

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Sacramento, California

April 30, 2013 at 3:00 p.m.

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1. 09-22405-E-13 JEAN LUALHATI MOTION TO APPROVE REVERSE  
JMB-2 Guillermo F. Geisse MORTGAGE  
4-16-13 [[26](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 16, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

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

**The court's tentative decision is to deny the Motion to Approve Reverse Mortgage.** 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 approval to enter a reverse mortgage. Pursuant to Local Bankruptcy Rule 9014-1(d)(5), each motion, opposition and reply shall cite the legal authority relied upon by the filing party. Here, Debtor fails to provide the legal authority for the court to approve a reverse mortgage. This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Additionally, the Motion fails to comply with Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), as if fails to state all material provisions of the proposed credit agreement, including interest rate, maturity, borrowing limits and conditions.

The Motion states with particularity (Fed. R. Bankr. P. 9014) the following grounds for the relief requested,

- a. The Debtor's Chapter 13 Plan provides for a 100% dividend to creditors' holding general unsecured claims because of the Debtor's equity in her home.
- b. The general unsecured claims are higher than projected, and the present Chapter 13 Plan is not feasible (implied that the Debtor cannot increase her payments to provide for such increased claims).
- c. The Debtor has been approved to obtain a reverse mortgage from Greenlight Reverse Mortgage.
- d. The Debtor seeks to use proceeds from the sale to pay the remaining amounts of the timely filed claims in this case.
- e. The Chapter 13 Plan is to be completed in February 2014, with approximately \$38,000 remaining to be paid by the Debtor to fund the Plan.

Motion, Dckt. 26. No other grounds are provided.

The Debtor sneaks some more information into her declaration. Dckt. 28. She states that her monthly Plan payments are \$1,067.00, which fund a 60-month Plan. She testifies that there is approximately \$39,000 in payments required to pay the claims in this case. She states that a reverse mortgage will be handled and serviced by Greenlight Reverse Mortgage.

Lastly, Debtor provides a letter from a reverse mortgage company, that is not properly authenticated. Debtor does not identify the document in the declaration filed. Even if the court could consider the evidence, there are no material provisions regarding the loan in the letter. The letter reads,

"To Whom it May Concern:

We have in process a Reverse Mortgage HECM loan for Jean A. Lualhati. The borrower has done her HUD counseling and application has been accepted. The primary findings based on estimated property value and estimated pay-off allows the borrower with a substantial amount of equity remaining and approval at completion of process."

Exhibit 1, Greenlight Reverse letter signed by Gary Marshall; Dckt. 29.

In substance, the Motion, declaration, and exhibit merely state that the Debtor wants a loan and the court shall grant an order letting the Debtor do what she wants. The court is asked to rely on the financial and legal conclusions of Gary Marshall, the Reverse Mortgage Specialist seeking to sell the Debtor a reverse mortgage.

If the court were to grant the Motion, it would be abdicating its judicial responsibility. Obtaining relief from a federal court is not merely demanding it, hiding the terms of the loan and providing an explanation of the finances of the Chapter case, why the reverse mortgage is the best (and apparently only) possible solution.

The Motion is denied without prejudice.

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

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

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

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

2. 12-22208-E-13 IRVIN/THERESA WHITE MOTION TO MODIFY PLAN  
EJS-4 Eric Schwab 3-19-13 [[59](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2013. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects to the treatment of the proposed creditor Ocwen Loan Servicing, LLC. The Trustee objects as the creditor is included in Class 1 of the confirmed plan and are now proposing to treat the creditor as Class 4. The creditor has filed a claim including \$6,233.99 in prepetition arrears. The Debtors motion and declaration assert that they have obtained a trial loan modification, but the Trustee has not received any evidence of a permanent loan modification. The Trustee also notes that the record does not reflect a hearing to approve a loan modification. Further, the Trustee estates the trial

loan letter does not address prepetition arrears, which the debtor is now attempting to treat as Class 4.

The Trustee also objects that the United States Attorney was not served on behalf of the Department of Education, as required by Local Bankruptcy Rule 2002-1(a).

Debtor responds asserting that the U.S. Attorney was not properly served and that all documents were immediately mailed to the U.S. Attorney for the Department of Education on April 15, 2013. Debtor asks that the Department of Education be allowed to forego the requirement to file written opposition and voice any concerns at the hearing.

Debtor also states that the Trustee's concerns are addressed in the letter provided as Exhibit A to the motion, as it states that any difference between the amount of the trial period payments and the regular mortgage payments will be added to the balance of the loan along with any other past due amounts. Debtors also state that they will file a motion to approve the permanent loan modification as soon as it is offered to them, which will not be until May 1, 2013.

The court sees that on March 25, 2013, the Debtors filed their motion to approve a loan modification. On its face, the Motion appears to state the terms of the proposed modification. Exhibit A filed in support of the motion to approve a loan modification is a Loan Modification Agreement signed by the Debtors and the Loan Servicer, Ocwen Loan Servicing, LLC. The Debtors' declaration in support of that motion authenticates the Loan Modification Agreement. Dckt. 77.

As Debtors provided the U.S. Attorney for the Department of Education with 15 days notice of the hearing, and any opposition can be heard at this hearing, the court will waive the defective service. Further, the Debtors have sufficiently explained the trial loan modification period they are currently in, with the past due amounts being added to the balance of the loan, and the permanent loan modification forthcoming.

The order confirming the Plan shall include an additional provision requiring the trial loan modification payments through the Plan.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 19, 2013 is confirmed, and

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

3. [09-46710-E-13](#) PHILLIP THAM AND GLENA CONTINUED MOTION TO VACATE  
PGM-4 SANCHEZ-THAM DISMISSAL OF CASE  
3-7-13 [[83](#)]  
CASE DISMISSED 2/25/13

CONT. FROM 4-16-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on March 8, 2013. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

**No Tentative Ruling:** The Motion to Vacate Dismissal of Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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 for an Order vacating the Order to Dismiss the Case entered on February 22, 2013. The case was dismissed for failure to make \$460.00 in payments. The Debtor failed to file any opposition to the Trustee's Notice of Default, Dckt. 74, and the Debtor did not request a hearing contesting the default as set forth in the Notice. The Notice was filed on January 15, 2013 and served on the Debtor and Debtor's counsel. On February 22, 2013 (38 days later) the Trustee filed a declaration confirming the default and that the Debtor had not filed an opposition and request for hearing in the 30-day period specified in the Notice.

Debtor's Motion to Vacate states with particularity (Fed. R. Bank. P. 9014) the following grounds upon which the requested relief is based:

- A. On December 27, 2009, the Debtor and his estranged wife filed the Chapter 13 bankruptcy case.
- B. On March 30, 2012, a Chapter 13 Plan was confirmed.

- C. Soon after confirmation the Debtor was incarcerated and a 2002 Honda Accord was surrendered.
- D. The Co-Debtor subsequently determined that she wanted to convert her case to one under Chapter 7.
- E. The Debtor believes that the Trustee filed the Notice of Default for a failure to make \$780.00 in Chapter 13 Plan payments as of December 25, 2012.
- F. On February 23, 2013, the Debtor delivered \$960.00 to the Chapter 13 Trustee.
- G. Debtor's counsel and Debtor mistakenly believed that payment, having been made before February 25, 2013, and within the 30-day objection period to the Notice of Default, was sufficient to not file a repose or opposition to the Notice of Default.

Motion, Dckt. 83.

Only the co-debtor, who is not a debtor in the case now before the court, provides her declaration. Dckt. 85. The co-debtor states that she (and not the Debtor as stated in the Motion) made a payment of \$960.00 to the Chapter 13 Trustee on February 23, 2013. The co-debtor, who is not a debtor in this case, states that she, and not the Debtor, will make future payments under the Plan. She further testifies that the Debtor remains incarcerated.

The Trustee filed a response, asserting that he filed a Notice of Default in the amount of \$780.00 as of January 15, 2013, with an additional plan payment due in the amount of \$180.00 on January 25, 2013, NOT February 25, as Debtor's counsel asserts. Thus, a total of \$960 was due within 30 days of service date of the Notice of Default, which was January 17, 2013.

Debtor responds, asserting that while the Trustee is *technically correct*, the court should use its equitable powers to vacate the dismissal. Counsel argues that the circumstances of the Debtor having to move and pay the first and last month rental deposit and confusing the deadlines dates is sufficient to grant relief.

#### **DISCUSSION**

Federal Rules of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Red. R. Civ. P. 60(b). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

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

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

Here, Counsel asserts that the prior order dismissing the case should be vacated because of *mistake* - that Debtor confused the deadlines in sending in the payment. A review of the docket shows that the Notice of Default was clear in its directions to Debtors regarding their case. The Debtor knew that payments had to be made to the Trustee and failed to make the payments by the stated deadline, or to file and amended plan, set an opposed hearing, or otherwise contact the Chapter 13 Trustee. There is no evidence of mistake in the prior order dismissing the case. The Debtor elected not to respond, ignoring the motion of the Chapter 13 Trustee. Proper grounds existed to dismiss the case, and dismissal is proper. The Debtor, now wiser, may file a new case if he is able to make the promised payments in the plan and prosecute her case in good faith.

The Debtor's response raises further and more significant concerns. Rather than comply with the simple rules, the Debtor and counsel seek to rewrite them for their convenience and strategy. For more than three years this court has made it clear to all counsel that it is necessary to respond to motions and state oppositions. Here, the Debtor argues that he decided that he did not need to respond because his estranged wife (who is not a debtor in this case) assumed that the plan payments were current.

Nowhere is any argument presented as to why and how the Debtor and his counsel concluded that they could just ignore the Notice of Default based on

their unilateral assumption that the non-debtor estranged spouse had brought the plan current.

**CONTINUANCE**

The court continued the hearing to allow Debtors to address additional issues. On or before April 23, 2013, the Debtors were to file and serve on the Chapter 13 Trustee and U.S. Trustee supplemental pleadings addressing the following issues:

- A. The basis under the Local Bankruptcy Rule upon which the Debtors have combined their motion and points and authorities.
- B. The payments made to the Chapter 13 Trustee through the plan in this case and the creditors who have received payments through the plan and directly by the Debtors.
- C. The prejudice to the Debtors if the dismissal is not vacated and the Debtors file a new Chapter 13 case.
- D. The appropriateness of the court conditioning the vacating of dismissal of the case on counsel for the Debtor paying \$1,000.00 in sanctions (4 hours of attorney time at \$250.00 an hour) to the Chapter 13 Trustee for the time wasted by the Debtors' failure to respond to the Motion to Dismiss the case, the hearing on the Motion to Dismiss, the Motion to Vacate the Dismissal, and attendance at the hearing on the Motion to Vacate the Dismissal.

**SUPPLEMENTAL PLEADINGS**

Debtor filed a supplemental pleading apologizing to the court for the use of the combination of Motion and Points and Authorities, and is conducting a full review in his office of older less used "templates" which may contain the error.

Debtor also states that the plan has paid a total of \$7,280.00. Of this amount the Trustee has paid \$3,680.69 to Wells Fargo Class 2 claim, \$1,700.00 to Debtor's counsel, at a rate of \$50.00 per month, and \$939.31 in Trustee fees, with \$660.00 being held pending disbursement. Debtor asserts that he is current with the plan payments and made the April payment for the plan.

Debtor states that if the case continues the unsecured creditors receive no less than zero and if the Debtor's case gets dismissed and files a new Chapter 7, the creditors would get zero. Debtor states there is no income, no current monthly income issues and no non-exempt assets. The non-debtor estranged spouse provides a declaration asserting that the Debtor needs the case to go forward to serve as motivation when her husband is released from incarceration to put the past behind him. The estranged non-debtor spouse also asserts that its important the case does not get dismissed because this would start the Debtor off with resentments as to why she received a discharge and he did not.

The Debtor further responds, stating the conditioning of sanctions in order to vacate the dismissal is unjust. Counsel argues that he has filed all necessary motions for the well being of the family. Counsel asserts he did not charge for the Chapter 7 case, only received \$500 down for the original Chapter 13 and \$800 remains in the attorneys' already earned fees.

Counsel for Debtor also states that the filing of the Notice of Default and Application to Dismiss were signed by David Cusick. No hearing was warranted if the debtors became current and no hearing was required or held by the Trustee prior to dismissal. Further, Counsel argues that none of the persons whom prepared or signed these documents were practicing attorneys and thus, an award of attorney's fees would not be proper as no attorneys participated in the submission of the documents. Counsel states that the Trustee is no longer a practicing attorney and an award of attorney's fees for his time preparing the reply is unwarranted. Counsel also states appearance of the Trustee's counsel was not needed as the motion was a final ruling for a continuance.

Lastly, Counsel asserts that he decided that money was not a factor in helping these debtors and that a sanction would not have a greater effect than the time and cost in preparing this motion, replying and appearing in front of ones peers. Counsel argues that no prejudice has been caused to the creditors and Debtor is current on plan payments.

In making these arguments, counsel misses the point of and the need for corrective sanctions to be imposed. Because of his decision to not file a simple one page opposition stating that the payments are current and setting a hearing, he has caused the Chapter 13 Trustee to process the default declaration, have the case dismissed, engage in the closing paperwork, and now address a motion to vacate the dismissal which counsel chose not to oppose.

Counsel also misses the mark by saying that the Chapter 13 Trustee doesn't really have legal expenses, that his counsel's time is not worth anything, and that everything is just done by non-lawyers. The Debtor, acting through his agent, the attorney, and his proxy, the non-debtor estranged spouse, made the decision to not respond to the Notice of Default. It is not asserted that counsel made a mistake and failed to respond, but knowingly chose not to respond. In doing so he was attempting to effectively draft the Chapter 13 Trustee into prosecuting the opposition to the Notice of Default for the Debtor.

