

# Eastern District of California

**Honorable Christopher M. Klein**

Chief Bankruptcy Judge  
Sacramento, California

**July 1, 2014 at 2:00 p.m.**

1. [13-25008](#)-C-13 TERENCE CAMPOLIETI MOTION TO AMEND  
[14-2008](#) SS-3 5-29-14 [[33](#)]  
 CAMPOLIETI, SR. V. PNC  
 MORTGAGE, INC. ET AL

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 May 29, 2014. 28 days' notice is required. That requirement was met.

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

**The court's decision is to grant the Motion to for Leave to Amend.** No appearance required. The court makes the following findings of fact and conclusions of law:

Plaintiff is the Debtor in the above-referenced Chapter 13 Bankruptcy filed on April 12, 2013. This adversary complaint was filed on January 9, 2014 alleging, among other things, breach of contract which Plaintiff and Defendants had properly entered and to which both parties were now bound (loan modification agreement on Plaintiff's residence). After the contract had been properly consummated, Defendants allegedly breached their contractual obligations under the loan modification agreement.

On April 29, 2014 this Court heard Defendants' Motion to Dismiss. Although the Court granted the Motion to Dismiss, the Court granted Plaintiff the opportunity to file the herein Motion for Leave to Amend his Complaint no later than May 29, 2014. Plaintiff is now doing so.

**July 1, 2014 at 2:00 p.m.**

As the Court can see from the accompanying First Amended Complaint with Exhibits thereto, Plaintiff has now properly plead all claims related to the breach of contract at issue. Additionally, Plaintiff has removed his causes of action related to California Business & Professions Code § 17200 et seq. Although Plaintiff has removed those causes of action, Plaintiff reserves the right to seek leave to amend again to assert additional causes of action (including B&P § 17200 causes of action) if discovery leads to facts supporting those allegations.

### **Discussion**

Pursuant to Fed. R. Civ. P. 15, leave to amend should be freely given when justice so requires. In this instance, when the court granted Defendant's Motion to Dismiss, it further ordered that if Plaintiff so desired, he could a motion for leave to file an amended complaint on or before May 29, 2014. Plaintiff alleges that substantive changes have been made to the complaint that justify granting leave to amend the complaint.

The court is satisfied that justice will be served by permitting leave for Plaintiff to amend the complaint and grant the requested relief.

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 Amend 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 Plaintiffs are permitted leave of  
the court to amend the complaint.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 20, 2014. 35 days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because Debtors did not resolve Trustee's Objection to Confirmation sustained by the court at the hearing held on April 8, 2014 (Dkt. 39).

The following concerns were raised by the Trustee previously and remain at issue:

The Chapter 13 Trustee opposed confirmation of the Plan because Debtors filed amended Schedules I & J on November 20, 2013, adding a new employer for Mr. Quinlan and new income information. This resulted in a net increase of income in \$1,591.22 per month.

The following changes were made to Schedule J:

Food	\$297.00 increase
Clothing	\$25.00 increase
Laundry	\$5.00 increase
Medical/Dentals	\$623.00 increase
Transportation	\$350.00 increase

Recreation	\$71.00 increase
Auto Insurance	\$78.00 increase
Personal Care	\$97.00 added expense

The Trustee recognized that expenses increased based on Mr. Quinlan's new employments; however, it was unclear to Trustee why Debtors' monthly net income increased by only \$65.22 compared with the combined monthly income on Schedule I of \$1,591.22.

Debtor replied to Trustee on March 25, 2014 (Dkt. 30) and stated they had provided the Trustee with recent paystubs which result in a net income of \$329.00 per month.

According to the Trustee's review, it appears that Robert Quinlan is paid biweekly, regular earnings in the amount of \$2,307.69, or \$5,007.68 per month. He further receives biweekly reimbursements of approximately \$2,634.24 per month. Debtors' most recent Schedule I discloses that Mr. Quinlan earns \$4,615.38.

Overall, Trustee's calculations conclude that Mr. Quinlan earns approximately \$7,641.92 per month, or \$3,026.54 more per month than what is listed on Schedule I.

Where Debtors' first Amended Plan proposes payments of \$1,800 through April 25, 2014 and then \$329.00 for fifty-four (54) months, it does not appear the Objection to Confirmation has been resolved.

### **Debtors' Response**

Debtors' request more time to address the issues raised by the Trustee.

### **Discussion**

The court's decision is to deny the Motion to confirm the Modified Plan. Debtors request more time to address the Trustee's Objection; however, Debtors have been aware of Trustee's concerns over Schedule I and J disclosures since December 2013. The Trustee's objection was reasserted on April 1, 2014 and is now being raised for the third time. The court is not convinced that continuing the hearing to the next hearing date will provide ample time to resolve the issue if Debtors were not able to resolve the issue during the course of the past seven months.

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

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

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

The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on May 20, 2014. Twenty-eight days' notice is required; that requirement was met.

**Final Ruling:** The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Loan Modification is granted.** No appearance required. The court makes the following findings of fact and conclusions of law:

Movant Debtors request that the court approve a modification of their mortgage with Bank United, N.A. concerning real property commonly known as 1630 Cantrell Lane, Placerville, California. The current principal balance is \$404,192.15. The new principal balance will be \$399,940.67. The current monthly payment is \$2,767.04. The new payment will be \$1,892.36. The interest rate is to remain the same at 2.875%. A copy of the loan modification agreement with Bank United, N.A., containing its precise terms, is attached to the instant motion as Exhibit A (Docket Item No. 41).

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

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

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

**IT IS ORDERED** that the Motion to Approve Loan Modification is granted and Debtors are permitted to enter into a Loan Modification Agreement with Bank United, N.A. concerning real property commonly known as 1630 Cantrell Lane, Placerville, California.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 22, 2014. 35 days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because Trustee is unable to locate a Motion for Approval of Attorneys' fees on the court's docket. Section 2.06 of Debtor's modified plan provides for approximately \$2,000 in attorneys' fees that are to be paid through the plan and states that Debtor will file and serve a Motion for Attorneys' Fees.

#### **Debtor's Response**

Debtor asserts that counsel for Debtor substituted into the case in May 204 after the plan was confirmed. Counsel intends on submitting an application for attorneys' fees following successful granting of the present Motion. Counsel is aware that until the application is granted, no disbursements may be made on the administrative claim.

#### **Discussion**

The court's decision is to grant the Motion and order counsel for Debtor to file an Application for Attorneys' Fees by July 15, 2014.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on May 22, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**IT IS FURTHER ORDERED** that Debtor's counsel is to file and serve upon all relevant parties a Motion for Attorneys' Fees pursuant to Section 2.06 of the confirmed plan by July 15, 2014.



