amended schedule B. On Debtors' amended schedule C, Debtors exempt the "trust bank accounts" under CCP § 704.070, exempting 100% instead of specifying a specific amount. Trustee objects on the basis that it does not appear that Debtors have exhibited that they are entitled to this exemption.

CCP § 704.070 permits an exemption of up to 75% of paid earnings (paid to the employee during the 30-day period ending on the date of the levy) from deposit accounts that are "levied upon or otherwise sought to be subjected to the enforcement of a money judgment if prior to payment to the employee they were not subject to an earnings withholding order or an earnings assignment order for support." Here, Debtors have not indicated how long these monies have been held in the accounts and are attempting to

exempt 100% rather than specifying an amount claimed as exempt equal to 75%.

(2) Vehicles. Trustee objects to Debtors' claim of exemption for two (2) vehicles listed on amended schedule B (four total vehicles listed—a 2000 Toyota Sienna; a 2003 Toyota Tundra; a 2004 Subaru Outback; and a 2014 Hyundai Santa Fe). On amended schedule C, Debtors exempt (1.) \$2,500 in the 2000 Toyota Sienna under CCP § 704.060(a)(3), and (2.) \$8,000 in the 2003 Toyota Tundra under CCP § 704.060(a)(3). Trustee objects to these two exemptions on the basis that they appear to exceed the allowance provided under the exemption.

CCP § 704.060(a)(3) permits an exemption for twice the amount of \$6,075 for a debtor and spouse "for use in the exercise of the same trade, business, or profession by which both earn a livelihood." Here, Debtor Paul Fanfelle reports employments as a project manager at Hock Construction. Debtor Lynda Fanfelle reports self-employment operating Crazy for Yogurt, Inc. Schedule I does not report joint operation of Crazy for Yogurt, and Debtors are not entitled to the two vehicle exemptions under CCP § 704.060(a)(3).

#### **DEBTORS' RESPONSE**

Debtors respond to each of Chapter 13 Trustee's objections. First, as to the Bank Account exemption, Debtors state that they have amended and corrected the exemption to the 75% limit. Second, as to the vehicle exemptions, Debtors state that they have instead exempted one vehicle under CCP § 704.010 in the amounts of \$1,320 and \$1,580, and the other vehicle under CCP § 704.060(a)(3) in the amount of \$6,680.

Finally, Debtors defend their use of CCP § 704.060(a)(3) exemption, stating that while it is true that Debtor Paul Fanfelle is employed as a project manager, the business is a jointly owned entity for which he responds to repair of equipment, delivery needs between cities, advises as to various governmental entities, and provides reasonable and necessary services to the operations of the community entity.

#### **DISCUSSION**

While Debtors have resolved Trustee's issue with exceeding the exemption permissible under CCP § 704.010, Debtors' use of the CCP § 704.060(a)(3) exemption remains at issue. Trustee asserts that because Debtor Paul Fanfelle is employed separately from Debtor Lynda Fanfelle, they are not entitled to the exemption. Debtors assert that because Crazy for Yogurt is a jointly owned enterprise, and because Debtor Paul Fanfelle aids with various business tasks, they are entitled to use of the exemption. Debtors provide a joint declaration in support of their response to Trustee's objections.

California Code of Civil Procedure § 704.060(a)(3) authorizes a debtor to exempt tools of the trade up to an aggregate equity value of double \$6,075 if such tools are "reasonably necessary" to and "actually used" by the debtor and debtor's spouse in the exercise of the same trade, business, or profession by which both earn a livelihood. CCP § 704.060(a)(3) This section permits the exemption of "one commercial motor vehicle[.]" *Id.*

The court is disinclined to accept Debtors' claim of this exemptions for two reasons: first, because Debtors do not appear to qualify for the exemption for debtor and spouse under CCP § 704.060(a)(3) as they do not

appear to collectively "earn a livelihood" from the Crazy for Yogurt business; and second, even if the court were to accept that Debtors qualify for this double exemption, Debtor husband's use of his vehicle does not appear to be "reasonably necessary" or "actually used" in the exercise of their business.

To the first point, Courts have interpreted the phrase "by which the debtor earns a livelihood" as meaning "his principal source of income when he has work . . . ." *In re Vigil*, 101 B.R. 189, 191 (Bankr. N.D. Cal. 1989) (discussing the phrase "by which the debtor earns a livelihood" in a separate context).

It is clear that Debtor Paul Fanfelle does not derive his principal source of income from Crazy for Yogurt (and it is even questionable if Debtor Lynda Fanfelle qualifies under this definition). As Chapter 13 Trustee points out, Debtors' schedule I does not report joint operation of Crazy for Yogurt, and in fact lists Debtors as employed separately from each other. (Dkt. 53) (it is unclear if this is an amended or supplemental schedule I, as Debtors have marked that it is both). Moreover, Debtor Paul Fanfelle's "primary source of income" is earned from his employment as a project manager, pulling into the household over \$8,000 per month, while the Crazy for Yogurt business appears to provide Debtors only \$50. It is clear from Debtors' own schedule I that Debtor Paul Fanfelle does not earn "a livelihood" from taking part in operation of this business.

Second, the court takes issue with the extent to which the exempted vehicle is "reasonably necessary" and "actually used" by Debtors in the exercise of their business. In ascertaining whether a vehicle is a "tool of the trade," the court must examine the necessity of the vehicle to the particular trade, and even whether the "occupation of the owner is uniquely dependent on its use." *In re Rawn*, 199 B.R. 733 (Bankr. E.D. Cal. 1996) (citing *In re Dubrock*, 5 B.R. 353 (Bankr. W.D. Ky. 1980) (noting that *Dubrock* is not a California case, but acknowledging that it echoes the "necessity" component to constitute a "tool of trade"). For example, in *In re Rawn*, the court rejected mechanical engineer's claim that his vehicle was a tool of the trade because he required transportation to and from work, noting that a commute was not in and of itself necessary to the execution of his trade. *Id.* at 736.

Here, similar to the Debtors in *In re Rawn*, Debtors have offered scarce evidence providing that the vehicle claimed exempt is a necessary tool of the Crazy for Yogurt business. Debtor Laura Fanfelle states in her declaration that her husband participates in the business along with business decisions by "repairing broken items, making emergency deliveries and responses to county and area entities in order to remain in compliance and avoid liabilities on an ongoing basis." The only use of the vehicle identifiable in Debtors' own declaration can be to make "emergency deliveries." The court questions whether this use is, in and of itself, necessary to the execution of the Crazy for Yogurt business.

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 Exemption filed by the Chapter 13 Trustee having been presented to the court, and upon review

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

**IT IS ORDERED** that the Objection is sustained.

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 12, 2015. Forty-two days' notice is required. That requirement was met.

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

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. Chapter 13 Trustee opposes Debtors' motion to confirm plan on the basis that:

1. Debtors cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtors' plan relies on the pending Motion to Value the secured claim of Chase Bank's 2<sup>nd</sup> DOT secured by 6537 Cowboy Way and Chase Bank's 2<sup>nd</sup> DOT secured by 8194 Sunrise Blvd. Debtors have not filed motions to value collateral, and if these motions are not filed or granted, Debtors lacks sufficient monies to pay the claim in full.
2. Debtors propose to pay Labor Commissioner in Class 5 of the Plan, which should be paid a pro rata share of the plan payments, however the Debtor specifies a dividend of \$136.82 in the Additional Provisions of the plan. Additionally, Debtors propose specific dividend for Trustee administrative costs (\$255.75 for months 1-12; \$285.76 for months 13-24; \$473.39 for months 25-60). However, these amounts may not be accurate as Trustee's compensation fee may change throughout the life of the

case.

3. Debtors' plan does not provide how Debtors will be able to make all payments under the plan. 11 U.S.C. § 1325(a)(6). Debtors owns a care home known as Divine Family Care, LLC, and list their income from the business at negative \$700 per month. However, Debtors are proposing plan payments that increase throughout the life of the plan without providing evidence of how they intend to do so.
4. Debtors' plan will exceed sixty (60) months, the maximum amount of time allowed. 11 U.S.C. § 1322(d). Debtors' plan proposes to complete in 60 months, however, according to the Trustee's calculations, the plan will complete in 69 months. Plan proposes payments of \$4,518.50 for 12 months to \$5,048.50 for 12 months, then \$8,363.14 for 36 months, totaling \$415,877.04. In calculating the amount Debtor is proposing to actually pay in the plan, total debts to be paid total \$430,397.84 and does not include 5.4% Trustee compensation for fees, mortgage arrears, and labor commissioner.

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

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

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

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

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

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6. [15-20217](#)-B-13 MICHAEL/ROSE LARIVIERE  
MET-1 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
1-21-15 [[18](#)]

**Also #7**

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Continued to February 23, 2015 @ 1:30 p.m. to Department A.  
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7. [15-20217](#)-B-13 MICHAEL/ROSE LARIVIERE MOTION TO AVOID LIEN OF  
MET-2 Mary Ellen Terranella CITIBANK (SOUTH DAKOTA), N.A.  
1-21-15 [[12](#)]

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Removed from Calendar. Matter resolved at February 18, 2015 at 10:00 a.m. in  
Department B.

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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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 January 7, 2015. Forty-two days' notice is required. That requirement was met.

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

**The Motion to Confirm the Amended Plan is granted.**

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on January 7, 2015 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.

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9. [14-29021](#)-C-13 WILLIAM HINTE  
SJS-1 Scott Sagaria

MOTION TO AVOID LIEN OF MIDLAND  
FUNDING, LLC  
1-19-15 [[30](#)]

**Also #10**

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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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 January 19, 2015. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Avoid Lien is granted.**

A judgment was entered against the Debtor in favor of Midland Funding LLC, for the sum of \$18,104.70. The abstract of judgment was recorded with Sacramento County on October 11, 2012. That lien attached to the Debtor's residential real property commonly known as 5950 Lake Crest Way, Sacramento, 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 \$320,000 as of the date of the petition. The unavoidable consensual liens total \$284,161.84 according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$75,000 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 Midland Funding LLC, Sacramento County Superior Court Case No. 34-2012-00122321 recorded on October 11, 2012, with the Sacramento County Recorder, against the real property commonly known 5950 Lake Crest Way, Sacramento, 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.

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**Tentative Ruling:** The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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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, creditors, and Office of the United States Trustee on February 6, 2015. Twenty-one days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.) That requirement was met.

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

**The Motion to Sell Property is granted.**

The Bankruptcy Code permits the Debtor William Mark Hinte ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

- A. 5950 Lake Crest Way, Sacramento, California, APN: 029-0174-011-0000.

The proposed purchaser of the Property is Christian and Kate Kolodziej and the terms of the sale are for the sale price of \$320,500. The sale is and all cash, arms-length transaction. Debtor will not relinquish title to or possession of the property prior to payment in full of the purchase price. Based upon the sale price of the property and the liens against the property and Debtor's homestead exemption under CCP § 704.730, there will be no proceeds available for creditors or the bankruptcy estate.

Chapter 13 Trustee has filed a statement of non-opposition to the instant motion to sell.

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: -----.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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 Sell Property filed by Debtor, William Mark Hinte 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 Debtor is authorized to sell pursuant to 11 U.S.C. § 363(b) to Christian and Kate Kolodziej or nominee ("Buyer"), the Property commonly known as 5950 Lake Crest Way, Sacramento, California ("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$320,500.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 38, and as further provided in this Order.
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 Debtor be and hereby is authorized to pay a total real estate broker's commission in an amount equal to five percent (5%) of the actual purchase price upon consummation of the sale. The five percent (5%) commission shall be paid to the real estate agents, Better Homes and Gardens and KNC Properties, Inc.

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 15, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because Debtor's Plan does not provide how Debtor will be able to make all payments under the Plan. 11 U.S.C. § 1325(a)(6). Debtor's plan payments under the confirmed plan are \$2,400 for 60 months. Under Debtor's modified plan, Debtor proposes \$37,022.98 through December 2014, \$1,700 for January 2015, then \$2,250 for 42 months beginning February 2015.

However, according to Debtor's Schedules, Debtor has a monthly net income of only \$4,306.97 including \$500/month from family and friends. Debtor's declaration states that Debtor fell behind on plan payments because her ex-boyfriend moved out and no longer contributes to the household, and further states that her daughter is moving in. If this extra \$500 represents her ex-boyfriend's contribution, then the reduction of \$500/month would leave Debtor with insufficient monies to make proposed plan payments of \$2,250 beginning February 2015.

**DEBTOR'S REPLY**

Debtor responds to Trustee's objection. Debtor states that because her daughter is moving into her home, she will be gaining the support of her daughter to replace the lost income of her ex-boyfriend.

**DISCUSSION**

The court is satisfied that Debtor has adequately resolved Chapter 13 Trustee's confusion and objection, and that \$500/month from "family and friends" includes income support of her daughter.

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

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is granted and the proposed Chapter 13 Plan is confirmed.

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2015. Forty-two days' notice is required. That requirement was met.

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

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick. Chapter 13 Trustee opposes confirmation on the basis that:

1. In section 6 of the amended plan, Debtors refer to Bank of America and Old Republic Insurance Company. Trustee opposes Debtors' attempt to address creditors in this manner. Any concerns or issues with creditor claims should be handled by objecting to the claims. Trustee requests that the language in section 6 be stricken in its entirety.
2. Debtors propose to amend their plan to increase payments from \$626.20/month to \$633.34 beginning the 9<sup>th</sup> month. Debtors have not filed an updated schedule J to show the ability to increase the payments.
3. Debtors propose to pay United Consumer Financial Services in Class 2 as a secured claim paying \$180 at \$4.09 per month. Class 2 monthly dividends must be no less than \$15/month. In this

case, Creditor United Consumer Financial Services filed amended claim 4 on November 4, 2014 indicating that the claim is wholly secured. The claim should be removed from class 2 and paid as a general unsecured claim.

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

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

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

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

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

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13. [14-27529](#)-C-13 VICTOR LONSKIY AND DINA MOTION TO APPROVE LOAN  
MS-1 LONSKAYA MODIFICATION  
Mark Shmorgon 1-20-15 [[22](#)]

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**Tentative Ruling:** The Motion to Approve Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

The court notes that Debtors filed their original Motion to Approve Loan Modification on (f) (1) notice. However, Debtors filed an amended motion on February 19, 2015 changing certain terms that were originally included in the first-filed motion. The court will thus treat this motion under (f) (2) notice and issue a tentative ruling in order to accommodate any objections at the hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor Chapter 13 Trustee, Official Committee of Creditors Holding General Unsecured Claims/creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on January 20, 2015. An amended motion was filed on February 19, 2015. 14 days' notice is required. That requirement was met.