Counsel contends that it is "corrective enough" to have made him file the Motion to Vacate and he should not have to compensate the Chapter 13 Trustee for the time and expense of dealing with the dismissal of the case and then the present Motion to Vacate.

In reviewing the Chapter 13 Plan, the court cannot understand why the Debtor wants to proceed with this plan, rather than converting to a case under Chapter 7 or seeking a hardship discharge. The 2002 Honda Accord provided for in Class 2 has been surrendered. There are no other Class 1, 2, 4, 5, 6, or 7 (with unsecured claims to receive a 0.00% dividend) to be paid under the plan. The only persons to be paid are Debtor's counsel and the Chapter 13 Trustee.

## **CONCLUSION**

On the merits of the Debtor's Motion, no grounds under Rule 60(b) have been established to vacate the order dismissing the case. Further, little reason can be shown for continuing to make this incarcerated Debtor continuing to bleed \$180.00 a month in the case to fund payments to counsel and the Chapter 13 Trustee.

Further, a basis has been shown for ordering corrective sanctions to be paid by counsel. He knowingly and intentionally chose to not file an opposition to the Notice of Default. Even aware that the Debtor, acting through his proxy, was not able to make the payment until the very last minute, no effort was made to file, or consider filing, an opposition to the Notice of Default. Now, counsel argues that it is unfair for him to bear the cost of his deliberate choice.

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

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

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

**IT IS ORDERED** that the Motion to vacate the Dismissal is -----, and the February 25, 2013 order of this court dismissing the Chapter 13 case, Dckt. 80, is -----.

4. [11-27711-E-13](#) FELIPE/AVELINA MIGUEL MOTION TO MODIFY PLAN  
PGM-3 Peter Macaluso 3-26-13 [[96](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 2013. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects to Debtor's Motion on the grounds that Debtor's declaration provides insufficient detail to support the changes in expenses. Debtor has filed updated statements of income and expenses and the Trustee compares the information with the following chart:

<b>INCOME:</b>			
Net Income	7-1-11	9-5-12	3-26-13
Felipe Miguel	\$13,800.83 (combined net per Schedule J)	\$7,496.75	\$7,496.75
Avelina Miguel		\$1,423.40	\$1,423.40
Cominbed	\$13,800.83	\$8,920.15	\$8,920.15
<b>EXPENSES:</b>			
	7/1/11	9-5-12	3-26-13
Rent/Mortgage	\$1,590.41	\$1,590.41	\$1,590.41
Electricity/Heat	\$ 280.00	\$ 280.00	\$ 280.00
Water/Sewer	\$ 165.00	\$ 165.00	\$ 165.00
Telephone	\$ 50.00	\$ 50.00	\$ 50.00
Cable TV	\$ 164.00	\$ 164.00	\$ 164.00
Garbage	\$ 60.00	\$ 60.00	\$ 60.00
Home Maintenance	\$ 6.54	\$ 6.54	\$ 6.54
Food	\$ 400.00	\$ 600.00	\$ 600.00
Clothing	\$ 25.00	\$ 25.00	\$ 25.00
Laundry/Dry Clean	\$ 25.00	\$ 100.00	\$ 100.00
Medical/Dental	\$ 760.00	\$ 35.00	\$ 35.00
Transportation	\$ 750.00	\$ 400.00	\$ 400.00
Recreation	\$ 26.50	\$ 45.82	\$ 45.82
Charity	\$1,000.00	\$ 500.00	\$ 500.00
Life Insurance	\$ 207.25	\$ 207.25	\$ 207.25
Auto Insurance	\$ 500.00	\$ 500.00	\$ 500.00
Vehicle Reg.	\$ 25.00	\$ 25.00	\$ 25.00
Adj Fed Taxes	\$3,000.00	\$1,500.00	\$1,500.00
Adj FTB Taxes	\$ 500.00	\$ 500.00	\$ 500.00
Cosmetic/Hair Cuts	\$ 66.13	\$ 66.13	\$ 66.13
<b>TOTAL</b>	<b>\$9,600.83</b>	<b>\$6,820.15</b>	<b>\$6,820.15</b>

The Trustee states that the objections from Debtor's prior Motion to Modify (Dckt. 66) remain for the most part. The Trustee questioned Debtor's adjustments in expenses related to food, laundry/dry cleaning, medical/dental, transportation, recreations, charitable contributions and taxes. Debtor attempted to resolve the objections with a supplemental declarations. The Trustee states the following issues were never resolved in Debtor's prior modification and remain objections in the current modification:

A. Dry Cleaning - \$75.00 increase. Debtor provided five copies of dry cleaning receipts as an exhibit which total \$378.94 over ten months. The average monthly amount would then total approximately \$37.90. Even if the receipts are the only ones Debtor could find, Trustee argues that the average would be \$75.79, neither which support a monthly expense of \$100.00.

B. Medical/Dental - \$725.00 decrease. Debtor explains that medical and dental expenses have decreased except for contact lenses and optic drops. Debtor's supplemental declaration now provides that they are not longer being covered by the same policies, but do not provide any additional information.

C. Car Insurance - \$500.00 budgeted. Trustee argues that Debtor has stated in a prior declaration and submitted evidence (insurance statement) that the actual monthly payment is \$281.70.

D. Charitable Contributions - \$500.00 reduction. Debtor states this expense is limited if they are not able to meet their budget. Based on the copies of checks provided, over a three month span Debtor paid \$135.00 in contributions, or \$45.00 per month, yet Debtor's budgeted \$500.00 for this expense.

E. Adjusted Federal Taxes - \$1,500.00 decrease. Trustee argues that Debtor has not provided copies of tax returns to support the claim.

F. Telephone - \$50.00 budgeted. Trustee argues that the AT&T statement provided by Debtors reflects a monthly expense of \$269.83, while Debtor has budgeted \$50.00.

G. Cable TV - \$164.00 budgeted. Trustee argues that Debtor submitted a bill as an exhibit that reflects \$233.96 charges per month, while Debtor has budgeted \$164.00.

F. Mortgage - \$1,590.41 budgeted including escrow. Trustee argues that Debtor has provided an exhibit and declaration stating that the mortgage payment is \$1,816.45, while they continue to budget \$1,590.41.

The Trustee also states that under the confirmed plan BAC Home Loans Servicing is a Class 4 Creditor to be paid directly by the Debtor while the Debtor's modified plan no longer provides for the claim.

Lastly, the Trustee states the Debtor's modified plan proposes plan incorrectly states the total paid in.

#### DEBTOR'S REPLY

Debtors respond stating that if the Trustee believes that there is extra disposable income, to state the amount desired instead of leaving the Debtor to guess. Debtor states the total amount of the Trustee's disputed amounts above

total a shortage of \$347.32, yet, the Debtors believe the plan as budgeted is feasible.

Debtors also state that leaving out BAC Home Loans was an error and that the class 4 creditor be included in the order confirming.

Lastly, Debtors state they are willing to correct the total amount paid in the order as well.

#### DISCUSSION

The court is not satisfied with the Debtor's response. Debtors have failed to meet their burden of proving the requirements of confirmation. *See Amfac Distribution Corp. v. Wolff (In re Wolff)*, 22 B.R. 510, 512 (9th Cir. B.A.P. 1982) (holding that the proponent of a Chapter 13 plan has the burden of proof as to confirmation). Here, Debtors rely on the Trustee to provide the amount of disposable income, when Debtor has the burden to prove the requirements of confirmation.

The court remains concerned that the Debtor is providing false expenses, as laid out by the Trustee. The judicial process is not one in which a party is rewarded for making multiple false statements under penalty of perjury. The Debtors offer no testimony as to how the prior expenses were computed, why they are now incorrect, and why the court should find the present statements under penalty of perjury credible. It may well be that the expenses shown on Amended Schedule J were complete fabrications to justify the prior version of the Plan. However, prior inaccurate, unsupported statements under penalty of perjury and then unsupported changes are neither credible or indicative of a debtor proceeding in good faith. The court does not believe the Debtors' testimony concerning their finances in this case.

The Debtors are not proceeding in good faith and the court cannot determine that the plan is feasible. Rather, the Debtors' testimony and conflicting statements under penalty of perjury demonstrates that either they are unaware of their expenses or continually misrepresent their expenses to misuse the bankruptcy process. The Debtors' Reply to the Trustee's objection, characterizing it as a game of "wack a mole," in which the poor Debtors do not understand what to do materially misstates the situation. It is quite simple, the Debtors honestly and truthfully state their expenses. If the expenses change, they state (1) and provide support for why the prior number was in good faith and believed accurate, (2) what has caused the situation to change, and (3) and provide support for why the new expense amount is stated in good faith and accurate.

Further, the Debtors' attitude that the Trustee can be "bought off" by promising to pay him \$16,000.00 in not only insulting, but further calls into question the good faith and ethics of the Debtors. Additionally, this strategy falls below the minimum professional conduct of counsel. How little or much a Chapter 13 Trustee may receive in a case does not govern his properly prosecuting a case or a debtor's obligation to be truthful and honest.

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

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

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

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

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

5. [11-27711](#)-E-13 FELIPE/AVELINA MIGUEL  
TSB-1 Peter G. Macaluso

CONTINUED MOTION TO DISMISS  
CASE FOR FAILURE TO MAKE PLAN  
PAYMENTS  
2-27-13 [[89](#)]

CONT. FROM 3-27-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on February 27, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

On March 27, 2013, the hearing was continued to be heard in conjunction with the Debtors' Motion to Modify the Chapter 13 Plan. As the court denies the Motion to Confirm, the Motion to Dismiss is granted.

The Trustee seeks dismissal of the case on the basis that the Debtor is \$32,700.00 delinquent in plan payments. Failure to make plan payments is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1).

The Debtor having failed to confirm another modified plan, cause exists to dismiss the case. The motion is granted and the case is dismissed.

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is granted and the case is dismissed.

6. [12-30811-E-13](#) GARY/LORETTA SCHEFFEL  
MG-1 Matthew Gilbert

MOTION TO MODIFY PLAN  
2-13-13 [[30](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 13, 2013. By the court's calculation, 76 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

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

7. [13-20113-E-13](#) CHARLES/KEELY MCCORMICK  
NLE-1 Peter G. Macaluso

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
2-13-13 [[14](#)]

CONT. FROM 3-12-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on February 13, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan exceeds 60 months. According to the Trustee's calculations, the plan will complete in 90 months as opposed to the 60 months proposed. This exceeds the maximum time allowed under 11 U.S.C. § 1322(d). The Trustee asserts that the plan proposes payments of \$400.00 for 60 months, which totals \$24,000.00. The Debtor is proposing to pay the following debts in the plan: \$3,000 for attorney fees; Wells Fargo in Class 2 at \$7,962.24 with 3% interest; and a 30% dividend to unsecured creditors. This totals \$22,975.00. The total of unsecured debt on Schedule F is \$76,583.86.

The court continued the hearing in order for Debtors to file and serve their opposition.

DEBTOR'S OPPOSITION

Debtors oppose the objection, asserting that the plan estimates no less than 15% to be paid to unsecured creditors. Debtor argues that at the present moment, with the last date to file claims at 5/8/13, there have only been \$33,168.90 in general unsecured creditors who have filed claims and therefore

the plan does not exceed sixty months. Debtor requests that the objection be denied or in the alternative continue the hearing past the filing deadline of 5/8/13 in order to determine what percentage \$22,975 computes out as.

TRUSTEE'S RESPONSE

Trustee responds that the Debtor's reply refers to a 15% dividend to unsecured creditors, while the proposed plan estimates no less than a 30% dividend to unsecured creditors. The Trustee argues that based on a 30% dividend to unsecured creditors, the plan will complete in 90 months as opposed to the 60 months proposed. The Trustee also asserts that he is opposed to continue the objection until after the bar date.

The Trustee is correct, the proposed Chapter 13 Plan states,

**2.15. Class 7 consists of all other unsecured claims** not listed as Class 5 or 6 claims. These claims will receive no less than a 30.0% dividend. These claims, including the under-collateralized portion of secured claims not entitled to priority, total approximately \$ 31,977.22.

Chapter 13 Plan, Dckt. 5.

The aggregate dividend for the general unsecured claims will be at least \$9,593.00, which averages \$159.89 a month for the 60 months of the Plan. (This uses the Debtor's lower projected general unsecured claim amount of \$31,977.22, rather than the \$76,583.86, none of which are listed as disputed or unliquidated, listed on Schedule F, Dckt. 1 at 24-28.) The Plan provides for \$400.00 a month in payments by the Debtors. From this they will have to fund \$2,000.00 in counsel's fees (\$33.33 a month), Chapter 13 Trustee's fees projected to be \$32.00 a month, and \$310.00 to Wells Fargo Bank for its secured claim, which leaves \$24.70 a month to fund the unsecured claims. With that funding, the court computes that it would take 388.34 months to pay the promised 30% dividend.

Here, based on the projections of 30% dividend to unsecured creditors as proposed in the plan, the plan will exceed 60 months. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). 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.