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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on May 6, 2014. 14 days' notice is required. That requirement was met.

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

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

Creditor, Alliant Credit Union, opposes confirmation of the Plan. On September 18, 2006, Debtor executed and delivered to Creditor a Note in the sum of \$310,000. Debtor executed a delivered to Creditor a Deed of Trust in September 2006, granting Creditor a security interest in real property known as 125 Whitecap Way, Fairfield, California.

The plan proposes making ongoing monthly payments to Creditor, but does not propose to cure the arrearage due. Instead, the plan indicates Debtor will modify the loan outside of bankruptcy.

Creditor is in the process of finalizing its Proof of Claim, but estimates pre-petition arrearage on its claim to total \$47,198.01. This amount does not include late charges, escrow advances, attorneys' fees, costs, or other fees and charges that might otherwise be included once the Proof of Claim is finalized.

#### **Prior Hearing**

The court first heard Creditor's Objection on July 3, 2014 and continued the hearing for Debtor to submit evidence. The docket reflects that Debtor has presented no further evidence for the court to consider. Therefore, the court's tentative decision to sustain the Objection remains.

The court's decision to deny confirmation. The plan does not contemplate payment of the full amount of arrears due to Creditor and is attempting to modify Creditor's claim without filing a Motion to Approve a Loan Modification or Motion to Value the secured claim. In the Additional Provisions, the Debtor includes the colloquially termed "Ensminger Provisions" the court has used to confirm plans contingent on pending loan modification workouts. However, here, there is no evidence that a loan modification application was submitted to Creditor and there is no pending Motion to Approve Loan Modification. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 14, 2014. Forty-two days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on May 14, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 29, 2014. Twenty-eight days' notice is required. That requirement was met.

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

**The court's tentative decision is set the Motion to Value Collateral for an evidentiary hearing one [date] at [time].** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 5929 Shirley Avenue, Carmichael, California. The Debtors seeks to value the property at a fair market value of \$310,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$325,444.16. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$156,297.70. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

#### **Creditor's Objection**

Wells Fargo Bank, N.A., Creditor, objects to Debtor's Motion to Value. Creditor proposes a valuation of the property at \$545,000 and attaches a Residential Evaluation Report in support. (Dkt. 24)

#### **Debtor's Response**

Debtors disagree with Creditor's valuation and present a Broker's Price Opinion of Irina Shevchenko suggesting a value of \$325,000. (Dkt. 28)

## Discussion

The court's decision is to set the Motion to Value for an evidentiary on the issue of valuation of the asset. The court was presented with three different values in the pleadings related to the current Motion, none of which are verified appraisals.

At the evidentiary hearing, the court will consider the adequacy of the evidence presented in determining the value of the subject property and the amount of Creditor's secured claim in the property, if any.

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

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

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

**IT IS ORDERED** that the Motion is to be set for an evidentiary hearing on **[date]** at **[time]**.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 22, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because, according to his calculations, the plan will complete in more than the 60 months proposed, possibly taking 68 months. This exceeds the amount of time allowed under 11 U.S.C. § 1322(d). Remaining amounts to be paid into the plan total \$4,850, starting June 25, 2014. Total remaining amount to be paid through the plan is approximately \$5,789.91. This consists of secured claims and interest of \$2,450.03, attorneys' fees of \$3,125.65, and approximately Trustee fees of \$214.23. This is \$939.91 greater than the proposed plan payments, or eight additional months.

#### **Debtor's Response**

In order to finish the plan within 60 months, Debtor proposes increasing the monthly plan payments by \$26.00 starting August 25, 2014. Debtor will be able to afford this increase by reducing expenses associated with entertained and miscellaneous expenses.

Debtor requests that the order confirming the plan be amended and restate the plan payments as follows:

66.90 per month for 21 months (total paid as of May 25, 2014 is \$1,405.00); \$100.00 per month for 1 month (June 25, 2014); \$125.00 per month for 1 month (July 25, 2014); and \$151.00

per month for 37 months (beginning August 25, 2014.).

## **Discussion**

The court is amenable to Debtor making the proposed changes in the order confirming the plan in so far as the changes resolve the Trustee's concerns. Based on the court's review, it does appear that the changes proposed by Debtor will increase the plan payment sufficient to ensure the plan completes within 60 months.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on May 22, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**IT IS FURTHER ORDERED** that the Order Confirming the Chapter 13 Plan will include the following language concerning plan payments: "66.90 per month for 21 months (total paid as of May 25, 2014 is \$1,405.00); \$100.00 per month for 1 month (June 25, 2014); \$125.00 per month for 1 month (July 25, 2014); and \$151.00 per month for 37 months (beginning August 25, 2014)."

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on June 5, 2014. 14 days' notice is required. That requirement was met.

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

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

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

1. Debtors' plan relies on a Motion to Value the secured claim of Green Tree Servicing, LLC. If the motion is denied, Debtor cannot afford to make the payments or comply with the plan.  
11 U.S.C. § 1325(a) (6).

The court's decision is to overrule the Objection as the court is prepared to grant the Motion to Value the secured claim of Green Tree Servicing, LLC at the hearing on July 1, 2014.

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

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

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

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



appearing,

**IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on April 24 , 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 16, 2014. 14 days' notice is required. That requirement was met.

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

**The court's tentative decision is that the Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2181 Moonstone Avenue, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$255,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$277,307.37. Green Tree Servicing, LLC's second deed of trust secures a loan with a balance of approximately \$0.00. 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 Green Tree Servicing, LLC secured by a second deed of trust recorded against the real property commonly known as 2181 Moonstone Avenue, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$255,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

11. [14-25838](#)-C-13 IGOR MARKIN AND LUDMILA MOTION TO AVOID LIEN OF  
MS-1 MARKINA PORTFOLIO RECOVERY ASSOCIATES,  
Mark Shmorgon LLC  
6-2-14 [8]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on June 2, 2014. Twenty-eight days' notice is required. That requirement was met.