The Motion to Approve Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

**The Motion to Approve Loan Modification is granted.**

The Amended Motion to Approve Loan Modification filed by Viktor Lonskiy and Dina Lonskaya ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor") has agreed to a loan modification for the first and only mortgage encumbering Debtor's real property commonly known as 7013 Buskirk Drive, Sacramento, California. The principle will be in the amount of \$133,201.23 with a modified interest rate of 4.25% for the duration of the loan. The loan will be for forty years, and the

modified monthly payment of principal and interest will be \$655.27. The payment including principal, interest, and escrow impounds will be \$879.00.

The Motion is supported by the Declaration of Victor Lonskiy and Dina Lonskaya. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

On February 5, 2015, the Chapter 13 Trustee filed a statement of non-opposition to the first-filed motion.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. 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 the court authorizes  
Viktor Lonskiy and Dina Lonskaya ("Debtor") to  
amend the terms of the loan with Wells Fargo  
Bank, N.A., which is secured by the real property  
commonly known as 7013 Buskirk Drive, Sacramento,  
California, on such terms as stated in the  
Modification Agreement filed as Exhibit B in  
support of the Amended Motion, Dckt. 28.

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14. [11-32430](#)-C-13 ROOSEVELT/RAULETTE  
BLG-9 MCCLINTON  
Chad Johnson

CONTINUED MOTION TO MODIFY PLAN  
12-18-14 [[124](#)]

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 18, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtors have filed Amended Schedules I and J in support of the proposed increase in their plan payment from \$2,637 to \$3,147. While Debtors' income has increased, their monthly expenses have increased as well. However, Debtors may have more income available.
  - a. Debtors' declaration explains that their son, wife, and three children are now living with them and saving to buy a home of their own. The amended Schedule J lists Debtors' daughter, two grandchildren, Debtors' son, wife, and three grandchildren as dependents. Debtors previously

listed only Debtors' dependents as daughter and two grandchildren. Debtors do not indicate whether adult children are employed or financially contributing to household, though it appears that Debtors' son is saving to purchase a home.

- b. Debtors' prior Schedule I filed January 13, 2012, stated Debtor had one year left on a 401K loan with a balance of \$1,521.57 as of March 31, 2011. Debtors' loan payments at that time per Schedule I were \$162.50. Debtors' amended Schedule I filed December 18, 2014 nearly three (3) years later continues to reflect a monthly 401K loan payment. Debtors' currently monthly loan payment is \$154.05. Trustee is uncertain if Debtors continue to paying on prior 401K loan or if they borrowed additional funds.

#### **DEBTORS' RESPONSE**

On December 18, 2014, Debtors filed a response to Trustee's objection requesting a continuance to February 24, 2015 at 2:00 pm in order to gather necessary documents to address Trustee's objection regarding their updated budget.

#### **DISCUSSION**

On February 24, 2015, the court continued the instant matter to February 24, 2015 in order to permit Debtors additional time to address Trustee's objection. However, the docket reflects that Debtors have not filed any additional response or documents as of this hearing 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 Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

\*\*\*\*

15. [14-28030](#)-C-13 BONITA MELENDEZ  
RJM-1 Rick Morin

CONTINUED MOTION TO CONFIRM  
PLAN  
11-19-14 [[34](#)]

\*\*\*\*\*

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

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

**Below is the court's tentative ruling.**

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

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

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

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

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

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

**DEBTOR'S RESPONSE**

Debtor requests the hearing be continued to February 24, 2015 at 2:00 p.m. in order to allow additional time to respond to the Chapter 13 Trustee's objection to her first amended plan.

**DISCUSSION**

On January 13, 2015, the court continued the instant motion to

February 24, 2015 at the Debtor's request. However, the docket reflects that no further documents or responses have been filed by Debtor in efforts to resolve the Trustee's objection.

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

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the Plan is not confirmed.

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**Also #17**

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**Tentative Ruling:** The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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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, creditors, and Office of the United States Trustee on February 3, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

**The Motion to Extend the Automatic Stay is granted.**

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 14-28298) was filed on August 15, 2014 and dismissed on January 29, 2015, for causing unreasonable delay prejudicial to creditors. See Order, Bankr. E.D. Cal. No. 14-28298, Dkt. 31, January 29, 2015. As noted at the January 21, 2015 hearing, the docket reflected that Debtor had not filed an amended plan or motion to confirm following the Trustee's objection to confirmation on October 28, 2014. See Civil Minutes, Bankr. E.D. Cal. No. 14-28298, Dkt. 29, January 21, 2015. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the

court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307( and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

*Elliot-Cook*, 357 B.R. at 814-815.

Here, Debtor states that he filed the previous case in good faith, believing that his efforts to obtain a loan modification would be successful. Debtor's previous plan relied upon a loan modification. In the plan filed for the instant chapter 13 bankruptcy case, Debtor has abandoned attempts to obtain a loan modification, and instead states that he will provide for the cure of arrears to Wells Fargo Home Mortgage in Class 1 of the plan. Additionally, Debtor has restructured his plan payments to accommodate his abandoned attempts at loan modification. Debtor states in his declaration that he has filed this new case and plan in good faith.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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 Extend the Automatic Stay 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 and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes, unless terminated by further order of this court.

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17. 15-20430-C-13 JOHN LEWIS  
TJW-2 Timothy Walsh

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
2-3-15 [17]

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**Tentative Ruling:** The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on February 3, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
-----.

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 441 Ebbets Pass Road, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$181,000 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 \$293,000. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$31,300. 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.'s secured by a second deed of trust recorded against the real property commonly known as 441 Ebbets Pass Road, 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 \$181,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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18. [14-30332](#)-C-13 JEFFREY AKZAM  
DPC-1 Pro Se

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
12-9-14 [[23](#)]

Thru #21

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**Tentative Ruling:** The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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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 (pro se) on December 9, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
-----.

**The court's decision is to sustain the Objection.**

The Chapter 13 Trustee objects on the following grounds:

1. Debtor failed to appear and be examined at the First Meeting of Creditors held on December 4, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. The meeting has been continued to January 15, 2015.
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is required seven (7) days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(1).

3. Debtor did not provide Trustee with Business Documents or written statements that no such documents exist. 11 U.S.C. § 521(e) (2) (A); Fed. R. Bankr. P. 4002(b) (3). This is required seven (7) days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (1).
4. Debtor has not paid court ordered filing fees. 11 U.S.C. § 1325(a) (2). On October 17, 2014, the Court issued an Order Approving Payment of filing fees in 4 separate installments. Debtor has paid only the first installment on November 17, 2014 in the amount of \$77.00, failing to pay the three (3) subsequent installments.
5. Debtor has not provided proper treatment for a secured debt. Although 11 U.S.C. § 1325(a) (5) does not require treatment of all secured claims, failure to provide the proper treatment may be indicative of Debtor's inability to afford the plan payments because of improperly identified debts or because of concealment of the proposed treatment of a creditor.
6. The secured debt has not been provided for real property commonly known as 631 Steffan Street, Vallejo, California.

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

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

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

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

8. Debtor has failed to provide the necessary Schedule I statement showing gross income and expenses, despite listing a net business income of \$2,575.
9. Debtor did not disclose prior bankruptcy filings in the

Voluntary Petition. The case numbers for the previous filings are 13-20155 and 11-25844.

## **DEBTOR'S REPLY**

Debtor, Jeffrey Akzam, urges the Court to overrule Chapter 13 Trustee's objection to confirmation on the basis that:

1. Debtor was too ill to appear at the schedule meeting of creditors on December 4, 2014. The meeting was continued to January 15, 2014.
2. Debtor has provided 2012 and 2013 completed federal tax returns to Trustee. Debtor has no outstanding tax liabilities or tax liens.
3. Debtor has provided Trustee with business documents, including six (6) months profit and loss statements, six (67) months of bank statements, Questionnaire with explanations, and insurance documents.
4. Debtor is current in all filing fee payments.
5. The real property commonly known as 631 Steffan Street, Vallejo, California, has no current lawful lender or creditor.

In 2009, the loan was rescinded timely and by law, voiding the security immediately thereby leaving it as an unsecured debt. Alleged creditor/lender did not respond within time allowed by law, thereby acquiescing to the rescission.

In Debtor's 2011 Chapter 7 bankruptcy (Case No. 11-25844), Debtor discharged all debt previously concerning this property. Thus, there is no secured claim attached to the property, and does not need to provide treatment for it. Alleged prior creditor/lender attempted twice in 2011 to obtain relief from stay but was denied due to lack of standing. (Case No. 11-25844, Dkt. 76). Said creditor has not filed a proof of claim, nor have they filed for relief from stay since the discharge in 2011.

Finally, this property is subject of a pending state appeal.

6. The real property commonly known as 802 Ohio Street, Vallejo, California is in a state of flux.

In 2011, the alleged creditor moved for relief from stay with regard to this property. Debtor filed a motion for reconsideration claiming improper service and lack of standing. Alleged creditor rescinded their Deed upon Sale. Debtor claims this creditor forged documents and recorded them in the county recorder's office, and that this alleged creditor does not have possession of the note.

Debtor listed half the value of this property on Schedule A because he has a half interest. The property is in a state of disrepair after an earthquake, lowering the value.

Debtor is paying adequate protection payments into the plan to be held until the true creditor is ascertained. Because the current alleged creditor is not in possession of the note, Debtor asserts the debt is bifurcated from the security instrument, and it is thus an unsecured debt. Debtor has not provided treatment for this debt because its secured status has not be ascertained, but has been making adequate protection payments.

7. Debtor has not attached a statement showing gross income and expenses to his Schedule I, but will amend to correct.
8. Debtor has not listed prior cases, but will amend to correct.

#### **DISCUSSION**

The docket reflects that Debtor has appeared at the meeting of creditors, is up to date in payment of filing fees, and Debtor has averred that he has provided all necessary tax and business documents to Trustee. However, the court is unsatisfied with Debtor's lack of treatment for the 631 Steffan Street and the 802 Ohio Street properties. Debtor claims all loans and deeds of trust associated with these properties are rescinded, and that these debts are unsecured based on various theories, and further claims that the creditor to the 802 Ohio Street property has forged documents that were recorded and presented to this court. The court finds these allegation unsubstantiated and is sustaining the Trustee's objections with regard to these properties.

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

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

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

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

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

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19. [14-30332](#)-C-13 JEFFREY AKZAM  
DPC-1 Pro Se

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
12-9-14 [[23](#)]

[See item 18 above, referring to the same matter (Dkt. 23).]

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**Tentative Ruling:** The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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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 (pro se) on December 11, 2015. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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**The court's decision is to sustain the Objection.**

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

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

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

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

#### **DEBTOR'S REPLY**

Debtor, Jeffrey Akzam, urges the Court to overrule U.S. Bank, N.A.'s objection to confirmation on the basis that:

1. Creditor, U.S. Bank, N.A., as Trustee for Wells Fargo Asset Securities Corporation, states that they are a secured creditor of Randy Miramontez, the Borrower. Creditor asks to Court to deny confirmation of Debtor's plan because he has not properly provided for Creditor's claim. However, Creditor is a creditor to Borrower, not to Debtor.
2. Creditor claims that Debtor's interest in the subject property is a result of an "unauthorized grant deed." Debtor asserts there is no such thing as an "unauthorized grant deed," as a party may grant ownership at any time they wish with no need for permission.
3. Debtor objects to Creditor's claim that they are in possession of the original note that is endorse in blank. Debtor claims that the note attached as Exhibit A to Creditor's objection is not a copy of the original note.

Creditor has provided no declaration swearing to their statement in possession.

4. Debtor asserts that Creditor has no standing.
  - a. Debtor contests Creditor's assertion that the beneficial interest in the Deed of Trust was transferred to it, as the Creditor. Creditor is only Trustee for the trust, which comprises many beneficial interest holders or certificate holder, the ones entitled to receive payment. According to the law of the Trust, the certificate holders must be named parties to have standing.
  - b. Creditor states that they do not intend to file a proof of claim because Debtor is not the borrower on the "subject" loan. Because they are not Debtor's creditor, they have no standing to object to Debtor's plan.
5. Debtor takes issue with errors in Creditor's objection. First, the deed was not recorded in Placer County, as the Objection identifies, but Solano County. Second, the Objection states that the property was transferred for no consideration, however, the deed plainly states "For a Valuable Consideration."
6. Debtor asserts that the plan was proposed in good faith, evidenced by Debtor's proposal to pay the adequate protection payments to whoever is the party entitled to payment pursuant to the contract and trust by providing the original note.
7. Creditor states that the plan fails to provide for a cure of "Creditor's" arrears. However, because Creditor is not Debtor's creditor, the plan does not need to provide for this treatment.

## **DISCUSSION**

Debtor deflects liability in connection with the debt owed this property, and even asserts that Creditor has forged the note presented to the court. The court is unsatisfied with Debtor's explanations and lack of treatment for the 802 Ohio Street property. It is clear that Creditor has standing as holder of the note to the property, and Debtor has not provided for full treatment of the claim or for the pre-petition arrears.

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

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

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

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

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

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21. [14-30332](#)-C-13 JEFFREY AKZAM  
PD-1 Pro Se

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY U.S.  
BANK, N.A.  
12-11-14 [[31](#)]

[See item 20 above, referring to the same matter (Dkt. 31).]

22. [11-30933](#)-C-13 JEANETTE KISSOON  
MET-2 Mary Ellen Terranella

MOTION TO APPROVE LOAN  
MODIFICATION  
1-25-15 [[41](#)]

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**Final Ruling:** No appearance at the February 14, 2015 hearing is required.  
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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, and Office of the United States Trustee on January 25, 2015. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Approve Loan Modification is granted.**

The Motion to Approve Loan Modification filed by Jeanette A. Kissoon ("Debtor") seeks court approval for Debtor to incur post-petition credit. Wells Fargo Bank, N.A. ("Creditor") has agreed to a loan modification which will reduce Debtor's mortgage to \$1,295.52 a month with a fixed interest rate of 4.5%. The new principal balance is \$212,949.61, and the new maturity date is January 1, 2055. Upon court approval, Creditor will amend its proof of claim to reflect \$0 pre-petition arrears. Finally, Debtor requests that the 14 day period pursuant to Fed. R. Bankr. P. 6004(g) be waived unless specific objection to waiver is filed.

The Motion is supported by the Declaration of Jeannette A. Kissoon. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

On February 5, 2015, Chapter 13 Trustee filed a statement of non-opposition.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. 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 Jeanette A. Kisson 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 court authorizes Jeanette A. Kisson ("Debtor") to amend the terms of the loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 700 Keats Drive, Vallejo, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 45.

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2015. An amended notice was filed January 29, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee filed a limited objection to Debtors' plan, requesting Debtors to clarify plan payments. The additional provisions of the modified plan lists plan payments as "the total amount to be paid into the plan through December 2014 is \$19,292.58. Beginning with the January 2015 payment, debtors will pay to trustee \$906.38 for the remainder of the plan." Trustee points out that it could be interpreted that \$906.38 is the total amount needed to complete the Chapter 13 plan. Trustee has no objection to the proposed plan, but requests monthly plan payments be clarified in the order confirming plan to state that plan payments will be \$906.38 per month for the remainder of the plan beginning with the January 25, 2015 payment.

