

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Christopher M. Klein**  
Chief Bankruptcy Judge  
Sacramento, California

**July 22, 2014 at 2:00 p.m.**

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1. [14-21205](#)-C-13 JOHN/PATRICIA MELMS MOTION TO CONFIRM PLAN  
DBJ-1 Douglas B. Jacobs 5-23-14 [[38](#)]  
**Thru #2**

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, all creditors, parties requesting special notice, and Office of the United States Trustee on May 23, 2014. By the court's calculation, 60 days' notice was provided. 42 days' notice is required.

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

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

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

1. Debtors are \$5,801.50 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$5,160.00 is due on July 25, 2014. The case was filed on February 10, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25<sup>th</sup> day of each month, beginning the month after the order for relief under Chapter 13. Debtors have paid \$13,555 into the Plan to date.
2. It appears that the Plan is not the Debtors' best effort under 11 U.S.C. § 1325(b). Debtors are under median income and propose plan

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payments of \$9037.00 to be paid through April 2014 (2 months), then payments of \$5,160.00 for 58 months with a 0% dividend to unsecured claim holders. The Debtors' 2012 income tax return provided to the Trustee shows that Debtors received an income tax refund of \$8,359.00; however, Debtor does not provide for future tax refunds to be paid into the Plan for the remainder of the 60 month plan, or make changes to his income tax withholdings so that he does not receive such a large refund.

3. Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors' plan relies on the Motion to Value to the Collateral of Real Time, DBJ-2, which is set for this same hearing date. The Motion to Value the Secured Claim of Real Time is granted by this court, thereby resolving this part of the Trustee's objection to the proposed plan.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 43 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 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 tentative decision is to deny the Motion without prejudice.**

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

Debtors seek to value the secured claim of Real Time Resolutions, Inc., which is secured by a second deed of trust on real property located at 1280 Virage Lane, Chico, California. The motion is accompanied by the Debtors's declaration. The Debtors is the owner of the subject real property commonly known as 1280 Virage Lane, Chico, California. The Debtors seeks to value the property at a fair market value of \$260,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust, held by Wells by an unknown entity that Debtors call "Wells Fargo Bank/ Select Portfolio Servicing." secures a loan with a balance of approximately \$345,562,99. "Creditor" Real Time Resolution Inc.'s second deed of trust secures a loan with a balance of approximately \$58,815.74. The respondent creditor's claim secured by a junior deed of trust appears to be completely under-collateralized. Debtors argue that the creditor's secured claim should be 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).

Debtors seek to value the collateral of "Real Time Resolutions, Inc." However, it has been repeatedly represented in this court that loan servicing companies and debt collection agencies such as Real Time Resolutions, Inc. are not creditors (as that term is defined by 11 U.S.C. § 101(10)), but are mere servicing agents with no ownership of or in the secured claim. To state that the Second Deed of Trust is held by Real Time Resolutions, Inc. and that the first deed of trust in the subject property is held by Select Portfolio Servicing indicates that Debtors have no knowledge of who the actual creditor in interest is who holds the claims secured by the first and second deeds of trust.

A review of the claims registry shows that Real Time Resolutions, Inc. filed Proof of Claim No. 2 on March 6, 2014. In the claim, the respondent entity Real Time Resolutions identifies itself as an "AGENT FOR THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS SUCCESSOR TO JPMORGAN CHASE BANK, N.A., AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWHEQ RESOLVING HOME EQUITY LOAN TRUST SERIES 2006-1." It appears from this identification that Real Time Resolutions is acting on behalf of another entity, which is the actual owner of the subject deed of trust, the identity of which has not been disclosed to this court.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtors provide no evidence for the court to determine who the proper creditor is on this loan. The Debtors do not testify that they borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred from a certain creditor to Real Time Resolutions, Inc. The Debtors do not provide the court with any discovery conducted to identify the creditor holding the claim secured by the second deed of trust.

No assignment or transfer of claim appears on the docket transferring any interest to Real Time Resolutions, Inc. The court is not certain how Debtors can name Real Time Resolutions, Inc. as the actual lender for an obligation that appears to be owed to another originating entity. The court will not approve a Motion to Value that will not be effective against the actual owner of the obligation.

Thus, the Motion to Value the Secured Claim of Real Time Resolutions, Inc. Is denied without prejudice.

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

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

The Motion for Valuation of Collateral filed by 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 is denied

without prejudice.

3. [14-23407](#)-C-13 CHRISTIAN/AGATHA OKOYE MOTION TO CONFIRM PLAN  
EJS-2 Eric John Schwab 6-3-14 [[28](#)]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2014. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the chapter Trustee objects to confirmation of the Debtors' plan on the basis that it is not the Debtors' best efforts under 11 U.S.C. § 1325(b).