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

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

A judgment was entered against the Debtor in favor of Portfolio Recovery Associates, LLC for the sum of \$4,438.84. The abstract of judgment was recorded with Sacramento County on February 24, 2014. That lien attached to the Debtor's residential real property commonly known as 4029 Sierra Gold Drive, Antelope, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$247,129 as of the date of the petition. The unavoidable consensual liens total \$207,321.46 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

#### **ISSUANCE OF A COURT DRAFTED ORDER**

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Portfolio Recovery Associates, LLC, Sacramento County Superior Court Case No. 34-2013-0014165, Document No. 20140224, recorded on February 24, 2014, with the Sacramento County Recorder, against the real property commonly known 4029 Sierra Gold Drive, Antelope, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan because there is an unexplained change in support listed in Debtor's current Schedules I and J. The Exhibit (Dkt. 70) filed in support of the modified plan lists "Domestic support obligation" on Schedule I in the amount of \$377.74. Also, Schedule J lists "other payments you make to support other who do not live with you - Support" in the amount of \$811.00. These amounts differ from the Scheduled J filed on September 10, 2013, which lists "payments for support of additional dependents not living at your home" for an amount of \$520.35.

#### **Debtor's Response**

Debtor states that his child support expenses have increased as Debtor is now responsible for his child's medical costs. Debtor is also responsible for his child's extracurricular activities. This resulted in an increase of \$290.65 per month. These expenses are not deducted from his paycheck.

The listing of the amount of \$811.00 on line 19 is a typographical error. The amount should be listed on line 18 as "Payments of Alimony, Maintenance, and support not reported as deducted from your pay on Schedule I line 5." The amount is an increase of \$290.65 per month from the previous amount of \$520.35 per month as stated on Schedule J filed on September 10,

2013.

## **Discussion**

Debtor supports his explanation of the changes in domestic support obligations via the Declaration of Roderick Deal (Dkt. 76). The court is satisfied with the explanation and overrules the Trustee's objection.

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

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

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

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

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

13. [12-39445](#)-C-13 AFFONSO LOPEZ AND LEILA MOTION TO MODIFY PLAN  
SDB-6 ANDRADA LOPEZ 5-12-14 [[127](#)]  
W. Scott de Bie

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 12, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

(1.) Debtor is \$150.00 delinquent in plan payments to the Trustee to date. Debtor has paid \$2,000.00 into the plan to date with the last payment posted on January 22, 2014.

(2.) Debtor's modified plan proposes to reclassify Capital One Auto Finance regarding a 2004 Nissan from a Class 2 secured claim to Class 3 surrender. The Trustee has disbursed a total of \$1,111.45 to this creditor, but Debtor has not authorized these payments under the proposed modified plan.

#### **Debtors' Response**

Debtors state they will make the delinquent payment and be current under the modified plan by the hearing on July 1, 2014.

Debtor asserts that the Trustee will not be required to recover any funds previously disbursed to Capital One Auto Finance regarding a 2004 Nissan listed in Class 3 surrender of Debtor's Modified plan.

#### **Discussion**



As it stands, the court remains without sufficient evidence to grant Debtors' Motion to Confirm. Until the court is assured that Debtors' have remedied the outstanding delinquency, the plan will remain unconfirmed.

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

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

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

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

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

14. [14-23045](#)-C-13 GWENETH MCROY  
KK-1 Sally C. Gonzales  
**Thru #15**

OBJECTION TO CONFIRMATION OF  
PLAN BY GREEN TREE SERVICING  
LLC  
6-10-14 [[29](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney and Chapter 13 Trustee on June 9, 2014. By the court's calculation, 22 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). The Debtor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Green Tree Servicing, LLC ("Green Tree"), is the holder of a secured claim recorded against the property commonly known as 2010 Tolenas Avenue, Fairfield, California, which is Debtor's principal residence. The total amount due and owing under the Promissory Note is \$244,325.95 and the pre-petition arrearage amount owed is \$21,037.74.

Green Tree argues that the Debtor's Plan understates the pre-petition arrearage owed to Green Tree. Because the Debtor's Plan does not provide for the cure of the full amount of the pre-petition default owed, it does not satisfy 11 U.S.C. § 1322(b)(5) or 1325(a)(5).

#### **REPLY BY DEBTOR**

Debtor responds by stating that she "intends to review the claim" filed by Green Tree Servicing, LLC, and will amend her plan accordingly "if she is in agreement with the pre-petition arrearage of \$21,037.74. Debtor states that she understands that the difference between the claim filed by Green Tree Servicing LLC and the estimated arrearage listed on the Debtor's schedule D is approximately \$6,000, which would equate to a plan increase of approximately \$100 per month. Dckt. No. 34.

Debtor states that she shall determine if and how she will accommodate the difference in her budget and propose an amended plan if necessary.

#### **DISCUSSION**

As part of Green Tree's Proof of Claim, Proof of Claim No. 1, Green Tree has provided a Mortgage Proof of Claim Attachment, detailing the charges, costs, and fees due on the claim as of the petition date. The Proof of Claim calculates the total from the Statement of Pre-Petition Fees, Expenses, and Charges, along with total installment payments that were due on the claim as of the petition date. The Proof of Claim indicates that the last payment received by the creditor was received on April 15, 2013, and that the total amount necessary to cure the default is \$21,037.74.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. 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 docket reflects that no Objection to Claim has been filed against Green Tree Servicing, LLC, by the Debtor. The Debtor has not filed an amended plan, reflected revised arrearage amounts. The court accepts the Mortgage Attachment to Proof of Claim No. 1 as *prima facie* valid evidence of the arrearage owed on the claim by Debtor. The Plan not adequately providing for the full amount of Green Tree Servicing, LLC's claim, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

15. [14-23045](#)-C-13 GWENETH MCROY  
TSB-1 Sally C. Gonzales

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
4-30-14 [[23](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 17, 2013. 14 days' notice is required. That requirement was met.

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

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

#### **JUNE 3, 2014 HEARING**

The court continued the Objection from June 3, 2014 to this hearing date as Debtor stated that she would appear at the continued Meeting of Creditors. Civil Minutes, Dckt. No. 27.

#### **REVIEW OF OBJECTION**

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

1. Debtor did not appear at the First Meeting of Creditors held on April 24, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. Trustee lacks sufficient information to determine whether or not the case is suitable for confirmation with respect to 11 U.S.C. § 1325.
2. Debtor is \$2,277.44 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$2,277.44 is due on September 25, 2013. Debtor has paid \$0.00 into the plan to date.

#### **Trustee Report**

The Report of the Trustee filed on June 20, 2014 at the 341 Meeting indicates that Debtor and Debtor's Counsel appeared, and the meeting was concluded as to the Debtor, thereby resolving the first part of Trustee's Objection to the Confirmation of Plan.