**DEBTOR'S REPLY**

Debtors clarify that they propose to pay \$906.38 a month for the

remainder of the plan, and that the sum will be the on-going monthly payments in the order confirming the plan.

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

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is granted and the proposed Chapter 13 Plan is confirmed.

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24. [14-31734](#)-C-13 GARY GREER  
DPC-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
1-22-15 [[17](#)]

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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The case having previously been dismissed, the Objection is moot. Chapter 13 Trustee has filed a notice of withdrawal of objection, the case having been dismissed at hearing held February 18, 2015.

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 plan by Chapter 13 Trustee, 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 moot, the case having been dismissed.

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 20, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtors' modified plan proposes to provide for Solano County Tax Collector as a Class 2 secured claim. However, Trustee objected to the claim and requested the claim be disallowed absent a motion to allow the administrative claim. The court sustained the Trustee's objection and disallowed the Solanto County Tax Collector's claim as an "Unsecured Administrative Claim" without prejudice to any secured claim which the Creditor may have in this case. Trustee does not oppose the inclusion of Solano County Tax Collector as Class 2 creditor provided the court specifically orders Trustee to make such payments.
2. Debtor's Plan does not provide how Debtor will be able to

make all payments under the Plan. 11 U.S.C. § 1325(a)(6). Debtors filed amended schedules I and J. Trustee's specific concerns relate to auto insurance, life insurance, an exhibit (D-a State Farm Statement) in support of these expenses, and transportation costs.

- a. Auto Insurance. Schedule A lists Debtors' vehicles as 2002 Coleman Laramie Tent Trailer, 2002 Hyundai Accent, and a 15' Open Bow Boat. Debtors amended schedule J budgets \$111.91 for this expense where previously Debtors budgeted \$200. However, it appears they are part of their monthly auto insurance premiums for a total \$510.86/month. Debtors exhibit D reflects insurance for these vehicles per month is \$75.63. Trustee would note that the State Farm Statement also includes monthly premiums for seven other vehicles. Debtors have not disclosed these vehicles, and Trustee is unsure who they actually belong to.
- b. Life Insurance. Amended schedule J budgets \$500/month for life insurance where they previously budgeted \$0. Exhibit D indicates the monthly premium for Debtors is \$500. Trustee would note the State Farm Statement also includes life insurance premiums for what appears to be other family members for total monthly premium of \$673.96. Trustee is uncertain when Debtors obtained life insurance policy since their prior schedule J did not include this expense.
- c. Transportation. Debtors budget \$600 per month for transportation costs. Debtors motion and declaration indicate they work for the same company but different locations and hours. Debtors state this expense includes gas, bridge tolls (\$25/week totaling \$400/month), and vehicle maintenance. Trustee calculates bridge tolls at \$25/week per Debtor would total \$216.67/month, not \$400.

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

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

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

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

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

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Thru #28

1-22-15 [[27](#)]

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**Tentative Ruling:** The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 22, 2015. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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**The court's decision is to sustain the Objection.**

Chapter 13 Trustee opposes confirmation of the Plan on the basis that treatment of U.S. Bank under Class 2 creates several problems, including:

1. Plan payment is insufficient to pay Class 2 creditor. Section 2.09 calls for a monthly dividend to Class 2 creditor of \$2,500. Section 6.01 (payment plan) appears to call for plan payments to the Trustee of \$82 for 1 month, \$106 for one month, \$234 for 58 months, and one lump sum payment of \$145,000 through a refinance by the end of the plan. Section 6.02 appears to reiterate that Class 2 creditor will be paid a monthly dividend of \$2,500. The plan does not state that the Debtor will make this payment directly, and states "Trustee shall pay each Class 2 claim the monthly amount specified below as the monthly dividend."

2. Debtor's schedules are inconsistent with paying the claim directly. According to schedule A, Debtor owns two properties. Schedule D states that Debtor owes two secured obligations to Desert Island Community Association and U.S. Bank. Schedule J reflects a rental or home ownership expense of \$1,791, which based on the entries in 4a-4d appears to include Homeowner's association dues if they are being paid at all. The Statement of Financial Affairs reflects no payments aggregating \$600 or more to creditors in the 90 days prior to filing.
3. Debtor has not provided evidence that he has paid December and January payments directly to Creditor. This case was filed November 21, 2014. Monthly obligations are due on the 1<sup>st</sup> and late of the 15<sup>th</sup>, and two payments will have come due since commencement of the case. Trustee has reviewed PACER and does not see any evidence that these payments have been made.
4. Debtor cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325 (a)(6). Debtor's plan relies on the pending Motion to Avoid a Homeowner's lien. No motion to value or avoid lien appears pending.
5. Debtor has not provided sufficient proof of income. The income listed on line 13 of schedule I of \$2,500 "added salary" and \$2,000 "rental income" appears to be income that is anticipated, not actual. Schedule I & J appear to only support plan payments of \$82 without these amounts. No proof of either source of income have been provided to Trustee in form of bank statements or cancelled checks or lease agreement.

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

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 26, 2015. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value secured claim of U.S. Bank, N.A., "Creditor," is set for evidentiary hearing on [DATE] at [TIME].**

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 900 Island Drive #106, Rancho Mirage, California. The Debtors seeks to value the property at a fair market value of \$220,000 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

Creditor, U.S. Bank, N.A., holds a first deed of trust securing a loan with a balance of approximately \$450,000, according to Debtor's schedule D. Therefore, Creditor's claim secured by subject property is under-collateralized. Debtor asserts that the Creditor's secured claim should be determined to be in the amount of \$220,000.

**CREDITOR'S OBJECTION**

U.S. Bank, N.A., Creditor, objects to Debtor's Motion to Value,

asserting that the balance of the loan is estimated at roughly \$712,971.90 at the time of Debtor's commencement of the case.

Moreover, Creditor contests Debtor's valuation of the property. Instead, Creditor had a Broker's Price Opinion conducted on the property in November 2014, estimating the value of the subject property to be closer to \$325,000.00. See Declaration of Kathleen Tabberer and Exhibit A.

#### **DEBTOR'S RESPONSE**

Debtor asserts his own valuation is correct, stating that he has been a licensed real estate broker for over 35 years. Debtor has owned the property for nearly 13 years and has inspected the interiors of dozens of units within the Dessert Island community. Debtor insists that Creditor's BPO uses only an observed exterior appearance and is totally unreliable without the necessary interior inspections that dictate the true value of the condominium unit. Because the Creditor's BPO does not include considerations of the interior, as Debtor's assessment has, BPO submitted by Creditor is incorrect.

#### **DISCUSSION**

After reviewing the pleadings, the court is presenting with evidence of two competing valuations of the subject property. Under 11 U.S.C. § 506(a), the value of a property is a factual issue and requires resolution through an evidentiary 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 Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is set for evidentiary hearing on [DATE] at [TIME].

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**Tentative Ruling:** The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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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 January 22, 2015. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
-----.

**The court's decision is to sustain the Objection.**

Creditor, U.S. Bank, N.A. opposes confirmation of the Plan on the basis that:

1. Debtor's plan does not provide for arrearages to secured creditors. 11 U.S.C. § 1325(a)(5)(B)(ii). To cure the pre-petition arrears of at least \$262,828.15 over the term of the plan within 60 months, Creditor must receive a minimum of \$4,380.47 per month through the plan. Debtor's plan provides for payments to Trustee of \$85 month one, \$106 month two, \$234 for months 3-60. Debtor does not appear to have sufficient fund to cure the arrears, and the plan is not feasible.
2. Debtor's plan is not feasible in that it does not provide for arrearages to secured creditors. 11 U.S.C. §§ 1325(a)(6) and

1322(d).

3. Debtor's attempt to reduce the value of the Creditor's secured claim based on the value of its collateral is not be successful. However, Debtor has not substantiated any basis for the reduction in value of the collateral to \$220,000, and has not filed a motion to value.

The court notes that Debtor has filed a motion to value the collateral of Creditor (see item 27 above), and Creditor's third objection will be resolved through evidentiary hearing. However, because the first and second objections remain unsettled, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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29. [14-32243](#)-C-13 ANDRES DELGADILLO  
RPH-1 Robert Huckaby

MOTION TO VALUE COLLATERAL OF  
MERIWEST CREDIT UNION  
1-26-15 [[24](#)]

Also #30

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 26, 2015. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value secured claim of Meriwest Credit Union, "Creditor," is set for evidentiary hearing on [DATE] at [TIME].**

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 3368/3358 Heavenly Valley Road, South Lake Tahoe, California. The Debtors seeks to value the property at a fair market value of \$240,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$328,953. Meriwest Credit Union's second deed of trust secures a loan with a balance of approximately \$48,646.83. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

**CREDITOR'S OBJECTION**

Meriwest Credit Union, Creditor, states that the principal balance owed to Creditor as of the filing of the bankruptcy petition was \$41,648.39. Creditor objects to Debtor's Motion to Value, estimating the value of the subject property to be closer to \$368,500.00 based on a Value Sure Automated Valuation Model. Creditor argues that its claim is therefore secured by the subject property.

#### **DISCUSSION**

After reviewing the pleadings, the court is presenting with evidence of two competing valuations of the subject property. Under 11 U.S.C. § 506(a), the value of a property is a factual issue and requires resolution through an evidentiary 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 Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is set for evidentiary hearing on [DATE] at [TIME].

\*\*\*\*

30. [14-32243](#)-C-13 ANDRES DELGADILLO  
RPH-2 Robert Huckaby

MOTION TO AVOID LIEN OF GREATER  
CALIFORNIA FINANCIAL SERVICES  
1-26-15 [[28](#)]

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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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 January 26, 2015. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Avoid Lien is granted.**

A judgment was entered against the Debtor in favor of GCFS, Inc. for the sum of \$14,646.13. The abstract of judgment was recorded with El Dorado County on December 28, 2011. That lien attached to the Debtor's residential real property commonly known as 3368/3358 Heavenly Valley Road, South Lake Tahoe, 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 \$240,000 as of the date of the petition. The unavoidable consensual liens total \$377,599 on that same date according to Debtor's Schedule D. 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 GCFS, Inc., El Dorado County Superior Court Case No. SCL20110149, recorded on December 8, 2011, with the El Dorado County Recorder, against the real property commonly known 3368/3358 Heavenly Valley Road, South Lake Tahoe, 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.

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Thru #33

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Section 2.06 of the modified plan proposes attorneys' fees of \$0.00 paid prior to the filing of the case and refers to the additional provisions for amounts to be paid through the plan. Section 6.02 of the additional provisions indicate that the court has approved additional attorneys' fees in an unspecified amount concurrently with the order confirming the modified plan.

Counsel filed a Motion for Additional Attorneys' Fees on

January 16, 2015 (Dkt. 92) requesting additional fees of \$2,502.50. An Order on Substitution of Attorneys was filed January 15, 2015, which authorized the substitution of Scott Shumaker for John Harrison.

Under the confirmed plan, and pursuant to the May 17, 2012 order confirming (Dkt. 25), attorneys' fees were \$3,500, of which \$1,200 was paid prior to filing and \$2,300 was to be paid through the plan. The Trustee has disbursed \$2,171.92 in attorneys' fees through Debtor's confirmed plan with \$128.08 remaining.

Trustee believes that section 2.06 should reflect fees as they were ordered paid upon confirmation of the case with any additional fees provided for in the additional provisions of the proposed modified plan. Section 6.02 of the modified plan indicates additional fees in an unspecified amount have been approve and the modified plan has been confirmed, which is not an accurate statement.

2. Trustee is uncertain of Debtors' ability to make the plan payment as proposed. Debtors' Motion and Declaration indicates that Debtors fell behind on their plan payments because Charles Hodge lost his employment. Debtors state that Mr. Hodge is now employed and Debtors can complete their plan.

The Supplemental Schedules I & J indicate that Debtors can afford a monthly plan payment of \$651.00. The Supplemental Schedule I shows Mr. Hodge as Debtor 1 employed as a Technician for Sterling Bank Service and show Marylou Hodge as Debtor 2 unemployed. The previous Schedule I indicated that Ms. Hodge was Debtor 1 employed as a Pricing Specialist for Tony's Fine Foods and Mr. Hodge was Debtor 2 as a Technician for Rancho Santa Fe Technology.

Income is now reported as \$2,646 from Mr. Hodge, \$0.00 from Ms. Hodge, \$900 in rent contribution from adult children, and a \$1,000 household contribution from adult children. The Declaration does not address what happened to Ms. Hodge's income and does not provide a declaration substantiating the adult children's contributions. There were also numerous changes to expenses that went unexplained.

3. Trustee is uncertain of Debtors' intentions regarding Sacramento County Utilities, as a creditor. Debtors' modified plan proposes to pay Sacramento County Utilities in Class 2 and increases the monthly dividend from \$15.00 to \$85.00. Debtors' Schedule D filed February 4, 2012 includes Sacramento County utilities in the amount of \$869.67 for a past-due utilities lien regarding account number 9155.

Debtors state in their Motion that the County had not yet filed a claim and that the Trustee had not yet paid on the claim. Debtors assume that the Trustee has not paid because no claim was filed. Debtors stated that they would file a claim on behalf of the County at the same time as they filed the Motion to Modify. No such claim has been filed.

Trustee notes that County of Sacramento Utilities filed an unsecured claim on September 3, 2013 in the amount of \$1,338.77 for utilities provided regarding account number ending in 9155. Trustee is uncertain whether Debtor is proposing to file a secured claim for a debt where the creditor has already filed a claim and claimed no security.

4. Trustee is uncertain of the present status of Debtors' First Deed of Trust for property located at 9964 Nestling Circle, Elk Grove, California.

Debtors' Modified Plan provides for this creditor in Class 4 and indicates that monthly contract installment is \$1,700. Debtors' Supplemental Schedule J budget \$1,700 for monthly mortgage payments.

Federal National Mortgage Association c/o Seterus, Inc. filed a Motion for Relief on July 17, 2013 concerning this property, which was subsequently granted. The creditor's Motion and Relief from Stay Information Sheet indicated that Debtors were delinquent on their \$1,870.96 monthly mortgage payments. The Trustee is uncertain whether Debtors are correctly budgeting the amount of their mortgage payment.

5. Debtors modified plan proposes to reduce the percentage to unsecured creditors from 1% to 0% where the Trustee has already disbursed up to 0.68%. Debtors proposed modified plan does not authorize prior disbursements to unsecured creditors under the confirmed plan.
6. Section 6.01 of Debtors' Modified Plan proposes to increase the plan term from 36 to 39 months. Debtors are under median income with an applicable commitment period of three years pursuant to Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income, B22C. The Trustee calculates that with all proposed plan modifications considered, the plan will take 41 months to complete.