8. [13-22917](#)-E-13 VICTORIA THOMPSON  
GFG-1 Guillermo F. Geisse

MOTION TO VALUE COLLATERAL OF  
CONTRA COSTA FCU  
4-2-13 [[15](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 2, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7919 Twin Oaks Avenue, Citrus Heights, California. The Debtor seeks to value the property at a fair market value of \$125,000.00 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 \$151,027.08. Contra Costa FCU's second deed of trust secures a loan with a balance of approximately \$34,350.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Contra Costa FCU secured by a second deed of trust recorded against the real property commonly known as 7919 Twin Oaks Avenue, 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 \$125,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

9. [12-36018](#)-E-13 IMELDA/ANTONIO BAUTISTA MOTION TO CONFIRM PLAN  
JBR-1 Jennifer Reichhoff 3-8-13 [[81](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 11, 2013. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.



determine the demanded payment amount to comply with the contract. Debtors argue that while the Trustee is accurate in stating that the Debtor has failed to make plan payments outside of the approved plan due to Bank of America, N.A.'s demand for payment not in conformity with the contract, the Debtor has made the confirmed plan payments to the Trustee.

Pending before the court is Federal Rule of Civil Procedure 12(b)(6) motion by Bank of America, N.A. to be heard on March 21, 2013. The court took the Motion to Dismiss under advisement. However, on April 24, 2012, the Chapter 13 Trustee Withdrew his Notice of Default and Application to Dismiss. As the Motion to Dismiss was withdrawn, the court cannot delay the dismissal, and Debtor's request is denied as moot.

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

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

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

**IT IS ORDERED** that the Motion is denied as moot.

11. 13-24924-E-13 JACQUELINE THOMPSON MOTION TO EXTEND AUTOMATIC STAY  
PSB-1 Pauldeep Bains O.S.T.  
4-12-13 [8]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on April 12, 2013. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

**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:

Debtors seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 12-20774-C-13C) was dismissed on March 24, 2013, after Debtors defaulted on their plan payments. See Order, Bankr. E.D. Cal. No. 12-20774-C-13C, Dckt. 61, March 24, 2013. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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 the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 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(c) and 1325(a) – but the two basic issues to determine good faith under § 362(c)(3) are:

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as unexpected and necessary expenses arose during her prior bankruptcy case, which are now behind her. The Debtor states that in the previous case she had to replace her water heater in September 2012, the heater unit in October 2012, and replace the stove in November 2012. Debtor states these were very costly, approximately \$4,800, and she could not afford both the plan payments and the repairs.

Debtor testifies that her income has also increased, has the social security benefits for her and her four children have gone up and her 17 year old son now does some part time work through a school program. The Debtor asserts that she is able to perform under their new Chapter 13 plan.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor asserts that she will not have to replace her hot water heater, stove or heater unit during this bankruptcy, which was why she could not afford plan payments previously. Debtor now asserts that she has sufficient income that will allow her to perform under the new Chapter 13 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.

12. 10-23428-E-13 ROLAND FAIRWEATHER MOTION TO VALUE COLLATERAL OF  
SDB-2 W. Scott de Bie JP MORGAN CHASE BANK, N.A.  
3-21-13 [48]

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 the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 21, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required. FN.1.

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

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



court's calculation, 49 days' notice was provided. 44 days' notice is required.

**Tentative Ruling:** This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d)(4). 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 overrule the Objection to Proof of Claim number 22 of Capital One, FSB. without prejudice** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 22 on the court's official claims registry, asserts \$50,473.34 claim. The Trustee objects to the Claim on the basis that it is duplicative of claim number 16.

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

The Trustee has provided the Declaration of Yvette Sanders to introduce evidence to authenticate documents upon which it bases its claim. The Sanders Declaration merely attempts to authenticate a copy of Proof of Claim number 16, but does not provide any other specific evidence to indicate that Proof of Claim number 22 is a duplicative claim.

A review of the Proofs of Claim numbers 16 and 22 reveals significant similarities between the two claims. Particularly, the amount of unsecured debt claimed to be owed by the Debtor in both proofs of claim are \$50,473.34. See Claim #16; Claim #22. Further, attached to the Proof of Claim number 22 is a bill dated July 9, 2009 which lists the account number of the Debtor as 4791-2470-9506-4616. See Claim #22. The account number listed on the Proof of Claim number 16 is 47TDM47095064616. See Claim #16. When comparing the two account numbers, the only difference between the two is that on the bill the letters "TDM" have been replaced by the numbers "912."

In addition, the bill dated July 9, 2009 attached to the Proof of Claim number 22 states that payments should be made "payable to Capital One Bank (USA), N.A." The Proof of Claim number 22 states that Capital One, FSB is the creditor, while the Proof of Claim for Claim number 16 lists Capital One Bank

(USA), N.A. as the respective creditor. There appears to be some internal confusion as to the correct creditor within "Capital One."

While there are significant similarities between Proof of Claim number 22 and Proof of Claim number 16 the Trustee has failed to present substantial factual basis to overcome the prima facie validity of a proof of claim. Proof of Claim number 22, is supported by the evidence of an original credit agreement that is signed and dated by the Debtor and a copy of a bill dated July 9, 2009 that was addressed to the Debtor. The evidence provided in support of Proof of Claim number 22 has more probative force than the Sanders Declaration that merely alleges that the Proof of Claim number 22 is a duplicate of Proof of Claim number 16 without directing the court to any particular factual basis. The evidence supporting Proof of Claim number 16 is only a sparse Statement of Accounting but Proof of Claim 16 is not the claim being disputed in this motion. Based on the evidence before the court, the creditor's claim is allowed in its entirety.

The court also notes that the Objection to claim was served on the creditor as follows:

Capital One FSB  
Attention Officer or Agent  
PO Box 85140  
Richmond, VA 23285-5140

TSYS Debt Management  
Attention Officer or Managing Agent  
PO Box 5155  
Norcross, GA 30091

First, service on a post office box does not comply with the Federal Rules of Bankruptcy Procedure 9014(c) for a contested matter. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9<sup>th</sup> Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Further, Capital One Bank (USA), N.A. is a federally insured financial institution as reported on the FDCIP web site. (FDIC Certificate # 33954) Proof of Claim No. 22 names an entity Capital One, F.S.B. as the creditor. No such entity is listed as being federally insured by the FDIC on its web site. However, on the exhibits, Capital One Bank (USA), N.A. is listed in several locations, including that the Debtor is to make payable to that Bank. Proof of Claim No. 22, at 14.

The Comptroller of the Currency lists on its official website to federal banks with the words "Capital One" listed in their names: Capital One Bank (USA), N.A., in Glen Allen, Virginia, and Capital One, N.A., in McLean, V i r g i n i a .  
<http://www.occ.treas.gov/topics/licensing/national-bank-lists/index-active-bank-lists.html>. Using LEXIS-NEXIS, one corporate filing for "Capital One, FSB"

was identified, that being with the Washington State Secretary of State. However, no such entity could be located on the Washington State listing of registered entities. [http://www.sos.wa.gov/corps/corps\\_search.aspx](http://www.sos.wa.gov/corps/corps_search.aspx). However, registrations for Capital One (USA), N.A. and Capital One, N.A. are both listed by the Washington Secretary of State.

The court does not have confidence that the creditor or creditors with the claims have been properly served with the Objection.

The Objection to the Proof of Claim is overruled 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 Objection to Claim of Capital One, FSB filed in this case 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 Proof of Claim number 22 of Capital One, FSB is overruled without prejudice.

14. [12-26830-E-13](#) DAVID/LINDA ESCOBAR  
GFG-99 Guillermo Geisse

CONTINUED MOTION TO CONFIRM  
PLAN  
2-6-13 [[115](#)]

**CONT. FROM 4-2-13**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 6, 2013. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee objects to confirmation on the grounds that Debtor may not be able to make the payments required under 11 U.S.C. § 1325(a)(6). The Debtors projected disposable monthly income listed on Schedule J is \$521.68 and the Debtors propose a plan payment of \$2,315.00. The Trustee asserts that Debtors deduct their Class 1 mortgage on Schedule J, in the amount of \$1,517.84 and adding that back would result in \$2,039.52, which is still insufficient to pay the proposed plan payment.

The court continued the hearing to allow Debtors to file and serve supplemental pleadings.

#### **SUPPLEMENTAL PLEADINGS**

Debtors submit a supplemental declaration asserting that they have made changes to their budget to support the new plan payment of \$2,315. Specifically, Debtors reduced their transportation expense to \$400 and reduced their allowance for home maintenance, medical expense, clothing expense and allowance for dry cleaning. Debtor states that with these changes they will be able to afford the new plan payment.

#### **TRUSTEE'S RESPONSE**

The Trustee responds stating that he is satisfied with the Debtors' amended budget and now believes the amended plan is feasible.

Based on the foregoing, 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 6, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

15. [12-36931-E-13](#) DAVID/BONNIE DAROLD MOTION TO SELL  
LR-1 Craig N. Lundgren 4-8-13 [[81](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2012. By the court's calculation, 22 days' notice was provided. 21 days' notice is required.

**Tentative Ruling:** The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

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

Here, the Debtors propose to sell the residential real property commonly known as 39915 Barry Road, Davis, California, APN 036-042-006-000. The sales price is \$780,000.00 and the named buyers are Jeremy and Kelly Brooks, who the Debtors claim are not insiders. The terms are set forth in the Purchase Agreement, filed as Exhibit 1 in support of the Motion. Dckt. 84. Debtors state the sales price will be adequate to pay all creditors with claims secured by the property.

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

#### ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

**IT IS ORDERED** that Debtors David and Bonnie DaRold, the Debtors ("Debtor"), is authorized to sell to Jeremy and Kelly Brooks or nominee ("Buyers"), the residential real property commonly known as 39915 Barry Road, Davis, California, APN 036-042-006-000("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyer for \$780,000.00, on the terms and conditions set forth in the Motion.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale.
5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtors. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

16. [13-22331](#)-E-13 ERICH/CONNIE PARKS  
NLE-1 Al J. Patrick

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
4-3-13 [[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 Debtor and Debtor's Attorney on April 3, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

**Final Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

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

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on April 24, 2013. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is dismissed as moot.

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

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

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

**IT IS ORDERED** that Objection is dismissed as moot and the proposed Chapter 13 Plan is not confirmed.

17. [11-48832-E-13](#) MIKE/JAMIE MCGUIRE  
MMM-4 Mohammad M. Mokarram

OBJECTION TO CLAIM OF THE BANK  
OF NEW YORK MELLON, ET AL.,  
CLAIM NUMBER 16  
3-11-13 [[52](#)]

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 the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 11, 2013. By the court's calculation, 50 days' notice was provided. 44 days' notice is required.

**Final Ruling:** This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d)(4). 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 16 of The Bank of New York Mellon, Et Al. is overruled as moot.** No appearance required.

The Proof of Claim at issue, listed as claim number 16 on the court's official claims registry, asserts \$104,178.10 claim. The Debtors objects to the Claim on the basis that it was not timely filed. *See Fed. R. Bankr. P. 3002(c)*.

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

The deadline for filing a Proof of Claim in this matter was April 18, 2012. The creditor's claim was filed February 26, 2013. However, The Bank of New York Mellon, Et Al filed a withdrawal of Claim number 16 on April 4, 2013. Therefore, there is no longer a claim for the court to disallow.

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

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

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

The Objection to Claim of The Bank of New York Mellon, Et Al filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim number 16 of The Bank of New York Mellon, Et Al is overruled as moot.

18. [12-38436](#)-E-13 NARAINAN/UMA NAIR MOTION TO CONFIRM PLAN  
SJS-5 Scott Sagaria 2-27-13 [[61](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 27, 2013. By the court's calculation, 62 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.



Counsel asserts that applicant has spent a total of 19.6 hours in obtaining confirmation and 12.2 post-confirmation and seeks 6.0 hours for actual, reasonable, necessary and unanticipated fees in the amount of \$1,200.00.

**Description of Services for Which Fees are Requested**

Pre-confirmation Charges: counsel spent 19.60 hours in this category for total fees of \$3,920.00.

Post Confirmation Charges: counsel spent 12.20 hours in this category for total fees of \$2,440.00. Counsel states two plan modifications were necessary after confirmation which were necessary to maintain the case after multiple Motions to Dismiss filed by the Trustee.

Counsel argues that this time included assistance in pursuing loan modifications, subsequent correspondence and meetings with clients to maintain the case. Counsel suggests that the two additional modified plans that were filed were unanticipated.

Based on a review of the docket, the time spent from 7-14-11 through 2-5-13 regarding the motions to dismiss and the final Motion to Modify (granted February 6, 2013), the court finds the fees were reasonable for the requested 6.0 hours.

The Chapter 13 Trustee filed a Non Opposition on April 4, 2013.

**FEES ALLOWED**

The hourly rates for fees billed in this case are \$200/hour for 6.0 hours. The court finds that the hourly rates are reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$1,200.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

Attorneys' Fees	\$1,200.00
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For a total final allowance of \$1,200.00 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 Additional Unanticipated and Substantial Fees and Expenses filed by counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



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 February 22, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

21. [10-22338-E-13](#) **DARLENE KOHAYA** **MOTION FOR ORDER CONFIRMING**  
**SDB-2** **W. Scott de Bie** **FINAL CURE OF MORTGAGE DEFAULT**  
**3-20-13 [58]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 12, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

**The Motion for Order Confirming Final Cure of Mortgage Default is granted.** No appearance required.

Debtor seeks an order confirming that she has cured her mortgage default and made all postpetition mortgage payments required under the plan, pursuant to Federal Rule of Bankruptcy Procedure 3002.1. Debtor asserts her plan called for 36 monthly payments to the Trustee sufficient to cure a pre-petition delinquency of \$5,083.77 and to maintain the required mortgage payments due to Suntrust Mortgage, Inc. Debtor states they have made all payments required by their plan and completed payments on January 25, 2013. On February 8, 2013, the Trustee filed and served a Notice of Final Cure confirming that Debtors had made all payments necessary to cure the pre-petition delinquency. Debtor asserts that Suntrust Mortgage, Inc. did not

comply with Federal Rule of Bankruptcy Procedure 3002.1(g) and filed a statement as to whether it agreed that the prepetition arrearage was cured and whether debtors are otherwise current on payments, which was required 21 days after service of the Trustee's Notice of Final Cure.