Nothing further, however, has been filed on the docket regarding Trustee's concerns with Debtor's delinquency under the Plan. Nothing has been filed indicating that Debtor has now cured her delinquency in her plan payments to the Trustee to date. On this basis, the court's decision is to deny confirmation. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

16. [14-24246](#)-C-13 CARL ASMUS AND JODI OBJECTION TO CONFIRMATION OF  
DPC-1 CAMPISI ASMUS PLAN BY DAVID P. CUSICK  
Scott A. CoBen 6-5-14 [[36](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on June 5, 2014. By the court's calculation, 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). The Debtor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Chapter 13 Trustee opposes confirmation of the Plan for three reasons. First, the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on May 29, 2014. The Trustee does not have sufficient information to determine whether or not the cause is suitable for confirmation with respect to 11 U.S.C. § 1325. The meeting has been continued to June 26, 2014, at 10:30 am. Prior to the Meeting, Debtors' counsel contacted the Trustee's office indicating that Debtor could not attend, due to graduations scheduled for the same day. The Trustee does not oppose continuing this hearing on the Motion until after June 26, 2014.

Second, Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because the Plan relies on the Motion to Value the Secured Claim of JP Morgan Chase Bank, which is set for hearing on June 10, 2014. On that hearing date, the court continued the matter to permit Creditor JP Morgan Chase Bank, N.A. to obtain a full appraisal of the property. The Motion was continued to August 5, 2014 at 2:00 pm. Currently, the Debtor's plan does not have sufficient monies to pay the claims in full.

Third, Debtors' Plan does not provide for the secured debt of the Internal Revenue Service. Debtor lists this debt as a priority claim on Schedule E, and provides for it as a Class 5 debt through the plan. The Internal Revenue Service filed a secured claim, Court Claim No. 1, and amended the claim on May 22, 2014, with an amount of \$8,869.47 as the amount of the secured claim. While the treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that Debtors either cannot afford the payments called for under the Plan because they have additional debts, or that Debtors want to

conceal the proposed treatment of a creditor.

## **RESPONSE BY DEBTORS**

Debtors respond by stating that they will attend the continued hearing on June 26, 2014. Debtors also state that they anticipate the Motion to Value the Secured Claim of JP Morgan Chase Bank, N.A. being granted.

Because of a factual dispute over the value of the Debtor's real property, however, the Motion has been continued to August 5, 2014 to permit Creditor to obtain a residential appraisal and present its own evidence of value. Civil Minutes, Dckt. No. 44.

The Debtors state that they are "willing" to provide for the secured claim of the Internal Revenue Service by adding the following language to their plan in the order confirming:

The secured claim of the Internal Revenue Service shall be provide for as a Class 2 claim to be paid in full after payment of attorney fees.

Debtors acknowledge that the plan payment will need to be increased to \$5025 or \$35, which represents an increase of less than one percent of the plan payment, but do not propose that this revision be made in the order confirming. Because Debtors do not provide for this plan increase, and the Motion to Value the Secured Claim of JP Morgan Chase has not yet been resolved, the plan is not sufficiently funded, and does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 5, 2014. By the court's calculation, 26 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 may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is over median income and proposes plan payments of \$380.00 per month for sixty months with a 0% dividend to unsecured creditors.

Form B22C reflects \$1,171.84 per month in court-ordered payments, such as for spousal or child support payments. Education expenses are claimed at \$270.00 per month, although the Trustee has not received documentation of actual expenses. Qualified retirement deductions are claimed at \$176.84, although it is not clear from Schedule B or the Statement of Financial Affairs as to whether this is the \$7,062.00 in 2012 Debtor Pension and Annuities, or whether this is a loan from a scheduled Retirement with UCRP. Form 22C currently shows -\$316.85 as the monthly disposable income. In the event these are not allowed as to education expenses, and are reduced by \$300 per month as to court ordered payments and are disallowed as to required retirement loan repayments, Debtor's disposable income will be \$429.99.

Debtor's Schedule I lists on Line 5d a required repayment of retirement fund loans of \$175.84, and on line 5h a support payment of \$1,171.90 per month. Debtor testified at the First Meeting of Creditors held on May 29, 2014, that \$300.00 of this amount is for spousal support, and the remainder is for child support. Debtor stated that the \$300.00 spousal support will end in August 2014. If the expenses are allowed by



adjusted as to future changes, the plan payment should increase by \$300.00 in August 2014, and increase by \$175.00 when the retirement loans are paid off, which would be in 45 months if the amount of the retirement loans was the \$7,962.00 showing on the Statement of Financial Affairs, Question 2.

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.

18. [13-32449](#)-C-13    ARNULFO CHAVEZ AND MARIA    MOTION TO MODIFY PLAN  
JMC-2    ALMANZA    5-13-14 [[43](#)]  
Joseph M. Canning

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 and Debtors' Attorney on May 13, 2014. By the court's calculation, 49 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. In this instance, the Chapter 13 Trustee opposes confirmation of the modified plan on the basis that Trustee is unable to determine whether the Debtor can make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Under the confirmed plan, creditor Internal Revenue Service was scheduled as a Class 5 priority in the amount of \$15,000.00. This creditor is no longer provided for in the proposed modified Plan. The Trustee notes that no claim was filed by the Internal Revenue Service and the bar date of March 24, 2014, has passed.

#### **RESPONSE BY DEBTORS**

Debtors respond by stating that, at the time of the filing of this bankruptcy petition the Debtors believed that they owed the Internal Revenue Service approximately \$15,000.00. Dckt. No. 54. Counsel for the Debtors referred Debtors to a competent local tax professional to assist in these matters. Debtors believe that they do not owe the Internal Revenue Service any tax debt at this time, and will file amended Schedule E reflecting this.

On June 24, 2014, the Debtors filed Amended Schedules, omitting the Internal Revenue Service as a creditor. Dckt. No. 56. California Civil Code of Procedure § 703.140(b).

No Proof of Claim has been filed, and no declaration of an employee or office of the person asserting to be a creditor has been filed. Only an argument presented by an attorney. The court cannot determine the actual amount owed to the Internal Revenue Service. The Internal Revenue Service

not having shown that they are a claim holder in this case, the Plan has provided for all known creditors and complies with 11 U.S.C. §§ 1322 and 1325(a). The Motion is granted and the plan is confirmed.

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

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

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

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 May 20, 2014. By the court's calculation, 42 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 and Creditor 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 opposes confirmation of the plan for three reasons.

First, the Debtor's Plan proposes in the Additional Provisions that attorney fees be paid pro rata, but this is inconsistent with Section 2.07 of the Chapter 13 Plan, which states a dividend of \$30.50 per month for attorney fees.

The Additional Provisions of the Plan state that the Debtor will continue his ongoing monthly installment payments to the Internal Revenue Service, in the amount of \$150.00 per month. The Internal Revenue Service has filed a priority claim, which is not listed in Class 5 of the Plan (as the Internal Revenue Service has not agreed to this treatment).