#### **DEBTORS' RESPONSE**

Debtors provide the following response to the Trustee's Objection:

1. Debtors' counsel takes no issue with the Trustee's evaluation as to how attorneys' fees should be listed in Debtors' plan and requests drafting these changes to be reflected in the Order Confirming the Plan.
2. In regards to Debtors' changes in income, Debtors' provide a Declaration (ECF 108). Debtor Marylou Hodge was laid off from her job in 2012 and remains unemployed. The parties survive on Charles' income and family contribution to the household. Debtors adult children presently reside with Debtors and contribute \$1,900.

Debtors argue that their ability to make the plan payment and complete the plan is evidenced by their having paid the first payment due under the modified plan in January 2015 and that

they will have paid their February 2015 plan payment by the time of the hearing on this matters.

Debtors argue that the changes to their expenses are nominal and primarily reflect cost of living changes.

3. Debtors' counsel did intend to file a claim on behalf of Sacramento County to reflect the utility lien amount. Not filing it was an error and the claim is being filed with the reply.
4. Debtors continue to make monthly mortgage obligations on the First Deed of Trust. Debtors state that the only reason Fannie Mae indicates a delinquency is solely due to the timing of the filing of the Chapter 13 Bankruptcy. Because a Chapter 13 Plan Payment is not due until the 25<sup>th</sup> of the month following the filing of the Bankruptcy, Debtors often miss one month. As the Court can see, the alleged delinquency totals \$1,870.96, which represents approximately one month in delinquency.

Debtors intend to either see a waiver of the one-month delinquency after the Chapter 13 Plan completed, or Debtors will obtain family assistance to "catch-up.". Debtors are confident this will not be an issue. Debtors inform the court that the secured creditor has taken no action to initiate foreclosure proceedings in response to the delinquency.

5. Debtors request that language authorizing prior payments to unsecured creditors be added to the Order Confirming.
6. Debtors assert that their plan will complete in 39 months, opposed to the Trustee's estimate of 41 months.

Debtors assert that the total amount of plan obligations is \$3,110.56. At 39 months, Debtors will have paid \$2,604 of this amount. While this amount is insufficient to pay off \$3,110.56, the unpaid portion will be deducted from Debtors' counsel's fees. In Debtors' counsel's Motion for Additional Fees, he indicates that he wishes to be paid additional fees only to the extent funds are available in the Chapter 13 plan. Accordingly, to the extent that this court grants counsel his full request of for fees, that portion not paid off in 39 months will be waived.

## **DISCUSSION**

The court's decision is to deny the Motion to Confirm the Modified Plan. The court is amenable to the Debtors correcting attorneys' fees language and authorizing prior disbursements in the order confirming. Further, the court is satisfied with the Debtors' explanation of why expenses changed and how income has changed. The court remains concerned about a few outstanding matters.

First, Debtors plan relies on \$1,900 in income from Debtors' adult children. The Trustee requested a Declaration from Debtors' adult children confirming the contribution of \$1,900 per month. No such declaration was

provided. The court cannot determine that the plan is feasible without confirmation that the adult children are contributing \$1,900 per month.

Second, Debtors' submitted a claim for Sacramento County Utilities on February 16, 2015, secured in the amount of \$414.60. The claim was not filed with any supporting documents indicating that the lien asserted exists. Trustee expressed concern about Debtors' intention in filing this claim because Sacramento County Utilities filed a previous unsecured claim. The court shares Trustee's concerns and Debtors' filed claim does nothing to reassure the court that the claim is valid.

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

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

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

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

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

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32. [12-23646](#)-C-13 MARYLOU/CHARLES HODGE  
SS-3 Scott Shumaker

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
1-15-15 [[85](#)]

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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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 January 15, 2015. Twenty-eight days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 9964 Nestling Circle, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$218,500 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 \$366,521. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$69,870. 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 9964 Nestling Circle, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$218,500 and is encumbered by senior liens securing claims which exceed the value of the Property.

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33. [12-23646](#)-C-13 MARYLOU/CHARLES HODGE  
SS-4 Scott Shumaker

MOTION FOR COMPENSATION FOR  
SCOTT SHUMAKER, DEBTORS'  
ATTORNEY  
1-16-15 [[92](#)]

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 16, 2015. Twenty-eight days' notice is required. That requirement was met.

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

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

#### **FEES REQUESTED**

Scott Shumaker, the Counsel ("Applicant") for Marylou and Charles Hodge the Chapter 13 Debtors ("Client"), makes an application for additional attorneys' fees. Applicant has served as counsel for Debtors since January 6, 2015. Applicant substituted in to the case for John Harrison. In February 2012, Harrison received a retainer for services of \$1,200 and the parties agreed to \$3,500 in attorneys' fees as total compensation for the administration of the case. To date, Harrison has been paid \$2,044.16 of \$2,300 additional fees previously approved by the court.

Applicant has received no compensation for work performed to date and brings this motion for fees. Applicant is seeking \$2,502.50 in fees and \$100.00 in costs incurred for 17.4 hours of work.

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

General Case Administration: Applicant spent .5 hours in this category. Applicant's paralegal spent 4.7 hours in this category. Applicant assisted Client by becoming familiar with the Chapter 13 case filed and

making changes to the filed. Case management involved refiling a Motion to Value a secured claim because the second deed of trust holder had not property executed an assignment.

Reset Motion: Applicant spent .2 hours in this category. Paralegal spent 2.9 hours in this category. Applicant determined that the previously granted Motion to Value needed to be reheard because the subject second deed of trust was assigned to a different lien holder.

Motion Work: Applicant spent .4 hours in this category. Paralegal spent 5.5 hours in this category. Applicant was faced with a pending Motion to Dismiss when Debtors approached Applicant about representation. Application needed to file a Motion to Modify the Plan to prevent dismissal of the case. Applicant's staff discovered a utility lien recorded by Sacramento County has been confirmed in a prior plan as a Class 2 debt; however, because Sacramento County had never filed a claim, the Trustee had not paid on that claim. This require public records searches as part of the process of modifying the plan.

Motion for Fees: Applicant spent .2 hours in this category. Paralegal spent 3 hours in this category.

### **Statutory Basis For Professional Fees**

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

- (I) unnecessary duplication of services; or
- (ii) services that were not--

- (I) reasonably likely to benefit the debtor's estate;
- (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

**Benefit to the Estate**

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

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

*Id.* at 959.

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

**FEES ALLOWED**

The fees request are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Applicant	1.3	\$300.00	\$390.00
Paralegal	16.1	\$125.00	\$2,012.50
	0	\$0.00	\$0.00

	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	\$0.00
	0	\$0.00	<u>\$0.00</u>
<b>Total Fees For Period of Application</b>			\$2,402.50

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Fees in the amount of \$2,402.50 pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Trustee under the confirmed plan from the available funds of the Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$100 pursuant to this applicant.

Costs in the amount of \$100 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Trustee under the confirmed plan from the available funds of the plan funds in a manner consistent with the order of distribution under the confirmed Plan.

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

Fees	\$ 2,402.50
Costs and Expenses	\$ 100.00

pursuant to this Application in this case.

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

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

The Motion for Allowance of Fees and Expenses filed by Scott Shumaker ("Applicant"), Counsel for Chapter 13 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 Scott Shumaker is allowed the following fees and expenses as a professional of the Estate:

Scott Shumaker , Professional Employed by Chapter 13 Debtors

Fees in the amount of \$ 2,402.50  
Expenses in the amount of \$ 100.00,

**IT IS FURTHER ORDERED** that the Trustee under the confirmed plan is authorized to pay the fees allowed by this

Order from the available funds of the Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

\*\*\*\*

34. [14-27546](#)-C-13 MICHAEL GRANT  
MMM-1 Mohammad Mokarram

OBJECTION TO CLAIM OF SETERUS,  
INC., CLAIM NUMBER 2  
1-6-15 [[28](#)]

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 6, 2015. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

**The Objection to Claim of Seterus, Inc. is sustained in part and overruled in part.**

Michael Tillman Grant, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Seterus, Inc. ("Creditor"), Proof of Claim No. 2 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be secured in the amount of \$67,207.73. Objector asserts that he does not understand from where a \$4,950.60 escrow shortage or deficiency came. He argues that Creditor did not provide a full analysis for the shortage or deficiency.

Objector takes issue with the total amount owed as state on the claim, \$67,207.73. The principal and interest due as of the petition date was \$56,132.94. Objector believes that Creditor is adding six (6) delinquent monthly installment payments in the amount of \$1,243.82 each, and the itemized fees and expenses listed on Part 2, in the amount of \$5,182.17 to the outstanding principal. Objector argues that these fees should not be added to the principal owed.

### CHAPTER 13 TRUSTEE RESPONSE

Trustee has already disbursed the amount of \$4,115.72 to the claim objected to by the Debtor. Of this amount, \$2,715.56 is principal and \$1,400.16 is interest. Trustee requests that if the claim be reduced or disallowed, it still be allowed in at least the amounts already disbursed by the Trustee.

### CREDITOR'S RESPONSE

Creditor concedes there was an error with respect to the inclusion of the delinquent pre-petition payments in its total claim amount and will be amending its proof of claim to correct the error. Creditor takes issue with the remainder of Debtor's objection on the basis that it lacks legal and documentary support overcoming the prima facie validity of the proof of claim.

Creditor further states that it is working with Debtor on resolving this matter and intends to have the matter fully resolved by the anticipated hearing date.

### 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 court agrees that the proof of claim is entitled to prima facie validity pursuant to FRBP 3001(f). Further, the court agrees with the Creditor that Debtor did not file any compelling evidence that would convince the court to adjust the fees and costs set out in the claim.

Based on the evidence before the court, the creditor's claim is disallowed in the amount of \$7,462.92 and allowed as a secured claim in the amount of \$59,744.81. The Objection to the Proof of Claim is sustained in part and overruled in part.

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 Seterus, Inc., Creditor filed in this case by Chapter 13 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 Proof of Claim Number 2 of Seterus, Inc. is

sustained in part and the claim is allowed as  
a secured claim in the amount of \$59,744.81.

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35. [14-32046](#)-C-13 CHRISTOPHER/AUDRA  
CAH-1 STERRETT  
Anthony Hughes

MOTION TO VALUE COLLATERAL OF  
KEYBANK, N.A.  
1-27-15 [[19](#)]

Also #36

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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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 January 27, 2015. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Value secured claim of Keybank National Association, "Creditor," is granted.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8709 Jonnie Way, Fair Oaks, California. The Debtor seeks to value the property at a fair market value of \$331,000 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 \$380,713. Keybank National Associations' second deed of trust secures a loan with a balance of approximately \$19,627.12. 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 Keybank National Association secured by a second deed of trust recorded against the real property commonly known as 8709 Jonnie Way, 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 \$331,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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36. [14-32046](#)-C-13 CHRISTOPHER/AUDRA  
DPC-1 STERRETT  
Anthony Hughes

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
1-28-15 [[24](#)]

\*\*\*\*

**Tentative Ruling:** The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on xxxx, <year>. Fourteen days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
-----.

**The court's decision is to overrule the Objection.**

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

1. The plan relies on the pending Motion to Value the secured claim of Keybank National Association. If the Motion is not granted, Debtor lacks sufficient monies to fund the plan. 11 U.S.C. § 1325(a)(6).

At the hearing on February 24, 2015, the court is prepared to grant the Motion to Value the secured claim of Keybank National Association. This resolves the Trustee's objection.

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

**IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on December 12, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2015. Thirty-five days' notice is required. That requirement was met.

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

**The court's decision is to ~~xxxx~~ the Motion to Confirm the Modified Plan.**

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

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

1. According to the Trustee's calculations, the plan will complete in more than 60 months, possibly taking 71 months. It appears that this is due to the proposed percentage increase to unsecured creditors from 0.00% to 100%. The Trustee would not that Debtor's Moton reflects a percentage to unsecured creditors of 58.08%, but section 2.15 of the plan proposes 100%.
2. Debtor's modified plan proposes to reclassify Nissan Motor Acceptance Corp from Class 2 to Class 3, but does not authorize payments made under the confirmed plan. Debtor's

Motion indicates \$4,398.92 was paid to this creditor through October 2014. To date, the Trustee has disbursed a total of \$4,613.77, which consists of \$3,582.24 principal, and \$1,031.52 interest.

3. Debtor's modified plan proposes to add Maita Subaru Mazda to Class 4 for a 2010 Nissan Maxima. Debtor's Motion and Declaration indicate that creditor Nissan Motor Acceptance Corporation is being reclassified to Class 3 due to the vehicle being totaled, and Maita Subaru Mazda is added in Class 4 for a new secured car payment. Debtor's Amended Schedule J now includes a vehicle payment of \$389.00 per month.

Trustee is uncertain if Debtor received court authorization to make such a purchase and is unable to locate a Motion to Incur Debt to purchase this vehicle.

4. Debtor's original Schedule I, filed May 2, 2013, reflects monthly 401K loan payments of \$92.56. At the 341 Meeting on June 6, 2013, the Trustee learned this debt was to be paid in two years. Debtor's proposed modified plan does not offer to increase the plan payments by \$92.56 upon payoff of this loan, which would be approximately June 2015.

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

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

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

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

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

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38. [11-43448](#)-C-13 STEPHEN/SHIRLEY BOZZO  
WSS-7 Steven Shumway

MOTION TO APPROVE LOAN  
MODIFICATION  
1-6-15 [[126](#)]

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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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, and Office of the United States Trustee on January 6, 2015. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Approve Loan Modification is granted.**

The Motion to Approve Loan Modification filed by Stephen and Shirley Bozzo ("Debtor") seeks court approval for Debtor to incur post-petition credit. U.S. Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current \$2,533.90 a month to \$1,745.25 a month. The modification will capitalize the pre-petition arrears and provide for stepped increases in the interest rate from 2.00% to 4.125% over the next seven years and for the remainder of the term of the loan.

The Motion is supported by the Declaration of Stephen Bozzo. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. 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 the court authorizes Stephen and Shirley Bozzo ("Debtor") to amend the terms of the loan with U.S. Bank, N.A., which is secured by the real property commonly known as 12679 Anvil Road, Grass Valley, California, on such terms as stated in the Modification Agreement filed as Exhibit 1 in support of the Motion, Dckt. 129.

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 13, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtors' Motion states that the plan is supported by accompanying Declaration of the Debtor and Supplemental Schedules I & J. Debtors' Motion and Declaration indicate that Debtors are modifying their plan due to divorce and the increased cost of maintaining separate homes.

Trustee is unable to locate Supplemental Schedules I & J within the court docket. Debtors' previous Schedules I & J were filed August 28, 2013 as Exhibits A & B and support a plan payment of \$919.39. Debtors are now proposing a plan payment of \$505.00.

