UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

March 25, 2014 at 2:00 p.m.

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1. 13-33301-C-13 GLORIA WELLINGTON — MOTION TO CONFIRM PLAN
PGM-2 Peter G. Macaluso — 2-5-14 [36]

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 February 5, 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 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 February 5, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. 14-20101-C-13 GARY/WYRENE DAVIS — MOTION TO CONFIRM PLAN
WW-2 Mark A. Wolff — 2-25-14 [25]

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

Correct Notice Not 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 12, 2013. According to the court's calculation, 29 days' notice of the hearing was provided. Forty-two day's notice is required.

Tentative Ruling: The Motion to Confirm the Modified Plan Proposed Prior to Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1) 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).

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. § 1328 permits a debtor to modify a plan proposed prior to confirmation. Debtors have filed evidence in support of confirmation. However, Debtors did not provide sufficient notice of the hearing.

Local Bankruptcy Rule 3015-1(d)(1) concerns modified plans proposed prior to confirmation. Here, Debtors are seeking confirmation of a second amended plan proposed prior to confirmation. LBR 3015-1(d)(1) provides:

> If the debtor modifies the chapter 13 plan before confirmation pursuant to 11 U.S.C. § 1323, the debtor shall filed and service the modified chapter 13 plan together with a motion to confirm it. Notice of the motion shall comply with Fed. R. Bankr. P. 2002(b), which requires twenty-eight days' of notice of the time fixed for filing objections, as well as LBR 9014-1(f)(1). LBR 9014-(f)(1) requires twenty-eight days' notice of the

> hearing and notice that opposition must be filed fourteen days prior to the hearing. In order to comply with both Fed. R. Bankr. P. 2002(b) and LBR 9014-1(f)(1), parties-in-interest shall be served at least forty-two days prior to the hearing.

Debtor served parties-in-interest on February 25, 2014 and the hearing date is March 25, 2014. Debtors gave 29 days' of notice, which is insufficient under LBR 3015-1(c)(1); therefore, the court will deny Debtors' Motion 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 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 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 Debtor, Chapter 13 Trustee, and Office of the United States Trustee on March 4, 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. § 361(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 13-22222) was filed on February 20, 2013 and dismissed on July 1, 2013, because Debtor did not make plan payments. 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 states the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Debtor's daughter and her daughter's fiancé were living with Debtor and committed to helping Debtor with her plan payment. A few months into the plan, the daughter's fiancé unexpectedly died. Debtor's daughter was not cemployed and Debtor could only rely on her social security benefits as income and was unable to continue making the plan payments.

Debtor's daughter is now employed and committed to contributing financially to a plan. Debtor is confident she will be able to maintain plan payments in her new Chapter 13 plan.

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay 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.

4. 13-24818-C-13 ANDREW/DIANE GARCIA — MOTION TO APPROVE LOAN MODIFICATION
MDE-1 Steele Lanphier — 2-14-14 [42]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' attorney, the U.S. Trustee, and Chapter 13 Trustee on February 14, 2014. Twenty-eight days' notice is required; that requirement was met.

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

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

IndyMac Mortgage Services, a Division of OneWest Bank, FSB, as servicing agent for Deutsche Bank National Trust Company, as Trustee of the IndyMac INDX Mortgage Loan Trust 2006-AR9, Mortgage Pass-Through Certificates, Series 2006-AR9 under the Pooling and Servicing Agreement dated April 1, 2006, whose claim the plan provides for in Class 1, has agreed to a loan modification on Debtors' residence.

MOTION DOES NOT CONFORM TO THE REQUIREMENTS OF FRBP 9013

On its face, the Motion states with particularity the following grounds upon which the requested relief is based:

A. Movant seeks an order from the court approving a loan modification on its first deed of trust secured by Debtors' residence.

B. Debtors and Movant agree to modify Debtors' loan to bring Debtors current on their obligation, lower Debtors' interest rate, lower Debtors' principal balance, and lower the total monthly payment and change the maturity date of the loan.

Motion, Dkt. 42.

The Motion to Approve Loan Modification does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is

based. The motion merely states that Movant seeks approval of a loan modification. The motion makes general claims about the terms of the modification, but provides no actual numbers, leaving the court to comb through the evidence to cobble together sufficient evidence to grant Movant's requested relief.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement" standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes

> do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Based on the above listed defects, Debtor's Motion to Approve the Loan Modification is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Approve Loan Modification is denied without prejudice.

5. 12-40619-C-13 MARTHA GARCIA — MOTION TO MODIFY PLAN
PGM-1 Peter G. Macaluso — 2-5-14 [91]

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 February 5, 2014. Thirty-five 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's modified plan proposes to reduce the commitment period from 60 months to 36 months. Debtor's Chapter 13 Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income indicates Debtor is under median income and the commitment period is three years.

   Debtor's Motion and Declaration provide no reason for the reduction in plan term.

2. The additional provisions of the proposed modified plan lists terms for a loan modification sought by Debtor. According to Trustee's records, there does not appear to be any documents filed showing proof of Debtor attempting to obtain a loan modification. Additionally, the proposed modified plan is not feasible without the loan modification and will overextend

the claim to complete in more than 92 months.

Debtor's Reply, filed 03/18/14 (Dkt. 100)

In response to Trustee's Objection, Debtor presents the following:

1. Debtor has a disabled grandchild, to which she receives I.H.S.S. and experiences frequent emergency payments that make plan payments difficult to maintain.

2. Debtor explains that her plan requires payments based on "a 31% mortgage, and an option by the mortgage company which the need for (60) sixty months is [*sic*] would not be necessary, nor would it materially change the payment to class 7 claims."

3. Debtor recently obtained a loan modification and submitted the documents for processing.

Discussion

Regarding the pending loan modification, Debtor adds in her response that the loan modification was recently obtained and the documents are being processed. Further, Debtor included in the additional provisions of her plan the "Ensminger Additional Plan Provisions" regarding pending loan modifications and included necessary information that provides for on-going loan modification negotiations, the payment of adequate protection payments to the creditor, and a relief from stay process if the loan modification is denied or the creditor believes that the Debtor is not prosecuting the loan modification in good faith. The court is satisfied that Debtor is in the process of obtaining a loan modification and expect to be presented with a Motion to Approve the Loan Modification once the documents are processed.

In reviewing Debtor's proposed modified plan and supporting documents, the court noticed insufficient unexplained changes in income and expenses that require further attention.

First, regarding Debtor's income, in Debtor's Declaration filed with the Motion to Modify (Dkt. 91) Debtor provides that her work has slowed and this has affected her income (Dkt. 93). She cites this as a reason for needing to modify her plan. Reviewing the Schedule I under which Debtor's first amended plan was confirmed (Dkt. 16), it shows that Debtor and her spouse had a combined gross monthly income of $3,609.00, with Debtor earning $3,009.00. The most recently filed Supplement Schedule I (Dkt. 94) is included with the exhibits to Debtor's Motion to Modify and shows a combined gross monthly income of $3,676.00, with Debtor earning $3,026.00. Debtor's separate income is not reflected as decreasing, but increasing by $17.00, and does not support Debtor's statement in her Declaration that suggests work has slowed, causing her income to decrease. Debtor's net income dropped between the two filings from $2,442.00 to $1,503.34. As Debtor's income actually increased between the earlier and later Schedule I filings, the claim that inconsistent income forced this modification seems in bad faith.

Reviewing Debtors First Amended Schedule J (Dkt. 50), under which the plan was confirmed, and Debtors recently filed Supplement Schedule J (94) show the following changes in expenses:

	First Amended Schedule J (01/31/13)	**Second Amended Schedule J (02/05/14)**
Property/Homeowner Ins	$0.00	$66.66
Home maintenance	$100.00	$150.00
Electricity	$120.00	$140.00
Water/Sewage	$125.00	$133.00
Telephone	$32.00	$90.00
Cable	$46.00	$95.00
Internet	$20.00	$20.00
Food	$400.00	$690.00
Clothing/laundry	$25.00	$150.00
Medical/Dental	$50.00	$150.00
Personal Care	$0.00	$67.00
Transportation	$150.00	$320.00
Recreation	$22.00	$0.00
Auto Insurance	$65.00	$76.00
Amortized Vehicle Reg.	$12.00	$0.00
Vehicle Tax	$0.00	$25.00
TOTAL	**$1,167.00**	**$2,172.66**

Between Debtor's First Amended Schedule J, filed January 21, 2013, and Debtor's Supplement Schedule J, filed February 5, 2014, expenses increased by $1,005.66. Debtor explains in her Declaration filed with the Motion to Modify that adjustments in her income led, in part, to the need to modify; however, the court only sees a small increase in income and a large, unexplained increase in expenses. While some of these increases may be justified based on the year that lapsed between the filings, others require further explanation. Also, Debtor declares that she often must make "emergency payments" concerning the care of her disabled grandchild but does not provide reassurance to the court that these payments will not affect her ability to complete the proposed modified plan.

The court is not convinced and lacks evidence convincing it that

this modification will ensure consistent future plan payments. This conclusion is based on Debtor's own testimony regarding emergency payments, the statement that Debtor's work has slowed and affected her income being contradicted by her own Schedule I filings, and the unexplained increases in Debtor's expenses.

The court lacks sufficient evidence that Debtor's plan is proposed in good faith and is feasible given the above analysis and concerns of the Trustee. 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.

