

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

March 4, 2014 at 2:00 p.m.

1. [14-20008](#)-C-13 TISHA KRAMER OBJECTION TO CONFIRMATION OF
TSB-1 Scott J. Sagaria PLAN BY DAVID P. CUSICK
2-5-14 [[15](#)]

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on February 5, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor may not be able to make the payments or comply with the plan. 11 U.S.C. § 1325(a) (6). Debtor lists on Schedule I "anticipated" income from both unemployment and employment. At the 341 Meeting held January 30, 2014, Debtor admitted that she has not yet begun working and also that she was denied a claim of unemployment. Debtor currently has no source of income to support her proposed plan.
2. Debtor's plan does not pass Chapter 7 liquidation analysis because Debtor's non-exempt equity totals \$938.00, Debtor is proposing a 0%

dividend to unsecured creditors, and Debtor has not exempted all equity in her 2006 Nissan Sentra.

3. Debtor admitted that she moved to California in 2012. Debtor's statement of financial affairs does not disclose a prior address in the last three years.

The court's decision to sustain the objection deny confirmation. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

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

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

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

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

2. [13-35611](#)-C-13 **KENNETH HUSARIK AND KELLY ALLEN**
Mark Alonso

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
2-5-14 [17]

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on February 5, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtors' plan may not comply with 11 U.S.C. § 1325(a) (1) because it plan proposes to pay interest on arrears to Wells Fargo Home Mortgage in Class 1; however, this creditor may not be entitled to interest under 11 U.S.C. § 1322(e), unless the not provides for interest on late payments or applicable non-bankruptcy law requires it.
2. Debtors have not signed the proposed plan. In addition, Debtors' counsel has not properly signed the plan. Counsel's name appears on the signature line; however, under LBR 9004-1(c), the name of the person signing the document is to be typed underneath the signature and, under LBR 9001-1(c) (1) (b) (3), if a scanned image of the signature is not submitted, the use of "/s/Name" is to be used for the signature.
3. Debtors' plan is not Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors are above median income. On Line 59 of Form B22C, Debtors monthly disposable income is shown with a net excess of \$1,080.61. Based on the applicable commitment period of 60 months, the creditors holding unsecured claims

would be entitled to \$64,836.60.

On Line 3a, Debtors report gross income from business operations of \$10,000 and deduct \$8,442 for business expenses on line 3b. Business expenses should be reported below line 22, whether the deductions begin on the form.

It appears Debtors may not be reporting all income. On Scheduled I, Debtors only list \$1,557 per month in gross business income and do not list any expenses for operating the business listed on Schedule J. Debtor Kenneth Husarik admitted at the First Meeting of Creditors that his gross income was approximately \$30,000 last month.

The court's decision to sustain the objection and deny confirmation. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

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

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

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

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

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 July 5, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance at the March 4, 2014 hearing is required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 10001 Geode Court, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$380,000 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 \$405,000. E*Trade Bank's second deed of trust secures a loan with a balance of approximately \$53,192. 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 E*Trade Bank secured by a second deed of trust recorded against the real property commonly known as 10001 Geode Court, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$380,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 10, 2014. 35 days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Confirm the Modified Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

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

1. Debtor is \$1,140 delinquent under the terms of the proposed modified plan. According to the proposed plan, payments of \$3,840 have become due. Debtor has paid a total of \$2,700 to the Trustee with the last payment posted on January 13, 2014 in the amount of \$300.00. It appears Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6).
2. Debtor is proposing to increase the plan payment from \$300.00 to \$320.00. Debtor has not filed Supplemental Schedules I & J to reflect how Debtor will afford the increased payment. Debtor's current Schedule I provides for a monthly net income of \$302.00.

The court's decision is to deny the Motion to Modify because it is unclear to the court whether Debtor has sufficient income to fund the proposed plan. 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2013. Forty-two (42) days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Confirm the Plan without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Prior Hearing & Evidentiary Hearing

On November 5, 2013, the court held a prior hearing on the Motion to Confirm. The court continued the matter to January 28, 2014, as a pending Motion to Value (Dckt. 16) was continued for supplemental pleadings. The Motion to Value concerns property located at 7406 Myrtle Vista, Sacramento, California and the secured claim of Mark R. Feldman.

At the hearing on January 28, 2014, the court set the Motion to Value for an evidentiary hearing that took place on February 25, 2014. At the evidentiary hearing, the value of the subject was determined to be \$260,000 (Dckt. 73). According to the Motion to Value (Dkt. 16), the property is secured by a senior lien totaling \$234,017.02, leaving \$25,983 in equity for the secured claim of Mark R. Feldman. Pursuant to Claim 4-1, Mark R. Feldman asserted a claim totaling \$22,949.00.

Opposition to Confirmation, filed 10/22/2013 (Dckt. 28)

The Chapter 13 Trustee opposed confirmation of Debtor's plan on the following grounds:

1. Debtor is delinquent \$1,963.31 in plan payments. Debtor has paid \$0.00 into the plan.
2. Debtor's plan relies on a pending Motion to Value the secured claim of Mark R. Feldman. If the Motion is not granted, Debtor cannot afford to make payments or comply with the plan. 11 U.S.C.

§ 1325(a)(6).

3. The plan is not Debtor's best effort because Debtor's Schedule J reflects net income of \$2,381.96 and Debtor's amended plan calls for payments of \$1,963.13 per month for 60 months. Not all of Debtor's disposable income is being paid into the plan. 11 U.S.C. § 1325(b).

Creditor, Mark R. Feldman, Opposition, filed 02/18/14 (Dckt. 70)

Creditor is the holder of a secured claim and objects to Debtor's plan on the following grounds:

1. On February 18, 2014, Creditor filed a proof of claim in the amount of \$22,949.99. The claim is secured by 7406 Myrtle Vista Ave, Sacramento, California.
2. According to the proposed plan, Debtor does not provide for any interest on Creditor's claim. Creditor asserts its claim should be provided for in Class 2 with a 5% interest rate. 11 U.S.C. § 1322(b)(5)(B).