2. Trustee is uncertain of the treatment of Class 2 creditors. Debtors' Motion states that Debtor James Heinle, with the help of his father, will pay the Agricredit and Cap1/Polaris claims as Class 4 payments, which are currently in class 2.

Under the confirmed plan, Agricredit Acceptance, LLC and Capital One are Class 2 creditors to be paid in full through the life of the plan. Agricredit filed a secured claim on May 2, 2013 for \$15,547.01 and Debtors' confirmed plan provides for a monthly dividend of \$288.08. The Trustee has paid \$6,168.42 to this creditor under the plan.

Bass & Associates, P.C., through their Limited Power of Attorney filed a claim for Capital One, N.A. in the amount of \$4,472.97 and claimed no security. The Trustee has disbursed \$131.23 to this creditor on their unsecured claim. On April 10, 2014, Capital One, N.A. filed a Transfer of Claim to eCase Settlement Corporation, c/o Bass & Associates, P.C.

Debtor is now proposing to move these creditors to Class 4 as secured claims to be paid directly by the Debtor, with the aid of his father. The Capital One claim is not secured. Debtor does not provide a declaration from his father substantiating the proposed financial assistance, and payments made to these creditors under the confirmed plan have not been authorized.

3. Debtors' Motion and Declaration indicate that Debtors are now maintaining separate residences. Debtors have not filed a Change of Address with the court, which is required and in violation of Debtors' December 19, 2013 Order Confirming Plan.

#### **DEBTORS' RESPONSE**

In response, Debtors provide the following:

1. Debtors submit Supplemental Schedules I & J, demonstrating the changes in expenses and supporting the proposed plan payment.
2. Debtors argue that there is no basis for the Trustee's objection and that 11 U.S.C. § 1329(a)(1) allows Debtors to increase or reduce the amount of payments on claims of a particular class provided for by the plan. Debtors further argue there is no requirement for the father to provide a declaration because the eventual burden of payment rests with the Debtors.
3. Debtors filed with this response the Change of Address form, indicating the new address of Joint Debtor.

#### **DISCUSSION**

The court recognizes that Debtors resolved the first and third objections of the Trustee. The court remains concerned that the second objection remains outstanding.

Debtors' Motion and Declaration state that James Heinle's father will assist with Class 4 payments. Debtors argue that no declaration from James Heinle's father is required under the code, rules or local rules and that Class 4 explicitly provides that third parties can make payments under Class 4. What Debtors do not seem to understand, is that the court will only confirm a plan if it finds that the plan, as proposed in its entirety, is feasible and made in good faith. A statement under oath from James Heinle's father, that he is assisting with Class 4 payments and stating the amount that he is contributing is evidence the court requires to make its findings of fact.

Further, Debtor does not address moving creditor Capital One, N.A. from Class 2 to Class 4, when the claim of Capital One, N.A. is unsecured and Class 4 is limited to secured claims. A review of the claim shows that it was filed as an unsecured claim for \$4,472.97 and there is no security document indicating any security interest.

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

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

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

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

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

\*\*\*\*

Also #41

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

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

**Below is the court's tentative ruling.**

-----  
Local Rule 9014-1(f)(1) Motion - 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, and Office of the United States Trustee on xxxx, <year>. By the court's calculation, xx days' notice was provided. 28 days' notice is required.

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.**

The Chapter 13 Trustee seeks dismissal of Debtor's case based on the following:

1. Debtors are in material default under the terms of the confirmed plan because Debtors are delinquent \$300 in plan payment. Debtors' monthly plan payments are \$150.00.

**Debtors' Response**

Debtors are filing a motion for hardship discharge, which, if granted, will resolve the issue of delinquency under the plan.

**Discussion**

On January 7, 2015, the Debtors filed a Motion for Hardship Discharge, which is set for hearing on February 24, 2015. The court continued the Motion to Dismiss to be heard on the same date at the Motion for Hardship Discharge.

The court is prepared to grant the Motion for Hardship Discharge on the basis that Debtors are experiencing an unfortunate situation that renders them unable to afford plan payments and modify the plan. Therefore,

the Motion to Dismiss will be 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 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.

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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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 January 7, 2015. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion for Hardship Discharge is granted.**

Pursuant to 11 U.S.C. § 1328(b), Larry and Sharon Kelley ("Debtors") request the court enter a hardship discharge. In support of the request, Debtors provided the Declaration of Sharon Kelley, which states:

1. Due to medical issues, Sharon Kelley is unable to make plan payments.
2. Sharon Kelley is 73 years old and Larry Kelley is 77 years old.
3. Last year, Larry Kelley was diagnosed with dementia. He used to earn income from insurance sales, but can no longer work.
4. The only income for the family is social security.
5. Debtors collectively spend approximately \$600.00 per month on out-of-pocket medical expenses and an additional \$654.00 per month on medial insurance.

A review of Supplemental Schedules I and J show total income of \$3,392.00 from social security and expenses of \$4,125, leaving net income of (\$733.00).

**CHAPTER 13 TRUSTEE**

On February 20, 2015, the Chapter 13 Trustee filed a statement indicating that he has no opposition to the court granting the Debtors a

hardship discharge.

**DISCUSSION**

Section 1328(b) states that at any time after the confirmation of a plan, after notice and hearing, the court may grant a discharge prior to a debtor completing plan payments, only if:

1. The debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
2. The value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; or
3. Modification of the plan under section 1329 of this title is not practicable.

The court is satisfied that the Debtors have submitted sufficient evidence that justifies the court granting a hardship discharge. Debtors' circumstances are unfortunate and the loss of income was a result of illness affecting Mr. Kelley, not a voluntary withdrawal from the workforce. Unsecured creditors will receive at least as much as they would receive in a Chapter 7 case. Based on Supplemental Schedules I & J, modification of the plan to adjust the payment is not practicable given the Debtors' negative net income. 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 for Hardship Discharge 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 granted and Debtors are to receive a discharge pursuant to 11 U.S.C. § 1328(b).

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2015. Forty-two days' notice is required. That requirement was met.

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

**The court's decision is to continue the Motion to Confirm the Plan to [date] at [time].**

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

1. Debtor's plan does not pass the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4).

Original Plan/Schedules: Debtor originally filed this case disclosing that he sold his business, Clark Heating & Air-conditioning, to his daughter, an insider. On Schedule B (Dkt. 18), Debtor discloses the balance of \$54,489 owed on a Note for purchase of the business. Debtor exempted the Note on Schedule C under CCP § 703.140(b)(5) in the amount of \$21,934.00, leaving \$32,555 of the Note non-exempt.

On April 30, 2014, Trustee objected to confirmation, citing that the plan failed liquidation because there was \$32,555 non-exempt and the plan was not paying a sufficient amount to unsecured creditors to satisfy liquidation. The objection was eventually sustained.

It appears that Debtor's intent is to depreciate the Note to the

"fair market value" of \$32,636, leaving only \$10,759 non-exempt.

Amended Plan/Schedules: In the Motion and Declaration, Debtor indicates that after the 341 Meeting, additional payments were discovered concerning the Note, that reduces the balance on the Note to \$31,679. The Trustee would like the court to be aware that in a review of Debtor's 2012 and 2013 tax returns, Debtor has not reported any income from payment on a note.

Trustee queries the integrity behind the lower Note balance, because it reduces the non-exempt amount down to \$9,745, an amount close to what the Debtor was aiming for in the beginning.

Due to these circumstances, and the fact that Debtor has not provided any evidence accounting for the payments to the court or the Trustee, such as cancelled checks of payments made on the sale of the business, the Trustee requests that Debtor be required to provide a Forensic Accounting of the sales transactions. This is especially considered in this case due to the fact that the purchase of the business is Debtor's daughter, who happens to reside with debtor.

2. It does not appear that the provides all of the Debtor's projected disposable income for the applicable commitment period. 11 U.S.C. § 1325(b). Debtor is above median income and proposes a 60 month plan paying \$444 for 10 months and \$677 for 50 months with a guaranteed dividend of 4% to general unsecured claims. Debtor receives tax refunds that are not proposed to be turned over to the Trustee during the life of the plan.

Debtor delayed filing his 2013 return, and when Trustee received a copy of it, it only reported \$29,984 of income, and does not report income derived from payments on the Note for sale of the business.

Debtor received a \$1,297 refund for 2013 and did not report this income to the Trustee. Debtor did not provide Trustee with a copy of his State return; however, the cover sheet on the federal return reports that the state refund was \$132.00.

Debtor's 2012 Return shows that he received a \$647 federal refund that also was not reported to the Trustee.

Trustee's position is that all future tax refunds should be turned over to the Trustee as an additional payment to the plan for payment toward unsecured creditors. The Trustee further requests Debtor explain when the tax refunds for 2012 and 2013 were received and where the funds were spent.

3. Debtor's plan may not reflect his best efforts under 11 U.S.C. § 1325(b). Form B22C shows on line 59 that Debtor's monthly disposable income is \$4,346.75. Debtor is proposing a plan payment of \$444 for 10 months and \$677 for 50 months. The original plan payment was \$444 for 60 months. To support the ability to pay the increase of \$233 per month, Debtor filed Amended Schedules I & J. Debtor's wage income decreased from \$5,171.83 to \$4,483.42. Trustee requested updated payroll stubs, but never received the supporting documentation.

4. Trustee's Objection to Confirmation included an objection to the allowance of Debtor's counsel charging \$6,000 in fees for the case, as this case did not appear to qualify as a "business case." On July 22, 2014, the court entered a ruling that the case was not considered a "business case" and that maximum fees for representation of the Debtor be \$4,000. According to the First Amended Plan, Debtor paid counsel \$1,000 prior to filing, which leaves a balance of \$3,000 to be paid to counsel through the plan.

#### **DEBTOR'S RESPONSE**

Liquidation Analysis: Debtor asserts that the original schedules listed an incorrect amount for the Note. As Amended, Debtor's calculations show non-exempt equity to be \$9,745. Debtor is paying \$38,290 into the plan. Debtor states that, to the extent the value of the note needs to be verified, the Debtor will agree to have a forensic accountant review the note and payments.

Best Efforts: Debtor states that the taxes were delayed in getting filed because of a dispute with his former spouse over the 2012 and 2013 returns. Debtor was attempting to file married jointly, but his former spouse had filed her own returns, leaving Debtor to file his own married filing separately. The delay resulted from attempts to obtain former spouse's signature on the returns.

Debtor states that pay stubs were provided to the Trustee on February 9, 2015 and attached a copy as an exhibit.

Attorneys Fees: Counsel will file an application for fees instead of being paid under the "no look" provisions.

#### **DISCUSSION**

The court shares the Trustee's concerns that Debtor is not adequately disclosing information concerning the Note for the sale of the business and will order that Debtor provide the Trustee with a forensic accounting of the Note and payment history. After the accounting, the court can determine the amount remaining and consider whether the modified plan passes Chapter 7 liquidation analysis.

With regard to best efforts and the tax returns, the court lacks a declaration from the Debtors testifying to the reason why the returns were delinquent and how the funds were spent. Debtors address the situation in the Motion, but do not provide a Declaration signed under penalty of perjury. Given that the court is questioning whether Debtor is making his best efforts in this case, the court will require sufficient evidence that such efforts are being made.

The court will review and consider Debtor's counsel's fee application when it is set for calendar.

The court will continue the Motion to [date] at [time], granting Debtor time to engage a forensic accountant regarding the Note, upload a declaration testifying to the Debtor's best efforts, and arrange to resolve the outstanding Trustee objections.

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 is continued to [date] at [time].

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43. [15-20249](#)-C-13 CURT SHELSTAD  
SS-2 Scott Shumaker

MOTION TO AVOID LIEN OF THE  
GOLDEN 1 CREDIT UNION  
1-27-15 [[15](#)]

**Also #44**

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

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

**Below is the court's tentative ruling.**

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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 (*pro se*), Debtor's Attorney, and Office of the United States Trustee on January 27, 2015. Twenty-eight days' notice is required. That requirement was met.

The Motion to Avoid Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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 Motion to Avoid Lien is denied without prejudice.**

A judgment was entered against the Debtor in favor of Golden 1 Credit Union for the sum of \$17,331. That lien allegedly attached to the Debtor's residential real property commonly known as 3769 Ellies Allie, Placerville, California.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$210,000 as of the date of the petition. The unavoidable consensual liens total \$301,476 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$0.00 in Schedule C.

There are issues that prevent the court from granting the requested relief. First, Debtor did not provide the court with a copy of the recorded Abstract of Judgment. Instead, the Debtor uploaded what appears to be the online coversheet from the website for the El Dorado County Recorder's Office. The proof of recordation of the specific lien Debtor intends to avoid is necessary for the court to act. (Exh. 1, Dkt. 18).

Second, Debtor's claimed exemption is in the amount of \$0.00. Pursuant to 11 U.S.C. § 522(f), the court can order that a judgment lien is

avoided to the extent it impairs an exemption. Here, Debtor's exemption is \$0.00 and there is no amount that is being impaired.

Therefore, the court finds the relief requested to be improper and will deny the motion without prejudice.

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 Motion is Denied without prejudice.

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44. [15-20249](#)-C-13 CURT SHELSTAD  
SS-3 Scott Shumaker

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
1-27-15 [[20](#)]

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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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 January 27, 2015. Twenty-eight days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3769 Ellies Alley, Placerville, California. The Debtor seeks to value the property at a fair market value of \$210,000 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 \$222,624. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$78,852. 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 3769 Ellies Alley, Placerville, 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 \$210,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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45. [14-31552](#)-C-13 ALEJANDRO DIAZ AND  
DPC-1 FAUSTINA MENDOZA  
Patricia Wilson

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
1-22-15 [[34](#)]

**Also #46**

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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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.

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46. [14-31552](#)-C-13 ALEJANDRO DIAZ AND  
PD-1 FAUSTINA MENDOZA  
Patricia Wilson

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
1-21-15 [[26](#)]

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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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.

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47. [13-36064](#)-C-13 RANDOLPH/TAMARA RILEY MOTION TO MODIFY PLAN  
MET-2 Mary Ellen Terranella 1-15-15 [[40](#)]

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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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 January 15, 2015. 35 days' notice is required. That requirement was met.

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

**The Motion to Confirm the Modified Plan is granted.**

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on January 15, 2015 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.

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**Tentative Ruling:** The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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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 29, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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**The court's decision is to sustain the Objection.**

The Bank of New York Mellon opposes confirmation of the Plan on the following basis:

1. Creditor holds a secured claim in the amount of \$335,251, including arrearage in the amount of \$44,137. The claim is secured by real property commonly known as 2416 Edwards Street, Marysville, California.
2. Creditor objects on the basis that the plan does not provide for the curing of the default on secured creditor's claim. 11 U.S.C. § 1322(b)(5). The amount of arrears provided for in the plan is \$42,211, but the actual amount is \$44,137.