6. 14-20119-C-13 RICHARD POPEJOY
NLE-1 Tyson Takeuchi

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
2-20-14 [24]

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 Debtor and Debtor's Attorney on February 20, 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 on the following grounds:

(1.) The Debtor did not use the correct standard Chapter 13 Plan form. Local Rule 3015-1(a) states that the mandatory form plan EDC 3-080 shall be utilized as the standard form. According to the Court's website (www.caeb.uscourts.gov), the EDC 3-080-12 is effective May 1, 2012.

(2.) The Debtor did not appear at the First Meeting of Creditors held on February 13, 2014. The Trustee does not have sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325. The Meeting has been continued to April 10, 2014 at 10:30 a.m.

(3.) The Debtor did not provide the Trustee with a tax transcript or a copy of his Federal Income Tax Return with attachments for the most recent pre-petitio tax year for which a return was required, or a written statement that no such documentation 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 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.

7. 13-28921-C-13 BURT/LORI HESTAND MOTION TO CONFIRM PLAN
NF-4 Nikki Farris 2-3-14 [64]

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 February 3, 2014. By the court's calculation, 50 days' notice was provided. Forty-two days' notice is required.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. 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 Debtors' plan for the following reasons:

(1.) The case is currently overpaid. Debtors' original plan (Docket #5) called for payments of $2,180.00 for 60 months. The most recent amended plan (Docket #67) calls for payments of $1,400.00 for nine months, then $1,750.00 for fifty-one months. Debtors have made total payments of $11,845.00 to date. The current plan calls for total payments due of $9,800.00 as of February 25, 2014. The case is currently overpaid by $2,045.00 based on the proposed plan.

(2.) The plan is not feasible. Debtors' amended plan (Docket #67) proposes to pay a 100% dividend to unsecured creditors. Section 2.15 lists total unsecured debts as $72,771.73. A review of Schedules D and F and the filed claims in the Court record indicates that the total unsecured debts are actually $105,733.69 (which includes the second trust deed). According to the Trustee's calculations, the plan will only pay 67% of the unsecured debt within 60 months. The plan will take 82 months to pay 100% of unsecured debts.

(3.) Debtors may not be able to make the plan payments required under 11 U.S.C. § 1325(a)(6). The Debtors' amended plan (Docket #67) calls for payments of $1,400.00 for nine months, then $1,750.00 for fifty-one months. The most recently filed Schedules I and J (Docket 59, pp. 3-6) indicate net income on line 20c of $1,400.23. Line 19 of the form calls for a description of any increase or decrease reasonably anticipated to occur within the year. However, no change in circumstances is listed on the form. The Debtors will not be able to increase plan payment by $350.00 beginning with the May 2014 payment. The Trustee is not aware of any further amendments to Schedules I and J to date.

(3.) The plan is not Debtors' best effort under 11 U.S.C. § 1325(b). The Debtors are over the median income and are proposing plan payments of $1,400.00 for nine months, then $1,750.00 for fifty-one months with a 100% dividend to unsecured creditors.

TIMESHARE - Class 4 of the most recent amended plan (Docket #67) lists a Worldmark Timeshare at $818.04 per month and indicates the Debtors owns 45,000 credits that could be sold for $30,000, which Debtors propose to retain paying $49,082.40 ($818.04 per month for 60 months). If Debtors did not have this expense, the plan payment could be increased significantly to $2,218.04 which would result in approximately $101,466.93 to unsecured creditors, or about 95% of total unsecured debts. If the Debtor does not qualify for the deduction on Form 22C (Docket #59), as either not contractually due or not due to a secured claim, the Debtors' plan is not Debtors' best effort under 11 U.S.C. § 1325(b).

SPECIAL CIRCUMSTANCES - Debtors claim $966.03 of "special circumstances" on the means test (Docket #59, p. 13, line 57), with insufficient proof and explanation as required under the instructions to show these expenses are necessary and reasonable.

OTHER EXPENSES - Debtors claim $262.54 in additional care maintenance/repair on the means test (Docket #59, p. 13, line 60). Debtors have not provided a sufficient explanation of the need for this expense, and why it is not already allowed in lines 27-29.

(4.) The plan may not be proposed in good faith under 11 U.S.C. § 1325(a)(3). The plan has decreased from the original $2,180.00 per month, 100% plan (Docket #5), to $1,400.00 per month, 12% plan (Docket #29), to $1,400.00 per month, 40% plan (Docket #57), and now $1,400.00 for nine months, $1,750.00 for fifty-one months, 100% plan (Docket #67) without sufficient explanation. The Trustee is concerned that the Debtors are merely proposing a plan with the hope that it will work, rather than undergoing a thorough and complete analysis of their financial situation and proposing a realistic plan based on this analysis.

The Debtors have an income of over $16,000.00 a month in gross income, $699.26 per month in home maintenance expense, $344.00 per month in clothing, and $1,600.29 per month in various other expenses, including $417.00 national scholarship award program and $446.19 for school expenses/supplies/sports/ travel (Docket #59, pp. 3-6). The Debtors appear to have income with a substantial surplus if these expenses do not exist for the entire 60 months of the plan.

Debtors have a $21,395.00 2011 FLHTK Harley Davidson, a $20,490.00 2007 AR 203 Yamaha boat owned free and clear, a 2013 Dodge Dart, a 2011 Chevrolet Tahoe, a 2005 Toyota Corolla, a 2004 Hyundai Sante Fe, a timeshare which the Debtors propose to retain paying $49,082.40 over the plan (without any clear indication as to the travel expenses required to use the timeshare, if any). The motivation and sincerity of the Debtors in pursing this plan and the bankruptcy are not clear considering all of the property retained by the Debtors, along with all of the expenses the Debtors maintain.

As demonstrated by the deficiencies outlined by the Chapter 13 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.

8.	13-35830-C-13 CK-1 **Thru #9**	ROBERT/CATHERINE BARR Catherine King	MOTION TO AVOID LIEN OF CITIBANK, N.A. 2-18-14 [14]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on February 18, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Avoid a Judicial Lien is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

A judgment was entered against the Debtor in favor of Citibank (South Dakota), N.A. for the sum of $3,937.00. The abstract of judgment was recorded with Shasta County on July 10, 2013. That lien attached to the Debtor's residential real property commonly known as 16941 Scout Avenue, Anderson, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $45,200 as of the date of the petition. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the

amount of $75,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the judgment lien of Citibank (South Dakota) N.A., Shasta County Superior Court Case No. 12CV1286, Document No. 2013-0025132, recorded on June 6, 2011, with the Shasta County Recorder, against the real property commonly known 16941 Scout Avenue, Anderson, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

9.	13-35830-C-13 NLE-1	ROBERT/CATHERINE BARR Catherine King	OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 2-20-14 [19]

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 Debtors and Debtors' Attorney on February 20, 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 Debtors, 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 because Debtors cannot afford to make the payments or comply with the plan, 11 U.S.C. § 1325(a)(6). Debtors' plan relies on the Motion to Value Collateral of Citibank USA in Class 2, which is set for hearing on March 25, 2014. If the motion to value is not granted, Debtors' plan does not have sufficient monies to pay the claim in full and therefore should also be denied confirmation.

Discussion

The court granted the Motion to Avoid the Lien of Citibank, N.A. on March 25, 2014. Therefore, Trustee's Objection will be overruled as moot and the Chapter 13 Plan is confirmed.

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 to confirmation the Plan is overruled as moot.

IT IS FURTHER ORDERED that Debtor's Chapter 13 Plan filed on December 18, 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.

10.	13-34931-C-13 GW-1	SJOERD/MELISSA VERWEIJ Gerald L. White	MOTION FOR COMPENSATION FOR GERALD L. WHITE, DEBTORS' ATTORNEY(S), FEES: $9,611.00, EXPENSES: $0.00 2-21-14 [22]

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

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

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

The court's decision is to grant the motion for compensation. No appearance is necessary. The court makes the following findings of fact and conclusions of law:

FEES REQUESTED

Gerald White, Counsel for Debtor, makes a Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is November 21, 2013 through March 25, 2014.

The "Disclosure of Compensation of Attorney For Debtor" provides that prior to the filing of the petition, Counsel received $5,000.00 from Debtor. Section "e" provides that Debtor's attorney declines to seek approval of compensation pursuant to the "Guidelines for Payment of Attorney Fees in chapter 13 Cases. Instead, compensation is to be disclosed, reviewed, and approved in accordance with applicable authority. It continues to state that compensation will be billed hourly per the Chapter 13 Retainer Agreement, subject to court approval.

Counsel is requesting the Court allow fees and costs of $9,611.00 for services charged at a rate of $300.00 per hour. Counsel represents that he was paid $2,055 for pre-petition attorney fees and $281.00 for the filing fee. Of the $5,000 retainer, $2,664 is held in trust for post-petition attorney fees and costs. After accounting for the retainer, counsel also seeks approval of the balance of post-petition fees and costs in the sum of $4,611, to be paid pursuant to the plan terms.

Description of Services for Which Fees are Requested

Services performed included reviewing Debtors' financial information, analyzing Debtors' ability to propose a confirmable plan, establishing an appropriate strategy, and preparing the petition and creditor matrix. Counsel communicated with the foreclosure trustee to stop a pending sale, communicate with the IRS and FTB to prevent levies, and preparing the Schedules, Plan, and Amended Creditor Matrix. Counsel communicated with Debtors, their CPA, the Trustee and creditors, and prepare for an attend the meeting of creditors, and prepare and email a letter and proposed confirmation order to the Trustee in order to obtain confirmation of the plan. Counsel also review claims that were filed.