Discussion

At the evidentiary hearing on the Motion to Value, the court entered an order valuing the subject collateral, real property located at 7406 Myrtle Vista, Sacramento, California, at \$260,000 (Dkt. 73). The original Order did not value the secured claim of Mark R. Feldman. On March 3, 2014, the court entered an Order Amending the Order on the Motion to Value the Secured Claim of Mark R. Feldman, valuing the secured claim of Mark R. Feldman at \$23,720.00. Although the Motion to Value is now resolved, Debtor's proposed plan does not provide for the secured claim of Mark R. Feldman. Currently, the plan lists Mr. Feldman in Class 1 with no payments on his contract and only an arrearage payment at 0.00% interest. Further, the court lacks sufficient evidence to determine whether Debtor's are current on plan payments and the plan reflects Debtor's best efforts under 11 U.S.C. § 1325(b). Therefore, the court's decision is to deny the Motion to Confirm.

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

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

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

IT IS ORDERED that Motion to Confirm is denied without prejudice.

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 28, 2014. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 825 O'Banion Road, Yuba City, California. The Debtor seeks to value the property at a fair market value of \$650,000 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 \$1,021,608. RBS Citizens, N.A.'s second deed of trust secures a loan with a balance of approximately \$105,000. 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 RBS Citizens, N.A. secured by a second deed of trust recorded against the real property commonly known as 825 O'Banion Road, Yuba City, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$650,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

7. 13-35429-C-13 PAUL ROMERO
DPB-1 Douglas P. Broomell
Thru #8

MOTION TO VALUE COLLATERAL OF
CITIMORTGAGE-HOME EQUITY LINE
OF CREDIT
1-16-14 [[16](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 16, 2014. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 9630 Halli Way, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$256,667 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 \$289,433.19. Citimortgage, Inc.'s home equity line of credit secures a loan with a balance of approximately \$204,543. 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 Citimortgage, Inc. secured by a second deed of trust recorded against the real property commonly known as 9630 Halli 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 \$256,667 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

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

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of Debtor's plan for the following reasons:

1. Debtor's plan relies on a pending Motion to Value the secured claim of Citimortgage, Inc. If the motion is not granted, Debtor's plan lacks sufficient monies to pay the claim in full and; therefore, should be denied confirmation. (The court has granted that motion, resolving this part of the objection to confirmation.)
2. The plan is not Debtor's best effort under 11 U.S.C. § 1325(b). Debtor is over the median income and proposes plan payments of \$144.00 for 48 months and \$184.00 for 12 months with a 0% dividend to unsecured creditors. Form B22C, Line 59 reflects disposable income of \$144,05; however, based on Trustee's revised Form B22C, disposable income totals \$1,137.00.

In adjusting Form B22C, Trustee revised the following:

A. Line 31, involuntary deductions for employment. Debtor deducted \$1,341.67; however, it appears the only deductions listed for mandatory retirement (\$399.60) and union dues (\$92.00) on Schedule I total \$491.00, which is a difference of \$850.00.

B. Debtor's income tax deduction of \$1,531.00 listed on Schedule I appears to be approximately 27% of Debtor's gross

income, which totals \$5,508.00. Debtor admitted at the First Meeting of Creditors that the Internal Revenue Service increased the withholdings in October 2013. It appears that based on the high level of income tax withholdings, Debtor will receive a refund from the IRS; however, Debtors has not provided for this income to be paid into the Plan.

The court's decision is to sustain the objection and deny confirmation. While the court is granting the Motion to Value the secured claim of Citimortgage Inc., the court is concerned that the plan does not reflect Debtor's best efforts, as outlined by the Trustee. 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.

**CASE TRANSFERRED TO DEPT. E
ON 2/11/14**

The court shall conduct a Status Conference on this case and the pending Chapter 13 Plan at the March 5, 2014 hearing. The Debtor was most recently in a Chapter 13 case, No. 11-37725, which was dismissed by an order filed on November 19, 2014. 11-37725 Dckt. 123. The Debtor had defaulted in modest monthly payments, with the aggregate multiple monthly default amount being less than \$1,000.00. Notice of Default, *Id.* Dckt. 120. The case was dismissed as the court was setting the trial in Adversary Proceeding 11-02684.

The Chapter 13 Trustee in the present case has filed an Objection to Confirmation asserting:

- A. The Debtor lists on the Schedules in the present case the real property on which he operates his business as having a value of \$250,000.00. This is substantially less than the \$325,000.00 of this property as listed in his 2011 Schedules. The Debtor has offered no explanation as to why this real property would have decreased in value during the period from 2011 to 2014.
- B. The Debtor lists the creditor having a secured claim against the business property at a substantially reduced amount than scheduled in the 2011 bankruptcy case.
- C. The Debtor has failed to list business assets or a value for his business on Schedule B. The Debtor does list some office equipment (\$600), business equipment (\$800), forklift (\$3,000), and inventory and parts (\$15,000).
- D. In his Business Case Questionnaire provided to the Chapter 13 Trustee the Debtor stated that he estimated the business to have a value of \$20,000.00, inventory of \$35,000.00, and accounts receivable of \$25,000.00.
- E. That the Statement of Financial Affairs states that the Debtor had \$20,000.00 in gambling winnings and losses during the year prior to commencement of the present case on December 30, 2013. The 2011 bankruptcy case was dismissed on November 19, 2013. (During the period of the 2011 Chapter 13 case the Debtor was the fiduciary of the bankruptcy estate and the handling of all property of the estate.)

Objection to Confirmation, Dckt. 18.

The Debtor has responded to the Objection to Confirmation. His Opposition asserts:

- A. The \$250,000.00 value for the business property is based upon

what unidentified persons have offered to purchase the property for from the Debtor. No information or evidence is provided as to what, if anything, the Debtor has done to obtain an informed, professional statement of value for the business property. (It would not be uncommon for unsolicited offers made on a debtor in bankruptcy to be from persons attempting to "obtain a steal of a deal" from a desperate debtor.)