**DEBTOR'S RESPONSE**

Debtors do not dispute the increased amount and are willing to have the order confirming the plan amended to increase the payment to Bank of New York Mellon to \$44,137.16. Debtors state that the plan, as drafted includes approximately \$3,000 extra and should be able to absorb the increase without seriously impacting other creditors.

**DISCUSSION**

The court is amenable to the Debtor making the necessary changes to the language in the order confirming the plan. With the correct language regarding the amount of the arrearage included in the order confirming, 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 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 Objection is overruled, Debtor's Chapter 13 Plan filed on December 5, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtor's plan may not comply with 11 U.S.C. § 1325(a)(1). Debtor's plan proposes to pay interest on arrears to Legacy Lane HOA in class 1; however, this creditor may not be entitled to interest under 11 U.S.C. § 1322(e), unless the note provides for interest on late payments or applicable non-bankruptcy law requires it.
2. Debtor's Motion to Approve Loan Modification was heard on February 25, 2014 and denied. Debtor has not filed a subsequent Motion and continues to propose to pay the ongoing

mortgage through Class 4 of the plan with no proposed curing of any mortgage arrears. The mortgage creditor, J.P. Morgan Chase, still reflects mortgage arrears due of \$47,791.60.

3. Section 1.03 of the plan lists plan term as 0 months. Section 6.01-6.02, indicates that Debtor is reducing the previous plan term from 60 months; however, the specific term is not stated. From the Trustee's calculations, it appears that Debtor is proposing to pay no payments from the conversion date of October 18, 2013 through December 2013, and begin payments January 2014 and end payments September 2016 for a total of 32 payments.
4. Trustee states that Debtor's plan was not filed in good faith. In section 6.04, Debtor indicates that prior to reconverting to Chapter 13, Debtor paid-off her 2007 GMC Yukon and sold the property. A representative of the Trustee's office has not found authorization from the court to sell this vehicle. Debtor has used the bankruptcy process to manipulate to her benefit, converting the case to sell property of the estate without any payments to Chapter 7 Trustee or toward the estate.
5. Debtor has been asked by the Trustee whether she filed taxes and has replied multiple times that she does not file taxes due to her income. Debtor refused to turn over her spouses returns, indicating that her spouse would not cooperate. When Trustee objected that the plan relied on spouses income and that the plan would not operate without a cooperating spouse, the objection was sustained. Debtor has filed the second amended plan indicating that Debtor's spouse has been advised to file several years of back returns as "joint tax returns" in support of the proposed plan. They are Exhibits E & F.

The 2013 return is a joint return signed by Jason Sauve and Corinne Sauve. The return shows that Debtors earned \$68,054 gross wages and \$6,509 net business income from Jason Sauve Landscaping, where the gross receipts earned was \$19,129. Debtor and her spouse are to receive a \$3,723 refund, which is property of the estate. These funds have not been turned over to the Trustee, nor has the Debtor reported receiving these funds. Debtor's proposed second amended plan calls for turnover of tax refunds.

The 2012 return was filed as a joint return by Jason Sauve and Corinne Sauve. The return reveals that Debtors earned \$51,215 wages and report no self-employment income. Debtors are entitled to receive a \$7,573 refund. No funds have been turned over to the Trustee.

Debtor has not provided copies of the corporate returns to show what Debtor's non-filing spouse's corporation earned in 2014 or 2013. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3).

6. Trustee is unable to determine whether the Debtor can make the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a) (6). In the joint declaration of debtor and

non-filing spouse, they explain what their income earned in 2012 and 2013 was and provide documentation to support the income. Debtor provides no information and supplies no evidence of what their current household income is. Debtor does not provide current paystubs or any income statements and/or profit and loss statement for Rock Bottom Landscaping for the last 6 months of operation. Debtor has not demonstrated that she currently has the ability to support the proposed plan.

#### **DEBTOR'S RESPONSE**

Debtor responds to the Trustee:

1. Debtor's claim arising from past HOA dues amounts to \$986.00. It constitutes a senior lien against Debtor's residence and included in the scheduled amount of the claim are late charges and interest, as claimed by the HOA.
2. Debtor states that she obtained a loan modification from her lender in January 2014 and intended to attached the loan modification to the modified plan, but it was inadvertently omitted.
3. Debtor has based the plan length on a sixty month period.
4. Debtor originally scheduled the 2007 GMC Yukon with a value of \$22,000 and a secured claim against it of \$9,294.81, owed to Ally Financial. The debtor scheduled all of the equity exempt.

On April 1, 2013, Chapter 7 Trustee signed a stipulation for relief from the automatic stay with Ally Financial, Directly above the Trustee's signature, the stipulation states that "the trustee asserts no interest in this vehicle." The court entered its order approving the stipulation on April 1, 2013.

Based upon the stipulation, Debtor sold the 2007 GMC Yukon. Debtor's claim exemption in the vehicle and the Chapter 7 Trustee's disclaimer of any interest in the vehicle, the Debtor argues, means that it was sold in compliance of the code.

5. Debtor intends to comply with the provision in the plan that she remit any tax income refunds she receives to the Chapter 13 trustee. Neither Debtor nor her spouse have received any income tax refunds for the 2012 and 2013 tax returns, even though the returns show refunds due. Instead, Debtor and her spouse received a notice from the IRS stating that it was offsetting the refunds against prior unpaid taxes, taxes owed by the debtor's spouse.
6. Debtor's spouse no longer operates or conducts any business as Jacor, Inc. And he has not done so since the filing of this case. He is not require to file tax returns for the corporation.
7. Debtor has made every single monthly payment to the trustee

in a timely fashion for twelve months, since January 2014. Debtor's community income has remain stable throughout the year. The income is reasonably substantial, and her proposed payments are not substantial. Debtor only has 19 payments left to obtain her chapter 13 discharge, which will allow her to strip the second and third priority trust deeds from her residence.

## **DISCUSSION**

With regard to the HOA interest issue, the court notes that 11 U.S.C. § 1322(e) states that if a plan proposes to cure a default, the amount necessary to cure the default shall be determined by the underlying agreement and applicable non-bankruptcy law. In response to the Trustee's objection to the interest included in the claim, Debtor merely states that the scheduled amount includes interest. Debtor did not provide a copy of the agreement demonstrating that the creditor was permitted to charge interest.

Although Debtor may have received a loan modification from her lender in January 2014, she must have the loan modification approved by the bankruptcy court. See Rule 4001(d). Debtor's Motion to Approve Loan Modification was heard on February 25, 2014 and denied on March 6, 2014. The court has reviewed the docket and cannot find another filed Motion or order approving the Loan Modification.

Debtor needs to clarify the proper plan term in the plan itself.

As for the GMC Yukon, the court notes that on April 1, 2013, the Chapter 7 Trustee signed a Stipulation stating that the "Chapter 7 estate asserts no interest in the vehicle." This was a stipulation for relief from the automatic stay executed between the Chapter 7 Trustee and secured creditor, Ally Financial.

The effect of this agreement was to indicate that, with regard to the motion for relief from stay, Ally Financial could move forward with collection efforts, not fearing that it would violate the stay as to the estate. The Stipulation did not include language from the Trustee abandoning the vehicle from the estate and the court cannot find on the docket a Motion to Compel Abandonment that abandons the vehicle completely to the Debtor. The court is not convinced that the Stipulation abandoned the vehicle from the estate and it appears the vehicle was sold without court approval.

Debtor does not state that she will provide Trustee with evidence of income as requested by the Trustee. Debtor asserts that her history of timely payments demonstrates her intent to continue making payments; however, not the Debtor is seeking to modify the plan and needs to show that she can meet all requirements of modification under the code. Proving that she can make the proposed plan payments is required for confirmation and Debtor should comply with the Trustee's request for information.

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

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

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

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

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

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51. [14-27671](#)-C-13 RAUL/ALMA ANGEL  
JME-4 Julius Engel

MOTION TO RECONSIDER DISMISSAL  
OF CASE  
1-31-15 [[63](#)]

CASE DISMISSED 1/29/15

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**Tentative Ruling:** The Motion to Vacate Dismissal was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f) (2) (iii).**  
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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, parties requesting special notice, and Office of the United States Trustee on January 31, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Vacate Dismissal was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

**The Motion to Vacate Dismissal of Debtor's Case is denied.**

Debtors, Raul Angel and Alma Angel, requests the court enter an order vacating the dismissal of her Chapter 13 case. Debtor's petition was filed on July 28, 2014. The case was dismissed at a hearing held January 21, 2015, for unreasonable delay in proposing a confirmable Chapter 13 plan. The Trustee's Motion to Dismiss was based on Debtors' proposing to confirm a plan that had been denied at a previous confirmation hearing.

Debtors assert the following in support of reconsideration:

1. Debtors' counsel believed that an Amended Schedule J had been filed to correct the original filing. That was not the Case and Debtors' counsel mistakenly believed that the correct Chapter 13 plan had been filed.

2. Debtors' counsel was under the impression that the mistakes pointed out by the Trustee' regarding the previous plan could be corrected in the Order Confirming the Plan.
3. A Motion to Value has been erroneously filed against Ocwen Loan Servicing, LLC, when the creditor-in-fact is Deutsche Bank, National Trust Company.

#### **CHAPTER 13 TRUSTEE REPLY**

The Chapter 13 Trustee provides the following opposition:

1. Debtors filed no written opposition to the Trustee's Motion to Dismiss and has not explained why a response was not filed. No declaration was filed in support of Debtor's motion, and it should be denied.
2. Debtors' reasons to reconsider do not appear clear, based on the record. Debtor is asking the court to reconsider the decision to grant the Motion to Dismiss for: (1.) Mistake as to an Amended Schedule J; (2.) Belief an error could be corrected in the order confirming; and (3.) A Motion to Value was filed against the wrong creditor.

The Motion to Dismiss was for unreasonable delay in filing a new plan. Debtor had filed a Motion to Confirm; however, no new plan was filed and the Motion did not comply with FRBP 9013.

3. Trustee argues that the current plan is not the Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors are under median income and propose plan payments of \$353 for 60 months with a 0% dividend to unsecured creditors. Debtors list an ongoing Class 4 mortgage with payments of \$1,224 to Ocwen Loan Servicing; however, Debtors have listed the same Class 4 on-going payment on Schedule J in the amount of \$1,598. The Debtors admitted at the 341 Meeting that the correct amount of the mortgage payment is \$1,224 and; therefore, Debtors have an additional \$374 per month to pay into the plan.

Debtors' 2013 tax returns shows that the Debtors received a refund of \$6,280; however, the plan does not propose to pay into the plan the tax refunds or adjust withholdings so that Debtors do not receive such a large refund.

None of these issues were address when Debtors filed the Motion to Confirm on December 8, 2014. Debtor was attempting to confirm the same plan that has previously been denied confirmation on September 30, 2014.

#### **DISCUSSION**

The Federal Rules of Civil Procedure provide for vacating an order or judgment in Rule 60, as incorporated into bankruptcy cases by Federal Rule of Bankruptcy Procedure 9024, which incorporates minor modifications that do not apply here. 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 in prospectively is no longer equitable; or
- (6) Any other reason that justifies relief.

Fed. R. Civ. P. 60(b). The court uses equitable principles when applying Rule 60(b) Fed. R. Civ. P. 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2857 (3rd ed. 1998). A precondition to the granting of such relief is that the movant show that he or she has a meritorious claim or defense. See 12-60 Moore's Federal Practice Civil § 60.24; *Brandt v. American Bankers Insurance Company of Florida*, 653 F.3d 1108, 111 (9th Cir. 2011); *Falk v. Allen*, 739 F.2d 461, 462 (9th Cir. 1984) ("We agree with the Third Circuit that three factors should be evaluated in considering a motion to reopen a default judgment under Rule 60(b): (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. See *Gross v. Stereo Component Systems*, 700 F.2d 120, 122 (3d Cir. 1983) ("Gross"); see also *United Coin Meter v. Seaboard Coastline R.R.*, 705 F.2d 839, 845 (6th Cir. 1983) (adopting Third Circuit test).")

The court is not convinced that this situation warrants granting relief pursuant to FRCP 60, FRBP 9024. First, the Motion does not comply with FRBP 9013 because it does not state with particularity the grounds upon which relief can be granted. Specifically, the Motion makes no reference to the Federal Rules of Civil Procedure or Bankruptcy Procedure and makes no arguments under any of the prongs of Rule 60. Upon this ground alone the court finds reason to deny the motion.

Second, the Debtor has presented no compelling arguments or evidence upon which the court could make findings of fact. Debtors did not submit a declaration with their Motion, explaining mistakes, surprises, fraud, etc. that might warrant the court reconsidering the Motion.

The court finds no other grounds upon which relief should be granted and 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 to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause

appearing,

**IT IS ORDERED** that the Motion to Vacate Dismissal is denied without prejudice.

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Thru #54

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**Tentative Ruling:** The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 10, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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**The Motion to Value secured claim of Aaron Sales & Lease, "Creditor," is denied without prejudice.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of personal property. The Debtor seeks to value the property at a fair market value of \$400.00 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 court cannot rely on the Declaration of Debtor. On page 1, line 21, Debtor states that collateral concerning the subject lien is a Refrigerator-Freezer. See Dkt. 12. On page 1, line 28, Debtor states that the "automobile" was a purchase money security interest. Further, on page 1, line 22, there are "xxxxx" marks through "of the vehicle," referring to its good condition. The declaration is signed under penalty of perjury. These inconsistencies and glaring proof reading errors are sloppy and

unreliable. The court will not entertain adjusting the legal rights of an entity without coherent evidence.

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.

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**Tentative Ruling:** The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on February 10, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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**The Motion to Value secured claim of Nationwide West, LLC, "Creditor," is granted.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2005 Ford Taurus. The Debtor seeks to value the property at a replacement value of \$2,800.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred on May 19, 2012, more than 910 days prior to the filing of the petition, with a balance of approximately \$5,781.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$15,675.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is

granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Nationwide West, LLC secured by a second deed of trust recorded against the real property commonly known as 2005 Ford Taurus, is determined to be a secured claim in the amount of \$2,800.00, 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 \$2,800.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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**Tentative Ruling:** The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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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, parties requesting special notice, and Office of the United States Trustee on February 10, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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**The Motion to Value secured claim of Tidewater Finance Company, "Creditor," is granted.**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2010 Ford Escape. The Debtor seeks to value the property at a replacement value of \$11,700.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred on June 3, 2012, more than 910 days prior to the filing of the petition, with a balance of approximately \$15,800.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$15,675.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is

granted

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Tidewater Finance Company secured by a 2010 Ford Escape, is determined to be a secured claim in the amount of \$11,700.00, 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 \$11,700 and is encumbered by liens securing claims which exceed the value of the Property.