FEES ALLOWED

The hourly rates for the fees billed in this case are $300.00/hour for counsel for 31 hours. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of $9,300.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

Counsel for the Trustee also seeks the allowance and recovery of costs and expenses in the amount of $311.00. The total costs in the amount of $311.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

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

Attorneys' Fees	$9,300.00
Costs and Expenses	$311.00

For a total final allowance of $9,611.00 in Attorneys' Fees and Costs in this case.

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

holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Allowance of Fees and Expenses filed by Michael Croddy having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Gerald White is allowed the following fees and expenses as a professional of the Estate:
>
> Gerald White, Counsel for the Estate Applicant's Fees Allowed in the amount of $9,300 Applicant's Expenses Allowed in the amount of $311.00, which amount may be paid Counsel by the Chapter 13 Trustee from unencumbered assets, after full credit applied for any retainers or prior amounts paid to Counsel.

11. 12-34532-C-13 ANN VANDERSCHANS MOTION TO MODIFY PLAN
WW-3 Mark A. Wolff 2-13-14 [56]

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 February 13, 2014. Thirty-five 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 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 February 13, 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.

12. 13-31234-C-13 ANTHONY/GEORGENIA AKA MOTION TO CONFIRM PLAN
SL-1 Steele Lanphier 2-14-14 [49]

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

Correct Notice Not 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 February 14, 2014. By the court's calculation, 39 days' notice was provided. Forty-two days' notice is required and this requirement was not 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.) Debtors provide insufficient notice. The Motion to Confirm Plan has not been property set for hearing on the notice required by Local Bankruptcy Rule 3015-1-(d)(1). To comply with both Federal Rule of Bankruptcy Procedure 2002(b) and Local Bankruptcy Rule 9014-1(f)(1), 42 days notice is required. Twenty-eight days notice is required under Federal Rule of Bankruptcy Procedure 2002(b) and a 14-day deadline is required for written opposition required by Local Bankruptcy Rule 9014-1(f)(1). Debtor filed this Motion on February 14, 2014, and the hearing is set for March 24, 2014. Therefore, only 39 days notice has been given.

(2.) Debtors' Proof of Service was defective. The Proof of Service (Docket #52) filed on February 14, 2014 lacks an original or electronic signature of the serving party as required by Local Bankruptcy Rule 9004-I(c). In addition, the amended plan (Docket #51) lists a Class 5 creditor "Labor Commissioner, State of California"; however, this creditor does not appear in the list of parties served on the Proof of Service. It appears all interested parties have not been properly served with the Motion and amended plan.

(3.) Debtors did not file a Declaration in Support of the Motion to Confirm setting forth all the components of 11 U.S.C. § 1325(a).

(4.) Debtors list a Class 5 creditor but do not list this creditor on Schedule E. Debtors' amended plan (Docket #51) lists a Class 5 creditor "Labor Commissioner, State of California" and asserts a debt of $8,209.24.

However, this debt is not listed on Schedule E (Docket #1, p. 20). The Trustee is not aware of any amended Schedule E to date. In addition, the creditor address matrix does not appear to contain this creditor (Docket #1, pp. 47-50). The Trustee is not aware of any amendment to the creditor matrix to date.

Based on the procedural, evidentiary, and substantive deficiencies outlined by the Chapter 13 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.

13. 13-34138-C-13 DBJ-1 — KIMBERLY LOWTHER, Douglas B. Jacobs — MOTION TO CONFIRM PLAN 1-30-14 [26]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, dismissal

of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

14.	14-20041-C-13 NLE-1	DONALD TAGGART Gary Ray Fraley	OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 2-20-14 [22]

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 20, 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 because Debtor's plan payment of $1,723.02 per month is insufficient to pay the Class 1 arrears monthly dividend of $2,400.00.

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

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

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

The Objection to the Chapter 13 Plan filed by the 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.

15.	14-20042-C-13 ASW-1 **Thru #16**	ANGELICA PASCUAL Pro Se	OBJECTION TO CONFIRMATION OF PLAN BY HSBC BANK USA, N.A. 2-27-14 [33]

Final Ruling: The case having previously been dismissed on March 19, 2014, the Motion is denied as moot. *See* Civil Minutes (Dkt. 39).

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

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

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

IT IS ORDERED that the Objection is overruled as moot.

16. 14-20042-C-13 TSB-1 — ANGELICA PASCUAL, Pro Se — OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK, 2-26-14 [25]

Final Ruling: The case having previously been dismissed on March 19, 2014, the Motion is denied as moot. *See* Civil Minutes (Dkt. 39).

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot.

17. 14-20947-C-13 DJC-1 — RUSSELL/FRANCES EDMONDS, Diana J. Cavanaugh — MOTION TO VALUE COLLATERAL OF SCHOOLS FINANCIAL CREDIT UNION, 2-14-14 [17]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 14, 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 $19,940.00. 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 2011 Jeep Wrangler Sport SUV 2DR. The Debtor seeks to value the property at a replacement value of $19,940.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2011, more than 910 days prior to the filing of the petition, with a balance of approximately $24,591.79. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $19,940.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Schools Financial Credit Union secured by a 2011 Jeep Wrangler Sport SUV 2DR, is determined to be a secured claim in the amount of $19,941.00, 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 $19,941.00 and is encumbered by liens securing claims which exceed the value of the Property.

18. 14-20052-C-13 MELANIE HIRSCH
TSB-1 Pro Se

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
2-26-14 [22]

Final Ruling: The case having previously been dismissed on March 20, 2014, the Motion is denied as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled as moot.

19. 13-33953-C-13 PAUL/ANGELA JIMENEZ — CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A.
SCG-1 Sally C. Gonzales — 11-18-13 [14]

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, respondent creditor, and Office of the United States Trustee on November 18, 2013. 28 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)(1). A 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 the Motion to Value Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Prior Hearing

On December 17, 2013, the court heard the Motion to Value the secured claim of J.P. Morgan Chase Bank, N.A. The motion was accompanied by the Debtor's declaration. Debtors own the subject real property commonly known as 7324 Candlelight Way, Citrus Heights, California. Debtors sought to value the property at a fair market value of $120,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Creditor contested Debtors' opinion of value and the court granted a continuance to March 25, 2014, for submission of supplemental evidence.

Supplemental Evidence, filed 02/14/14 (Dkt. 41)

Creditor presents the court with the appraisal of Jared Micket, from Los Angeles Valuation Group, Inc. (Dkt. 41). The appraisal values the subject property at $140,000.00.

Discussion

Creditor has not provided admissible evidence for the court to consider. Creditor submitted an unauthenticated appraisal. *See* Fed. R. Evid. 901. The appraisal not having been property authenticated and no testimony having been provided by the person purporting to have an opinion as to value, the court does not have competing evidence to consider the value of

the subject property.

The first deed of trust on the subject property secures a loan with a balance of approximately $130,218.00. Creditor JPMorgan Chase's second deed of trust secures a loan with a balance of approximately $44,092.00. Therefore, based on the evidence presented, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Value Collateral, filed 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 real property commonly known as 7324 Candlelight Way, Citrus Heights, 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 $120,000.00 and is encumbered by senior liens securing claims which exceed the value of the property.

20. 14-20455-C-13 GARRETT/CHERYLL GATEWOOD — MOTION TO VALUE COLLATERAL OF
PGM-1 Peter G. Macaluso — BANK OF AMERICA, N.A.
Thru #22 — 2-24-14 [14]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 24, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required. That requirement was met.

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

The Motion is granted and creditor's secured claim is determined to be $0.00. No appearance required.

The motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 4067 Copper Lake Way, Rancho Cordova, California. The Debtors seek to value the property at a fair market value of $190,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $328,152.00. Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately $84,383.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

STIPULATION

On March 18, 2014, the Debtors and Creditor, Bank of America, N.A., as the servicing agent of Bank of New York Mellon fka The Bank of New York, as trustee for the benefit of the Certificateholders of the CWHEQ Inc., Home Equity Loan Asset-Backed Certificates, Series 2006-S3 ("Creditor"), filed a

stipulation signed by both parties, that resolves the Motion to Value the Secured Claim of Bank of America, N.A. Dckt. No. 30.

The parties stipulated and agreed that Creditor's claim shall be allowed as a non-priority general unsecured claim, which shall be paid as such in accordance with the Debtors' Plan. The avoidance and release of Creditor's Second Deed of Trust is contingent upon Debtors' completion of their chapter 13 Plan, and Debtors' receipt of a Chapter 13 discharge.

The stipulation states that upon plan completion and the discharge, the Creditor shall reconvey the Deed of Trust within a "reasonable time." Creditor shall retain its lien for the full amount due under the subject loan, should the subject property be sold or should a refinance take place prior to the completion of the Chapter 13 Plan, and the entry of a Chapter 13 Discharge. The Creditor will retain its lien for the full amount due under the subject loan in the event of either the dismissal fo the Debtors' Chapter 13 case, or the conversion of the Debtors' Chapter 13 case to any other Chapter under the United States Bankruptcy Code.

Creditor and Debtors agree that in the event that any entity, including the holder of the first lien on the subject property, forecloses on its security interest and extinguishes the Creditor's Deed of Trust prior to the completion of the Plan and the discharge, the Creditor's lien shall attach to the surplus proceeds of the foreclosure sale for the full amount of the subject loan balance at the time of the sale. If the property is destroyed or damaged, pursuant to the mortgage, Creditor is entitled to its full rights as a loss payee with respect to the insurance proceeds, and has a security interest in such proceeds up to the entire balance due on the mortgage. Each party has agreed to bear its own attorneys' fees and costs incurred in the present case.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A., secured by a second deed of trust recorded against the real property commonly known as 4067 Copper Lake Way, Rancho Cordova, 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 $190,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.
>
> **IT IS FURTHER ORDERED** Debtors and Creditor, Bank of America, N.A., as the servicing agent of Bank of New York Mellon fka The Bank of New York, as trustee for the benefit of the Certificateholders of the CWHEQ Inc., Home Equity Loan

Asset-Backed Certificates, Series 2006-S3 ("Creditor"), abide by the terms of the stipulation signed by both parties, resolving the Motion to Value the Secured Claim of Bank of America, N.A., on Dckt. No. 30.