- B. The Debtor states that the decrease in value may be attributable to his use of the business property during the last two years. No explanation is provided as to how the Debtor, as the fiduciary of the 2011 bankruptcy estate, used the real property in such a way as to cause such a substantial loss of value.
- C. The Debtor asserts that the information in the Business Case Questionnaire are in error, quite possibly because of a "translation problem."
- D. The Debtor further asserts that his gambling did not cause the dismissal of the prior case. Rather, a terminated employee and then a temporary employee failed for multiple months to send the small monthly plan payment to the Trustee. Then the Debtor, through "inadvertence," failed to note that (1) the payments were not being made and (2) that notice of default were being sent to him by the Trustee.

Opposition to Objection to Confirmation. Dckt. 23.

In the Adversary Proceeding, though he had filed the present bankruptcy case, the Debtor had his attorneys file a motion to dismiss the Adversary Proceeding to determine the dischargeability of the plaintiff's claim asserting that no federal court jurisdiction existed due to the 2011 case having been dismissed. No mention was made in the motion that the Debtor had filed the present case a month after the dismissal of the 2011 case. Additionally, even when the plaintiff's attorneys notified Debtor's counsel in the Adversary Proceeding of the current bankruptcy case, the Debtor proceeded in asserting that the Adversary Proceeding should be dismissed.

The following is an excerpt from the court's ruling on the motion to dismiss, which reflects the court's concerns about the dismissal of the 2011 case to have been a "strategic dismissal" to improperly create the appearance that the Debtor was not seeking relief under the Bankruptcy Code.

"While serious issues of jurisdiction arise in an adversary proceeding filed in bankruptcy court when an underlying bankruptcy case is dismissed, this does not appear to be an issue in this case for one very significant reason the Defendant is currently a debtor in a bankruptcy case pending in the Eastern District of California.

The Defendant commenced his voluntary Chapter 13 in case number 11-37725 on July 19, 2011. This Adversary Proceeding was commenced on October 24, 2011. The Parties to the instant Adversary Proceeding and the court have expended

substantial time, financial resources, and judicial resources in prosecuting this Adversary Proceeding. The parties engaged in a judicially supervised mediation, which unfortunately did not lead to resolution of this case. Trial is set for July 7th and 8th, 2014 in this court.

Though the Defendant had been making his \$192.00 a month payments in this case (Second Modified Plan, 11-37725 Dckt. 107), On October 11, 2013, the Chapter 13 Trustee filed a notice of default in plan payments. Notice, 11-37725 Dckt. 120. The Defendant did not respond to the Notice of Default and on November 19, 2013 the court filed its order dismissing the Chapter 13 case. This dismissal coincided with the judicially supervised mediation having been concluded without settlement and the Pre-Trial Conference set (having been continued to allow for the judicially supervised mediation) conducted in this Adversary Proceeding to set the trial date.

After having not attempted to cure the default or save his almost 3 year old Chapter 13 case, No. 11-37725, and it being dismissed (it has not yet been closed), the Defendant commenced a new Chapter 13 case on December 30, 2013 Case No. 13-36132.

On January 14, 2014, fifteen days after the Defendant commenced his new bankruptcy case, the Defendant filed the present motion to dismiss this Adversary Proceeding premised on There is no estate for the bankruptcy court to litigate because the bankruptcy proceeding has been dismissed. Motion, Dckt. 129. The court cannot identify in the Motion any reference to the Defendant filing a new bankruptcy case a month after he let the prior bankruptcy case being dismissed.

The Plaintiff was required to respond to the Motion to Dismiss this Adversary Proceeding. This Opposition addressed the various contentions that dismissal was proper because there was no bankruptcy case pending for the Defendant. The Opposition asserts and Supporting Declaration provides evidence that counsel for Defendant was notified of Bankruptcy Case 13-36132 on January 14, 2014, the same day the Motion to Dismiss was filed. Though notified on the second bankruptcy case the Motion to Dismiss was not itself dismissed, requiring the time and resources spent by the Plaintiff in presenting the opposition.

On February 12, 2014, the Defendant filed a pleading titled Notice of Withdrawal of Motion. Dckt. 143. Other than merely stating that the Motion was Withdrawn, the document does not state any basis for a party unilaterally removing a contested motion matter from the courts calendar. No stipulation executed by all parties in this Adversary Proceeding to dismiss the Motion has been filed.

While it may be a mere coincidence, the Notice of Withdrawal of Motion was filed three days after the judge to whom the second bankruptcy case had been assigned transferred the

case to this judge. 13-36132.

With respect to federal court jurisdiction, to the extent that any deficiency could have existed, the Defendant has remedied that with the filing of his current bankruptcy case. Case No. 13-36132. No good faith basis has been shown why this Adversary Proceeding should not be prosecuted and trial conducted to determine whether the claim, if any, be determined nondischargeable. The court will realign the case so that it is tied as a core proceeding to Case No. 13-36132."

Civil Minutes, 11-0268 Dckt. 145.

At the hearing on the Motion to Dismiss, the court directed that any requests for attorneys' fees and costs, if any, relating to the Motion to Dismiss pursuant to Federal Rule of Bankruptcy Procedure 9011 or other basis, be asserted by separate motion.

Local Rule 3007-1(c)(1) Motion - Opposition Filed.

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

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). Respondent creditor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to overrule the Objection to Proof of Claim number 9 of ECMC/California. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Debtor objections to Proof of Claim No. 9, identifying the creditor as ECMC/California. The Objection to Claim was served as follows,

ECMC/ CALIFORNIA
Accounts Receivable
P.O. Box 419041
Rancho Cordova, California 95741-9041

Certificate of Service, Dckt. 89.

Attempted service by mail is normally not sufficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004). Additionally, the court cannot identify any entity known as ECMC/CALIFORNIA authorized to do business in the State of California.