The Trustee's previous Objection, DPC-1, Dckt. No. 23, was sustained by this court at the hearing held on June 24, 2014. The Debtors have filed an amended Plan, with Amended Schedules I and J. Dckt. No. 31.

Debtors are above median income, and propose a plan that pays \$508.00 for 60 months with 17% to the estimated unsecured claims of \$119,439.00. Form 22c reflects a negative \$115.36 on line 59, Dckt. No. 1, Page 48, line 49, but also reflects a tax expense of \$3,081.78, which almost matches Schedule I, Dckt. No. 31, Page 3, Lines 5a, and the Debtor normally gets a tax refund as set for the below.

#### **Increase in Debtors' Expenses**

Debtors' Amended Schedule I reduces Line 5e for Insurance by \$1,475.00, thus resolving the Trustee's concern regarding Mr. Okoye's net income. At the same time, the Debtor has proposed increased expenses. The Declaration of Debtors, Dckt. No. 30, states in part that the budget was adjusted to correct certain inaccuracies, and the budget contained several errors.

Debtors have not provided documentary evidence such as bills or receipts to prove these expenses where these expenses were discovered at the same time the Debtors admitted that the Debtors' income was higher. Debtors have increased their total monthly expenses by \$1,217.00 per month, when they increase their income after taxes by \$1,475.00. The plan payment has increased from \$250.00 to \$508.00 per month.

**Tax Refunds**

Debtors have not resolved the tax refund concerns listed in the prior Trustee's Objection to Confirmation as to the following: Debtors received \$4,375.00 in federal tax refunds based on their total tax payments of \$16,927.00, where only \$12,552.00 taxes were due. Of the \$4,375.00 refund, \$1,499.00 was from the Child Tax Credit, since the Debtors' dependents as reported on Schedule J are ages 8, 10, and 13, and the fact that Debtors are retaining their real property, it appears that their tax deductions in the future are likely to remain the same or similar.

If the Debtors included this income in their monthly income calculation, dividing the income monthly, they would have at least \$364.58 per month in additional income. Continued tax refunds appear likely, and Debtors' income should be adjusted to either reflect the tax refund income or a lower tax expense.

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

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

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

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

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

4. [14-24908](#)-C-13 RUBEN/VERONICA BEDOLLA  
DPC-1 Susan B. Terrado  
**Thru #5**

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P CUSICK  
6-18-14 [[23](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on June 18, 2014. By the court's calculation, 35 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 overrule the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtors cannot afford the payments or comply with the plan under 11 U.S.C. § 1325(a) (6). Debtors' plan relies on the pending Motion to Value the Secured Claim of RBS Financial Products, Inc., which is set for hearing on this same hearing date.

The court is granting Debtors' Motion to Value the Secured Claim of RBS Financial Products, Inc., SBT-1, thus resolving the Trustee's singular objection to the Debtors' proposed plan. The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a), and the objection is overruled.

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,

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

5. [14-24908](#)-C-13 RUBEN/VERONICA BEDOLLA MOTION TO VALUE COLLATERAL OF  
SBT-1 Susan B. Terrado RBS FINANCIAL PRODCUTS, INC.  
5-28-14 [[17](#)]

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

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

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

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

Debtors move for an order valuing the security on their property located at 1246 Breckinridge Dr. Fairfield, California under Federal Rule Bankruptcy Procedure §3012 and 11 U.S.C. §506(a).

The motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 1246 Breckinridge Dr. Fairfield, California. The Debtors seek to value the property at a fair market value of \$375,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$554,275.94. Creditor RBS Financial Products, Inc.'s second deed of trust secures a loan with a balance of approximately \$49,712.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be

made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of RBS Financial Products, Inc. secured by a second deed of trust recorded against the real property commonly known as 1246 Breckinridge Dr. Fairfield, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$375,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

6. [14-26309](#)-C-13 JAMES MASON  
EJS-1 Eric John Schwab

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
6-18-14 [[10](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 18, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7324 Fleming Avenue, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$75,000.00. as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$80,268.00. Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$47,018.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 7324 Fleming 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 \$75,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2014. By the court's calculation, 46 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 plan on the basis that the Debtor is delinquent \$228.00 under the proposed plan.

The case was filed on January 16, 2014, and five payments have come under the plan; payments totaling \$1,070.00 have become due under the proposed modified plan, which states that "Debtor shall pay the Trustee a total of \$956.00 through month 4, and then beginning in month 5, debtor shall pay the Trustee \$114.00 per month for the remaining 32 months." Debtor has paid the Trustee \$842.00 with the last payment of \$114.00 posted on April 30, 2014.

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.