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

Pursuant to Federal Rule of Bankruptcy Procedure 3002.1(h), on motion of the debtor or trustee, after notice and hearing, the court shall determine whether the debtor has cured the default and paid all required post-petition amounts. Here, Creditor has failed to file a Response to Notice of Final Cure Payment within 21 days after the service of the notice as required by Federal Rule of Bankruptcy Procedure 3002.1(g). A review of the Notice of Final Cure Payment indicates that debtor has made all payments under the plan for arrears to Suntrust Mortgage, Inc. Dckt. 39. Therefore, the court finds Darlene Kohaya, Debtor, has cured the mortgage default to Suntrust Mortgage, Inc., as required by the Chapter 13 Plan.

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

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

The Motion for Order Confirming Final Cure of Mortgage Default filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the court finds Darlene Kohaya, Debtor, has cured the mortgage default to Suntrust Mortgage, Inc., as required by the Chapter 13 Plan.

22. [10-36238-E-13](#) CHAI XIONG AND KIA THAO  
SAC-1 Scott A. CoBen

MOTION TO APPROVE LOAN  
MODIFICATION  
3-26-13 [[32](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 26, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Approve the Loan Modification is granted.** No appearance required.

Though the motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), the court will waive the defect since the declaration filed in this matter provides much of the information. The moving party is well served to ensure that future filings comply with the Federal Rules of Bankruptcy Procedure.

IndyMac Mortgage Services whose claim the plan provides for in Class 4, has agreed to a loan modification with a proposed monthly payment of \$1,665.20. FN.1. The modification will capitalize the pre-petition arrears and provides an interest rate of 4.000% over the next 40 years.

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FN.1. In the Motion, there appears to be a confusing statement, "Debtors do not intend to pay off the plan." Dckt. 32 at 2:5. It appears to the court that the statement is incomplete and what was intended was Debtors do not intend to pay the mortgage through the plan. The Motion in the same paragraph goes on to confirm that the mortgage claim is provided for under Class 4, which means it is not to be paid for through the plan.  
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There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

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

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

**IT IS ORDERED** that IndyMac Mortgage Services are authorized to amend the terms of their loan with the Debtors, which is secured by the real property commonly known as 8153 Laguna Brook Way, Elk Grove, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 35, in support of the Motion.

23. [12-39538](#)-E-13 RICARDO DELREAL AND MARIA MOTION TO CONFIRM PLAN  
TOG-8 BARRAGAN 3-12-13 [[41](#)]  
Thomas Gillis

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 12, 2013. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee objects to the proposed plan on the grounds that Debtors have not resolved the Trustee's concerns from the prior Objection to Confirmation, NLE-1, Dckt. 31. Trustee raised concerns regarding Schedule I "other monthly income" listed at \$1,000. Trustee states Debtors

amended the statement from "help from son" to "help from sister and nephew." Debtors stated in their reply to the Trustee's Objection that they would obtain declarations from the nephew and sister. The Trustee states the debtors filed an Exhibit, Dckt. 45, which is a hand written declaration by Iris Estrada, which is not signed under penalty of perjury. No declaration was filed by the nephew.

Based on the failure to provide sufficient evidence regarding the aid from sister and nephew to fund the proposed plan, the motion is denied.

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.

24. [09-47939-E-13](#) NICOLE PRESTON MOTION TO MODIFY  
MWB-1 Mark W. Briden 3-18-13 [[40](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2013. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The 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 decision is to continue the hearing to 3:00 p.m. on May 14, 2013.** No appearance at the April 30, 2013 hearing is required.

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

**SERVICE**

Debtor did not properly serve the Internal Revue Service. Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

**LOCAL RULE 2002-1  
Notice Requirements**

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

**For Cases filed in the Sacramento Division:**

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

**For Cases filed in the Modesto and Fresno Divisions:**

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

. . .

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

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

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

Internal Revenue Service  
Centralized Insolvency Operations  
PO Box 7346  
Philadelphia, PA 19101

IRS Bankruptcy Department  
Centralized Insolvency Operations  
PO BOX 21126  
Philadelphia, PA 19114

The proof of service states that the addresses used for service are the preferred addresses for the Internal Revenue Service specified in a Notice of Address filed by that governmental entity.

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

#### **TRUSTEE'S OBJECTION**

The Trustee opposes the motion on the grounds that the Debtor does not have the ability to make the proposed plan payments. The Trustee states that the plan payments under the confirmed plan are \$825.00 for 60 months and the Debtor is currently \$2,360.00 delinquent. Debtor's motion and declaration indicate Debtor became delinquent due to an illness that required hospitalization. Debtor now proposes plan payments of \$825.00 for 36 months, \$0.00 for 3 months, and then \$942.00 for the remaining 21 months. The Trustee is unable to locate within the court docket schedules supporting the proposed increased plan payment. The Trustee questions whether the Debtor will be able to make an increased plan payment of \$942.00 when she has been unable to make the lower amount of \$825.00.

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

Debtor requests a continuance of the hearing to May 14, 2013 at 3:00 p.m. to allow Debtor to respond to the Trustee's objection. The Debtor states she has been hospitalized several times in the past 6 months and is presently residing out of town and is unable to sign documents needed to be filed in support of the motion.

Due to Debtor's health circumstances, the court will grant the Debtor's request for a continuance to May 14, 2013 at 3:00 p.m. in order to provide Debtor time to file and serve supplemental pleadings to support the Motion to Confirm. Debtor shall also serve the Internal Revenue Service at the proper addresses by May 3, 2013.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of

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

**IT IS ORDERED** that the hearing on the Motion to Confirm is continued to 3:00 p.m. on May 14, 2013.

**IT IS FURTHER ORDERED** that Debtor shall properly serve the Internal Revenue Service on or before May 3, 2013.

25. [10-41039-E-13](#) **YASMIN SAYYED** **MOTION TO APPROVE LOAN**  
**RWF-1** **Robert W. Fong** **MODIFICATION**  
**3-21-13 [45]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 21, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Approve the Loan Modification is denied without prejudice.** No appearance required.

The Motion seeks for the court to approve a loan modification with JPMorgan Chase Bank, N.A. The Motion states that the Debtor's current plan provides for a 1.5% dividend to creditors holding general unsecured claims and is for a 36 month term. The proposed modified loan has the following terms,

Balance: \$202,7110 [sic], approximately based on current loan balance.

Proposed Payment: \$1,240.00, which consists of principal, interest, tax, and insurance, which has been lowered from the prior \$1,535.00.

Interest Rate: 4.125%, which has been lowered from the prior 6.5%.

Cash From Loan Modification: None

Pre-Petition Arrearage: The balance of the Pre-Petition Arrearage shall be paid through the Chapter 13 Trustee, with the current payments under the modified loan paid directly to the creditor by the Debtor.

Motion, Dckt. 45. Filed as Exhibit A is the Good Faith Estimate Form stating the terms of the modified loan. Dckt. 48.

The declaration of Yasmin Sayyed is provided in support of the Motion. Dckt. 49. In attesting to the information being true and correct, the Declaration of Yasmin A. Sayyed states, "I declare under penalty of perjury that the foregoing is true and correct *to the best of my knowledge.*" Dckt. 49 at 2:7-8 (emphasis added). In substance, the declarant is stating "I hope the information is true and correct, and though I don't know, I'm informed by someone else and believe (because it lets me win) that what I've said above is true and correct."

The requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides:

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

This does not provide for any qualification on stating that the information is true and correct, or let the witness provide a declaration based on information and belief, or merely true to the extent the witness may have knowledge of the purported facts. Stating that the information is true and correct, only to the

extent that I actually know or believe it to be true, is not substantially in compliance with this section. Further, the declaration is not dated.

The court recognizes that if the Motion is denied, it could well have a possible significant negative impact on the Debtor - loss of the loan modification. (Such would also have a significant negative impact on Debtor's counsel for having provided a defective declaration.) The judges in this District have been addressing this issue with both debtor and creditor counsel for almost one year. There is little reason in general for an attorney to have such a defective declaration in his or her forms, and no reason in this District (especially in Departments C and E).

The court will accept this declaration as being made based upon personal knowledge under penalty of perjury by the Debtor. It appears that one-year of notice to the attorneys in the District, denial of some non-critical motions without prejudice, and repeated reminders in open court has not corrected the misuse of declarations. In the future, such failure will result in the court issuing corrective sanctions against counsel who cannot generate declarations which comply with 28 U.S.C. § 1746. It can be anticipated that the corrective sanctions will start at \$275.00.

The Motion is denied without prejudice.

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

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

The Motion to 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 Motion is granted and Yasmin Sayyed, Debtor, is authorized to enter into a Loan Modification with JPMorgan Chase Bank, N.A. on the terms set forth the Good Faith Estimate filed as Exhibit A, Dckt. 48.

26. [12-41143-E-13](#) MARYLYNN MATTHEWS  
SJJ-3 Stephen J. Johnson

MOTION TO VALUE COLLATERAL OF  
UMPQUA BANK  
3-22-13 [[63](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 22, 2013. By the court's calculation, 39 days' notice was provided. 28 days' notice is required. FN.1.

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FN.1. The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).  
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**Final Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of subject real properties commonly known as 3280 Secret Lake Trail, Cool, California (Secret Lake Trail property); 7463 Tiara Way, Citrus Heights, California (Tiara Way property); and business assets located at 13555 Bowman Road, Suite 400, Auburn, California (Business Assets).

**SECRET LAKE TRAIL PROPERTY**

The Debtor seeks to value the Secret Lake Trail property at a fair market value of \$205,000.00 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 \$233,991.00. Umpqua Bank's third deed of trust secures a loan with a balance of approximately \$182,611.69. Therefore, the respondent creditor's claim secured by a junior deed of trust is 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).

#### **TIARA WAY PROPERTY**

The Debtor seeks to value the Tiara Way property at a fair market value of \$147,457.00 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 and second deeds of trust secure a loan with a balance of approximately \$246,450.00. Umpqua Bank's third deed of trust secures a loan with a balance of approximately \$182,611.69. 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).

#### **BUSINESS ASSETS**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of business assets located at 13555 Bowman Road, Suite 400, Auburn California. The Debtor seeks to value the property at a replacement value of \$8,850.00 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 business assets secures the same Small Business Administration loan incurred in 2006, more than 910 days prior to filing of the petition, with a balance of approximately \$182,611.69. 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 \$8,850.00. 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 Umpqua Bank secured by:

(1) a third deed of trust recorded against the real property commonly known as 3280 Secret Lake Trail, Cool, California,

(2) a third deed of trust recorded against the real property commonly known as 7463 Tiara Way, Citrus Heights, California, has a value of \$0.00 as secured by those properties, and

(2) business assets located at 13555 Bowman Road, Suite 400, Auburn California,

has a value of \$8,850.00 as a secured claim, with the balance of claim to be paid as a general unsecured claim through the bankruptcy plan in this case. The value of the 3280 Secret Lake Trail, Cool, California Property is \$147,457.00 and is encumbered by senior liens securing claims which exceed the value of the Property. The value of the 7463 Tiara Way, Citrus Heights, California Property is \$147,457.00 and is encumbered by senior liens securing claims which exceed the value of the Property. The value of the Business Assets is \$8,850.00 and is encumbered by this creditor's lien securing a claim which exceed the value of the asset.

27. [12-41143-E-13](#) MARYLYNN MATTHEWS  
SJJ-3 Stephen Johnson

CONTINUED MOTION TO CONFIRM  
PLAN  
2-15-13 [[48](#)]

CONT. FROM 4-16-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 15, 2013. By the court's calculation, 74 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes the motion on the grounds that the plan relies on a pending motion to value collateral. The court having granting the motion, the Trustee's objection is overruled.

The Trustee also states he is uncertain why the Debtor has not already increased her personal draw unless the business cannot support an additional draw. Debtor lists \$911.03 of anticipated income from personal draws to herself from her business to be able to fund the plan. Because the Debtor merely anticipates the change in income, the Trustee argues that Debtor may not be able to make the plan payments.

Debtor provides a supplemental declaration asserting that due to the bankruptcy filing, she is no longer obligated to pay certain debts related to her business and because she is no longer trying to pay off those debts, she is free to use the funds to increase her draws. Debtor states she has already noticed that since filing she has been able to increase the draws because of the money she is saving by filing a Chapter 13.

However, the court is not convinced by Debtor's supplemental declaration. Debtor states that she is no longer obligated to pay certain debts related to her business. The Debtor does not identify these debts, the amounts of each of them or how they are related to the business. The court does not have sufficient information to compute how the Debtor is able to use

these "available funds" to increase her draws. This is nothing more than "I now have more money because I say I have more money." Therefore, the motion is denied.

In reviewing the Debtor's calculations to show she has \$1,000.00 a month in disposable income (Amended Schedules I and J, Dckt. 32), the Debtor fails to make any provision for the payment of income taxes. No withholding is provided for on Schedule I and no expense line item is listed on Schedule J. The Debtor offers no reason for why she does not have to pay state and federal income tax or self employment tax for the income she is generating from her business.