The Additional Provisions of the Plan state that the Debtor will begin installment payments to the Lassen County Tax Collector in the amount of \$100.00 per month outside of the plan. Lassen County filed a secured claim in the amount of \$4,457.73 on May 19, 2014. Thus, the debt should be paid in Class 2 of the Plan.

Second, there is no specific date set for the balloon payment provided in the Additional Provisions of the Plan, which states:

The debtor entered into a real property purchase contract with the seller (Sue Terwilliger) dated 10/11/2011

indicating that a balloon payment in the amount of \$165,832.69 (est) will be due on November 15, 2018, which falls before the 60<sup>th</sup> month plan. The Debtor intends on trying to sell the property before the balloon payment is due."

Third, the Plan lists a 5% dividend to unsecured claim holders, but the Motion states that the unsecured creditors will receive a 4.5% dividend.

#### **OPPOSITION BY CREDITOR**

Creditor Sue Terwilliger appears to have filed an *ex parte* letter, exclusively addressed to the court, and not to the Debtor, the Debtor's attorney, the objecting Trustee, or other parties in interest, addressing issues with her claim, and that she stated her concerns previously with the Trustee regarding this case. Dckt. No. 61.

Ms. Terwilliger states that the Plan does not cover the ongoing property taxes, which could be approximately \$2,705.28 per year, in the treatment of her claim in the Plan. Ms. Terwilliger states that she wishes to again address "the issue of this being the second foreclosure in the last 2 years," and that Debtor "does not have an investment in this property having only lived there since February 10, 2014."

Ms. Terwilliger has filed Proof of Claim No. 6 in this case, claiming a debt owed of \$9,475.06 for delinquent payments on a mortgage note entered between Ms. Terwilliger and the Debtor, supporting her claim with a Mortgage Proof of Claim Attachment and documentation showing that Ms. Terwilliger is the obligee on a promissory note, and had transferred her deed of trust.

Ms. Terwilliger asserts that additional property taxes should be covered by the Debtor's Chapter 13 plan, but these additional charges have not been provided for in her Proof of Claim. Ms. Terwilliger has not amended her Proof of Claim, and this additional amount of taxes are not stated in the Claim. As Trustee has pointed out, however, Debtor has not provided a date for the balloon payment to be paid to Ms. Terwilliger, which renders funding of the Plan uncertain and confirmation unachievably.

Based on the foregoing, 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 the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 22, 2014. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 3533 Mission Avenue, Carmichael, California. The Debtors seek to value the property at a fair market value of \$213,276.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$233,161.83. Creditor JP Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$249,973.58. Debtors argue that the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

#### **OPPOSITION BY CREDITOR**

Creditor JPMorgan Chase Bank, N.A. ("Creditor"), essentially argues that its junior lien is not subject to avoidance under 11 U.S.C. § 506(d) because the Creditor's claim is not wholly unsecured.

Debtor asserts that the fair market value of the subject property exceeds the alleged balance owed on Debtors' First Deed of Trust. Debtors allege that the fair market value of the Subject Property is \$213,276.00, and that it is encumbered by a First Deed of Trust in favor of Bank of America, N.A. in the amount of \$233,161.00. However, Creditor believes the fair market value of the Subject Property exceeds the balance of the First

Deed of Trust.

Creditor states that it has retained a Residential Appraiser to provide a full interior and exterior appraisal of the Subject Property. Creditor states that their hired Residential Appraiser has conducted the inspection of the Subject Property, and that the Creditor is waiting for the appraisal report to be prepared. Creditor requests that this matter be continued so Creditor can obtain a verified appraisal of the Subject Property. Dckt. No. 53.

The court's decision is to continue this matter to [date] at [time] to permit the Creditor to submit an authenticated appraisal and other evidence presenting Creditor's own valuation of the property located at 3533 Mission Avenue, Carmichael, California.

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

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

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

**IT IS ORDERED** that the Motion to Value the Secured Claim of J.P. Morgan Chase Bank, N.A., is continued to [date] at [time].

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on June 5, 2014. By the court's calculation, 26 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 does not satisfy the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt assets total \$9,200.00, and Debtors propose to pay 14% to unsecured claim holders, which amounts to approximately \$7,565.00. According to Debtors' Schedules B and C, non-exempt equity exists in two vehicles: \$625.00 in a 1999 Mitsubishi Mirage, and \$8,575.00 in a 2007 Toyota Rav 4.

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

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan



is sustained and the proposed Chapter 13 Plan is not confirmed.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 5, 2014. By the court's calculation, 26 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 following grounds:

1. Debtors cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor proposes to value the secured claim of Specialized Loan Services on a second mortgages, but has not filed a Motion to Value to date.
2. Plan does not provide for the secured claim of Nationstar Mortgage on a deed of trust on the property at 5068 Oakbrook Cir., Fairfield, California. Schedule D lists a \$276,094.00 deb, and the creditor has filed an Objection to Confirmation set for July 1, 2014.

The Plan also does not provide for the secured claim of the Internal Revenue Service. Debtor's Plan provides for this creditor as a Class 5 debt for \$13,500.00. Creditor filed a claim for \$17,108.44 secured, and \$684.45 unsecured. Court Claim No. 1.

While the treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment could indicate that Debtor either cannot afford the payments called for under the Plan because they have additional debts, or that Debtor wants to conceal the proposed treatment of a creditor.

3. Debtor has claimed exemptions under California Code of Civil Procedure §703.140, and appears to be married based on Debtors' testimony at the First Meeting of Creditors held on March 6, the Statement of Current Monthly Income, Form 22C, although the spouse has not joined in the petition. California Code of Civil Procedure §703.140(a)(2) requires Debtors to file a spousal waiver, signed by Debtor and Debtor's spouse, for the use of claimed exemptions.

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).

The Trustee has had not found any such waiver failed with the court after reviewing the docket. The Trustee's Objection to Exemption, DPC-2, is set for hearing on July 22, 2014.

4. Debtor's Schedule I indicates that Debtor is employed, but fails to list the occupation, name, address of the employer, as well as the length of employment.
5. Debtor's Petition misspell's Debtor's name. The Petition indicates that Debtor's name is spelled "Byan," but Debtor's testimony at the First Meeting of Creditors and communication with the Trustee indicates that his first name is "Bryan."
6. It appears that the plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is over median income, according to Line #59 of the Statement of Monthly Income, which lists Debtor's income as \$1,500.00. Trustee objects to several deductions taken on the means test:
  - a. Line 32: Life Insurance, \$24.00, Schedule J lists an expense of \$14.00.
  - b. Line 33: Court ordered payments of \$100.00. Debtor testified that this expense ended in December 2013.
  - c. Line 35: Childcare \$100.00. This expense is not listed on Schedule I.
  - d. Line 47b: Specialized Loan second deed is \$560.00. This debt is being valued at \$0.00 according to the plan.