However, the facial shortcoming in the Objection and service do not appear to be the fault of the Debtor. Upon reviewing Proof of Claim No. 9, the court finds that the creditor and representative executing Proof of Claim No. 9 under penalty of perjury state:

- A. Name of Creditor: "ECMC/ CALIFORNIA." (Proof of Claim No. 9 page 1.
- B. Address where notices and payments to be sent:

ECMC/ CALIFORNIA
ACCOUNTS RECEIVABLE, P.O. BOX 419041
RANCHO CORDOVA, CA. 95741-9041

C. Box 8, Signature and Identification of Person Executing:

1. Yvette Edwards Executing the Proof of Claim
2. As Student Loan Rep
3. For National Education Zions Bank
4. As the Creditor

Though this court requires that debtors correctly identify and serve creditors, in this case Ms. Edwards under penalty of perjury has stated that the creditor is an entity named "ECMC/ CALIFORNIA," and then states under penalty of perjury that the creditor is "National Education Zions Bank." Neither of these names can be identified as any type of legal entity using the California Secretary of State on-line registration data base or the on-line service of the FDIC. It is as if the creditor is intentionally attempting to have its identity hidden in attempting to avoid a debtor properly obtaining service of process on it. Alternatively, the Proof of Claim may have been filed as part of a fraudulent scheme to defraud less sophisticated consumer, the Chapter 13 Trustee, and the court, hoping that a payments would be mailed to a P.O. Box mail drop.

The Federal Rules of Bankruptcy Procedure provide that the "rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding." Fed. R. Bankr. P. 1001. "The purpose of the rules regarding claims is to require creditors to provide sufficient information so that a Debtor may identify the creditor and match the creditor and the amount of the claim with the claims scheduled by the Debtor." *In re Shelly Hughes*, 313 B.R. 205, 212 (Bankr. E.D. Mich. 2004). Here, the shortcomings related to the identification of claimant frustrate the purpose of the rules and render Debtor and the court at a loss as to who is the real creditor and what debt the creditor is owed.

The Debtor objects to the Claim on the basis that the claims bar date was set for June 13, 2012 and this claim was not filed until March 25, 2013, approximately nine (9) months after the claims bar date.

On September 4, 2013, the Chapter 13 Trustee filed a motion to dismiss, due to the claim causing an extension of the plan beyond 60 months. The Motion was denied as the claim, a student loan debt, was in deferment through December 13, 2013.

Debtor asserts that it did not file an Objection earlier because the obligation to pay was deferred from prior to filing thought December 13, 2013.

Debtor further states that the three standing Trustees where Debtor's counsel practices handle late filed claims in different ways and the inconsistencies in their practice can contribute to delay in handling late filed claims.

Trustee's Response

Trustee filed a Notice of Late Filed Claim and Trustee's Intent to Pay on April 3, 2013 (Dckt. 67 & 68). The Notice states that Trustee will not be objecting to the claim and it will be paid whatever dividend is

called for in the Plan, if any. Trustee's notice was clear.

Trustee also notes the Objection (Dckt. 86) reports the case number as 13-27180, which is incorrect. However, in case 13-27180, Debtor's attorney did file an objection to claim (Dckt. 52), within approximately 15 days of the Trustee issuing a Notice of Late Filed Claim (Dckt. 48).

Trustee's position is that the Objection was filed as a result of Debtor's case being overextended. Trustee set a Motion to Dismiss (Dckt. 69), which was denied at a continue hearing. The Civil Minutes (Dckt. 69) reflect that deferment of the student loan terminates December 16, 2013 and Debtor has been unable to provide evidence of continued deferment.

Debtor's Response

The court had a difficult time gleaning relevant information from Debtor's response. First, Debtor states that the Motion to Dismiss filed by the Trustee on September 4, 2013 (Dckt 69) and denied on November 13, 2013, was dismissed for two reasons (1.) Debtor was making direct payments; and (2.) The claim was non-dischargeable. The basis of Trustee's Motion was that the filing of Claim 9 caused the plan to become overextended and the reason it was denied was because the loan forming the basis for the claim in question, that of ECMC, was in deferment. Further, Debtor attributes the over extension of the plan to "Great Lakes;" however, the claim of "Great Lakes" was provided for in a previous modification and the subject of Trustee's Motion to Dismiss was Claim 9 of ECMC.

The main point of Debtor's response appears to be that ECMC will not provide a letter conclusively stating that the loan remains in deferment because the automatic stay prevents collection of its debt. This argument is more relevant to feasibility of the plan, rather than the Objection to Claim 9.

Pleading Issues

The court wishes to bring the Debtor's Counsel's attention pleading issues causing the court confusion. Contributing to the court's confusion were references to the subject creditor being "Capitol One" in Debtor's Motion and discrepancies in the case number associated with Debtor's Motion. Debtor's response contained sentences that seemed to end prematurely with incomplete phrasing, leaving the court to infer what point was intended by Debtor. Also, the Response was dated "2/20/2015." The lack of clarity and attention to detail in Debtor's pleadings made it very difficult for the court to gain a complete understanding of the requested relief. In the future, the court hopes that Debtor's Counsel will edit and prepare pleadings with greater care.

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).

Debtor objects to Claim 9 on the ground that the claim was late filed. Federal Rule of Bankruptcy Procedure 3002(c) establishes that the claims bar date at 90 days after the first date set for the meeting of creditors. 11 U.S.C. § 502(b)(9) provides that untimely filed proofs of claims may be disallowed, except to the extent that tardy filing is permitted by provisions of the Bankruptcy Code. Further, the Objection states that the creditor (whomever that may be) is not entitled to receive payment because any payment has been expressly deferred to some later date.

ECMC/ CALIFORNIA offers no opposition to the Objection to Claim, apparently acceding to its validity. The Proof of Claim on its face is conflicting, with Ms. Edwards stating under penalty of perjury names of two different purported entities to be the creditor. Neither purported entity can be identified as any actual entity. While a Proof of Claim is given prima facie evidence value, Proof of Claim No. 9 on its face disproves the asserted claim for the two "alternative creditors" identified under penalty of perjury.