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 13, 2013. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee objects to the proposed plan on the basis that the Debtor cannot make the plan payments. The Trustee asserts that Schedule I, filed on October 23, 2012, reflects gross income of \$10,135.00 and net income of \$5,717.98, but the Debtor's declaration states that her average monthly net income is \$7,981.97, which is a \$2,263.99 increase.

Further, Debtor's Schedule J filed September 20, 2012, reflects average monthly expenses of \$2,912.43, but the Debtor's declaration states her average monthly expenses are \$3,981.87, which is a \$1,069.44 increase. The Trustee states that the Debtor has failed to provide evidence or explanation of the changes of the expenses.

The court agrees with the Trustee. The Debtor has nor provided sufficient evidence or explanation of the substantial changes of income and expenses.

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.

29. [12-34546-E-13](#) KEITH/ZANETTA ROBINSON CONTINUED MOTION TO CONFIRM  
PGM-5 Peter Macaluso PLAN  
1-7-13 [[84](#)]

**CONT. FROM 2-26-13**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 7, 2013. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee argues that the Debtors may not be able to make payments as their proposed plan calls for payments of \$13,800.00 through December 2012, and \$4,600.00 per month for six months beginning January, then \$5,360.00 per month for fifty months. Trustee states that both Debtors motion and declaration fail to offer any contention or evidence as to how Debtors will increase the plan payment by \$760.00 starting in July 2013. Debtors Amended Schedule J lists net monthly income of \$4,600.27.

The Trustee also asserts that Debtors' Schedule I and J conflict. Trustee states that Schedule J lists monthly income from line 15 of Schedule I as \$8,348.11. The Trustee is not aware of any amendment to Schedule I and the original version shows net income of \$6,638.54. Debtors expenses have also increased to \$1,509.30 more than listed on Debtors original budget. Absent specific convincing evidence of each expense, the Trustee opposes confirmation.

Lastly, the Trustee raises a best efforts objection. Trustee states that Debtors are above median income according to Form B22C. This lists the same income as Debtors' Schedule I, which Debtors have admitted is understated. Debtors are proposing no less than 0% to creditors.

CONTINUANCE

The court continued the hearing on the Motion to Confirm per the request of Debtor's Counsel. Debtors filed a proof of service on March 27, 2013, asserting that he served the Debtor's Response to Trustee's Interrogatories and Request for Production of Documents and Exhibits. However, no substantive response appears on the docket for the court to review.

Based on the evidence before the court, 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.

30. [10-52748-E-13](#) EDWARD SCHLICK AND CONTINUED MOTION FOR  
DKC-1 MILLANEY HECHIM COMPENSATION FOR DENNIS K.  
COWAN, DEBTORS' ATTORNEY(S),  
FEES: \$2,072.00, EXPENSES:  
\$0.00.

**Final Ruling:** Counsel for Debtor having filed a Withdrawal of the Motion for Compensation, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion for Compensation was dismissed without prejudice, and the matter is removed from the calendar.**

31. [12-41748-E-13](#) CHARLES LINTT MOTION TO CONFIRM PLAN  
MRL-2 Mikalah R. Liviakis 3-13-13 [[27](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 14, 2013. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The 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 January 4, 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.

32. [12-40951](#)-E-13 KATHERINE KRAY  
MET-2 Mary Ellen Terranella

MOTION TO MODIFY PLAN  
3-26-13 [[25](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 26, 2013. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects to the Debtor's modified plan on the grounds that payments are not authorized. Trustee states that the modified plan proposes to reclassify Redwood Credit Union from Class 4 to Class 3 surrendered. However, Debtor's plan does not authorize any payments made by the Trustee to this creditor under the confirmed plan. To date the Trustee has disbursed \$375.06 to this creditor.

The Trustee also objects to the decrease in plan payments. The Trustee states under the confirmed plan, Debtors payments are \$290.00 for 60 months while the modified plan proposes payments of \$290 for two months and then \$110.00 for 58 months. Debtor's plan proposes to surrender a 2005 Pacifica. Debtor's Declaration indicates Debtor underestimated her commute expenses and food expenses. Debtor increased food from \$550.00 to \$650.00 and transportation from \$300.00 to \$380.00. These changes result in the \$180.00 increase in monthly expenses. The Trustee argues that where the Debtor proposes to decrease the plan payment by the exact amount they increase their expenses, the Trustee would request receipts to substantiate the increased expenses.

Lastly, the Trustee argues that the Debtor has not provided a declaration from her father representing his willingness or ability to purchase an automobile for the Debtor. Debtor does not provide any detail regarding the vehicle to be purchased, such as price, model, year or how this vehicle will affect the \$80.00 monthly fee the Debtor budgeted for insurance or \$13.00 budgeted for registration.

DEBTOR'S RESPONSE

Debtor responds stating that she does not expect the Trustee to have the funds returned and will modify the plan accordingly.

The Debtor also states that she was desperate to find an affordable, reliable vehicle, found a 2001 Ford Taurus for \$500.00 on Cragislist. Debtor stated her good friend, Nina Berry gave her \$500.00 to purchase the vehicle. Debtor states that while her father indicated he would help purchase a used vehicle, he has been ill and preoccupied with caring for her mother.

The Debtor also states the insurance for the new vehicle will be \$104.00 per month, and that the registration cost will not be more than the 2005 Chrysler Pacifica.

Lastly, Debtor states that she overestimated how much she could cut certain expenses, especially food and gas. Debtor states that she is living pay check to pay check, and can only afford \$110.00 plan payment.

DISCUSSION

The court is satisfied with Debtor's response. When the Debtor proposes to decrease the plan payment by the exact amount by which they increased their expenses, the court is concerned that the Debtor is simply making numbers up that fit the plan payment she wants to make. This concern is furthered by Debtor's inconsistent statements to the court.

This Debtor does have a problem with a changing story, but provides some testimony as to plausible life events which upset one's plans (both real life plans and Chapter 13 Plans). Though the Supplemental Declaration uses the ambiguous term "gave" in describing how the Debtor obtained the \$500.00 from her very good friend to purchase a replacement vehicle (instead of saying she had received a gift for which she has no obligation to repay or that she received a loan), given the dollar amount at issue, the court will infer that it was a gift. Further, the dollar amounts for the adjustments in food and travel expenses could have been more clearly explained, the court does not find the adjustment or total amounts for each to be unreasonable.

The Debtor having provided the supplemental explanation and further amending the plan to provide for the previous payments made by the Chapter 13 Trustee to creditor for the claim secured by the Chrysler Pacifica, the motion is granted.

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

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

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

The Motion to Confirm the 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 Modified Chapter 13 Plan filed on March 26, 2013, as amended at the hearing, 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.

33. [12-37754-E-13](#) HECTOR/CARMEN ROMO MOTION TO APPROVE LOAN  
DRE-3 D. Randall Ensminger MODIFICATION  
3-28-13 [[81](#)]

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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Approve the Loan Modification is denied without prejudice.** No appearance required.

The Motion seeks to obtain an order modifying a loan with Wells Fargo Home Mortgage. As a first point, based on other motions filed with the court, there is no legal entity known as Wells Fargo Mortgage. The bank known as Wells Fargo Bank, N.A. (as opposed to the many other entities with the words "Wells Fargo Bank" in their names) does have a division with it calls Wells Fargo Mortgage. Counsel would be well served to identify the creditor with its actual, legal name in the Motion, as the court can and will enter orders effective only to the person named in the motion.

The grounds stated with particularity in the Motion (Fed. R. Bank. P. 9014) are:

- a. The Debtors have an interest in real property ("Renwick Property").
- b. An entity identified as Wells Fargo Home Mortgage holds a security interest in the Renwick Property. (Wells Fargo Home Mortgage a Division of Wells Fargo Bank, N.A. has filed Proof of Claim No. 19 in this case, asserting that the Renwick Property secures its Claim.)
- c. A Loan Modification, effective January 1, 2013, has been approved by the creditor.
- d. Under the Loan Modification the Debtors mortgage payment is \$1,643.74 (including taxes and insurance).
- e. The arrearage under the obligation is being added to the loan balance, with the new loan balance being \$297,038.94.

Motion, Dckt. 81.

The Motion provides no information about the actual terms of the loan, such as interest rate, changes in interest rate, increases or decreases in monthly payments, or balloon payments. Taken on the face of the Motion, the court is asked to approve the secret, undisclosed terms of a loan. This would be little more than the court being the rubber stamp of Debtors and their counsel.

The Debtors' provide their joint declaration under penalty of perjury. Dckt. 83. Their personal knowledge testimony is a cut and paste of what is stated in the Motion. They provide little, if any, relevant evidence to the court beyond the principal balance and the monthly payment.

Finally, the Debtors have provided Exhibit A in support of the Motion. Dckt. 84. No testimony is provided to authenticate this exhibit. Fed. R. Evid. 901. While the Debtors allege in their Motion and repeat in their Declaration that there is a modification effective as of January 2013, Exhibit A is not executed by Wells Fargo Bank, N.A. (The court notes that the signature block for the Loan Modification form identifies the Lender as Wells Fargo Bank, N.A., not Wells Fargo Home Mortgage.)

Quite possibly Exhibit A, if properly authenticated would contain the terms of the Modified Loan. However, even if properly authenticated, it is not appropriate for the Debtors to assign the task of drafting the portion of the Motion stating the loan terms to the court. It is inappropriate for the court's staff to undertake drafting assignments for any party to the case before it. Further, it appears that when the debtor cannot clearly state in a motion for the terms of a loan, the debtor and quite possibly debtor's counsel don't know the terms of the loan modification.

The Motion to Approve the Loan Modification is denied without prejudice.

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



The Trustee also objects that Debtor failed to file a Motion to Value Collateral of Bank of America, N.A., as proposed in the plan.

The Trustee also asks that further provisions be added to the order confirming the plan in the event that the Debtor is able to obtain confirmation of the present plan.

Based on the foregoing deficiency and failure to attend the 341 Meeting, 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.

35. [13-21755-E-13](#) THEODORE NOVAK  
MAC-1 Marc A. Caraska

MOTION TO DISMISS CASE  
3-29-13 [[27](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 29, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Dismiss Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the 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 Dismiss Case is granted and the Chapter 13 case is dismissed.**  
No appearance required.

Debtor seeks voluntary dismissal of his Chapter 13 case. Debtor filed this Chapter 13 petition on February 9, 2013, as a "skeleton filing." However, after completion of the schedules, Debtor discovered that his debts exceed those allowed under 11 U.S.C. § 109(e) and is ineligible for Chapter 13 relief.

Pursuant to 11 U.S.C. § 1307(b), a debtor may request the court to dismiss a case, if the case has not been previously converted. The case not being previously converted, the court grants the Debtor's voluntary dismissal of this Chapter 13 case.

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

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

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

**IT IS ORDERED** that the Motion is granted and the Chapter 13 case is dismissed.

36. [13-23357](#)-E-13 FELIMON/IMELDA PATRICIO  
JOS-1 Jeanne Serrano

MOTION TO VALUE COLLATERAL  
AND/OR TO AVOID LIEN OF WELLS  
FARGO BANK, N.A.  
3-28-13 [[22](#)]

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

Proper Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors,, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 28, 2013. However, Wells Fargo Bank, N.A., a federally-insured depository institution, was not served as required by Federal Rule of Bankruptcy Procedure 7004(h). The addresses used for the respondent creditor does not match the addresses reported by the FDIC or California Secretary of State. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Value Collateral was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The court has determined that oral argument will not be of assistance in resolving this matter.

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

#### **SERVICE**

Wells Fargo Bank, N.A. was not served as required by Federal Rule of Bankruptcy Procedure 7004(h). Rule 7004(h) requires that service upon a federally insured depository institution be made upon an officer by certified mail. Here, Debtors served Wells Fargo Bank, N.A.'s local branches by certified mail, but neglected to serve the Bank to the attention of an officer as required by the Federal Rules of Bankruptcy Procedure. There is no evidence that local branches served are officers of Wells Fargo Bank, N.A. See *Hamlett v. Amsouth Bank (In re Hamlett)*, 322 F.3d 342, 346 (4th Cir. 2003) (holding that nothing in the legislative history of Federal Rule of Bankruptcy Procedure 7004(h) – which was added by § 114 of the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106 – indicates that Congress intended for "officer" to include a registered agent). None of the exceptions in Federal Rule of Bankruptcy Procedure 7004(h) apply.

#### **MULTIPLE MOTIONS**

In addition, the Motion moves for Valuation of the Collateral of Wells Fargo Bank, N.A. and To Avoid the Judicial Lien of Wells Fargo Bank, N.A. While Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure allow for a plaintiff to join multiple claims against a defendant in one complaint in an adversary proceeding, those rules are not applicable to contested matter in the bankruptcy case. Federal Rule of Bankruptcy Procedure 9014 does not incorporate Rule 9018 for contested matters.

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

#### **MOTHORITIES**

Furthermore, the Debtors filed a motion and memorandum of points and authorities in the same document. The pleading title motion is a combined motion and points and authorities in which the grounds upon which the motion is based are buried in detailed citations, quotations, legal arguments, and factual arguments (the pleading being a "Mothorities") in which the court and Plaintiff are put to the challenge of de-constructing the Mothorities, divining what are the actual grounds upon which the relief is requested (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007), restate those grounds, evaluate those grounds, consider those grounds in light of Fed. R. Bankr. P. 9011, and then rule on those grounds for the Defendant. The court has declined the opportunity to provide those services to a movant in other cases and adversary proceedings, and has required debtors, plaintiffs, defendants, and creditors to provide those services for the moving party.

The court has also observed that the more complex the Mothorities in which the grounds are hidden, the more likely it is that no proper grounds exist. Rather, the moving party is attempting to beguile the court and other party.