8. [14-23313](#)-C-13 PAUL/LYNDA FANFELLE CONTINUED OBJECTION TO  
DPC-1 Peter G. Macaluso CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
5-27-14 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on May 27, 2014. By the court's calculation, 28 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:

#### **JUNE 24, 2014 HEARING**

The court decided to continue the hearing to this hearing date because the parties had apparently reached an agreement to make plan amendments which would resolve the Trustees objection. Civil Minutes, Dckt. No. 29.

#### **REVIEW OF OBJECTION**

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

1. Debtors' Plan does not meet the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a) (4). Debtors' non-exempt equity totals \$2,765.00, and the Debtors are proposing a 1% dividend to unsecured claim holders. Debtors list real property at 1141 El Sur Way, Sacramento, California, on Schedule A with a value of \$1. The Debtor has provided the Trustee no estimated value to determine the

liquidation analysis.

To determine the value of the Debtors' primary residence, an assistant to the Trustee visited the Sacramento County Assessor's office website's assessorparcelviewer.saccounty.net. The website offers assessed values of real property. The most recent assessed values are dated September 30, 2013. As of that date, Debtors' property had an assessed value of \$738,282.

On Schedule D, Debtors list Wells Fargo Home Mortgage as lien holder on their residence at 1141 El Sur Way, Sacramento, but fail to list a lien amount. On May 19, 2014, HSBC/ Wells Fargo Home Mortgage filed Court claim No. 8, which indicates a lien totaling \$625,166.93 is secured by the real property. It appears based on this information that the debtors have equity in real property that is not disclosed.

Debtors report that their assets are held in the Paul and Linda Fanfelle Family Trust and that the trust pays the ongoing mortgage payments toward the mortgage. Other property included in the trust is real property at 10200 Tinkers Court, Truckee, California, the contents of their residence, all other real property, all bank accounts, stock brokerage and other financial and securities accounts of any kind, including Wells Fargo Checking Accounts Nos. 3458, 7671, and 5585, which are not reported on Schedule B, Wells Fargo Savings Accounts Nos. 0783, 9396, and 2142, which are not reported on Schedule B and retirement accounts, pensions, and 401 accounts including Wells Fargo Nos. 2542, 3434, and 5738 which are also not disclosed on Schedule B.

2. Trustee argues that the Plan is not the Debtors' best efforts. Lynda Fanfelle operates multiple business, including three separate locations of yogurt shops, which appear to be operating at a loss each month. The Trustee has, however, received insufficient information relating to the businesses to determine the totality of the circumstances and has therefore, at the scheduled first meeting of creditors, continued the meeting as to Debtor Lynda Fanfelle to June 19, 2014 at 10:30 am to allow Debtor to supply sufficient information relating to each business and the income and expenses generated from such.
3. It appears that the attorney of record is Peter Macaluso, but the documents were not signed by counsel, so the Trustee is unable to confirm representation.
4. Schedule A lists liens against real property at 10200 Tinkers Court, Truckee, California totaling \$68,729.62. On Schedule D, Debtors report only a tax lien held by Nevada County for \$1,279.62. It appears that Debtors have not listed all debts related to this property.

At the Meeting of Creditors held on May 22, 2014, Debtors indicated that Mesa Leasing, Inc. listed on Schedule D as a lease cure-Arden, has an interest in the property which is in a trust. Debtors indicated that they used their Trust property as collateral to secure the lease. The Debtors' lost is also an asset of the Paul and Linda Fanfelle Family Trust, and the Trustee is not certain what

property in the Trust and what debts are owed against the property.

No stipulation or settlement agreement has been filed by the Debtors or the Chapter 13 Trustee, however, showing that the parties have resolved the Trustee's original objection to the proposed plan. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

Local Rule 9014-1(f)(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, all creditors, parties requesting special notice, and Office of the United States Trustee on May 23, 2014. By the court's calculation, 61 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. Here, the Chapter 13 Trustee opposes confirmation of the proposed modified plan on the following grounds:

1. Debtors' modified plan proposes a plan payment of \$320.00 per month, commencing on March, 2014. March, 2014, is month 14; Debtors do not expressly provide for payments for months 1 through 13, although \$2,700 has been paid into the Trustee during that period. Trustee requests that the order confirming expressly provide for the prior plan payments made.
2. Debtors are proposing to increase the plan payment from \$300 to \$320.00. Debtors have not filed supplemental Schedules I and J to reflect how they will afford the increased payment; their current schedule J provides for a monthly net income of \$302.00. Trustee filed a Notice of Default on December 12, 2013, and Motion to Dismiss on April 28, 2014, for delinquency.

It is unclear to Trustee how Debtors will afford an increased plan payment when they have been delinquent in the past with lesser payments. Debtors' Motion, Declaration, and Motion for Loan Modification indicate that they are arranging for payments to be paid directly from their checking account.

Additionally, Debtors' prior Schedule I states, "Income is increasing from Rental, spouse will likely increase his income." Debtors' prior Schedule J states "Child support ends in June 2014." Debtors' Schedule J budgets \$400.00 for this expense, so Debtors may

have significant additional income.