Further complicating what is stated under penalty of perjury on the Proof of Claim by Ms. Edwards is an attachment thereto. In a document titled "ASSIGNMENT" an entity identified as NATL ED / ZIONS purports to assign a claim to ECMC / CALIFORNIA. Possibly NATL ED / ZIONS is a version of the entity stated under penalty of perjury to be one of the two stated in the Proof of Claim, National Education Zions Bank, the court will not just assume that such an entity sloppily has documents executed. Given that it is so simple to correctly identify an entity on legal documents, it is more plausible that NATL ED / ZIONS is some third entity mucking around in this claims process. FN.1.

FN.1. The court can hear creditors now saying, "judge, be practical and just assume that these are all the same entities. Why there couldn't be multiple entities with the same name. The court's quick and sure response to such a contention consists of three words, "Bank of America." The FDIC lists five federally insured financial institutions with the words "Bank of America" in their names. <http://www3.fdic.gov/idasp/main.asp>. The California Secretary of State lists active (with many more inactive entities identified) five corporations, limited liability companies, and limited partnerships with the words "Bank of America" in their names.

Yvette Edwards

The court's decision is to sustain the Objection to Proof of Claim No. 9. To the extent that a creditor exists who may assert any claim, they may seek relief from this order pursuant to Federal Rule of Civil Procedure 60(b) and Federal Rule of Bankruptcy Procedure 9024, or seek leave to file an untimely proof of claim. overrule the objection to claim 9.

The court is also gravely concerned with the statements under penalty of perjury by Yvette Edwards in Proof of Claim No. 9 and the entity for whom she prepared and executed the Proof of Claim. The court shall issue an order for Ms. Edwards to Appear and respond to the following:

I. Identify the basis for stating that an entity named ECMC/ California

has a claim in this case. Ms. Edwards shall identify how this entity is authorized to do business in the State of California, and shall provide the information identifying the agent for service of process and officers, managing partner, managing member, or representative of that entity.

- II. Identify the basis for stating that an entity named National Education Zions Bank has a claim in this case. Ms. Edwards shall identify how this entity is authorized to do business in the State of California, and shall provide the information identifying the agent for service of process and officers, managing partner, managing member, or representative of that entity.
- III. Identify the person who employed her to prepare and file Proof of Claim No. 9 in this case. Ms. Edwards shall identify the agent for service of process and officers, managing partner, managing member, or representative of that entity.
- IV. Show cause why the court should not impose monetary corrective sanctions to be paid by Ms. Edwards personally.

The court shall request that the U.S. Attorney for the Eastern District of California and the U.S. Marshal for the Eastern District of California provide the court with physical location information for Yvette Edwards so that she may be served with the Order to Appear and Show Cause.

The court being aware that a federally insured financial institution known as Zions First National Bank has appeared in other cases, shall have an informational copy of these Civil Minutes and Order on that Bank and one of the local attorneys who has appeared for that Bank in several unrelated cases.

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 Educational Credit Management Corporation filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim No. 9 of ECMC / CALIFORNIA is sustained and that such claim is disallowed in its entirety.

The court shall issue an order for Yvette Edwards to Appear and Show Cause Why Sanctions Should Not be Imposed for her executing under penalty of perjury Proof of Claim No. 9. Ms. Edwards shall appear and:

- I. Identify the basis for stating that an entity named ECMC/ California has a claim in this case. Ms. Edwards shall identify how this entity is authorized

to do business in the State of California, and shall provide the information identifying the agent for service of process and officers, managing partner, managing member, or representative of that entity.

- II. Identify the basis for stating that an entity named National Education Zions Bank has a claim in this case. Ms. Edwards shall identify how this entity is authorized to do business in the State of California, and shall provide the information identifying the agent for service of process and officers, managing partner, managing member, or representative of that entity.
- III. Identify the person who employed her to prepare and file Proof of Claim No. 9 in this case. Ms. Edwards shall identify the agent for service of process and officers, managing partner, managing member, or representative of that entity.
- IV. Show cause why the court should not impose monetary corrective sanctions to be paid by Ms. Edwards personally.

IT IS FURTHER ORDERED that the Clerk of the Court shall transmit a copy of this Order and the Civil Minutes from the March 4, 2014 hearing to the U.S. Attorney for the Eastern District of California and the U.S. Marshal for the Eastern District of California. The court requests, and does not order, that the U.S. Attorney or U.S. Marshal (they may coordinate which, if either, may respond) provide the court with physical location information for Yvette Edwards, who is identified in Proof of Claim No. 9 as being associated with the following information:

Yvette Edwards
Student Loan Rep
National Education Zions Bank

ECMC/ CALIFORNIA
ACCOUNTS RECEIVABLE, P.O. BOX 419041
RANCHO CORDOVA, CA. 95741-9041

Tele: 916-526-7363

The U.S. Attorney and the U.S. Marshal, whichever may respond, are requested to file with the court and deliver a chambers copy (email delivery sufficient) to Department E, Sacramento Division, United States Bankruptcy Court, a response either (1) stating that such information cannot be provided or (2) the contact information which the Clerk of the Court may then use to properly have the order served on Yvette Edwards.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve informational copies of this order (which shall be stamped in large, all capital letters, "**INFORMATIONAL**

March 4, 2014 at 2:00 p.m.

Page 26 of 57

COPY") of this Order and the Civil Minutes for the March 4, 2014 hearing on the Objection to Claim, as a courtesy, to the following:

Zions First National Bank
Attn: Officer - Judicial Proceedings
1 S Main Street
Salt Lake City, UT 84133

Margaret Garms, Esq.
Parkinson Finney
400 Capitol Mall
Suite 2560
Sacramento, CA 95814

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 31, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5009 Schuyler Drive, Carmichael, California. The Debtor seeks to value the property at a fair market value of \$300,000 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 \$345,500. J.P. Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$49,000. 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 J.P. Morgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 5009 Schuyler Drive, Carmichael, 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 \$300,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on February 5, 2014. Fourteen days' notice is required. That requirement was met.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to sustain the Objection. No appearance at the March 4, 2014 hearing is required. The court makes the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because Debtors' plan relies on a Motion to Value the secured claims of the Internal Revenue Service and the Employment Development Department of State of California. If the motions is denied, Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

The court granted both Motions to Value at the hearing on February 25, 2014, resolving the Trustee's Objection. The court's decision to overrule the objection and confirm the plan.