21.	14-20455-C-13 RTD-1	GARRETT/CHERYLL GATEWOOD Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY SCHOOLS FINANCIAL CREDIT UNION 2-27-14 [23]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on February 27, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required. That requirement was met.

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

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

Creditor Schools Financial Credit Union ("Creditor") is the holder of a purchase money security interest in a 2007 Toyota RAV4. Creditor filed its Proof of Claim on January 30, 2014 as a secured claim in the sum of $3,765.31. The arrears is listed as $330.80. No objections have been filed to the Proof of Claim.

Creditor objects to confirmation of the Chapter 13 Plan filed on January 17, 2014 on the following grounds: (1.) Debtors are not eligible to be Debtors; (2.) Creditor objects to the treatment of its secured claim; (3.) Debtors' Chapter 13 Plan is not feasible; (4.) the petition and the Chapter 13 Plan were not filed in good faith.

Compliance with 11 U.S.C. § 109(h)(1)

Creditor first states that Debtors have not complied with 11 U.S.C. § 109(h)(1), asserting that pages 4-7 of the Petition, Dckt. No. 1, is Exhibit D filed by each Debtor and the Credit Counseling Certificate filed by each Debtor. Each Exhibit D bears the date January 11, 2014 (6 days

preceding the filing of the Petition), and an /s/ followed by the typed name of the Debtor. There are 5 numbered paragraphs on Exhibit D. The Debtors have not placed an "x" or check mark in any of the boxes on Exhibit D. The Certificate of Counseling filed for each Debtor is dated February 22, 2013, which is 329 days prior to the filing of the case. At the top margin of each page of the Certificate of Counseling is a fax line which also shows the date 02/22/13.

Creditor states that Debtors have offered no explanation for their failure to obtain credit counseling within 180 days preceding the filing of the petition. Furthermore, the Debtors signed their documents 6 days before the petition was filed, and that no explanation is given as to why the Debtors did not obtain counseling on the 11th or at any other time prior to the filing of the petition.

The court notes that on March 14, 2014, both Debtors filed Certificates of Counseling, which states that both Debtors received credit counseling on March 13, 2014, from the DebtorWise Foundation, which an agency approved pursuant to 11 U.S.C. § 111 to provide credit counseling in this district, in a briefing that complies with the provisions of 11 U.S.C. § 109(h) and 111. Additionally, Creditor notes that Debtors signed the certificates using the notation "/s/." Local Bankruptcy Rule 9004-1(c)(1) allows signatures on documents submitted electronically to be notarized with an /s/, which is generated by the court's filing software when a user certifies the document by typing their name in the space where an otherwise written signature would appear. Thus, this part of Creditor's Objection is overruled.

Opposition to Treatment of Secured Claim

Debtors' Plan lists the debt owed to the Credit Union in Class 2. The debt is listed as PMSI, in the amount of $3,076.99, interest of 4.00% and dividend of $60.00 per month. Creditor objects to the treatment of its claim, and to the interest rate of 4.00%. Creditor also objects to the dividend on the ground that it does not provide adequate protection, and that the proposed dividend is insufficient to pay its claim in full.

Creditor states that it does not consent to an interest rate of 4.0%, a monthly dividend of $60.00 or agree that the amount owed is $3,076.99. The Declaration of Kevin Benner, filed in support of this opposition and in Creditor's Proof of Claim, asserts that the amount owed to the Credit Union is the sum of $3,765.31. Dckt. No. 25. Creditor states that at the time of the filing of the petition, the arrears were $330.80 and the payments were due for December 18, 2013. After the petition was filed, two payments of $380.88 each for the installments due January 18, 2014 and February 18, 2014 became due and owing pursuant to the terms of the contract.

Interest Rate

Creditor objects to the Plan's proposed interest rate of 4.00% on its claim as less than the *Till* standard. *In re Till*, 541 U.S. 465, 124 (2004). Creditor notes that at the time of filing, the risk adjustment is generally viewed as 1% to 3%. The prime interest rate at the time of filing has stayed 3.25%. In *Till*, a plurality of the Court supported the "formula approach" for fixing postpetition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach.

See In re Cachu, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. Of Unsecured Creditors* (*In re American Homepatient, Inc.*), 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *Farm Credit Bank of Spokane v. Fowler (In re Fowler)*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Creditor contends that a risk adjustment of 3% is warranted in this case, without providing any discussion of why a higher risk of adjustment, and facts supporting its contention that Debtors have "abused" their vehicle, in this matter. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.25%, plus a 1.5% risk adjustment, for a 4.75% interest rate per annum. The plan proposes a 4.00% interest rate, which as Creditor points out, is only .75% over the prime interest rate, which is below the normal range made for adjustments for risk. The objection to confirmation of the Plan on this basis is therefore sustained. *See* 11 U.S.C. §1325(a)(5)(B)(ii).

Adequate Protection

Creditor also alleges that the plan violates 11 U.S.C. § 1325(a)(5)(B)(iii)(II) because the amount of the periodic payments it proposes to pay the creditor are insufficient to provide it with adequate protection during the period of the plan.

Creditor states that according to the terms of the contract for purchase of the 2007 Toyota, the interest rate is 7.48% and the last payment was scheduled for July 18, 2014. Due to the accrual of interest and late fees, it will now take approximately 12 months to pay the account balance based on the contract payments of $380.88. The Debtors propose to extend the term of the contract to 60 months for an additional four years. Debtors' Plan does not exceed the maximum amount of time allowed under 11 U.S.C. § 1322(d), however, and may choose to spread out their payments based on the monthly payments they are able to contribute into the plan.

The subject vehicle is listed on Schedule B as a 2007 Toyota Rav 4 with 111,245 miles and a value of $6,500. Creditor states that nothing is stated about the equipment on the vehicle or the condition of the vehicle. Creditor states that the cash price of the vehicle was $24,768.36 when it was purchased on July 13, 2007. The miles at the time of purchase were 186. Creditor states that in the 79 months since Joint Debtor Garrett Gatewood purchased the vehicle, the vehicle has depreciated the sum of $18,268.36 or $231.26 per month, but has not provided a basis for the alleged depreciation.

Creditor states that the value of the vehicle as set forth by Debtors in their schedules is substantially below the value of other 2007 Toyota Rav4s with 111,245 miles. Creditor offers a suggested retail breakdown from Kelley Blue Book, which lists the retail value for a 2007 Toyota Rav4 at $13,327 on January 17, 2014.

Creditor argues that based on Debtors' valuation of the vehicle, which is below the wholesale and retail values of other 2007 Toyota Rav4s, it appears that the "Debtors have failed to properly maintain the vehicle

and it has been abused." Much of the confusion, however, stems from the fact that Debtors have not described the current condition of the vehicle, and repairs that may necessitate adjustments for the retail value of the vehicle, which may render the Kelley Blue Book estimate provided by Creditor off the mark.

The Court in the case of *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988) held "[a]dequate protection is intended to protect creditors from the diminution in value of their collateral during the pendency of a bankruptcy petition."

Timbers, however, interprets the meaning of the phrase "adequate protection" for purposes of 11 U.S.C. § 362. *Timbers*, 484 U.S. at 369-70. 11 U.S.C. § 361 provides that:

> [w]hen adequate protection is required under section 362, 363, or 364 ... of this title of an interest of an entity in property, such adequate protection may be provided by (1) requiring the trustee to make a cash payment or periodic cash payments, to the extent that the stay under section 362 of this title ... results in a decrease in the value of such entity's interest in such property.

11 U.S.C. § 361 says nothing about "adequate protection" for purposes of 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and the court will not lightly assume such silence to be unintentional. *See*, e.g., *In re Digimarc Corp. Derivative Litigation*, 549 F.3d 1223, 1233 (9th Cir. 2008) ("Accordingly, we cannot find in Congress' silence [in one section of an Act] an intent to create a private right of action where it was not silent in creating such a right to similar equitable remedies in other sections of the same Act.").

Neither the Ninth Circuit nor any of its sister circuits has considered the meaning of the phrase "adequate protection" as it is used in 11 U.S.C. § 1325 (perhaps unsurprisingly, since the phrase was only added to the section by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005). However, several bankruptcy courts that have considered the issue have found that payments to creditors with secured claims under § 1325 must always at least equal the amount of depreciation of the collateral. See, e.g., In re Sanchez, 384 B.R. 574, 576 (Bankr. D. Or. 2008); In re Denton, 370 B.R. 441, 448 (Bankr. S.D. Ga. 2007). The court will apply this rule.

Creditor alleges that its collateral declines in value by $231.26 per month (without providing a percentage formula). Since the creditor estimates the value of its collateral at $13,327.00 as the retail value, and the lending or wholesale value at $10,787.00, it asserts that a payment of interest of 4% is inadequate and a dividend of $60 or any other payment over 60 months does not provide adequate protection to the Creditor. In support of its allegation regarding the depreciation pf tje c;ao,, the creditor submits the Declaration of Kevin Benner as part of its Objection Confirmation of Debtors' Chapter 13 Plan, filed on February 27, 2014, Docket No. 25. In the absence of any countervailing evidence, the court accepts the objecting creditor's argument under 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and sustains the objection on this basis as well.