Based on the Trustee's calculations of Line #59, Debtor's disposable monthly income should be \$2,270.00. Based on the commitment period of 60 months, unsecured claim holders are entitled to receive \$136,200.00; however, the plan proposes to pay a 35% dividend, which amounts to \$62,531.00.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, the Chapter 13 Trustee, and Office of the United States Trustee on May 12, 2014. By the court's calculation, 20 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:

Nationstar Mortgage LLC ("Creditor") objects to the confirmation of the Debtor's Chapter 13 Plan on the following grounds:

1. Creditor states that it will file its Proof of Claim in the approximate amount of \$415,940.27, including arrearage in the approximate amount of \$143,659.39. The Creditor's claim is secured by the real property commonly known as 5068 Oakbrook Circle, Fairfield, California.  
  
Pursuant to 11 U.S.C. §1322(b) (5), the plan does not provide for the curing of the default on Creditor's claim. Debtor has not provided for the Creditor's claim. The arrearage on Secured Creditor's claim is in the amount \$143,659.39.
2. Pursuant to 11 U.S.C. §1325(a) (6), the Plan does not provide for how Debtor will be able to make all payments under the Plan and to comply with the Plan. The Plan indicates that the Debtor will make monthly payments of \$1,500.00 for 60 months to the Trustee for a base plan amount of \$90,000.00. However, according to the Debtor's Schedules, Debtor has a monthly net income of only \$1,364.00--this amount will be insufficient to fund the plan once the arrears on

Secured Creditor's claim, an additional \$143,659.39, is fully provided for.

Based on the foregoing, and the Trustee's Objection to confirmation of the Plan as sustained by the court, DPC-1, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The instant objection is sustained and the Plan is not confirmed.

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

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

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

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

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

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

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

#### **PROCEDURAL HISTORY**

On March 25, 2014, the court heard and granted this Motion to Relief from the Automatic Stay, filed by Creditor Seterus, Inc. No opposition was presented at the hearing, prompting the court to enter the defaults of the Debtor and the non-responding parties in this matter.

On April 30, 2014, Debtor filed a Motion to stay a foreclosure sale and reinstate the automatic stay. Debtor argued that she was current on her plan and that a motion to confirm was set for June 3, 2014. The court granted the Motion on the grounds represented by Debtor and vacated the Order granting the Motion for Relief from Stay.

The Motion was reset for hearing on June 3, 2014 to be heard in conjunction with Debtor's Motion to Confirm. Both motions were continued to June 10, 2014. Disposition of the Motion for Relief from Stay is contingent on the court's determination on the Motion to Confirm. At the June 3, 2014 hearing, the court permitted a one-week continuance to see if Debtor could cure the delinquency holding her back from plan confirmation.

At the June 10, 2014 hearing, the court decided to continue the hearing on this matter for a final time to permit the Debtor to present competent, credible evidence of her payments in this case, and to further

demonstrate that she is prosecuting her case in good faith. The court ordered the Chapter 13 Trustee to disburse \$4,035.00 to the movant by June 20, 2014, as an adequate protection payment. Civil Minutes, Dckt. No. 85.

## REVIEW OF THE MOTION

Seterus Inc. seeks relief from the automatic stay with respect to the real property commonly known as 4321 Greenholme Drive, Sacramento, California. The Motion states with particularity (Fed. R. Bank. P. 9013) the following grounds and relief:

- A. The beneficial interest in a Deed of Trust which secures a Note, which are the subject of the Motion, has been assigned to Movant. Movant does not assert that it has been assigned the Note. FN.1.

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FN.1. It is well established that a purported assignment of security, without an assignment of the underlying obligation which is secured, is a nullity. *Cervantes v. Countrywide Home Loans, Inc. et. al.*, 656 F.3d 1034, 9th Cir. 2011); *Carpenter v. Longan*, 83 U.S. 271, 274 (1872); accord *Henley v. Hotaling*, 41 Cal. 22, 28 (1871); *Seidell v. Tuxedo Land Co.*, 216 Cal. 165, 170 (1932); Cal. Civ. Code § 2936. From the totality of the pleadings, the court understands Seterus, Inc., to be a servicing agent for Federal National Mortgage Association, and not that Seterus, Inc. asserts to have an interest in the Note itself, which note is secured by the Deed of Trust. The court accepts the loan servicing company as being a real party in interest for a motion for relief from the automatic stay.  
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- B. The Debtor defaulted on the Note, and a loan modification agreement was entered into on or about September 8, 2012.
- C. On February 1, 2013, Debtor defaulted on the obligation, and has failed to make any payments on the note since February and after February 2013.
- D. The arrearage in payments on the Note for the period December 1, 2013 through February 1, 2014 total \$2,400.93.
- E. No post-petition payments have been made to Movant.
- F. The principal amount due and owing on the Note is \$129,274.36 and there is also an additional deferred principal of \$56,479.13 owed under the modification Agreement.
- G. It is asserted that, based on the Debtor's schedules, the fair market value of the real property securing Movant's claim has a value of \$141,611.00.
- H. After deducting costs of sale, the "sum securing the lien of creditor" and the homestead exemption, there is "little or no equity in the Property." (The Motion does not allege how the Debtor's exemption amounts are not "equity in the property").

Motion, Dckt. 34.

The moving party has provided the Declaration of Kerry Robinson to



introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Robinson Declaration states that the Debtor has not made three (3) post-petition payments, with a total of \$2,400.93 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$185,753.46, as stated in the Robinson Declaration and drawn from the Loan Modification Agreement (Exh. D, Dckt. 38), while the value of the property is determined to be \$141,611, as stated in Schedules A and D filed by Debtor.

**Chapter 13 Trustee Response**, filed 02/18/14 (Dckt. 40)

Chapter 13 Trustee notes that Debtor is delinquent \$1,105.00 and the plan is not confirmed. Debtor has paid a total of \$1,105.00 to date. The Trustee will disburse \$807.00 to Seterus on February 28, 2014.

**Supplement to Motion for Relief From Automatic Stay**, filed 3/6/14 (Dckt. 48)

On March 6, 2014, Movant filed a supplement to its Motion for Relief from Automatic Stay, clarifying that it is seeking relief from the stay under 11 U.S.C. §§ 362(d)(1) & (2).