In such situations, the court routinely denies the motion without prejudice and without hearing. Law and motion practice in federal court, and especially in bankruptcy court, is not a treasure hunt process by which a moving party makes it unnecessarily difficult for the court and other parties to see and understand the particular grounds (the basic allegations) upon which the relief is based. The court does not provide a differential application of the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules as between creditors and debtors, plaintiff and defendants, or case and adversary proceedings. The rules are simple and uniformly applied.

For these reasons the Motions are denied without prejudice.

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

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

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

IT IS ORDERED that the combined Motions are denied without prejudice.

37. [08-34960-E-13](#) THELMA/EDWARD RHEA CONTINUED MOTION TO MODIFY PLAN  
PGM-5 Peter Macaluso 12-28-12 [[105](#)]

CONT. FROM 2-12-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 28, 2012. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

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

On February 12, 2013 the court continued the hearing.

On February 5, 2013 the court continued the hearing to allow Debtor to (i) address the passing of her spouse and co-debtor, Edward Rhea, and (ii) file an updated statement of income and expenses. At the February 5th hearing the court requested that Debtor provide updated financial information already requested by the Trustee and noted that Debtor's failure to clearly state her income and expenses indicates that Debtor is intentionally hiding her true finances from the court, creditors, Trustee, and other parties in interest.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Trustee opposes confirmation on the grounds that he is uncertain if Debtor can sign the proposed plan as "successor in interest." Trustee states that he does not dispute that Debtor Edward Rhea has passed away as a death certificate was filed with the court. See docket number 107. Trustee states that Debtor has not filed a motion to substitute parties pursuant to Federal Rule of Bankruptcy Procedure 7025. Also, Trustee states that Debtor has not filed a motion to determine if further administration is possible and in the best interest of the parties pursuant to Federal Rule of Bankruptcy Procedure 1016.

Second, Trustee argues that the plan does not pass the liquidation analysis since Debtor proposes to pay a 0% dividend to unsecured creditors.

Trustee states that Schedules B and C indicate that Debtor has non-exempt equity of \$17,250. Trustee states that he filed an objection to Debtor's claim of exemptions.

Third, Trustee states that Debtor incorrectly reports the amount paid through December 2012. Trustee states that the correct amount is \$276,561.

Fourth, Trustee contends that the proposed plan is not feasible since it depends on the court granting the motion to approve loan modification to be heard on February 5, 2013. The court's decision is to approve the loan modification. This resolves this portion of the Trustee's Objection.

Fifth, Trustee argues that the plan does not authorize payments made by the Trustee under the previously confirmed plan. Trustee states that he has paid a Class 1 late fee of \$150 and disbursed \$5,642.76 to unsecured creditors.

Sixth, Trustee states that he is uncertain if Debtor can make plan payments and is uncertain whether the plan is Debtor's best effort. Trustee states that Debtor's most current income and expense statements (using Schedules I and J forms) are not signed or dated, both were filed after the death of Debtor Edward Rhea.

Trustee states income statement (schedule I form, Exhibit 2, Dckt. 81) indicates a monthly income of \$987 from Debtor Edward Rhea's social security benefits. Trustee states that Debtor does not anticipate receiving social security survivor's benefits. Trustee states that Schedule J reflects homecare expenses of \$1,260 for decedent and notes that Debtor has not filed a new statement of income and expenditures.

Trustee questions the following Statements of Current Income:

1. Schedule I filed on October 16, 2008, Dckt. 1;
2. Current Income Statement filed on October 18, 2012, Dckt. 81;
3. Current Income Statement filed on November 2, 2012, Dckt. 87.

Trustee states that the amounts reported on all three versions of Schedule I are the same, including payroll deductions. Trustee states that he raised this concern in his objection to confirmation, but Debtor has not responded.

Trustee questions the following Statements of Current Expenditures:

1. Schedule J filed on October 16, 2008, Dckt. 1;
2. Statement of Current Expenditures filed on May 20, 2009, Dckt. 38;
3. Statement of Current Expenditures filed on October 18, 2012, Dckt. 81;
4. Statement of Current Expenditures filed on November 2, 2012, Dckt. 87.

Trustee states that he previously questioned these expenses and that the schedule may still include expenses of the deceased Debtor. Trustee states Debtor has not filed current statements of income and expenses in support of the modified plan.

#### **Debtor's Reply**

Debtor replies that she has standing to bring this motion pursuant to California Probate Code § 13100. Debtor states that the Trustee has not included case law indicating that substitution of parties is required.

Second, Debtor provides a new liquidation analysis indicating that \$17,250 less Chapter 7 Trustee fees results in \$14,775. Debtor agrees to pay \$14,775 from receipts of the death policy.

Third, Debtor states that the amounts paid through December 2012 are \$276,561. Debtor states that she authorized payment under the previously confirmed plan.

Fourth, Debtor states that the motion to approve loan modification will be heard on February 15, 2013. The court notes that the motion to approve loan modification is set for hearing February 5, 2013.

Fifth, Debtor states that she did not anticipate the untimely death of her husband and that is why schedules filed on October 16, 2008 do not reflect homecare expenses. Debtor states that, due to the death of her husband, social security benefits are decreasing her income by \$987.

Debtor states that the following expenses have changed from the latest filed "Current" Expense Statement due to the death of her spouse:

<b>Expense</b>	<b>Initial</b>	<b>Current</b>
laundry and dry cleaning	\$250	\$75
medical co pays	\$200	\$100
transportation	\$600	\$300
health insurance	\$230.07	\$150
home care	\$1,260	\$0

**Debtor's Supplemental Filings**

The court's review of the docket indicates that on February 6, 2013 Debtor filed a statement noting a party's death. The statement indicates that Debtor is complying with Rule 25(a) by filing a notice stating that Edward A. Rhea, a co-debtor in this bankruptcy case, died on October 31, 2012. This does not substitute in a person to stand in the stead of the deceased debtor. It merely confirms that the Debtor died.

**Trustee's Reply**

On April 15, 2013 Trustee replied that the plan will not pay unsecured creditors what they would receive under a Chapter 7 liquidation analysis since Debtor proposes to pay unsecured a 0% dividend. Trustee states Debtor filed an Amended Schedule B indicating that Debtor has \$17,250 in nonexempt equity. Trustee states Debtor filed several documents indicating that unsecured creditors would receive a 0% dividend.

Second Trustee states that he is uncertain whether Debtor can make payments as it appears Debtor can afford to contribute more toward the plan. Trustee states Debtor filed four statements of current income and five statements of current expenditures. Trustee states the most current Amended Schedules I and J indicate gross monthly wages of \$6,472.50, gross earnings of \$5,967.17, or \$12,928.87 per month. Trustee states that he is unable to calculate the net monthly take home pay since the exhibit only included the first page of the pay advice. Trustee states he is uncertain as to whether Debtor has additional deductions not listed on page 1. Trustee states that the pay advice reflects tax withholding of \$1,505.03 for the bi-weekly period, monthly tax withholding of \$153.37, and a deduction in the amount of \$454.67 for a loan. Trustee states that Debtor has not explained the deduction.

Trustee states that the court previously questioned Debtor's expenses at the December 4, 2012 hearing and Debtor still has not provided an adequate explanation. Trustee states that he is unable to determine a reasonable monthly net income due to both the numerous documents filed and the inconsistency of said documents.

Third, Trustee states that the Debtor filed a motion to substitute party due to the death of Debtor's spouse. The court's review of the docket indicates that the motion was granted at the April 15, 2013 hearing.

#### **Debtor's Reply**

On April 23, 2013 Debtor filed a reply. Debtor replies that she will file an amended Schedule C and confirms that the plan proposes to pay 0% to unsecured creditors.

Second, Debtor states that her annual 2012 year to date income is \$77,670.13 or \$6,427.50 per month. Debtor states that her 2012 year to date income is far less than the gross monthly income of \$5,697.17 stated by Trustee and reflected in Debtor's 2013 gross bi monthly statements. Debtor states that she is willing to contribute all of her disposable income to the plan and that she earns \$5,039.28 per pay check.

Debtor requests a continuance to discuss reasonable payments with Trustee and to allow the 30-day time period for objections to exemptions to run.

#### **Analysis**

At the February 5, 2013 hearing the court expressed the following concerns:

First, Debtor must address how the passing of her spouse, Debtor Edward Rhea, impacts the Chapter 13 case. Trustee states that Debtor must file a motion to substitute parties pursuant to Federal Rule of Bankruptcy Procedure 7025 and a motion to determine if further administration is possible and in the best interest of the parties pursuant to Federal Rule of Bankruptcy Procedure 1016. Debtor responds that she has standing to pursue the Chapter 13 case pursuant to California Probate Code § 13100.

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

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

California Probate Code § 13100 addresses the management of a decedent's property worth \$150,000 or less, including management of decedent's debt. However, the California Probate Code does not supplant the requirements of the Federal Rules of Civil Procedure. At this point in time, there is nobody who has been substituted into this federal court proceeding to prosecute the rights of the decedent. Debtor has not supplied case law demonstrating that this state law provision governs the process for addressing death of a debtor under the Bankruptcy Code.

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

Subdivision (a) of Rule 25 of the Federal Rules of Civil Procedure deals with the situation of death of one of the parties. If a party dies and the claim is not extinguished, then the court may order substitution. **A motion for substitution may be made by a party to the action or by the successors or representatives of the deceased party.** There is no time limitation for making the motion for substitution originally. Such time limitation is keyed into the period following the time when the fact of death is suggested on the record. In other words, procedurally, **a statement of the fact of death is to be served on the parties in accordance with Bankruptcy Rule 7004 and upon nonparties as provided in Bankruptcy Rule 7005** and suggested on the record. The suggestion of death may be filed only by a party or the representative of such a party. The suggestion of death should substantially conform to Form 30, contained in the Appendix of Forms to the Federal Rules of Civil Procedure.

The motion for substitution must be made not later than 90 days following the service of the suggestion of death. Until the suggestion is served and filed, the 90 day period does not begin to run. In the absence of making the motion for substitution within that 90 day period, paragraph (1) of subdivision (a) requires the action to be dismissed as to the deceased party. However, the 90 day period is subject to enlargement by the court pursuant to the provisions of Bankruptcy Rule 9006(b). Bankruptcy Rule 9006(b) does not incorporate by reference Civil Rule 6(b) but rather speaks in terms of the bankruptcy rules and

the bankruptcy case context. Since Rule 7025 is not one of the rules which is excepted from the provisions of Rule 9006(b), the court has discretion to enlarge the time which is set forth in Rule 25(a)(1) and which is incorporated in adversary proceedings by Bankruptcy Rule 7025. Under the terms of Rule 9006(b), a motion made after the 90 day period must be denied unless the movant can show that the failure to move within that time was the result of excusable neglect. 5 The suggestion of the fact of death, while it begins the 90 day period running, is not a prerequisite to the filing of a motion for substitution. The motion for substitution can be made by a party or by a successor at any time before the statement of fact of death is suggested on the record. **However, the court may not act upon the motion until a suggestion of death is actually served and filed.**

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

*See also, Hawkins v. Eads, supra.* While the death of a debtor in a Chapter 13 case does not automatically abate due to the death of a debtor, the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bank. P. 1016. The court cannot make this adjudication until it has a substituted real party in interest for the deceased debtor. FN.1.

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FN.1. Counsel for the Debtor has chosen a bold move in responding to the basic standing issue - deny, deny, deny. Counsel is well aware of the obligation placed on the court itself to make sure that real parties in interest are before it.

A basic principal of American Jurisprudence is that the law does not condone the "officious intermeddler." One is not allowed to assert claims or rights in which he or she has no interest. In the federal courts, this is the Constitutional requirement of "standing."

Article III of the Constitution confines federal courts to decisions of "Cases" or "Controversies." Standing to sue or defend is an aspect of the case-or-controversy requirement. (Citations omitted.) To qualify as a party with standing to litigate, a person must show, first and foremost, "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent." (Citations omitted.)...Standing to defend on appeal in the place of an original defendant, no less than standing to sue, demands that the litigant possess 'a direct state in the outcome.' (Citations omitted.)

*Arizonans for Official English v. Arizona*, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997).

The court, as obligated by the Constitution, addresses this issue which the Debtor has chosen to deny, deny, deny.

Second, Debtor has not filed an updated statement of income and expenses, despite requests by the Trustee. Instead, Debtor filed as exhibits her pay advices and utility bills. Debtor then included a list of expenses that have decreased due to the death of her spouse. From this piecemeal information the court cannot gain an understanding of how Debtor's changed income and expenses affect her ability to support a plan. Debtor does not clearly state how these changes impact her monthly disposable income.

The court declines the opportunity to further continue the hearing on this Motion and perpetuate the procedural and substantive mess which has been created. When someone wishes to come forward to be appointed by this court as the personal representative in the case for the estate of the deceased Debtor, the court will then have a party in interest for which a motion may be prosecuted. If the surviving Co-Debtor determines that she wants to sever her case and proceed alone under the Plan, she may attempt to do so.

The court shall issue a minute order 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, one of the Debtors being deceased and no substitution of a successor or representative having been sought (Fed. R. Civ. P. 25 and Fed. R. Bankr. P. 7025, 9014) and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

38. [13-23661](#)-E-13 JENNIFER RIANDA  
LBG-1 Lucas B. Garcia

MOTION TO EXTEND DEADLINE TO  
FILE SCHEDULES OR PROVIDE  
REQUIRED INFORMATION  
4-1-13 [[10](#)]

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

Incorrect Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 2, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Extend the Time to File Schedules, Statements, and Other Necessary Documents was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Extend the Time to File Schedules, Statements, and Other Necessary Documents is granted.** No appearance required.