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

IT IS ORDERED that Objection is overruled, Debtor's Chapter 13 Plan filed on December 30, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved,

the Chapter 13 Trustee will submit the proposed order to the court.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on December 30, 2013. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). The Creditor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to grant Motion to Value Collateral and creditor's secured claim is determined to be \$0.00 Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 1 Nader Court, Sacramento, California. The Debtors seek to value the property at a fair market value of \$345,000.00 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 (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$396,629.00. Flagstar Bank, FSB's second deed of trust secures a loan with a balance of approximately \$95,184.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

Prior Hearing

On January 28, 2014, the court held a hearing on the Motion to Value. At the hearing, respondent creditor filed a limited objection based on conversations regarding a proposed Stipulation for treatment of its claim. The court continued the hearing on the Motion to March 4, 2014, to permit circulation of a Stipulation regarding treatment of secured creditor Flagstar Bank, FSB's claim.

Stipulation

A Stipulation regarding treatment was filed on February 7, 2014 (Dckt. 35), and the court entered an order approving the Stipulation on February 13, 2104 (Dckt. 38). It provides the following:

1. Secured Creditor shall have a non-priority general unsecured claim in the amount of \$97,572.58;
2. The avoidance of the Second Deed of Trust held by Flagstar Bank, FSB is contingent upon the Debtors' completion and discharge of their Chapter 13 Plan;
3. Upon discharge and completion, the Judgment avoiding the lien may be recorded with the local County Recorder's Office;
4. Flagstar Bank, FSB shall retain the full amount due under the loan in the event of either a dismissal of Debtors' Chapter 13 or conversion of Debtors' Chapter 13 case to any other Chapter under the United State Bankruptcy Code;
5. In the event that the first line holder on the Subject Property forecloses in its security interest and extinguishes Flagstar Bank, FSB's Second Deed of Trust prior to the Debtors' completion of their Chapter 13 plan and receipt of discharge, Flagstar Bank, FSB's lien shall attach to the surplus proceeds of the foreclosure sale for the full amount of the loan balance at the time of sale;
6. Each party shall bear their own attorney' fees and costs incurred in the present Motion.

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 Flagstar Bank, FSB secured by a second deed of trust recorded against the real property commonly known as 1 Nader Court, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$345,000 and is encumbered by senior liens securing claims which exceed the value of

the Property.

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on February 7, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor, OneWest Bank, FSB, is the holder of a note secured by a deed of trust in the amount of \$525,000 relating to real property commonly known as 5228 Chicago Avenue, Fair Oaks, California. Debtor's plan provides for payments to Creditor in the sum of \$104.00 per month for months one (1) through six (6) and in the amount of \$375.57 per month for months seven (7) through forty-eight (48). The pre-petition arrearage on Creditor's claim totals \$20,804.71. Creditor opposes confirmation of the Plan for the following reasons:

1. The amount of arrearage in Debtor's Chapter 13 plan is incorrect. The pre-petition arrears specified in the plan total \$16,400; however, the actual pre-petition arrear total is \$20,804.71. 11 U.S.C. § 1325(a) (5) (ii).
2. Debtor will have to increase the payment through the Chapter 13 Plan to Creditor to approximately \$433.43 per month in order to cure Creditor's pre-petition arrears over a period of forty-eight (48) months, which is the proposed plan term. If Debtor's plan is modified to a period of sixty (60) months, Debtor will have to increase monthly plan payments to \$346.75 in order to cure Creditor's pre-petition arrears over the life of the plan.
3. Debtor's Schedule J indicates that Debtor has disposable

income of \$224.67; however, Debtor will be required to apply \$433.43 each month to the Chapter 13 plan in order to provide for a prompt cure of Creditor's pre-petition arrears. Debtor lacks sufficient monthly disposable income to fund this plan. 11 U.S.C. § 1325(a)(6); 11 U.S.C. § 1322(d).

4. Debtor provides for treatment of Creditor's claim in Class 2 of the plan. Class 2 claims include all secured claims that are modified by the plan, or that have matured or will mature before the plan is completed. Creditor's claim is based on a reverse mortgage loan which will not mature during the course of the plan; however, there are no facts substantiating that this will happen.

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

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

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

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

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

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on February 5, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor did not appear at the First Meeting of Creditors held on January 30, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. Trustee lacks sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325.
2. Debtor may not be able to make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a) (6). Debtor reports a household size of five (5) and income from Social Security of \$1,526 (Debtor) and \$997 (Spouse) per month. Debtor's food expense is only \$500 per month. Debtor does not list expenses for clothing, laundry, personal care, recreation, or charity.
3. All sums required by the plan have not been paid. 11 U.S.C. § 1325(a) (2). Debtor is \$224.67 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$224.67 is due on February 25, 2014. Debtor has paid \$0.00 into the plan to date.
4. Debtor has not provided Trustee with 60 days of employer

payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).

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

The court's decision to sustain the objection and deny confirmation. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

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

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

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

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

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 27, 2014. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted. No appearance at the March 4, 2014 hearing is required. The court makes the following findings of fact and conclusions of law:

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 27, 2014 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

17. [13-21766](#)-C-13 IMELDA ABAKAN
PGM-2 Peter G. Macaluso

MOTION TO MODIFY PLAN
1-27-14 [[39](#)]

DUPLICATE FILING

Final Ruling: On the basis that the instant motion is a duplicate calendar entry (the same motion having been electronically filed twice), **the calendar item for this Motion to Modify Plan is removed from calendar.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 21, 2014. Forty-two days' notice is required. That requirement was met.