**DISCUSSION**

Federal Rule of Bankruptcy Procedure 9013 requires Movant to state with particularity the grounds for relief or order sought. FRBP 9013. Here, Movant provides the court with information concerning the subject property and related debt and, through the supplement, provided the court the grounds upon which it is seeking relief.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court vacated its previous order based on Debtor's representations that she was no longer delinquent and planned on presenting the court a confirmable plan on June 3, 2014. A review of the plan and the Trustee's objection to the plan illustrates that Debtor is not current on plan payments and may not be able to afford the plan payments. The court is prepared to enter an order denying the Motion to Confirm on June 3, 2014.

Although the Motion for Relief proceeding has been reopened, Debtor has not filed any further documents or evidence showing that she is attempting to become current on her plans on the Creditor's note, or have upheld her payment obligations on the loan modification agreement that she entered with Creditor in 2012, or has tried curing the arrearage on the Creditor's claim.

Debtor has not followed through on the "changed circumstances" that she argued existed in the Motion to Stay Foreclosure sale and the court's decision is to grant the Motion for Relief from Stay.

Nothing further has been filed on the docket reflecting that Debtor has made the necessary payments to cure her delinquency on the subject not. At this time, the court is not aware that the delinquency is cured and the tentative decision to grant the Motion for Relief From Stay remains unchanged.

The court shall issue a minute order terminating and vacating the automatic stay to allow Seterus, Inc., and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

No other or additional relief is granted by the 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 for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Seterus Inc., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 4321 Greenholme Drive, Sacramento, California.

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on April 29, 2014. By the court's calculation, 35 days' notice was provided. 42 days' notice is required.

**Tentative Ruling:** The Motion to Confirm the Plan has not been properly 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 court's tentative decision is deny the motion to confirm.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **Prior Hearings**

The court first heard this matter on June 3, 2014. At that hearing, Debtor represented she would cure the remaining delinquency by June 10, 2014. The court continued the hearing on the matter to June 10, 2014. The hearing on Confirmation is set simultaneously with a Motion for Relief from Stay filed by Seterus, Inc. (DJD-1).

At the June 10, 2014 hearing, the court continued the Motion to Confirm to this date to afford the Debtor an additional opportunity to file a supplemental declaration providing an accounting of all payments to the Trustee, and to provide evidence of her ability to make plan payments (Debtor's current financial information shows only \$1,100 a month in disposable income to make a \$1,300 a month payment proposed in the Plan). Civil Minutes, Dckt. No. 86.

Debtor has not presented evidence that the delinquency was cured and; therefore, the court's tentative decision to deny the Motion to Confirm remains unchanged.

#### **Chapter 13 Trustee Opposition**

The Chapter 13 Trustee opposes confirmation on the following grounds:

(1.) Debtor is \$1,305 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$1,325.00 is due on May 25, 2014. Debtor has paid \$5,320.00 into the plan to date.

(2.) Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor's monthly projected disposable income listed on Schedule J reflects \$1,150, however, Debtor is proposing a plan payment of \$1,325 per month.

(3.) Debtor proposes paying the Class 1 on-going mortgage payment and arrears. Creditor's Motion for Relief is pending and set to be granted on June 3, 2014.

The court's decision is to deny the Motion to Confirm. Debtor's plan does not comply with the requirements for Chapter 13 plan confirmation, as detailed by the Chapter 13 Trustee.

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 denied.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, the Chapter 13 Trustee, all creditors, and the Office of the United States Trustee on May 14, 2014. 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. In this instance, the Chapter 13 Trustee opposes confirmation of the proposed modified plan for two reasons.

First, it appears that the Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor is delinquent \$440.00 under the terms of the proposed modified plan. According to the Plan, payments of \$30,840.00 have become due. The Debtor has paid \$30,400.00 to the Trustee with the last payment posted on May 27, 2014 in the amount of \$1,600.00.

Second, the Motion to Confirm the Modified Plan may not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. Debtor's Motion does not provide any reason for the modification or any of the terms of the modified plan.

Third, Debtor's Declaration, Dckt. No. 72, provides that the basis of the modification is due to the confirmed plan's inability to complete in 60 months, leading to the need for an increased plan payment. The declaration does not, however, provide any details regarding the increased plan payment or how Debtors are able to afford it. Their Amended Schedule J reflects a reduction in food and housekeeping supplies from \$900.00 to \$680.00, and 2 dependents.

Additionally, Trustee is uncertain as to whether a \$220.00 reduction in food and housekeeping supplies is reasonable for a family of four. The

national standard for allowable food expenses for a family of 4 is \$794.00, and the standard for housekeeping supplies is \$74.00, for a total of \$868.00. Debtors are budgeting \$680.00.

### **MOTION DOES NOT COMPLY WITH THE REQUIREMENTS OF FRBP 9013**

The Motion to Confirm the Modified Plan does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion merely states that Debtors have filed a Modified Plan that complies with the applicable law, and that Debtors are proposing the plan in good faith. Debtors state that they have proposed a plan that provides unsecured creditors with what they would at least receive in the even of a Chapter 8 liquidation, and that the plan meets the requirements of 11 U.S.C. §§ 1322, 1323, and 1325. This is not sufficient.

Debtors have not stated why they seek to modify the terms of their plan, or discuss the terms of the proposed modified Plan. Dckt. No. 70. Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure 9013, the bankruptcy court in *In re Weatherford*, 434 B.R. 644 (N.D. Ala. 2010), applied the general pleading requirements enunciated by the *United States Supreme Court in Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007), to the pleading with particularity requirement of Bankruptcy Rule 9013. The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court.

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

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

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

from the bankruptcy estate), motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

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

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

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

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

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

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

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

Based on the foregoing, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 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.



27. [14-24289](#)-C-13 ISAAC NYDEN AND CAROLA  
ALICE MAY  
Mikalalah R. Liviakis

OBJECTION TO CONFIRMATION OF  
PLAN BY DAWN LORRAINE MCGRATH  
6-5-14 [[40](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and the Chapter 13 Trustee on June 5, 2014. By the court's calculation, 36 days' notice was provided. 14 days' notice is required.

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

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

Creditor Dawn Lorraine McGrath ("Creditor") joins the Trustee in opposing confirmation of the proposed Plan. Creditors state that the Debtors have mischaracterized the secure debt of Dawn Lorraine McGrath. The Debtors disclosed their \$33,088.25 debt to Dawn Lorraine McGrath on Schedule F. As stated in the Trustee's Objection (Dckt. No. 28, pages 2-3), Ms. McGrath recorded an Abstract of Judgment with the Solano County Recorder on March 11, 2014. In addition, on March 20, 2014, Ms. McGrath recorded a Notice of Judgment Lien with the California Secretary of State, securing her debt against all of Debtors' personal property.