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 9, 2015. Forty-two days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. Debtor is \$350 delinquent in plan payments to the Trustee to date and the next schedule payment of \$350 is due February 25, 2015. Debtor has paid \$0.00 into the plan to date.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 4, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtor's proposed modified plan, section 6.01 indicates \$13,376.80 in post petition arrears was due as of January 2, 2015. Trustee calculates that as of January 2, 2015, post-petition arrears were actually \$10,701.44, which consists of a principal due of \$8,06.08 in ongoing mortgage payments and 1 month of post-petition arrears in the amount of \$2,675.36 in Class 1 per Section 6.02 of the confirmed plan.
2. Debtor has provided conflicting information regarding treatment of Santander Consumer USA claim, 2010 Honda Accord. Debtor's plan filed September 3, 2013 (Dkt. 9) classified this creditor as a class 4 secured claim with a monthly

contract installment of \$433.27. Debtor's Schedule J filed September 5, 2013 (Dkt. 14) budgeted \$433.27 monthly payments. Debtor's confirmed modified plan filed on December 17, 2013 (Dkt. 55) reclassified this claim to Class 3 Surrender and Debtor's Projected Budget, Income and Expenses, reducing the monthly auto installment to \$0. Debtor's proposed modified plan continues to classify this claim as Class 3 Surrender claim, but Debtor's Supplemental Schedule budgets \$0.01 for installment payments and now states, "Husband paid off the car with retirement."

#### **DEBTOR'S RESPONSE**

Debtor responds to the Trustee, stating:

1. Post-Petition arrears are correctly stated by the plan. The figure stated by Trustee (\$10,701.44) does not take into account the sum stated by the Court's order (Dkt. 7). The order provides, "If a contract installment payment on a claim of the type described in 11 U.S.C. § 1326(a)(1)(c) first falls due after the petition is filed and during the first calendar month of the case, the debtor shall make the adequate protection payment proposed in the plan directly to the claim holder." As applied to this issue, post-petition arrears of \$2,675.36 were due for the installment to First Mortgage Corporation for September 1, 2013. Thus, \$10,701.44 and \$2,675.36 amount to \$13,376.80, as stated in the plan.
2. The secured claim of Santander Consumer USA is correctly classified in Class 3. The reason for reclassifying this claim to Class 3 on the December 17, 2013 modified plan is that at the time, Debtor's husband's intention was to surrender the car. Debtor's husband has since paid off the car loan with his retirement money. In the instant modified plan, this line 17c, page 5 of Document 17 should have been left blank.

#### **HEARING**

At the hearing on February 10, 2015, the court continued the matter to February 24, 2015 to see if "that which is represented comes to pass." It is uncertain at this point if Debtor is current on payments. If, on February 24, if Debtor is not current, Judge will dismiss case.

#### **CHAPTER 13 TRUSTEE WITHDRAWAL**

On February 17, 2015, the Chapter 13 Trustee withdrew his opposition to the Motion. The Trustee states that Debtor currently has a \$3,000 payment pending through TFW, which represents the January plan payment. Debtor is current under the modified plan once this payment posts.

The court will grant 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 Modified 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 January 2, 2015 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.

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57. [11-40781](#)-C-13 MARK FLORES AND PENNY  
[14-2338](#) POTTER  
FLORES ET AL V. JPMORGAN CHASE  
BANK, N.A.

MOTION TO DISMISS ADVERSARY  
PROCEEDING  
1-9-15 [7]

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent party, and Office of the United States Trustee on January 9, 2015. Twenty-eight days' notice is required. That requirement was met.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion Dismiss is granted as to Claim 1 and denied as to Claims 2, 3, and 4.**

Defendant, J.P. Morgan Chase Bank, N.A., moves to dismiss each claim of Plaintiff, Mark Flores and Penny Potter, pursuant to Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief may be granted.

**FACTS**

On February 21, 2006, Plaintiff Penny Potter obtained a home equity line of credit in the amount of \$99,999 from Defendant, secured by a deed of trust on real property commonly known as 9181 Lujan Drive, Elk Grove, California. The Loan and Deed of Trust were subject to a senior loan and lien encumbering the property in the original principal amount of \$211,250.

Plaintiffs filed for Chapter 13 relief on August 25, 2011. On September 30, 2011, Plaintiffs filed a Motion to Value the secured claim of J.P. Morgan Chase Bank, N.A. On December 7, 2011, the court entered an order

valuing the secured claim of Defendant at \$0.00 based on a senior lien exceeding the value of the subject property. Plaintiffs' Chapter 13 plan was confirmed on January 31, 2012.

Plaintiffs received a Chapter 13 discharge on December 1, 2014 and filed the instant adversary on December 10, 2014.

Through the adversary, Plaintiff seeks the following relief:

1. Declaratory judgment pursuant to FRBP 7001(9) that Defendant's lien is void and should be released; that the order on the Motion to Value is a final non-appealable order; and that the debt related to Defendant's claim is fully discharged and any security interest voided.
2. Order from the court voiding Defendant's second deed of trust in a form that allows for recording with the Sacramento County Recorder's Office. That the Order include language that would be included in a Deed of Reconveyance, directing all title to be reconveyed to the Plaintiff. Attorneys' fees pursuant to the contract with the Defendant.
3. Damages for violation of California Civil Code § 2941 for Defendant not reconveying the deed of trust within 30 days after the obligation on the deed of trust was satisfied.
4. Award of attorneys' fees pursuant to California Civil Code § 1717 and California Civil Code § 2941.

#### **MOTION TO DISMISS**

Defendant moves to dismiss the complaint pursuant to FRCP 12(b)(6), for failure to state a claim and argues the following:

1. There is no present or actual controversy between Plaintiffs and Defendant that would permit the granting of a claim for declaratory relief. A claim for declaratory relief requires the existence of a present and actual controversy. *Am. States Ins. Co. v. Kansas*, 15 F.3d 142, 143-44 (9th Cir. 1994).

Plaintiffs do not allege that Defendant is attempting to enforce the Deed of Trust as against the property or that Defendant is attempting to collect on the loan. There is no dispute that the court's order granting the Motion to Value is a final order and that appeals period has expired or that the debt was discharge. There is no claim alleged against Defendant.

2. Under applicable law, a debtor's completion of a Chapter 13 Plan, entry of discharge, and an earlier order finding a junior lien as completely unsecured, renders the debt unenforceable and the lien void. See *Zimmer v. PSB Lending Corp.*, 313 F.3 1220, 1227 (9 Cir. 2002); *Lam v. Investors Thrift*, 211 B.R. 36, 41 (9 Cir. B.A.P. 1997); *Victorio v. Billingslea*, 470 B.R. 545, 554 (S.D. Cal. 2012); 11 U.S.C. §§ 506, 1322(b)(2), and 1327.

Defendant argues this is distinguishable from "satisfaction" of the debtor or the relief Plaintiff is seeking in this cause of action. Defendant argues that attorneys' fees should not be awarded under the deed of trust to plaintiffs as the plaintiffs assert that the deed of trust is void by operation of law.

3. Section 2941(b) (1) and (d) state, in relevant part:

(b) (1) Within 30 calendar days after the **obligation secured by any deed of trust has been satisfied**, the beneficiary or the assignee of the beneficiary shall execute and deliver to the trustee the original note, deed of trust, request for a full reconveyance, and other documents as may be necessary to reconvey, or cause to be reconveyed, the deed of trust .

. .

(d) The violation of this section shall make the violator liable to the person affected by the violation for all damages which that person may sustain by reason of the violation, and shall require that the violator forfeit to that person the sum of five hundred dollars (\$500).

Emphasis added.

Defendant argues that the effect of a "lien strip" pursuant to sections 506, 1322(b), and 1327, is that the lien is void and unenforceable. However, the debt itself is not extinguished or satisfied, it merely cannot be enforced against a debtor. Accordingly, Defendant asserts that section 2941 does not apply to the instant case.

4. Defendant argues that attorneys' fees should not be awarded at the effect of a "lien strip" is that the Deed of Trust is void and because CC § 2941 does not apply to the instant case. The equities of the case do not merit an award of attorneys' fees and costs. Plaintiffs, after completing the plan and receiving a discharge, should obtain a judgment or order stating that the lien is void and unenforceable. However, this is not a situation where Plaintiffs have paid off their loan in full and are now seeking a reconveyance. Rather, by operation of law, Defendant's Deed of Trust is "stripped" upon entry of the Chapter 13 discharge. The Plaintiffs require the judgment or order to satisfy a title company and allow them to sell or refinance the real property post-bankruptcy.

#### **PLAINTIFF' S OBJECTION**

In response to the Defendant's arguments, Plaintiffs assert the following:

1. Plaintiff takes issue with Defendant not comply with Local Bankr. R. 7014-1(), which requires motions filed in adversary proceedings to have the Docket Control Number placed immediately below the adversary number. Further, Plaintiff points out that the Motion and Memorandum of Points and Authorities were filed as a single document, in violation of the Revised Guidelines for the Preparation of Document. Plaintiff seeks no relief for these errors.
2. Plaintiff states that, based on the response of the Defendant, the following are no longer in dispute: (1.) The deed of trust of Defendant has a secured value of \$0.00; (2.) The deed of trust of Defendant is completely unsecured; and (3.) The Motion to Value granted by the court is a final, non-appealable order.  
  
Plaintiff states that, in a Chapter 13 case, a 11 U.S.C. § 506(a) secured claim determination does not have "res judicata effect" until after a Chapter 13 plan is completed.
3. Plaintiffs argue they do show a controversy over whether the Defendant's lien is void and whether they are entitled to a release of the lien. The "lien strip" process involves the 11 U.S.C. § 506(a) determination and an includes an obligation of a creditor to reconvey a deed of trust. See *In re Frazier*, 448 B.R. 803 (Bankr. E.D. Cal. 2011), *affd.*; *Martin v. CitiFinancial Services, Inc.*, 491 B.R. 122 (Bankr. E.D. Cal. 2013).
4. Since Defendant has not reconveyed the deed of trust, Plaintiff is seeking a recordable judgment through which Plaintiff can record with the Sacramento County Recorder to have the lien removed. Plaintiff is confused by the Defendant's position because it appears Defendant agrees that the lien is void, but is convinced that it is appropriate to cloud the title of Plaintiff by allowing the deed of trust to remain on the property.
5. Plaintiff reasserts that Cal. Civ. Code § 2941 is applicable and should be applied by the court. Plaintiff reasserts that its pleadings for attorneys' fees is are appropriate and sufficiently plead.

#### **DEFENDANT'S RESPONSE**

Defendant responds to the Plaintiffs' Opposition as follows:

1. Plaintiff's claims are barred by res judicata as the issues they seek to have determined were resolved under the court's order on the Motion to Value.
2. At the time the complaint was filed, there was no controversy between Plaintiff and Defendant. Defendant argues that CC § 2941 provides for a full 51-day time period to record a reconveyance and this time period had not elapsed by the time the complaint was filed.

Defendant computes the time period by arguing that under § 2941, Defendant was only required to provide a request for a full reconveyance to the trustee within 30 days. The trustee then had the additional obligation to record the reconveyance within 21 days after receiving it.

Defendant states it is willing to reconvey the deed of trust.

3. Defendant reiterates that the nature of the lien being void does not entitle Plaintiffs to "satisfaction" of the debt, or judgment that "title be reconveyed to the Plaintiffs 'all right, title and interest' acquired by" the deed of trust.
4. Defendant argues that CC § 2941 does not apply in this case because the debt is not extinguished, it merely cannot be enforced by the debtor.
5. Defendant argues that attorneys' fees are not available under CC § 1717 because Plaintiff will not prevail and fees are not available under CC § 2941 because that section of the code does not apply.

## DISCUSSION

In considering a motion to dismiss, the court starts with the basic premise that the law favors disputes being decided on their merits. Federal Rule of Civil Procedure 8 and Federal Rule of Bankruptcy Procedure 7008 require that complaints contain a short, plain statement of the claim showing entitlement to relief and a demand for the relief requested. Fed. R. Civ. P. 8(a). Factual allegations must be enough to raise a right to relief above the speculative level. *Id.*, citing to 5 C. WRIGHT & A. MILLER, FED. PRACTICE AND PROCEDURE § 1216, at 235-36 (3d ed. 2004) ("[T]he pleading must contain something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action").

A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to the relief. *Williams v. Gorton*, 529 F.2d 668, 672 (9th Cir. 1976). Any doubt with respect to whether a motion to dismiss is to be granted should be resolved in favor of the pleader. *Pond v. General Electric Co.*, 256 F.2d 824, 826-27 (9th Cir. 1958). For purposes of determining the propriety of a dismissal before trial, allegations in the complaint are taken as true and are construed in the light most favorable to the plaintiff. *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988); *Kossick v. United Fruit Co.*, 365 U.S. 731, 731 (1961).

Under the Supreme Court's formulation of Rule 12(b)(6), a plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1954 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. See *Bell Atl. Corp. v. Twombly*, 127 S.Ct. 1955, 1964-66 (2007). ("[A] plaintiff's obligation to provide 'grounds' of his 'entitle[ment]' to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.").

In ruling on a 12(b)(6) motion to dismiss, the Court may consider "allegations contained in the pleadings, exhibits attached to the complaint,

and matters properly subject to judicial notice." *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). The court need not accept unreasonable inferences or conclusory deductions of fact cast in the form of factual allegations. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Nor is the court required to "accept legal conclusions cast in the form of factual allegations if those conclusions cannot be reasonably drawn from the facts alleged." *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir. 1994).

In order to address each claim in turn, a brief overview on how Chapter 13 cases can impact creditor-debtor relationships is useful.

Here, Plaintiffs have brought a claim that, at the foundation, seeks to quiet title to the subject property. A bankruptcy court has the power to issue judgments and orders divesting and vesting title to property pursuant to FRCP 70 and FRBP 7070.

Title to the subject property is complicated in this matter by the confirmation and completion of a Chapter 13 plan. Chapter 13 cases modify the rights and obligations in debtor-creditor relationships. See *In re Martin*, 491 B.R. 122 (Bankr. E.D. Cal. 2013).

First, a secured creditor's claim is determined under 11 U.S.C. § 506(a). Through application of § 506(a), the court determines which portion of a claim is secured and which portion is unsecured. The claim is allowed as a secured claim only to the extent there is value in the collateral which secures the claim. *Id.* at 125.

Second, the Debtor must have a confirmed Chapter 13 plan that provides for both the secured and unsecured claims of the creditor. A creditor and debtor are bound to the terms of a confirmed plan, which becomes the modified contract between the parties. 11 U.S.C. § 1327. *Id.* at 126 (citing *In re Hollis Motors*, 997 F.2d 581, 588 (9th Cir. 1993); *Max Recovery v. Than*, 215 B.R. 430, 435 (9th Cir. B.A.P. 1997)).