The proof of service indicates that the documents and supporting pleadings were served on April 2, 2013. The court's review of the docket indicates that the motion, notice of hearing, and declaration were filed on April 1, 2013. The proof of service is dated April 2, 2013 and was filed on April 3, 2013. Local Bankruptcy Rule 9014-1(e)(1) requires that all pleadings and documents filed in support of, or in opposition to, a motion be served on or before the date filed with the court. Here, the motion, notice of hearing, and declaration were served after they were filed with the court. There being no opposition from the Chapter 13 Trustee and given the nature of the motion the court waives the service defect.

The Debtor seeks an extension of time to file the required schedules, statements, and other necessary documents in her case. The court may, on motion, extend the time to file schedules, statements, and other documents required under Fed. R. Bankr. P. 1007 for cause and on notice to the United States trustee, any committee elected under § 705 or appointed under § 1102 of the Code, trustee, examiner, or other party as the court may direct. Fed. R. Bankr. P. 1007(c). Debtor noticed the required parties with this motion pursuant to Fed. R. Bankr. P. 1007(c). Debtor requests an extension to file her schedules, statements, and other necessary documents because this case was filed in haste in order to stop a scheduled foreclosure on her home. Debtor states in her declaration filed in support of this motion that she needs

additional time to file the required documents because her non-debtor spouse's assistance is needed and he travels often for work. Debtor requests that the deadline to file the required documents be extended from April 2, 2013, to May 13, 2013.

The court finds cause to justify an extension. Therefore, the motion is granted and the deadline for Debtor to file schedules, statements, and other necessary documents is extended to May 13, 2013.

The court shall issue a minute order 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 Time to File Schedules, Statements, and Other Necessary Documents 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 deadline for the debtor to file schedules, statements, and other necessary documents is extended to May 13, 2013.

39. [13-21866-E-13](#) **EARL CHARLESWORTH** **OBJECTION TO DEBTOR'S CLAIM OF**  
**TSB-2** **D. Randall Ensminger** **EXEMPTIONS**  
**3-26-13 [27]**

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on March 26, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(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).

**The Objection is sustained and Debtor's exemptions are disallowed.** No appearance required.

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure §703.140. California Code of Civil Procedure §703.140, subd. (a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

Trustee asserts that Schedule I states that Debtor is married.

The court shall issue a minute order 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 filed by the chapter 13 trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained and the Debtor's exemptions are disallowed.

40. [09-35067-E-13](#) JOSEPH/DONNA WITHERS MOTION TO INCUR DEBT  
WW-2 Mark A. Wolff 3-29-13 [[66](#)]

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

Correct Service and Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 29, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

**The court's tentative decision is to continue the hearing on Motion to Incur Debt to May 14, 2013, at 3:00 p.m.** 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 to incur a debt for \$9,300.00 through a Stafford Loan ("the Loan") in order to fund Joint Debtor Donna Withers' educational tuition and expenses. Debtors assert that repayment of the Loan will not commence until about six months after they have completed their Chapter 13 plan. Debtors are currently in the 44<sup>th</sup> month of their 60-month Chapter 13 plan. The Motion

states the basic loan terms (amount, interest rate, repayment period, and estimated loan payment). The loan is to cover the Debtor's portion of \$20,400.00 of tuition and expenses, after application of \$11,100.00 in a federal grant the Debtor has received.

The Loan Debtors seek to incur is based on a print-out of, what appears to be, a financial aid estimate, from the school Debtor plans to attend (University of Phoenix). Without more, the court cannot be expected to discern from a single-page financial aid estimate whether or not there is actually a loan that Debtors are eligible for and have been offered. In other words, there does not appear to be an actual loan for the court to approve. While the court understands that Debtors seek to incur a Stafford Loan, a type of educational loan funded by the federal government, Debtors have failed to provide evidence showing Debtors are even eligible for the Loan.

The absence of an actual loan for the court to approve means that the court lacks jurisdiction over the matter because the motion lacks justiciability. The justiciability doctrine concerns "whether the plaintiff has made out a 'case or controversy' between himself and the defendant within the meaning of Art. III." *Warth v. Seldin*, 422 U.S. 490, 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Under Article III of the United States Constitution, federal courts only hold jurisdiction to decide cases and controversies. Absent proof of an actual loan, no case or controversy within the meaning of Article III exists.

Moreover, Debtors assert that repayment of the Loan will not commence until after they have finished their Chapter 13 plan. However, this presumes that Debtor Donna Withers completes her educational program. Debtors should address any risks involved as to whether repayment of the Loan could commence prior to Debtors finishing their chapter 13 plan.

#### **ANALYSIS**

Notwithstanding the potential deficiencies, the court considers the realities of this case, that the Debtor is down to slightly more than one year left in a five year plan, and that education may well be part of the financial rehabilitation for these Debtors. The potential for default, failing to proceed with the education, may be possible, the factors mitigate to it being unlikely.

The largest impediment is that the court is not presented with an actual loan to approve. Rather, it is requested to approve the Debtors seeking to obtain a loan, which may be on certain terms from some lender. (Parties should not presume that a court knows any specific type of loan funding, lenders, and processes.)

The hearing is continued to allow Debtors to submit supplemental evidence of an actual loan (*i.e.*, evidence supporting Debtors are eligible for the Loan) and the risks involved as to when repayment of it could commence. Any supplemental evidence must be filed and served on all parties in interest by May 7, 2013.

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

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

The Motion to Incur Debt filed by 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 hearing on Motion to Incur Debt is continued to May 14, 2013, at 3:00 p.m. Debtors' supplemental brief to be filed by May 7, 2013.

41. [11-46069-E-13](#) **CHRISTOPHER/SARAH ANDREWS** **MOTION TO MODIFY PLAN**  
**PLC-2** **Peter Cianchetta** **3-26-13 [46]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 19, 2013. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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 December 28, 2012 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.

42. [12-35270-E-13](#) FELIPE LEPE MOTION TO VALUE COLLATERAL OF  
SAC-6 Jingming Cai PAUL FINANCIAL, LLC  
4-2-13 [[111](#)]

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 the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 2, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Value Claim of Paul Financial, LLC 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 Claim of Paul Financial, LLC is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2780 Woodmont Drive, Fairfield, California. The Debtor seeks to value the property at a fair market value of \$236,139.00 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 \$545,324.20. Paul Financial, LLC's second deed of trust secures a loan with a balance of approximately \$60,500.00. 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 Claim of Paul Financial, LLC 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 Paul Financial, LLC secured by a second deed of trust recorded against the real property commonly known as 2780 Woodmont Drive, Fairfield, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$236,139.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

43. [10-23073-E-13](#) KATHRYN BROTHERS  
SDB-2 W. Scott de Bie

MOTION TO VALUE COLLATERAL OF E  
TRADE BANK  
3-27-13 [[40](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on March 27, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Value Claim of E\*Trade Bank 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 Claim of E\*Trade Bank is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 515 McKinley Avenue, Woodland, California. The Debtor seeks to value the property at a fair market value of \$180,000.00 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 \$295,461.00. E\*Trade Bank's second deed of trust secures a loan with a balance of approximately \$72,338.17. 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 Claim of E\*Trade Bank 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 E\*Trade Bank secured by a second deed of trust recorded against the real property commonly known as 515 McKinley Avenue, Woodland, 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 \$180,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

44. [12-41273](#)-E-13 AMELIA VALITE MOTION TO CONFIRM PLAN  
RHM-1 Robert Hale McConnell 3-18-13 [[31](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 15, 2013. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The 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 March 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.

45. [13-24073](#)-E-13 JAMES/DAWN REID MOTION TO DISMISS CASE  
JAT-1 John A. Tosney 3-28-13 [8]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion is granted and the case is dismissed.** No appearance is required.

Debtors assert that this bankruptcy petition was inadvertently filed, duplicating Case No. 13-24072. Debtors offer the Declaration of James Moore who states he filed case no 13-24072 and then inadvertently caused this identical case to be filed. Under the totality of the circumstances the court may dismiss the case. 11 U.S.C. § 707; *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 840 (B.A.P. 9th Cir. 2008). The court finds that, in the totality

of the circumstances, this case should be dismissed since it was inadvertently filed and the dismissal will not prejudice creditors.

The court shall issue a minute order 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 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 and the case is dismissed.

46.	<a href="#">13-22477</a> -E-13 JOSE AGUILAR AND ROSA NLE-1                    ALCALA Thomas O. Gillis	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 4-3-13 [ <a href="#">43</a> ]
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors and Debtors' Attorney April 3, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Objection to the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

**The court's tentative decision is to continue the hearing on Objection to June 4, 2013 at 3:00 p.m.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on motions to value collateral of River City Bank and Wells Fargo Bank. The court notes that both motions to value have been set for hearing on June 4, 2013. The hearing on Trustee's objection is continued to June 4, 2013 at 3:00 p.m.

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

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

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of



IT IS ORDERED that the hearing on the Objection to Confirmation the Plan is continued to June 4, 2013, at 3:00 p.m.

**APPEARANCE BY DEBTORS' COUNSEL MARK W. BRIDEN  
REQUIRED. TELEPHONIC APPEARANCE IS APPROVED.**

48. [03-32080](#)-E-13 DONALD AND CHRISTINE HIGGINS MOTION TO AVOID ABSTRACT OF  
MWB-20 Mark W. Briden JUDGMENT  
4-1-13 [[272](#)]

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

Correct Service and Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditors, Creditors' attorney, Chapter 13 Trustee David Cusick, and Office of the United States Trustee on April 1, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Avoid Abstract of Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

**The courts tentative decision is to deny the Motion to Avoid a Judicial Lien without prejudice.** Appearance required.

A judgment was entered against the Debtors in favor of Creditors Don Stair and Carol Stair for the sum of \$9,873.66. The abstract of judgment was recorded with Shasta County on April 24, 2003. On October 13, 2003, an Order Granting Motion Avoiding Judgment Lien on the Debtor's residential real property commonly known as 20653 Alta Vista Way, Redding, California was entered in the United States Bankruptcy Court of the Eastern District of California. See Dckt.130. The Debtor along with her Joint-Debtor, Donald Gene Higgins, received Chapter 13 discharges on January 22, 2009. Debtor Kristine Higgins reopened her case on March 18, 2013.

The Debtors seek to obtain an Order Avoiding the Abstract of Judgment obtained by the Creditors pursuant to 11 U.S.C. § 522(f)(1)(a) on any and all property purchased by Debtors, Donnie Gene Higgins; Kristine Marie Higgins A/K/A Kris Higgins, each and individually D/B/A Diamond D. Enterprises, Diamond D. Enterprises, purchased in Shasta County, California after November 5, 2003. Dckt. 272 at 2:24-3:5.

The court is baffled by the Debtor's motion. 11 U.S.C. § 522(f)(1)(a) grants the court the power to avoid judicial liens attached to a debtor's residence that impair a debtor's exemptions. However, 11 U.S.C. § 522(f)(1)(a) does not grant the court the power to avoid the abstract of judgment issued by a state court ab initio. The abstract of judgment or the writ of execution in this case, is recorded with a county recorder which attaches a judicial lien to all property in that county. 11 U.S.C. § 522(f)(1)(a) only grants the court the power to avoid the fixing of such a judicial lien on an interest of the debtor in property to the extent that such lien impairs an exemption.

Further, there is no legal basis under 11 U.S.C. § 522(f)(1)(a) to grant avoidance of a judicial lien on property purchased post-petition, after discharge and not subject to the exemptions in the Debtor's prior bankruptcy case. The Debtor used her exemptions in her previous bankruptcy case residential real property commonly known as 20653 Alta Vista Way, Redding, California. The Honorable Michael S. McManus granted the previous avoidance of a judicial lien fixed to the Alta Vista Way property because the lien impaired an exemption to which Debtors were entitled on a pre-petition asset. Although, the Debtors reopened their Chapter 13 case, they are not entitled to claim exemptions in post-petition real property not part of the previous bankruptcy estate.

Pursuant to 11 U.S.C. § 541 the definition of property of the estate is very broad, sweeping up every conceivable right and interest of the debtor as of the commencement, with specifically enumerated exceptions. However, notwithstanding these interests and rights being swept into the bankruptcy estate, 11 U.S.C. § 541 does not create rights. *State of California v. Farmers Markets, Inc. (In re Farmers Markets, Inc.)*, 792 F.2d 1400, 1402 (9th Cir. 1986). Property purchased after November 5, 2003, would clearly fall under post-petition assets not part of the bankruptcy estate because the Debtors filed their Chapter 13 petition on that day.

A debtor may claim an exemption in an asset which is property of the bankruptcy estate. A debtor's exemption under California law in property of the estate is determined as of the bankruptcy case filing date. *Owen v. Owen*, 500 U.S. 305, 314, 11 S. Ct. 1833, 1838, n. 6; *In re Wolf*, 248 B.R. 365, 367-368 (B.A.P. 9th Cir. 2000). A debtor does not have the ability to claim exemptions which did not exist as of the commencement of the case or post-petition increases in value of the property in excess of the amount claimed as exempt. *In re Hyman*, 967 F.3d 1316, 1319, n. 2 (9th Cir. 1992). To be claimed as exempt the property must exist and become part of the bankruptcy estate. *Owen*, *supra* at 308. No interest or rights of the Debtor which are property of the estate existed in the post-petition property which may be claimed as exempt. Therefore, 11 U.S.C. § 522(f)(1)(a) does authorize the avoidance of judicial liens attached to post-petition property purchased by the Debtors because there are no exemptions for the judicial lien to impair.