Feasibility of the Plan

The Credit Union contends that the plan does not comply with 11

U.S.C. § 1325(a)(6) and confirmation should be denied on that ground. As stated previously, Creditor asserts that the payment in the plan for Creditor's claim is insufficient to pay the claim owed to the Credit Union. On January 30, 2014, the Creditor filed a secured claim in the amount of $3,765.31, which includes the principal balance of $3,706.99, plus interest and late charges. Creditor argues that Debtors have incorrectly listed the principal balance owed to the Credit Union in the Plan and on Schedule D. The correct account number, the principal balance of $3,706, the characterization of the debt as husband's debt and the date of the secured debt are listed on Schedule F. The court will not address Creditor's statements regarding the claims of the Internal Revenue Service and the Franchise Tax Board, based on Creditor's lack of knowledge and apparent mis interpretation of the nature of those claims.

Creditor advances that its asserted discrepancies (regarding the amount of taxes, the arrears on a home mortgage and different vehicles, the amount of business income claimed by Debtors, rental income, etc.) in Debtor's Schedules and Form 22C are evidence of bad faith on the part of Debtors in filing the petition and prosecuting their case.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

22. 14-20455-C-13 GARRETT/CHERYLL GATEWOOD — OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
TSB-1 Peter G. Macaluso — 2-26-14 [19]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on February 26, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors' Plan relies on the Motion to Value the Secured Claim of Bank of America, N.A., which is set for hearing on this date. If the motion to value is not granted, Debtors' plan does not have sufficient monies to pay the claims in full.

The court's decision is to grant the Motion to Value the Secured Claim, PGM-1, thus resolving Trustee's singular objection. The court having sustained the Objection to Confirmation of the Plan by Creditor Schools Financial Credit Union, RTD-1, however, Debtors' 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 the Objection is overruled.

23. 12-27059-C-13 JOHN/MICHELE HUNTER — MOTION TO MODIFY PLAN
MDP-7 Melissa D. Polk — 1-30-14 [133]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on January 30, 2014. By the court's calculation, 54 days' notice was provided. 35 days' notice is required. That requirement was met.

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the 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 30, 2014, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

24. 13-35659-C-13 LBG-3 **Thru #26**

GLENN CARNAHAN
Lucas B. Garcia

MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A.
2-25-14 [34]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 25, 2014. By the court's calculation, 28 days' notice was provided. 28 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)(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 the Secured Claim of Bank of America, N.A., is denied. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks an order valuing the secured claim of Bank of America. N.A. at $36,101.00. The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 401 West Tokay Street, Lodi, California. The Debtor seeks to value the property at a fair market value of $36,101.00 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).

MOTION DOES NOT CONFORM TO THE REQUIREMENTS OF FRBP 9013

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

A. This motion is brought pursuant to 11 U.S.C. §506(a) and (d) and Rule 3012 of the Federal Rules of Bankruptcy Procedure.

B. Debtor has an interest in 401 West Tokay Street, Lodi, California ("subject property").

C. Debtor believes and asserts that the reasonable, fair-market value of the subject property is $36,101.00, based on the appraisal performed on July 8, 2013.

D. Debtor further believes and asserts that the present balance owed by the Debtor to Bank of America, N.A. is $94,025.79.

E. This property is used for investment purposes.

F. Debtor requests the Court to determine that the value of the secured claim of the claim held by Bank of America, N.A., in the subject property be allowed at $36,101.00.

The Motion to Value the Secured Claim does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion merely states that Debtor seeks to value the debt owed to Bank of America.

Debtor does not describe the debt, and the property in which Bank of America, N.A. holds an interest securing the repayment of its claim, and whether Bank of America, N.A., holds a junior or senior position lien on presumably, the subject property. The court's review of Debtor's Schedule D, attached as an exhibit filed in support of the Motion, Dckt. No. 37, shows that there are two liens on the subject property. Bank of America is noted as the holder of a "second mortgage" loan on 401 West Tokay Street, Lodi, California, in the amount of $94,025.79. Chase is listed as having an interest in the amount of $158,899.00 in the property known as 401 West Tokay Street, Lodi, California.

Additionally, Debtor asserts that the reasonable, fair-market value of the subject property is $36,101.00. Debtor states that his opinion of value is based on an appraisal that was performed on the property on July 8, 2013. The Appraisal is offered as an unlabeled "Exhibit" on the Exhibit Cover Sheet, filed on Dckt. No. 37. There is no accompanying testimony provided by Debtor authenticating the appraisal of the value of the property. *See* Fed. R. Evid. 901. Furthermore, Page 2 of the Apprisal prepared by George R Retamoza II clearly stated that the defined value of the property, in the opinion of the appraiser, on July 8, 2013, is $195,000.00. The value of the subject property is also listed as $195,000.00 on Debtor's Schedules A and D.

If Chase is indeed the holder of the first deed of trust, securing a loan with a balance of $158,899.00 (as Schedule D seems to indicate), and the value of the property is in fact $195,000.00, then Chase's senior position lien is not undercollaterized. The remaining equity in the property would be $36,101.00. It appears, from the court's calculations, that Debtor is seeking to value the junior deed of trust of Bank of America, N.A., at $36,101.00, but this is not clear in Debtor's Motion or Declaration. For instance, Debtor Glenn Carnahan states in his declaration that,

> 3. The Schedules filed on my case disclose my interest in 401 West Tokay Street, Lodi, CA 95240 (hereinafter, the

"ASSET").

4. I believe and assert that the reasonable, fair-market value of the ASSET is $36,101.00 based on the appraisal done on July 8, 2013.

Debtor seems to be assigning a value to the subject property itself, and not the claim of the respondent creditor. Nowhere in Debtor's Motion or Declaration does Debtor even disclose the presence of a superior lien held by Chase, or that Bank of America, N.A., holds a second position lien or deed of trust in the subject property.

Rather, it took the court an inordinate amount of time sifting through Debtor's disordered pleadings and supporting documentation, to determine that there are multiple liens on the property, and that the Debtor is actually asserting that the fair market value of the property itself is $195,000.00. This figure is not mentioned in Debtor's declaration or the body of Debtor's Motion. The court will not determine the value of the secured claim of Bank of America, N.A., having been presented with a confusing thicket of facts and evidence.

This Motion does not sufficiently state the grounds for a claim for valuation under Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a). It is not for the court to canvas other pleadings, and wait until the hearing, to receive additional evidence to "draft the motion" for Debtor when the Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013.

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

In discussing the minimum pleading requirement for a complaint (which only requires a "short and plain statement of the claim showing that the pleader is entitled to relief," Fed. R. Civ. P. 7(a)(2), the Supreme Court reaffirmed that more than "an unadorned, the-defendant-unlawfully-harmed-me accusation" is required. *Iqbal*, 556 U.S. at 678-679. Further, a pleading which offers mere "labels and conclusions" of a "formulaic recitations of the elements of a cause of action" are insufficient. *Id.* A complaint must contain sufficient factual matter, if accepted as true, "to state a claim to relief that is plausible on its face." *Id.* It need not be probable that the plaintiff (or movant) will prevail, but there are sufficient grounds that a plausible claim has been pled.

Federal Rule of Bankruptcy Procedure 9013 incorporates the state-with-particularity requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules and Civil Procedure and Bankruptcy Procedure, the Supreme Court stated a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the "short and plain statement"

standard for a complaint.

Law-and-motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law-and-motion process. These include, sales of real and personal property, valuation of a creditor's secured claim, determination of a debtor's exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from stay (such as in this case to allow a creditor to remove a significant asset from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact on the other parties in the bankruptcy case and the court, holding,

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

Weatherford, 434 B.R. at 649-650; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ill. 2009) (A proper motion for relief must contain factual allegations concerning the requirement elements. Conclusory allegations or a mechanical recitation of the elements will not suffice. The motion must plead the essential facts which will be proved at the hearing).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

> Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, "shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought." (Emphasis added). The standard for "particularity" has been determined to mean "reasonable specification." 2-A Moore's *Federal Practice*, para. 7.05, at 1543 (3d ed. 1975).

Martinez v. Trainor, 556 F.2d 818, 819-820 (7th Cir. 1977).

Not pleading with particularity the grounds in the motion can be used as a tool to abuse the other parties to the proceeding, hiding from those parties the grounds upon which the motion is based in densely drafted points and authorities – buried between extensive citations, quotations, legal arguments and factual arguments. Noncompliance with Bankruptcy Rule 9013 may be a further abusive practice in an attempt to circumvent the provisions

of Bankruptcy Rule 9011 to try and float baseless contentions in an effort to mislead the other parties and the court. By hiding the possible grounds in the citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were "mere academic postulations" not intended to be representations to the court concerning the actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such "postulations."

Based on the above listed defects, Debtor's Motion to Value the Secured Claim is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Value the Secured Claim is denied.

25. 13-35659-C-13 GLENN CARNAHAN MOTION TO CONFIRM PLAN
LGB-2 Lucas B. Garcia 2-7-14 [26]

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 February 7, 2014. By the court's calculation, 46 days' notice was provided. 42 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Here, the Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

1. Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's Plan relies on the Motion to Value the Secured Claim of Bank of America, LBG-3, which is set for hearing on March 25, 2014. If the motion to value is not granted, Debtor's plan does not have sufficient monies to pay the claims in full.

   The court's decision is to deny the Motion to Value the Secured Claim, LBG-3 on this hearing date. Thus, Trustee's objection on this issue still stands and renders the plan insufficiently funded and not in compliance with 11 U.S.C. § 1325(a)(6).

2. Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6); Debtor filed an Amended Schedule J on February 7, 2014, which reflects a negative monthly net income of $308.94, and the Debtor is proposing plan payments of $1,550.00 for 60 months.

3. The plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is under the median income and proposes plan payments of $1,550.00 for 60 months, with a 0% dividend to unsecured creditors. Debtor filed an Amended Schedule I on February 7, 2014, and deleted the anticipated business income of $3,194.00 without any explanation.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

26.	13-35659-C-13 TSB-1	GLENN CARNAHAN Lucas B. Garcia	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 1-23-14 [21]

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 January 23, 2014. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). 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 to Confirmation. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The hearing on this matter was continued from February 25, 2014, to this hearing date to provide Debtor time to correct the "software errors" asserted in Debtor's opposition, and for Debtor prepare an adequate Motion to Value the Secured Claim of Bank of America.

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

1. Debtor's plan relies on a pending Motion to Value Collateral of Bank of America, which is set for hearing on February 25, 2014. If the motion is not granted, Debtor's plan lacks sufficient funds to pay the claim in full. 11 U.S.C. § 1325(a)(6).
2. The plan is not Debtor's best effort under 11 U.S.C. § 1325(b). Debtor is under the median income and proposes plan payments of $1,550.00 for 60 months, with a 0% dividend to unsecured creditors. Debtor has listed a double deduction of $1,325.39 on Schedule J for Bank of America's Class 4 mortgage payments; therefore, Debtor cannot increase the plan payment by $1,325.29 per month.

Debtor's Response

Debtor asserts the following in response to Trustee's Objection:

1. A software error from recently updated forms caused duplications in certain expenses and some income items were incorrectly disclosed.

2. Debtor requests that Trustee's Objection to Confirmation be continued to March 25, 2014 for Debtor's hearing on the Motion to Confirm.

A review of the court docket shows that Debtor has not filed a corrected Schedule J, and has not prepared a revised Motion to Value the Secured Claim of Bank of America, N.A. Additionally, the court is denying Debtor's Motion to Confirm Plan, LGB-2 on this hearing date, after having determined that the amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The instant 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 the Objection to Confirmation is sustained and the proposed Chapter 13 Plan is not confirmed.

27. 13-35661-C-13 MICHELLE JOBE MOTION TO CONFIRM PLAN
RIN-1 Michael Rinne 2-11-14 [33]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on February 11, 2014. By the court's calculation, 42 days' notice was provided. 42 days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on February 11, 2014, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

28. 13-23567-C-13 VERNON/LOTTIE HAMPTON — CONTINUED MOTION TO CONFIRM PLAN
TJW-3 Timothy J. Walsh — 1-21-14 [55]
Thru #29

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on 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 court continued the hearing on this Matter from March 4, 2014, to permit Debtors to file a Motion to Approve the Loan Modification. The court had previously noted that it lacked sufficient knowledge to determine whether Debtors' plan is feasible, stating that 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 Chapter 13 Trustee initially opposed 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.

Debtors have filed a Motion to Approve the Loan Modification, TJW-4,

to modify the terms of the loan with Nationstar Mortgage, which is being serviced by AMS Loan Servicing, LLC. The court is granting the Motion on this hearing date. Trustee has raised an additional concern, however, that casts doubt on the feasibility of the plan. Trustee states that based on Debtors' Schedule J, Debtors cannot afford the reduced payment under the modified loan terms offered by AMS Servicing, LLC.

Debtors' Schedule J reflects that Debtors have an average monthly income of $1,408.70, after subtracting $7,750.95 worth of monthly average expenses from a combined average monthly income of $9,159.65. The modified payment obtained from Debtors' Loan Modification Agreement will be a total payment of $3,450.72 after computing the principal and interest, and escrow costs. It appears that Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Thus, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

29. 13-23567-C-13 VERNON/LOTTIE HAMPTON — MOTION TO APPROVE LOAN MODIFICATION
TJW-4 Timothy J. Walsh — 3-2-14 [62]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 2, 2014. By the court's calculation, 23 days' notice was provided. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(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 Approve the Loan Modification. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors seek an order modifying the terms of a loan agreement with AMS Servicing, LLC, which is identified as the servicer of the loan described in the Loan Modification Agreement on Loan No. 1042702646. Dckt. No. 65. A review of the Loan Modification (attached as an Exhibit to Dckt. No. 65), shows that AMS Servicing, LLC, is named as the "Servicer" on the loan.

The court has stated that it will not approve an loan modification that will not be effective against the actual owner of the obligation, which here appears to be Wells Fargo Bank, N.A. There have been multiple instances in which different loan servicing companies have misrepresented to the court, debtors, Chapter 13 Trustee, U.S. Trustee, creditors, and other parties in interest that the loan servicing company is the "creditor" as that term is defined in 11 U.S.C. § 101(10). In each of those cases, the loan servicing company was merely an agent with very limited authority to service the loan. The servicer was not granted a power of attorney to modify the creditor's rights, was not authorized to contract in its own name to bind the creditor, or was the authorized agent for service of process for the creditor.

Here, AMS Servicing, LLC, is clearly identified as the servicer of the loan agreement of which repayment is being secured by the property

located at 9083 Cambridge Circle, Vallejo, California. Proof of Claim No. 1 on the official claims registry indicates that the name of the Creditor is Nationstar Mortgage, LLC, and that the basis for the claim is "money loaned." The Loan Modification Agreement identifies AMS Servicing, LLC, as servicer for the loan encumbering the property known as 9083 Cambridge Circle, Vallejo. The borrowers are listed as Lotti M. Hampton, and Vernon C. Hampton, the Debtors in this case.

Debtors state that the loan amount due in the prepetition period was $805,705.00, at an interest rate of 6.50%. Debtors indicate that the new interest rate is calculated on the remaining principal of $655,000.00 at the rate of 3.5% effective January 1, 2014.

Debtors states the terms of the modification are as follows: a regular monthly payment of principal and interest of $2,737.37 for the remaining term of the fixed rate period, paid in installments beginning the first day of each month beginning on January 1, 2014. The current escrow payment is estimated at $713.13. This adds up to a total payment of $3,450.72, based upon the current estimated escrow impound. Debtors state that the agreement provides for a principal reduction of $142,705.00, and in addition the interest is lowered to 3.5%.

Debtors state that effective April 1, 2015, the interest rate will increase to and remain at 6.50%, unless all of the following conditions are met:

A. Prior to April 1, 2015, the borrower submits a formal refinance application in an amount not less than 95% of the fair market value of the property, as determined by the lender

B. The borrower takes all steps necessary to complete the requirements set forth in the refinance application and/or approval letter; and

C. The borrower takes all steps within his/her/their control to close the refinance transaction.

D. In the event that the refinance application is rejected through no fault of the borrower, the interest rate will remain fixed at 3.5% per annum until maturity.

There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted

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

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

IT IS ORDERED that Debtors are authorized to amend the terms of their loan with AMS Servicing, LLC, which is secured by the real property commonly known as 9083 Cambridge Circle, Vallejo, California, and such other terms as stated in the

Modification Agreement filed as Docket Entry No. 65, in support of the Motion.

30. 13-28280-C-13 JT-4 JAMES/LORI PERRY Aaron C. Koenig — MOTION TO CONFIRM PLAN 1-13-14 [62]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on January 13, 2014. By the court's calculation, 71 days' notice was provided. 42 days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on January 13, 2014 is confirmed, and

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

31. 13-33884-C-13 RI-4 | ARLENE/RICHARD BAILEY
Rebecca E. Ihejirika | MOTION TO CONFIRM PLAN
2-5-14 [57]

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 February 5, 2014. By the court's calculation, 48 days' notice was provided. 42 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the Plan on the following grounds:

1. Debtor's original plan called for payments of $1,396.43 per month for sixty months. Debtors' Amended Plan calls for payments of $1,157.08 for sixty months. Debtors are delinquent in plan payments to the Trustee to date, and the next scheduled payment of $1,157.08 is due on March 25, 2014. The case was filed on October 29, 2013, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtors have paid $2,796.43 into the plan to date, with the most recent payment made on January 7, 2014.

2. The Plan may not be proposed in good faith and may be causing unfair discrimination to creditors with unsecured claims under 11 U.S.C. § 1325(a)(3); and 11 U.S.C. § 1322(b)(1). *In re Sperna*, 173 B.#. 654

(9th Cir. BAP 1994). Section 2.15 of the Plan proposes 0% to unsecured claim holders. However, Debtor lists a Class 6 special unsecured debt in section 2.14 to ASC, and indicates that it is a student loan with a total claim amount of $54,677.41.

3. Based on the special unsecured claim to ASC, the plan completes in 106 months, which exceeds the maximum time allowed under 11 U.S.C. § 1322(d).

Based on the foregoing, the amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

32. 13-35889-C-13 LA KEISHA MATLOCK — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
TSB-2 Pro Se — 2-13-14 [39]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 13, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required. That requirement was met.

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

The court's tentative decision is to sustain the Objection to Debtor's Claim of Exemptions. 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 objects to Debtor's Claim of Exemptions on the basis that Debtor's Plan does not meet the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor's non-exempt assets total $950.00, and Debtor proposes to pay 0% to creditors with unsecured claims. According to Schedules B and C, all of Debtor's personal property is non-exempt. Schedule C indicates that law providing the exemption as 11 U.S.C. § 522(b)(2), which is not a proper exemption code.

Based on the foregoing, the court denies the $950.00 exemption claimed in "Household goods/personal property," on Debtor's Schedule C, claimed under 11 U.S.C. § 522(b)(2).