Third, a debtor must then pay the full amount of the secured claim as determined under 11 U.S.C. § 506(a), through the terms of the confirmed plan. Once the plan is complete, there is no remaining obligation secured by the lien. *Id.*

Finally, a debtor will request a reconveyance of the deed of trust, when there is no obligation remaining to be paid, after completion of the plan, pursuant to applicable non-bankruptcy law. *Id.*

In the instant matter, Plaintiffs obtained an order valuing the secured claim of Defendant at \$0.00. Plaintiffs confirmed a Chapter 13 plan and completed the plan, receiving a discharge on December 1, 2014. Based on the above discussion, there is no remaining obligation secured by the lien. Without an obligation to be secured, the lien no longer had independent validity and the lien is void. *Id.* 127 at (citing 4 Witkin Summary of California Law, Tenth Edition, § 47).

Claim 1 - Declaratory Relief: Plaintiff is seeking declaratory relief with respect to matters that are soundly decided or improperly plead. First, Plaintiff seeks a declaration from the court that Defendant's lien is void and should be released. The court has laid out the operation of law in this area that demonstrates why the lien is void and Defendant has no contention with the lien being perceived as void.

Debtor seeks a declaratory judgment that the order on the Motion to Value is a final non-appealable order. There is no question that the order is final and that it is no longer appealable since the time for appeal has long since passed.

Debtor seeks declaratory relief stating that the debt related to Defendant's claim is fully discharged and any security interest voided. The court entered an order discharging all unsecured debt under the Chapter 13 plan on December 1, 2014. Since the entirety of the claim owed to Defendant was determined to be unsecured, with \$0.00 secured, any remaining obligation was discharged on December 1, 2014. As previously stated, the lien is void as a matter of law.

There is to be no disagreement or controversy as to these issues and the court agrees that there is no stated claim that should survive a motion to dismiss. Therefore, the court will dismiss claim one pursuant to FRCP 12(b)(6).

Claim 2 - Order Voiding Deed of Trust. Plaintiffs' claim two seeks an order voiding Defendant's second deed of trust in a form that allows for recording with the Sacramento County Recorder's Office. That the Order include language that would be included in a Deed of Reconveyance, directing all title to be reconveyed to the Plaintiff. Attorneys' fees pursuant to the contract with the Defendant.

The court does not find it proper to dismiss claim two as it addresses the heart of the dispute between Plaintiffs and Defendant. Defendant argues that CC § 2941, which mandates reconveyance of the deed of trust after satisfaction, does not apply because there has been no "satisfaction" as the defendant defines the work. Plaintiff argues that § 2941 does apply because there is no longer an obligation on the deed of trust, the obligation has been satisfied through the Motion to Value, confirmation of the plan, and completion of the plan, and Defendant must instruct the trustee to reconvey the deed of trust.

The court agrees with the Plaintiff, that CC § 2941 does apply to the case at hand. The court recently engaged application of § 2941 in *In re Martin* and finds that case particularly on point to the instant issue.

Plaintiff has stated a claim upon which relief may be granted, namely whether Plaintiff is entitled to an order in its favor based on the application of CC § 2941.

Claim 3 - Damages: Plaintiff requests an award of \$500 in statutory fees under § 2941. As section 2941 does apply and because Defendant has not complied with the section, the court finds that a claim for relief has been sufficiently stated to stave off a motion to dismiss on Claim three.

Claim 4 - Attorneys' Fees: Award of attorneys' fees pursuant to California Civil Code § 1717 and California Civil Code § 2941. Whether fees are due under these code sections is sufficiently plead by the Plaintiff and the court does not find cause to dismiss claim four under FRCP 12(b)(6).

Based on the forgoing, the court finds that Claim One is dismissed pursuant to FRCP 12(b)(6) and grants the Motion as to Claim One. The court further finds that Claims Two, Three, and Four each state a claim upon which relief could be granted and does not dismiss the claims.

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 filed by Plaintiffs, 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 granted as to Claim One and Denied as to Claims Two, Three, and Four.

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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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 January 14, 2015. 35 days' notice is required. That requirement was met.

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

**The Motion to Confirm the Modified Plan is granted.**

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on January 14, 2015 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.

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59. [14-29983](#)-C-13 EVANGELINA MEDINA  
TJW-1 Timothy Walsh

MOTION TO VACATE DISMISSAL OF  
CASE  
2-5-15 [[36](#)]

CASE DISMISSED 1/29/15

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**Tentative Ruling:** The Motion to Vacate Dismissal was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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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, parties requesting special notice, and Office of the United States Trustee on February 5, 2015. Fourteen days' notice is required. That requirement was met.

The Motion to Vacate Dismissal was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

**The Motion to Vacate Dismissal of Debtor's Case is denied.**

Debtor, Evangelina Medina, requests the court enter an order vacating the dismissal of her Chapter 13 case. Debtor's petition was filed on October 10, 2014 and the Meeting of Creditors was conducted on November 6, 2014. The case was ordered dismissed at a hearing on January 21, 2015, because the debtor had not caught up on delinquent payments.

Debtor argues that cause exists for the court to reconsider and vacate the dismissal of the case because the only issue at the time of dismissal was delinquent payments. Debtor argues that at the time Trustee filed his declaration stating that Debtor has not made payments, there was only one payment due, that due November 25, 2014 in the amount of \$600.00. This was the first payment of the plan. Debtor states the payment was actually made via TFS on December 18, 2014.

Debtor states that at the hearing on January 15, 2015, the Debtor had made the first payment as indicated. Debtor goes on to state that there were two payments that had come due, November and December 2014 for \$600 each and that one had been made and one had not been made.

Debtor declares that she was confused over the issue of the payments because she had made the payment, despite the Trustee stating that the payment had not been made. Debtor never intended to not make the payments. Debtor has since sent the other two payments and is prepared to proceed with the plan.

### **CHAPTER 13 TRUSTEE REPLY**

The Chapter 13 Trustee provides the following opposition:

1. Trustee's Motion to Dismiss was filed December 12, 2014 due to debtor being delinquent in plan payments and for not providing the Trustee with pay advices and tax documents.
2. As of the date of the hearing, January 21, 2015, Debtor was still delinquent \$600 with another payment of \$600 due in four days, on January 25, 2015. Trustee had received pay stubs and tax returns on December 17, 2014.
3. Trustee states that he has received no payments or correspondence from the Debtor since the dismissal on January 21, 2015. The only payment received by the Debtor was a \$600 payment received on December 29, 2014. Debtor remains in default under the plan.

### **DISCUSSION**

The Federal Rules of Civil Procedure provide for vacating an order or judgment in Rule 60, as incorporated into bankruptcy cases by Federal Rule of Bankruptcy Procedure 9024, which incorporates minor modifications that do not apply here. 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 in prospectively is no longer equitable; or
- (6) Any other reason that justifies relief.

Fed. R. Civ. P. 60(b). The court uses equitable principles when applying Rule 60(b) Fed. R. Civ. P. 60(b). See 11 CHARLES ALAN WRIGHT ET AL.,

FEDERAL PRACTICE AND PROCEDURE § 2857 (3rd ed. 1998). A precondition to the granting of such relief is that the movant show that he or she has a meritorious claim or defense. See 12-60 Moore's Federal Practice Civil § 60.24; *Brandt v. American Bankers Insurance Company of Florida*, 653 F.3d 1108, 111 (9th Cir. 2011); *Falk v. Allen*, 739 F.2d 461, 462 (9th Cir. 1984) ("We agree with the Third Circuit that three factors should be evaluated in considering a motion to reopen a default judgment under Rule 60(b): (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. See *Gross v. Stereo Component Systems*, 700 F.2d 120, 122 (3d Cir. 1983) ("Gross"); see also *United Coin Meter v. Seaboard Coastline R.R.*, 705 F.2d 839, 845 (6<sup>th</sup> Cir. 1983) (adopting Third Circuit test).")

The court is not convinced that this situation warrants granting relief pursuant to FRCP 60, FRBP 9024. First, the Motion does not comply with FRBP 9013 because it does not state with particularity the grounds upon which relief can be granted. Specifically, the Motion makes no reference to the Federal Rules of Civil Procedure or Bankruptcy Procedure and makes no arguments under any of the prongs of Rule 60. Upon this ground alone the court finds reason to deny the motion.

Second, the Debtor has presented no compelling evidence to support her theory that payments were made, when in fact they were not made. The Trustee provided the TFS report which shows that only one \$600 payment was received in December 2014. Delinquent plan payments is a classic ground for dismissal of a Chapter 13 case.

Debtor seems to argue that there may have been some "mistake" in her understanding of what payments were due. However, again, the court is not convinced that she made a reasonable mistake in the transactions, given the report provided by the Trustee.

The court finds no other grounds upon which relief should be granted and 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 to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Vacate Dismissal is denied without prejudice.

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 16, 2015. Forty-two days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation on the following grounds:

1. The plan is not the Debtor's best effort. 11 U.S.C. § 1325(b). Debtor is over the median income and proposes plan payments of \$18,189.20 through December 2014 (7 months); then, beginning January 25, 2015, payments of \$2,728.20 for 53 months, with a 60% dividend to unsecured creditors, which totals \$14,315.01.

Debtor's current net disposable income listed on Schedule J filed on August 26, 2014 reflects \$3,153 per month; however, Debtor is proposing plan payments of \$2,728.20, which is a difference of \$424.80 per month. The Debtor's Declaration in support of the motion states that the new plan provides for plan payments to be reduced by \$400, which makes it possible for Debtors to make the plan payment. Paragraph 7 provides for the changes; however, Debtor did not file an amended Schedule J.

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

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

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

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

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

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61. [12-38290](#)-C-13 JESUS/GLORIA MALGAPO  
SDB-2 Scott de Bie

MOTION TO APPROVE LOAN  
MODIFICATION  
1-21-15 [[47](#)]

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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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 and Office of the United States Trustee on January 21, 2015. Twenty-eight days' notice is required. That requirement was met.

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

**The Motion to Approve Loan Modification is granted.**

The Motion to Approve Loan Modification filed by Jesus Cristobal Malgapo and Gloria Mahgahas Malgapo ("Debtors") seeks court approval for Debtor to incur post-petition credit. Bank of New York Mellon ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to \$2,564.58 for years 1-22 and \$2,562.58 for year 23, these amounts are reduces from the previous monthly payment of \$2,678.58. The modification will capitalize the pre-petition arrears and provide interest at 5%.

The Motion is supported by the Declaration of Jesus Cristobal Malgapo. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

The Chapter 13 Trustee filed a statement of non-opposition to the court granting the requested relief.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. 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 the court authorizes Jesus Cristobal Malgapo and Gloria Mahgahas Malgapo ("Debtor") to amend the terms of the loan with the Bank of New York Mellon, which is secured by the real property commonly known as 6403 Eagle Ridge Drive, Vallejo, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 50.

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**Final Ruling:** No appearance at the February 24, 2015 hearing is required.  
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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 January 7, 2015. 35 days' notice is required. That requirement was met.

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

**The Motion to Confirm the Modified Plan is granted.**

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on January 7, 2015 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.

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**Tentative Ruling:** The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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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 January 28, 2015. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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**The court's decision is to sustain the Objection.**

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

1. Debtor cannot make payments under the plan or comply with the plan. 11 U.S.C. § 1325 (a)(6). Debtor's plan relies on the pending Motion to Value the secured claim of Americredit Financial Services, dba: GM Financial, MET-1, set for hearing on February 10, 2015. If the motion is not granted, Debtor lacks sufficient monies to pay the claim in full.
2. Debtor is \$783 delinquent in plan payments to the Trustee to the date and the next scheduled payment of \$783 is due on February 25, 2015. Debtor has paid \$0

into the plan to date.

At the hearing on February 10, 2015, the court granted Debtor's motion to value the collateral of Americredit Financial Services, Inc. (Dkt. 32), resolving the Trustee's first objection. However, Debtor is delinquent in plan payments to the Trustee, and Trustee's second objection remains outstanding.

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

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Trustee is uncertain of the proposed plan payments and duration. Debtor has omitted section 6.1. Section 1.03 states 24 months is the duration of the plan, while the court indicated the applicable commitment period is 60 months and the confirmed plan provided for 60 month plan duration. Debtors have paid Trustee \$56,268.38 through January 31, 2015, which was the 36<sup>th</sup> month of the plan. Trustee believes that Debtor intends to amend the plan to a 60 month plan paying what they have paid in to date through the end of January 2015, and then \$1,850 per month for the remaining 24 months.
2. Trustee is uncertain of the Debtors' ability to pay. Debtors

did not submit a supplement to Schedule I or Schedule J in support of the plan. The plan was filed after a notice of default issued under the confirmed plan.

3. Debtors' motion to confirm does not comply with applicable law. Motion does not cite applicable codes required under local rules.
4. Debtors' motion and declaration state that they have no domestic support obligation. Debtors' schedule I indicates Debtor has a wage garnishment and Trustee's record reflects that Debtor has two domestic support obligations.

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

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

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

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

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

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, January 16, 2015. Thirty-five days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan on the basis that Debtor is \$261.80 delinquent in plan payments to the Trustee under the terms of the proposed modified plan. According to the proposed modified plan, \$6,035.20 have become due. Debtor has paid a total of \$5,773.40 to Trustee with the last payment posted on January 16, 2015 in the amount of \$263.

DEBTORS' RESPONSE

Debtors admit that when they filed the motion to modify plan, they were delinquent \$261.80. The delinquency was due to misunderstanding between Debtors. After Trustee's objection, the misunderstanding came to Debtors' attention and they have cured their delinquency and made their February 2014 plan payment.

The court is satisfied with Debtors' response and action to cure the delinquency identified by Trustee. The modified Plan does comply with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that Motion to Confirm the Plan is granted and the proposed Chapter 13 Plan is confirmed.

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

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

**Below is the court's tentative ruling.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2015. Forty-two days' notice is required. That requirement was met.

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

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick. Trustee objected on the basis that Debtor did not appear at the continued meeting of creditors on January 16, 2015. The meeting was continued to February 12, 2015, to which the Debtor appeared. Trustee has since withdrawn the objection (Dkt. 37).

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 12, 2015 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.

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**Tentative Ruling:** The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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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 January 22, 2015. Fourteen days' notice is required. This requirement has been met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
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**The court's decision is to sustain the Objection.**

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

1. Debtor did not appear at the First Meeting of Creditors held on January 15, 2015. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325. The meeting was continued to February 12, 2015.
2. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002 (b)(3). This is required seven (7) days before the date first

set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (1).

3. Debtor's income is not clear, and it is not clear is Debtor can comply with the plan. 11 U.S.C. § 1325(a) (6). Schedule I states Debtor's monthly gross income is from: wage income of \$3,683; family support of \$2,500; and states the "Debtor is currently unemployed, but is hopeful of a construction employment in January." No verification such as any recent pay advices, bank account statements or declarations have been provided to Trustee to verify income.

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

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

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

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

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

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