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

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation for the following reasons:

1. Debtor's Declaration provides that Debtors are changing the plan because they obtained a loan modification; however, no motion to approve the loan modification was filed with the court.
2. The Plan indicates that Debtors have received a loan modification. The Plan proposes to pay Nationstar Mortgage's secured claim in Class 4 in the amount of \$3,454.18. Debtors listed the mortgage payment on Schedule J as \$2,791.95. It is unclear why the mortgage payment has increased by \$663.00 if Debtors received a loan modification. Further, based on Schedule J, Debtors cannot afford the "modified" payment.

The court lacks sufficient knowledge to determine whether Debtors' plan is feasible. Further, Debtors are required to file a Motion seeking approval of their loan modification pursuant to 11 U.S.C. § 364(d) and in compliance with Federal Rule of Bankruptcy Procedure 4001(c)(1)(B). 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.

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 13, 2014. Forty-two days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The Motion to Confirm the Plan is granted. No appearance at the March 4, 2014 hearing is required. The court makes the following findings of fact and conclusions of law:

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on December 17, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on February 5, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor's plan provides for attorney fees of \$9,600, of which \$4,800 was paid pre-petition. Debtors Rights and Responsibilities (Dckt. 7) conflict with the plan and indicate that attorney fees total \$4,800 and the full amount was paid prior to filing. Pursuant to LBR 2016-1(c)(1), only \$6,000 in fees is permitted in a Chapter 13 business case.
2. The Plan does not reflect Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors are below median income and propose a thirty-six (36) months plan with a 2.4% dividend to unsecured creditors.

The plan proposes to pay \$75.00 per month; however, it appears that Debtor is not proposing all disposable income into the plan. On Schedule J, Debtors deduct \$1,000 per month for on the home they reside in at 609 East Street, Woodland, California, \$250 per month for electricity/heat; \$125 per month for water/garbage/sewer; and \$120 per month for telephone usage. Debtors also deduct \$1,774 per month for business expenses. Included in the business expense is \$1,000 rent and \$225 for utilities. These expenses appear to be duplicates of those itemized in Schedule J. Debtors admitted at the First Meeting of Creditors that the business is operated out of their home. It appears Debtors have an additional \$1,225 per month to contribute toward their plan.

Debtor's Response

Debtor responds to Trustee and state that they have withdrawn the original Chapter 13 plan and will file a first amended plan addressing the Trustee's concerns.

The court notes that the Trustee's Objection raises vary serious issues in this case and puts into question the Debtors' good faith and ability to confirm a plan in this case, or obtain the discharge in this case or a subsequent case. The Schedules are completed and are stated by the Debtors under penalty of perjury. That has significance. Such a substantial duplicate "expense" may have been inadvertent or may represent an intentional misrepresentation to try and slip something by the Chapter 13 Trustee, U.S. Trustee, Creditors, and the court.

The court's decision to sustain the objection and deny confirmation of the plan filed December 26, 2013. Debtors are welcome to file a first amended plan.

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

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

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

The Objection to the Chapter 13 Plan filed by the 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.

Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on February 5, 2014. Fourteen days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

1. Debtor's plan may not be debtor's best effort under 11 U.S.C. § 1325(b). Debtor's projected disposable monthly income is \$2,859.11 (Schedule J) and debtor is proposing a plan payment of only \$2,447.69.
2. It does not appear that the plan provides for all of Debtor's projected disposable income for the applicable commitment period. 11 U.S.C. § 1325(b). On Schedule B, Debtor reports anticipated state tax refund of \$1,000.

On January 16, 2014, Trustee received Debtor and her non-filing spouse's 2012 Federal Tax Return. Debtor received tax refunds of \$11,118 from the Internal Revenue Service in 2012. Based on the summary sheet on the Federal Return, it appears Debtor received \$3,723 from the State for the 2012 refund. This makes Debtor's total refund for 2012 \$14,841. If Debtor contributed the tax refunds into her household income, they would add an additional \$1,236 per month.

3. Debtor lists the claim of Chase Manhattan Mortgage in Class 1 of the plan. This is a mis-classification because there

appears to be no equity in the property securing claim of Chase Manhattan Mortgage. The value of the real property (220 Maple Street, Suisun City, California) is \$159,723 (Schedule A, Dckt. 10) and senior line holder, Seterus, Inc., holds a lien totaling \$262,640 (Schedule D, Dckt. 10).

The claim should be provided for in Class 2 and Debtor should file a Motion to Value the secured claim.

4. Debtor and her counsel did not sign the plan.
5. Debtor is married but did not list her non-filing spouse on Statement of Financial Affairs #16.
6. Debtor reports on Form B22 that she has a household size of four (4); however, on Schedules I and J, Debtor lists only herself and non-filing spouse as a dependent. Based on Schedules I and J, it appear the household size should be two (2). Debtor did claim two (2) children on her 2012 Tax Return.
7. Debtor's plan may not pass Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor admitted at the First Meeting of Creditors that she has assets not disclosed on Schedule B. Debtor indicated that she and her spouse own a 2002 Honda CRV with 200,000 miles and a 2002 Ford F350 with 100,000 miles. Debtor state that both vehicles are in "good" condition. Debtor also indicated that her spouse has retirement accounts that remain undisclosed.
8. Debtor is \$2,447.69 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,447.69 is due on February, 2013. Debtor has paid \$0.00 into the plan to date.

The court's decision is to sustain the objection and deny confirmation. Debtor's plan contains several deficiencies and inconsistencies, as highlighted by Trustee's Objection to Confirmation. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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 28, 2015. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance at the March 4, 2014 hearing is required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6735 Sandylee Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$171,332 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 \$251,463. J.P. Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$64,120. 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 J.P. Morgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 6735 Sandylee Way, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$171,332 and is encumbered by senior liens securing claims which exceed the value of the Property.

Local Rule 9014-1(f)(2) Motion. No Opposition.