Creditor also argues that Debtors' business income has not been adequately disclosed. The Debtors may not be able to make the plan payments required under 11 U.S.C. § 1325(a)(6) because the Profit and Loss Statement provided by the Debtors to the Trustee indicates that Dahliana, LLC's net income for the six months of October 1, 2013 through April 1, 2014 is negative \$2,914.80.

However, the Profit and Loss Statement also indicates that Debtors are paying investor Mathew Brown \$500.00 per month. The Profit and Loss Statement business expenses do not include Mr. Brown's payment. As such, the net income for the business should be \$3,000 less, or negative \$5,914.80.

Based on Debtors not disclosing the recorded judgment of Creditor as

a secured debt, and business income not included in the Debtors' Profit and Loss Statement, 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.

28. [14-24289](#)-C-13 ISAAC NYDEN AND CAROLA  
DPC-1 ALICE MAY  
Mikalah R. Liviakis

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
6-4-14 [[28](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on June 4, 2014. By the court's calculation, xx 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 following grounds:

1. The plan may not be Debtors' best efforts under 11 U.S.C. § 1325(b). Debtors Statement of Monthly Income, Form 22C, indicates on line 4a gross rental income of \$600.00 per month. Schedule I does not disclose rental income. Attachments to Schedule I do not list any rental income or expenses. Debtors testified at the First Meeting of Creditors held on May 29, 2014, that the property at 910 Branciforte Street, Vallejo, is rented out and Debtors receive gross rent of \$1,250.00 per month.
2. Debtors rent additional property which is not disclosed. Debtors testified at the First Meeting of Creditors that they are renting a residential property at \$1,250.00 per month, and this property is not the Debtors' street address on Debtors' Petition, Schedule J, does not disclose this \$1,250.00 rent expense.

Debtors' Schedule I lists net business income on line 8a of \$1,200.00 for Debtor Isaac Nyden, and \$1,350.00 for Debtor Carola May, as well as net income on Line 8h of \$100.00 from the business "Dahlia." Debtors testified at the First Meeting of Creditors that Dahlia has negative income each month, and they do not have

the net income listed on Schedule I. Profit and Loss Statement provided to the Trustee indicates that the net income for the six months of October 2013, to April 2014 in negative \$2914.80. Debtors' 2013 federal tax return indicates a business loss of Dahliana of -\$16,950.00.

3. Debtors may have omitted or mischaracterized debts. While the Debtor did disclose an unsecured debt of \$3,,088.25 to Dawn McGrath on Schedule F, a preliminary search of the public records of the Solana County Recorder shows the creditor recorded an abstract of judgment on March 11, 2014, and while the Debtor scheduled a first mortgage and an additional secured debt against the real property, Debtor did not list the date the second mortgage on the property was incurred on Schedule D.
4. Debtors' Plan may not be Debtors' best effort because Debtor claims deductions as "special circumstances" on line 47 of Form 22C, claiming attorney fees of \$70.00 per month, an old car expense of \$200.00, \$381.20 for unitemized business expenses of Dahliana LLC, \$2,008.00 for unitemized business expenses of Skin Studio, and \$2,600.00 for unitemized business expenses of the Handy House Man. Debtor has not provided the case Trustee with adequate explanation of these expenses, and Debtor has not proven these expenses to be reasonable and necessary.

Without these claimed expenses, Line 59 on Form 22C would require \$2,738.48 to unsecured claim holders. Schedule I provides a breakdown for only two of the business, and includes rent, utilities, repairs, and maintenance, vehicle expenses, and travel and entertainment of \$3,120.00.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on June 5, 2014. By the court's calculation, 26 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 following grounds:

1. Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). The Debtors propose to value the secured claims of Bank of America, but have not filed a Motion to Value to date.
2. The Plan does not meet the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt assets total \$1,883.00 and Debtors propose to pay 0% to unsecured creditors. According to Debtors' Schedules B and C, Dckt. No. 1, non-exempt equity exists in two vehicles: \$915.00 in a 2004 Toyota Sequoia, and \$968.00 in a 2007 Camry.
3. Debtors may not be able to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors' Schedule I indicates that both Debtors are not employed, but lists wages for Debtor Myrna Estacio of \$2,672.00 per month. Debtor testified at the First Meeting of Creditors held on May 29, 2014, that she was laid off on November 2013, and her employer is paying her severance pay, not wages. Debtor also testified that this severance pay will end in July 2014. Debtors will not have the ability to make the plan payments once the severance pay ends.

4. Debtors' Schedule B does not disclose Debtor's severance pay as an asset.

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.

30. [13-25008](#)-C-13 TERENCE CAMPOLIETI  
[14-2008](#)  
CAMPOLIETI, SR. V. PNC  
MORTGAGE, INC. ET AL

CONTINUED STATUS CONFERENCE RE:  
COMPLAINT  
1-8-14 [[1](#)]

Continued to August 20, 2013 at 1:30 p.m.

31. [13-25008](#)-C-13 TERENCE CAMPOLIETI  
[14-2008](#) AAB-1  
CAMPOLIETI, SR. V. PNC  
MORTGAGE, INC. ET AL

CONTINUED MOTION TO STRIKE  
PORTIONS OF PLAINTIFF'S  
COMPLAINT  
3-11-14 [[11](#)]

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

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

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

**The court's decision is to deny the Motion to Strike as moot.** No appearance is required. The court makes the following findings of fact and conclusions of law:

Movant is the Defendant above-referenced adversary complaint. The adversary was filed by was filed on January 9, 2014 alleging, among other things, breach of contract which Plaintiff and Defendants had properly entered and to which both parties were now bound (loan modification agreement on Plaintiff's residence). After the contract had been properly consummated, Defendants allegedly breached their contractual obligations under the loan modification agreement.

On March 11, 2014, Defendant filed a Motion to Strike portions of Plaintiff's complaint. Plaintiff filed a response on DATE.

On April 29, 2014 this Court heard Defendants' Motion to Dismiss the complaint. The court granted the Motion to Dismiss and further ordered that Plaintiff could file the herein Motion for Leave to Amend his Complaint no later than May 29, 2014. Plaintiff is now doing so.

As the Motion to Strike is relevant to the original complaint and Plaintiff is seeking leave of the court to file an amended complaint, the Motion to Strike is no longer relevant and will be 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 Strike filed by Defendant[s] having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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