Counsel only need review the order he drafted in the previous Motion to Avoid a Judgment Lien for guidance on the proper procedure to protect the Debtor from attachment of future judicial liens. The October 13, 2004 Order Granting Motion Avoiding Judgment Lien on Debtor's Residence states that "[u]nless the debtors (sic) bankruptcy case is dismissed, the Judgment of the creditor is hereby extinguished and the Judgment shall not survive the bankruptcy..." Dckt. 130 at 1:22-25. The Debtors received their discharges on January 22, 2009 pursuant to 11 U.S.C. § 1328. It would best serve the Debtors if the counsel provided the title company with copies of these documents to evidence the discharge injunction preventing future attachment:

- 1) Evidence that the Creditors debt was scheduled and Creditors received notice of the bankruptcy, such as the Schedules in the Debtors petition and Verification and Master Address List.

- 2) The October 13, 2004 Order Granting Motion Avoiding Judgment Lien on Debtors Residence.

3) The January 22, 2009 Discharge of Debtor.

Reopening a case to file a Motion lacking any legal grounds furthers no purpose for the Debtor.

For these reasons the Motion to Avoid Judicial Lien is denied without prejudice.

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) 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** the motion is denied without prejudice.

49. [11-43788-E-13](#) LINDA BENO MOTION TO SET ASIDE DISMISSAL  
Marianne E. Malveaux OF CASE  
3-4-13 [[179](#)]  
CASE DISMISSED 12/15/12

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

Incorrect Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee and all creditors on April 5, 2013. By the court's calculation, 67 days' notice was provided. 25 days' notice is required.

**Tentative Ruling:** The Motion to Reconsider the Order Dismissing the Case has not been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

**The court's tentative decision is to deny the Motion to Vacate.** 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 Proof of Service states that the motion and supporting pleadings were served on April 5, 2013. The court's review of the electronic docket indicates that these documents were filed on April 4, 2013. Local Bankruptcy Rule 9014-1(e)(1) requires that all pleadings and documents filed in support of, or in opposition to, a motion be served on or before the date filed with

the court. Here, the documents were served after they were filed with the court.

Trustee having filed an opposition the court waives the service defect.

Through this motion, Debtor asks the court to vacate its order dismissing the Chapter 13 case. Debtor states that she has made timely plan payments and is not delinquent. Debtor states that her attorney filed a declaration of income indicating Debtor's inability to make plan payments. Debtor states that at the "last hearing" the court indicated that Debtor's "employment should be sufficient." Debtor states that it was inadvertence that the case number was one digit off and that this act does not constitute an egregious error that would impose an undue hardship on creditors.

### **Trustee's Opposition**

Trustee opposes the motion on the grounds that Debtor filed the exact same motion, which the court denied on February 26, 2013. Trustee states that it opposed the first motion to vacate and Trustee's position has not changed.

Trustee states that if the case was reinstated Trustee refunded all payments to Debtor except for \$253.04 in Trustee's fees, no disbursements were made to creditors, and that, in order for Debtor to become current on plan payments Debtor would be required to pay \$9,014.80.

### **Analysis**

The Debtor filed her first motion to vacate the dismissal on December 21, 2012. Dckt. 168. The Debtor did not assign to the motion a docket control number as required under the Local Bankruptcy Rules. The court ruled on the prior motion, with findings of fact and conclusions of law set forth in the Civil Minutes from the February 26, 2013 hearing. Dckt. 177. The first motion to vacate consists of five paragraphs stating with particularity (Fed. R. Bankr. P. 9014) the following grounds for relief from the order (Fed. R. Bankr. P. 9012 and Fed. R. Civ. P. 60(b)),

- A. Debtor has timely made her plan payments and is not in default.
- B. Debtor's attorney has filed a declaration indicating the Debtor's ability to make the plan payments.
- C. Debtor's counsel has addressed each and every objection of the Trustee [to confirmation of the plan].
- D. It was inadvertent that the case number is one digit off and states 11-43778 instead of 11-43788.
- E. Debtor provided more than 30 days notice ot all parties.

Motion to Vacate, Dckt. 168.

No declaration or other evidence was filed in support of the December 21, 2012 motion to vacate.

As stated in the court's ruling (Civil Minutes, Dckt. 177), the Debtor did not oppose, and did not provide a reason for failing to oppose, the Trustee's motion to dismiss the Chapter 13 case because of the default in payments and other deficiencies. No grounds were given for relief under Federal Rule of Civil Procedure 60(b). The reconsideration of a judgment or order is governed by Federal Rule of Civil Procedure 60(b), as made applicable in this case by Federal Rule of Bankruptcy Procedure 9024, which incorporates minor modifications that do not apply here. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) Newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) The judgment is void;
- (5) The judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying in prospectively is no longer equitable; or
- (6) Any other reason that justifies relief.

Fed. R. Civ. P. 60(b). The court uses equitable principles when applying Rule 60(b) and Federal Rule of Bankruptcy Procedure 9024.

Days after the court announcing its ruling on the first motion to vacate, the Debtor filed the present second Motion to Vacate. Dckt. 179. The second Motion to Vacate is identical to the first motion to vacate. However, the second Motion to Vacate is supported by the declaration of Debtor's counsel. Counsel testifies under penalty of perjury,

- A. That due to [non-specific] "I was unable to attend the hearing previously scheduled for February 26, 2013 [first motion to vacate]."
- B. She was informed that it was "off-calendar."
- C. "Debtor has made all of her plan payments timely."
- D. "We have complied with all of the Trustee's requests as indicated."
- E. "I am able to make my plan payments as indicated in my Plan."

Declaration, Dckt. 181.

This declaration does little to support a motion to vacate. No explanation is provided as to why the original motion to dismiss was not opposed. With respect to the hearing on the first motion to dismiss, counsel

offers no explanation as to who or how she was informed that the first motion to dismiss was "off-calendar." The Declaration also appears to state that counsel is the debtor in this case, making reference to "I [counsel] am able to make my payments as indicated in my plan."

The declaration suffers from another defect, counsel states that her testimony is accurate only to the "best of my knowledge." The requirements for what constitutes an adequate declaration are set out in 28 U.S.C. § 1746, which provides,

§ 1746. Unsworn declarations under penalty of perjury

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

This does not provide for any qualification on stating that the information is true and correct, or let the witness provide a declaration based on information and belief. Stating that the information is true and correct, only to the extent that I actually know or believe it to be true, is not substantially in compliance with this section. FN.1.

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FN.1. Given that the proper form of the declaration is, and has long been specified by statute, and is one of the simplest things which counsel can do, there is no basis for continuing the hearing to allow the preparation of a new declaration. Movant can start over, finding a witness who can testify based on personal knowledge.

The court had noted that declarations being submitted by parties which were qualified as being on "information and belief" or only to "the best of my knowledge" were increasing reading like complaints filed on information and

belief. Fewer and fewer declarants showed that they had personal knowledge as to their testimony. Rather, more and more declarants were "testifying" as to boilerplate allegations which, if possibly true, would allow them to prevail on their motions. These "I don't know but it lets us win declarations" culminated with attorneys for the moving parties testifying under penalty of perjury as to facts for which they clearly did not have personal knowledge, but in some cases related to events five to ten years before they were admitted to practice (with no showing that the attorney had personal knowledge of such events while that attorney was an undergraduate college student or a high school student).

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The court is unsure why and how counsel knows what the Debtor has paid to the Trustee. This indicates that at best counsel is parroting what someone else is telling her, providing the court with hearsay statements. No explanation is provided as to the Debtor cannot give her first hand knowledge testimony of payments made to the Trustee.

No evidence is presented that the Trustee's defaults set forth in the motion to dismiss and declaration in support thereof were not accurate. Dckts. 157, 159. At the time of filing the motion to dismiss, the Debtor was attempting to confirm a seventh amended plan.

As noted by the Trustee, the Debtor has received back all of her plan payments, except for \$253.04 for trustee fees. While the Debtor made plan payments, nothing was disbursed because the Debtor could not confirm proposed plans 1 through 6.

The court denies the present Motion to Dismiss on two grounds. First, the court has previously ruled on and denied this motion. Second, the court has independently reviewed the present Motion and evidenced, and it fails to offer any grounds for granting relief pursuant to Federal Rule of Civil Procedure 60(b).

The court shall issue a minute order 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 Vacate filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Vacate Dismissal is denied.

50. [12-27989-E-13](#) DAVID HOGUE AND KATHLEEN MOTION TO MODIFY PLAN  
JLK1 TATLOY-HOGUE 2-20-13 [[25](#)]  
James Keenan

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on February 20, 2013. By the court's calculation, 69 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Trustee objects on the grounds that he questions Debtors' credibility and intentions. Trustee states that Debtors have changed their expenses to the exact amount of the questioned auto installment payment. Trustee states Debtors have not provided evidence to support the changed expenses.

Trustee states that, at the meeting of creditors, he questioned the \$444.64 expenditure for an auto installment payment. Trustee states this debt was not listed on Schedule D or in the original plan. Trustee states that Debtors agreed to increase the plan payment by \$200, for a total monthly payment of \$450. That plan was confirmed and runs a 60 month term.

Trustee argues that the Debtors now propose a Modified Chapter 13 Plan, which is premised on increased expenses, thereby justifying a lower plan payment. Trustee states Debtors state they have increased monthly expenses in the following categories:

1. Electricity and heating, \$111.64....to....\$361.23;
2. Telephone, \$65.....to.....160 (In addition to \$180 a month for phone/cable);
3. Home maintenance, \$27.....to.....\$27;
4. Food, \$115.....to.....\$740;
5. Clothing, \$25....to....\$75;
6. Laundry and dry cleaning, \$26.....to....\$40;
7. Transportation, \$75.....to....475.

The dollar amounts listed above to increase a series of expenses total \$444.64, almost exactly the \$450.00 phantom auto installment payment.

The Debtors offer no Reply to the Trustee's Opposition to their Motion. The Debtors' declaration offers no explanation of their finances or why the original expenses they stated under penalty of perjury were inaccurate or have changed since that time. Dckt. 25.

On February 19, 2013, the Debtors filed an Amended Schedule J (Dckt. 24) correcting misstatements in their Original Schedule J filed April 25, 2012 (Dckt. 1 at 28). No explanation is given as to why such errors occurred. As stated on Schedule J itself, these are the "monthly expenses of the debtor and the debtor's family at the time [the] case [is] filed."

The Debtors have failed to provide the court with evidence supporting modification of the Plan. Further, the evidence they have provided supports the Trustee's position that the Debtors are improperly manipulating (and misrepresenting) their expenses to divert \$450.00 a month other than as permitted under the Bankruptcy Code.

mount the expense has increased. Trustee states that Debtors are increasing expenses to cover the auto installment payment.

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

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

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

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

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

51. [09-44890-E-13](#) VICTOR MONTANEZ  
PGM-5 Peter G. Macaluso

MOTION TO MODIFY PLAN  
3-22-13 [[80](#)]

**Final Ruling:** The Debtor having filed a "Withdrawal of Motion" for the pending Motion to Modify Plan, the "Withdrawal" being consistent with the opposition filed to the Motion by the Trustee, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Modify Plan, and good cause appearing, **the court dismisses without prejudice the Debtor's Motion to Modify 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.

A Motion to Dismiss the Bankruptcy Case having been filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

52. [12-40191](#)-E-13 ROBERTA DE LUZ MOTION TO MODIFY PLAN  
MET-2 Mary Ellen Terranella 3-25-13 [[32](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 25, 2013. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on March 25, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

53. [13-23994-E-13](#) VICTOR/CHERI MELENDEZ  
CAH-1 C. Anthony Hughes

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
3-28-13 [8]

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

Notice and Service appear to be correct. 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 28, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Value Claim of Wells Fargo Bank, NA has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Value Claim of Wells Fargo Bank, NA 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 owners of the subject real property commonly known as 4716 Chamberlin Circle, Elk Grove, California. The Debtors seek to value the property at a fair market value of \$215,000 as of the petition filing date. As the owners, the Debtors' opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$265,053. Wells Fargo Bank, NA's second deed of trust secures a loan with a balance of approximately \$41,589. 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 Wells Fargo Bank, NA secured by a second deed of trust recorded against the real property commonly known as 4716 Chamberlin Circle, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$215,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

54. 10-45095-E-13 ZANA MELVIN  
SAC-4 Scott Coben

MOTION TO MODIFY PLAN  
3-13-13 [[58](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 13, 2013. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Trustee objects on the grounds that the Debtor has not provided information regarding the terms of the loan modification with Creditor Provident Funding Associates. Trustee states that under the confirmed plan Creditor is provided for in Class 1 to be paid in the amount of \$9,592.40 per the proof of claim

number 1. Trustee states that Creditor has not amended its proof of claim to reflect that \$2,542.52 remains to be paid.

Second, Trustee states that the modified plan proposes to reclassify Creditor from Class 1 to Class 4, but does not authorize payments made by Trustee. Trustee states that he has disbursed \$34,432.27 in mortgage payments and \$7,049.88 in arrears.

**Debtor's Reply**

Debtor states that information regarding the loan modification trial period is attached as Exhibit A. Debtor states that once the loan modification has been approved by the bank Debtor will file a motion to approve loan modification.

Second, Debtor states that she will provide for payments already disbursed in the order confirming plan.

The plan relies on a loan modification. Debtor having not filed a motion to approve loan modification and the bank having not approved the proposed modification, the modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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