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

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

The court's tentative decision is to deny without prejudice the Motion to Use Cash Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

No Legal Authority Cited

Debtors' Motion does not cite any legal authority. Failure to cite legal authority justifying the relief sought is a ground for denial of the motion. LBR 9014-1(d)(5), 1001-1(g). Local Bankr. R. 9014-1(d)(5) requires that each motion, opposition, and reply cite legal authority relied upon by the filing party.

While for a simple motion a separate points and authorities is not required, it is necessary to identify in the motion the specific statutory or case law basis for the relief sought. If an explanation, quotation, or argument concerning that authority is appropriate, then it is done so in a separate points and authorities.

Relief Requested

Debtor seeks an order from the court permitting use of cash collateral of Valley Bank related to rental proceeds from 1071 Little River Drive, Miami, Florida. The Motion states with particularity (Fed. R. Bank. P. 9013) the following grounds and relief requested:

- A. The Debtors own Property in Florida which generates \$1,300.00 of rent a month.
- B. Valley Bank has a "potential claim" in the amount of \$69,272.00.

March 4, 2014 at 2:00 p.m.

(The Motion does not describe the contingency by which this "potential claim" becomes an "actual claim."

- C. It is "believed" that the Valley Bank claim is secured by a mortgage against the Florida Property.
- D. Debtors make the "assumption" that the \$1,300.00 a month in rent is cash collateral of Valley Bank.
- E. The Debtors need to pay the Trustee the rent money so it can be used to pay Valley Bank's claim. (The proposed Plan, Dckt. 12, provides for a monthly payment of \$1,220.00 to Valley Bank).
- F. Debtors want an order authorizing them to pay the rent money to the Chapter 13 Trustee.

Motion, Dckt. 33.

Pursuant to 11 U.S.C. § 1304, a debtor engaged in a business may operate the business while engaged in a Chapter 13 bankruptcy and, subject to any limitations on a trustee under section 363(c) and 364 of Title 11, shall have the rights and powers of the trustee under such sections.

Section 363(c) (1) provides that, if the business of the debtor is authorized to be operated under section 1304 of Title 11 and unless the court orders otherwise, the trustee may enter into transactions in the ordinary course of business, without notice of a hearing, and may use the property of the estate in the ordinary course of business without notice of a hearing. However, the trustee may not use, sell, or lease cash collateral under § 363(c) (1) unless each entity that has an interest in the cash collateral consents; or the court, after notice and a hearing, authorizes use of cash collateral in accordance with the provisions of this section. 11 U.S.C. § 363(c) (2) (A) - (B).

Here, Debtor operates real property commonly known as 1071 Little River Drive, Miami, Florida as a rental property. Valley Bank holds a secured claim in the property totaling \$69,272.00, which is set to be paid entirely through Class 2 of the plan. The property currently generates \$1,300.00 per month in rental income. Debtors request authorization to use the rental proceeds to pay the Chapter 13 Trustee plan payments, so that the Trustee can disburse on the respondent creditor's claim.

The Motion does not seek the use of cash collateral, but instead seeks a piecemeal approval of a plan term. If the cash collateral is to be used as part of the plan, then such is properly addressed in the confirmation of the plan. As of now, the Debtor does not seek to use any of the cash collateral.

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 Use Cash 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 to Use Cash Collateral is denied without prejudice.

Local Rule 9014-1(f) (2) 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 February 28, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Value without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2006 BMW X3 3.0i Sport Utility Vehicle 4D. The Debtor seeks to value the property at a replacement value of \$15,005.00 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 determine whether the lien on the vehicle's title secures a purchase-money loan incurred more than 910 days prior to the filing of the petition because Debtor present no evidence concerning when they entered into the financing agreement with Golden 1 Credit Union. 11 U.S.C. § 1325(5); 11 U.S.C. § 506(a). Without this evidence, the court cannot know whether 11 U.S.C. § 506(a) can be applied to bifurcate the secured claim of Golden 1 Credit Union. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

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

The Motion for Valuation of Collateral filed by Debtor(s) having been

presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Value is denied without prejudice.

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

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

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

The court's tentative decision is to grant the Motion to Extend the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to 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 pending within the last twelve months. Debtor's first bankruptcy case (No. 12-30913) was filed on June 8, 2012 and dismissed on November 18, 2013, for Debtor's failure to make timely payments to the Chapter 13 Trustee. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(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 perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). 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 argues that there is substantial excuse for failing to perform under the terms of the previous plan. At the time Debtor's previous case was dismissed, the holder of the first deed of trust on Debtor's residence increased the mortgage payment by approximately \$502.00 per month. The increase was a result of the lender placing forced homeowner insurance due to a lapsed policy. Debtor attempted to purchase less expensive insurance; however, they were denied coverage until the Debtor's yard was cleared of debris. Debtor fell behind in payments and was not able to make the new increased portage payments to the lender. In addition, Debtor's son was in the process of expanding his business and unable to afford to make the increase in the payments to the lender and cure the delinquent plan payment.

In his motion, Debtor states that he did not anticipate that the insurance policy would be cancelled due to the debris in his yard. Furthermore, Debtor was not able to anticipate that several insurance companies would deny coverage due to the condition of his yard. Debtor is elderly and, due to health problems, was not able to keep up his property. Debtor is now in better health and, with the assistance of his son, he will have the property cleared. Debtor's son has expanded his business and is in an improved financial circumstance. He will be able to assist in making the increased plan and mortgage payment.

Debtor has offered clear and convincing evidence to rebut the presumption of bad faith. Debtor has demonstrated a change in circumstance from the last filing that indicates to the court that Debtor will be successful in completing a plan.

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

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

The Motion to Extend the Automatic Stay 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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 15, 2014. Forty-two days' notice is required. That requirement was met.

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

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

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of Debtor's plan because the interest rate scheduled to Ford Motor Credit is incorrect. Debtor scheduled Ford Motor Credit in Class 2, to be paid 450% interest. Trustee concedes that this appears to be a typographical error and opposes confirmation unless the interest rate is reduced to 4.5% in the Order Confirming.

As it stands, 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.