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 Debtor's Claim of Exemptions filed by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is sustained and Debtor is the $950.00 exemption claimed in "Household

goods/personal property," on Debtor's Schedule C, claimed under 11 U.S.C. § 522(b)(2).

33.	14-20995-C-13 RJ-2	RODNEY/CHANDRA LAMBERT Richard L. Jare	CONTINUED MOTION TO VALUE COLLATERAL OF VALLEY BANK 2-11-14 [22]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on February 11, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required. That requirement was met.

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

The court's tentative decision is to set the Motion to Value the Secured Claim of Valley Bank for an evidentiary hearing on [date] at [time]. 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 hearing on this Motion was continued to this date to permit Creditor Valley Bank to file and serve its opposition to the Motion, and to allow Debtors to file and serve any replies if so desired. Civil Minutes, Dckt. No. 51.

Debtor seeks value the secured claim of Valley Bank, which has an acknowledged security interest in the real property commonly known as 1071 Little River Drive, Miami, Florida. The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1071 Little River Drive, Miami, Florida. The Debtor seeks to value the property at a fair market value of $65,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust and only deed on the real property is held by Valley Bank, and it secures a loan with a balance of approximately $69,272.00. Debtor asserts that the respondent creditor's claim secured by a junior deed of trust is under-collateralized, and that the creditor's secured claim should be determined to be in the amount of $65,000.00 pursuant to 11 U.S.C. § 506(a).

OPPOSITION BY CREDITOR

Creditor opposes the Motion to Value the Secured Claim on the basis that the subject property, located at 1071 Little River Drive, Miami Florida, is actually valued at $75,000.00. Creditor offers the Appraisal of the subject property, designated as Exhibit 1, Dckt. No. 66 in support of the Motion to Value, and the authenticating declaration of Lloyd Persaud, who testifies that he is a certified Residential Appraiser employed by the Florida appraisal company of Peninsula Appraisal Services. Dckt. No. 65.

The Appraisal is stated to be an Exterior-Only Inspection Residential Appraisal Report, with a date of valuation of June 20, 2013, for the singly family residence located at 1071 Little River Drive, Miami, Florida. Exhibit Cover Sheet, Dckt. No. 66. The report includes a description of the neighborhood, possible adverse conditions on the marketability of the property (which includes a note that the property is located within one mile of an expressway), and an explanation from the appraiser that the property was physically inspected from the exterior front, from the street only, and data on the property's room cout, patio, and porches were obtained from public data.

The report includes plat, flood, and location maps, as well as photographs of the property and of comparable units in the area. The appraisal includes an analysis of three other comparable properties in the area, with prices that bracket the appraiser's valuation of the subject property at $75,000. Exhibit 1, Dckt. No. 66. The Appraiser, Lloyd Persaud, concludes that the value of the property is $75,000.00.

REPLY TO OPPOSITION BY CREDITOR

Debtors challenge Creditor's valuation of the property on the basis that the appraisal offered, Dckt. No. 66, had already been performed on June 20, 2013. Although Creditor was already in possession of an appraisal determining that the value of the property is $75,000, Creditor has asserted different values for the property at different points of Debtors' case. For instance, Creditor stated that the value of the property was $69,271.77 in a Motion for Relief from Stay in Debtors' prior bankruptcy case, Dckt. No. 31. Case No. 13-30287, filed on September 27, 2013.

Debtors also ask the court to note why the qualifications of the appraiser have not been stated; upon a review of the Declaration of Llloyd Persaud (Dckt. No. 65) however, it appears that the appraiser has detailed his credentials as a professional appraiser, and includes a copy of his current Certified Residential Appraiser license in an attachment to the Appraisal Report on Dckt. No. 66. Debtors' more well-founded concern is that the appraisal was performed at a distance, with observations conducted at the street view of Debtors' property. Based on the limitations of preparing an appraisal of a property from afar, Debtors assert that their own valuation of the property is more credible.

Joint Debtor Rodney Lambert testifies that property is in need of "some repairs," and needs exterior painting. Lambert further testifies that the interior is dated, and that based on his familiarity with the condition of the interior (which is not captured in Creditor's appraisal), that the replacement value of the property on the petition date is $65,000. Dckt. No. 83. Lambert alleges that the appraisal prepared by Lloyd Persaud was not prepared with due care (based on an error appraiser committed in indicating the value of the property), and offers appraisals from internet sites appraisal.com and zillow.com , which is not admissible evidence that can be considered by the court, to corroborate Debtors' valuation. Fed. R. Evid. 801, 802.

The court would typically consider a valuation prepared by a professional appraisal more persuasive and credible than the admissible lay opinion of value offered by the debtor, but acknowledges Debtors' concern that the appraisal was conducted from a street view of the property, and did not include adjustments for any interior repairs that may only be discernable to the owners and those who are familiar with the condition of the interior of the residence. Debtors are advised to either obtain a professional estimate of the value of the property, or more extensively and meticulously details the repairs that affect the value of the subject property.

There exists a clear evidentiary dispute concerning the value of the subject property and the court lacks sufficient evidence to value the secured claim of Valley Bank at this time. The court's decision is to set the matter for evidentiary hearing on [date] at [time]. At the hearing, the Creditor may present its appraisal to the court and Debtors may supplement the Debtor's Declaration with more evidence of value.

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 the Secured Claim is set for an evidentiary hearing on [date] at [time].

34. 11-48097-C-13 PATRICK/MELISSA DUNSON MOTION TO INCUR DEBT
SJS-2 Scott J. Sagaria 2-20-14 [47]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on February 20, 2014. By the court's calculation, 33 days' notice was provided. 28 days' notice is required. That requirement was met.

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

The court's tentative decision is to grant the Motion to Incur Debt. Oral argument may be presented by the parties at the schedules 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:

Although this motion purports to be a "Motion to Incur Debt," this matter is more appropriately regarded as a Motion to Approve the Loan the Loan Modification. Debtors are seeking to modify the terms of their existing loan agreement pursuant to 11 U.S.C. § 364(d), and are not requesting court approval for incurring postpetition debt under Federal Rule of Bankruptcy Procedure 4001(c).

Debtors move for an order to modify the terms of an existing loan against the real property commonly known as 7541 Whitmore, Elk Grove, California. The proposed modification will modify the maturity term to 252 months, and the modified total payment, including principal, interest, and escrow costs is $1,839.93. The modified interest rate is 5.0000%. The proposal does not alter of affect the status or priority of any other existing liens on the property.

Debtors identify Ocwen Loan Servicing, LLC, as the Lender," stating that the Lender holds the first deed of trust against the property. A review of the Loan Modification (attached as Exhibit B), however, shows that Ocwen Loan Servicing, LLC was named as the "Servicer" on the loan. Dckt. No. 50. The court has stated that it will not approve an loan modification that will not be effective against the actual owner of the obligation, which here appears to be Wells Fargo Bank, N.A. There have been multiple instances in which different loan servicing companies have misrepresented to the court, debtors, Chapter 13 Trustee, U.S. Trustee, creditors, and other parties in interest that the loan servicing company is the "creditor" as that term is defined in 11 U.S.C. § 101(10). In each of those cases, the loan servicing company was merely an agent with very limited authority to service the loan. The servicer was not granted a power of attorney to modify the creditor's rights, was not authorized to contract in its own name

to bind the creditor, or was the authorized agent for service of process for the creditor.

Here, Proof of Claim No. 12 on the claims registry indicates that Wells Fargo Bank, N.A. is the actual creditor holding a secured claim on the subject property, stating that the amount owed on the claim is $262,905.90. The Home Affordable Modification Agreement offered by Debtors as Exhibit B, in Dckt. No. clearly shows that Ocwen Loan Servicing, LLC, is the servicer on the loan agreement. Ocwen Loan Servicing, LLC, expressly represents itself as the servicer and executes the loan modification agreement in its capacity as the servicer of the loan.

There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Debtors are authorized to amend the terms of their loan with Ocwen Loan Servicing, LLC, which is secured by the real property commonly known as 7541 Whitmore, Elk Grove, California, and such other terms as stated in the Modification Agreement filed as Exhibit "B," Docket Entry No. 50, in support of the Motion.

35.	14-20397-C-13 MDR-1 **Thru #36**	MATTHEW DEVILBISS AND EVA MOLINA-DEVILBISS Matthew D. Roy	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 1-28-14 [15]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 28, 2014. By the court's calculation, 56 days' notice was provided. 28 days' notice is required. That requirement was met.

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

The Motion is granted and creditor's secured claim is determined to be $0.00. No appearance required.

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 505 Pickering Court, Lincoln, California. The Debtor seeks to value the property at a fair market value of $275,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $319,346.00. Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately $84,108.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 505 Pickering Court, Lincoln, 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 $275,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

36.	14-20397-C-13 TSB-1	MATTHEW DEVILBISS AND EVA MOLINA-DEVILBISS Matthew D. Roy	OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 2-26-14 [21]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtor's Attorney on February 26, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because Debtors' Plan relies on the Motion to Value the Secured Claim of Bank of America, N.A., which is set for hearing on this date. The court is granting the Motion to Value, MDR-1, thus resolving Trustee's singular objection to the confirmation of the Plan.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on January 16, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as

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

37.	13-34498-C-13 NLE-1 **Thru #40**	DAWN BONNER C. Anthony Hughes	OBJECTION TO CLAIM OF ERNIE AND BARBARA HOOKER, CLAIM NUMBER 4 1-28-14 [35]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 28, 2014. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. That requirement was met.

Final Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d)(3). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 4 of Ernie and Barbara Hooker is sustained and the claim is disallowed as a Priority Claim, and allowed as a General Unsecured Claim. No appearance required. The court makes the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 4 on the court's official claims registry, asserts a $810.00 claim.

The Chapter 13 Trustee objects to this claim on the following grounds: (1.) No documents supporting the priority status of the claim were provided; (2.) The claim may not be entitled to priority under 11 U.S.C. § 507(a)(4); (3.) This claim was filed on the same day as three other claims from varying locations, Vallejo, Jacksonville, Victorville, and Manila, and Trustee is uncertain that the claimant filed the claim.

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).

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

A review of the subject claim shows that the Proof of Claim form, void of basic details about the claim (with no supporting documentation attached) to be clearly deficient in asserting the debt allegedly owed on the claim. The form for Proof of Claim No. 4 simply indicates that the amount of the claim is $810.00, and the name and the address of Creditors Ernie and Barbara Hooker. Claimants assert that the entire amount of the claim is entitled to priority status, on the basis of 11 U.S.C. § 507(a)(4), but provide no information on why the entire portion of the claim should be treated as a priority claim, and the basis for the claim. Section 2 of the Proof of Claim form is left blank, and the filings of four other claims from different locations on the same day of January 7, 2014 raises the court's doubts about the veracity of the claim.

Based on the evidence before the court, the creditor's claim is disallowed as a priority claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of 4 filed in this case by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 4 of Ernie and Barbara Hooker is sustained and the claim is disallowed as a Priority Claim, and allowed as a General Unsecured Claim.

38. 13-34498-C-13 DAWN BONNER
NLE-2 C. Anthony Hughes

OBJECTION TO CLAIM OF SHELLI CARLISLE, CLAIM NUMBER 6
1-28-14 [40]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 28, 2014. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. That requirement was met.

Final Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d)(3). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 6 of Shelli Carlisle is sustained and the claim is disallowed as a Priority Claim, and allowed as a General Unsecured Claim. No appearance required. The court makes the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 6 on the court's official claims registry, asserts a $700.00 claim.

The Chapter 13 Trustee objects to this claim on the following grounds: (1.) No documents supporting the priority status of the claim were provided; (2.) The claim may not be entitled to priority under 11 U.S.C. § 507(a)(4); (3.) This claim was filed on the same day as three other claims from varying locations, Vallejo, Jacksonville, Victorville, and Manila, and Trustee is uncertain that the claimant filed the claim.

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).

Not all Proof of Claims are deserving of this presumption of prima facie validity, however; only a properly completed and filed proof of claim

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

A review of the subject claim shows that the Proof of Claim form, void of basic details about the claim (with no supporting documentation attached) to be clearly deficient in asserting the debt allegedly owed on the claim. The form for Proof of Claim No. 6 simply indicates that the amount of the claim is $700.00, and the name and the address of Creditor Shelli Carlisle as an address in Victorville, California. Claimant asserts that the entire amount of the claim is entitled to priority status, on the basis of 11 U.S.C. § 507(a)(4), but provide no information on why the entire portion of the claim should be treated as a priority claim, and the basis for the claim. Section 2 of the Proof of Claim form is left blank, and the filings of four other claims from different locations on the same day of January 7, 2014 raises the court's doubts about the veracity of the claim.

Based on the evidence before the court, the creditor's claim is disallowed as a priority claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of 6 filed in this case by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 6 of Shelli Carlisle is sustained and the claim is disallowed as a Priority Claim, and allowed as a General Unsecured Claim.

39. 13-34498-C-13 DAWN BONNER
NLE-3 C. Anthony Hughes

OBJECTION TO CLAIM OF ROBIN HOSELTON, CLAIM NUMBER 5
1-28-14 [45]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 28, 2014. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. That requirement was met.

Final Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d)(3). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 5 of Robin Hoselton is sustained and the claim is disallowed as a Priority Claim, and allowed as a General Unsecured Claim. No appearance required. The court makes the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 7 on the court's official claims registry, asserts a $300.00 claim.

The Chapter 13 Trustee objects to this claim on the following grounds: (1.) No documents supporting the priority status of the claim were provided; (2.) The claim may not be entitled to priority under 11 U.S.C. § 507(a)(4); (3.) This claim was filed on the same day as three other claims from varying locations, Vallejo, Jacksonville, Victorville, and Manila, and Trustee is uncertain that the claimant filed the claim.

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).

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

A review of the subject claim shows that the Proof of Claim form, void of basic details about the claim (with no supporting documentation attached) to be clearly deficient in asserting the debt allegedly owed on the claim. The form for Proof of Claim No. 5 simply indicates that the amount of the claim is $300.00, and the name and the address of Creditor to be Robin Hoselton, at an address located in Jacksonville, Florida. Claimant asserts that the entire amount of the claim is entitled to priority status, on the basis of 11 U.S.C. § 507(a)(4), but provide no information on why the entire portion of the claim should be treated as a priority claim, and the basis for the claim. Section 2 of the Proof of Claim form is left blank, and the filings of four other claims from different locations on the same day of January 7, 2014 raises the court's doubts about the veracity of the claim.

Based on the evidence before the court, the creditor's claim is disallowed as a priority claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of 6 filed in this case by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 5 of Robin Hoselton is sustained and the claim is disallowed as a Priority Claim, and allowed as a General Unsecured Claim.

40. 13-34498-C-13 DAWN BONNER
NLE-4 C. Anthony Hughes

OBJECTION TO CLAIM OF DANIEL WHITNEY, CLAIM NUMBER 8
1-28-14 [50]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on January 28, 2014. By the court's calculation, 56 days' notice was provided. 44 days' notice is required. That requirement was met.

Final Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d)(3). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Proof of Claim Number 8 of Daniel Whitney is sustained and the claim is disallowed as a Priority Claim, and allowed as a General Unsecured Claim. No appearance required. The court makes the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 8 on the court's official claims registry, asserts a $12475.00 claim.

The Chapter 13 Trustee objects to this claim on the following grounds: (1.) No documents supporting the priority status of the claim were provided; (2.) The claim may not be entitled to priority under 11 U.S.C. § 507(a)(4); (3.) This claim was filed on the same day as three other claims from varying locations, Vallejo, Jacksonville, Victorville, and Manila, and Trustee is uncertain that the claimant filed the claim.

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).

Not all Proof of Claims are deserving of this presumption of prima facie validity, however; only a properly completed and filed proof of claim

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

A review of the subject claim shows that the Proof of Claim form, void of basic details about the claim (with no supporting documentation attached) to be clearly deficient in asserting the debt allegedly owed on the claim. The form for Proof of Claim No. 8 simply indicates that the amount of the claim is $12475.00, and the name and the address of Creditor to be Daniel Whitney, at an address located in Fairfield, California. Claimant asserts that the entire amount of the claim is entitled to priority status, on the basis of 11 U.S.C. § 507(a)(4), but provide no information on why the entire portion of the claim should be treated as a priority claim, and the basis for the claim. Section 2 of the Proof of Claim form is left blank, and the filings of four other claims from different locations on the same day of January 7, 2014 raises the court's doubts about the veracity of the claim.

Based on the evidence before the court, the creditor's claim is disallowed as a priority claim.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Claim of 6 filed in this case by Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the objection to Proof of Claim Number 8 of Daniel Whitney is sustained and the claim is disallowed as a Priority Claim, and allowed as a General Unsecured Claim.

41. 14-21098-C-13 TARU BIRAK
CYB-2 Candace Y. Brooks

MOTION TO VALUE COLLATERAL OF CITIBANK, N.A.
2-18-14 [20]

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 February 18, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required. That requirement was met.

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

The Motion is granted and creditor's secured claim is determined to be $0.00. No appearance required. The 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 125 Fairview Avenue, Vallejo, California. The Debtor seeks to value the property at a fair market value of $102,040.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $352,889.65. Creditor Citibank, N.A.'s second deed of trust secures a loan with a balance of approximately $79,998.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Citbank, N.A. secured by a second deed of trust recorded against the real property commonly known as 125 Fairview Avenue, Vallejo, California, 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 $102,040.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

42.	14-20299-C-13 CAH-1 **Thru #43**	KENNETH/RAMONA BRADFORD C. Anthony Hughes	MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC. 3-11-14 [18]

Final Ruling: The Debtors having filed a Withdrawal of the Motion to Value the Secured Portion of the Claim of Santander Consumer USA, Inc. pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Dismiss the Bankruptcy Case was dismissed without prejudice, and the matter is removed from the calendar.**

43. 14-20299-C-13 KENNETH/RAMONA BRADFORD — OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
NLE-1 C. Anthony Hughes — 2-20-14 [14]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on February 20, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required. That requirement was met.

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

The court's tentative decision is to continue the hearing on the Objection to 2:00 pm on April 1, 2014. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors propose to value the secured claims of Santander and HSBC as Class 2 Creditors, but had not yet filed motion to value the secured claims.

Debtors filed Motions to Value the Secured Claims of HSBCA Mortgage Services, Inc., CAH-2, Dckt. No. 25, and Santander Consumer USA, Inc., CAH-3, Dckt. No. 30, on March 18, 2014. Both motions are scheduled to be heard by this court on April 1, 2014. The Plan now relies on two pending Motions to Value Secured Claims. If the motions are not granted, Debtors' plan will not have sufficient monies to pay the claims in full. The court will continue the hearing on this Objection, so that Trustee's Objection to Confirmation of the Plan may be heard with the Motions to Value Secured Claims on April 1, 2014.

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 of the Plan is continued to 3:00 pm on April 1, 2014, to be heard in this court.