3. Trustee is uncertain whether Debtors' modified plan provides for the claim of Franchise Tax Board filed April 23, 2014. Debtors' Schedule E includes Franchise Tax Board regarding account number 3802 in the amount of \$714.28, of which \$571.41 is entitled to priority status, and \$142.87 is unsecured. Account number 3802 would reflect the last four digits of Verlana Keller's social security number.

Debtor's modified plan includes Franchise Tax Board in Class 5 for \$571.41. However, the claim of Franchise Tax Board lists Robert D. Keller as the Debtor, and includes an account number of 2220, which are the last four digits of Robert Keller's social security number. The claim is filed for \$8,571.34, of which \$1,575.00 is entitled to priority status, and \$6,996.34 is unsecured.

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.

10. [14-25918](#)-C-13 JERRY/SHARON CALL  
MET-1 Mary Ellen Terranella  
**Thru #13**

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
6-15-14 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 15, 2014. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 1006 Nightingale Drive, Fairfield, California. The Debtors seek to value the property at a fair market value of \$205,300.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$259,018.00. Creditor Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$60,820.00. 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 Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 1006 Nightingale Drive, Fairfield, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$205,300.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

11. [14-25918](#)-C-13 JERRY/SHARON CALL  
MET-2 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF  
ETRADE  
6-15-14 [[19](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 15, 2014. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

**The Motion is granted and creditor's secured claim is determined to be \$18,150.00. No appearance required.**

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of a 2004 Winnebago Minnie motor home. The Debtors seek to value the property at a replacement value of \$18,150.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2004, more than 910 days prior to filing of the petition, with a balance of approximately \$33,707.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$18,150.00. *See 11 U.S.C. § 506(a)*. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of ETrade secured by an asset described as a 2004 Winnebago Minnie motor home is determined to be a secured claim in the amount of \$18,150.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$18,150.00 and is encumbered by liens securing claims which exceed the value of the asset.

12. [14-25918](#)-C-13 JERRY/SHARON CALL MOTION TO VALUE COLLATERAL OF  
MET-3 Mary Ellen Terranella U.S. BANK, N.A.  
6-15-14 [[24](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 15, 2014. By the court's calculation, 38 days' notice was provided. 28 days' notice is required.

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

**The Motion is granted and creditor's secured claim is determined to be \$8,860.00. No appearance required.**

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of a 2004 Harbercraft Jetcrat 21' aluminum fishing boat. The Debtors seek to value the property at a replacement value of \$8,860.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the boat's title secures a purchase-money loan incurred in 2004, more than 910 days prior to filing of the petition, with a balance of approximately \$17,489.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$8,860.00. *See 11 U.S.C. § 506(a)*. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of U.S. Bank, N.A. secured by an asset described as a 2004 Harbercraft Jetcrat 21' aluminum fishing boat is determined to be a secured claim in the amount of \$8,860.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$8,860.00 and is encumbered by liens securing claims which exceed the value of the asset.

13. [14-25918](#)-C-13 JERRY/SHARON CALL  
MET-4 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF  
TRAVIS CREDIT UNION  
6-15-14 [[29](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 15, 2014. By the court's calculation, 38 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 failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to deny the Motion to Value the Collateral of Travis Credit Union.** 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 a 2012 Jeep Patriot. The Debtors seek to value the property at a replacement value of \$14,550.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

However, Debtors have not established that underlying debt is not a purchase-money loan acquired within the 910-day period prior to the filing of the petition. If so, Debtors are statutorily unable to prevail on this motion to value collateral pursuant to 11 U.S.C. §1325(a). Given that this is a standard requirement for this type of motion, presumably counsel's vehicle secured claim valuation for has that as a standard paragraph - which has been deleted from this motion rather than an affirmative allegation that the debt was not incurred within the 910-day period.

The lien appears to secure a loan incurred in December of 2012, which is at least 518 days from the filing of the petition on June 2, 2014. Given that Debtors' counsel is experienced in handling Chapter 13 bankruptcy cases and has appeared many times before this court to prosecute routine Motion to Value Secured Claims, the court is troubled by Debtors' counsel's apparently intentional omission of the fact that this debt was incurred less than 910 days before the petition filing date.

Debtors' counsel is well aware that this Motion cannot be granted absent a showing that the lien on the vehicle's title secures a purchase-money loan was incurred more than 910 days prior to filing of the petition, and that the respondent's claim is under-collateralized. Debtors' counsel's

omission can indicate bad faith in prosecuting the present Motion and an attempt to file a frivolous motion, which is wasting the court's and her clients' time and resources and may constitute sanctionable behavior.

The Debtors have not stated the prima facie case for the requested relief. See Fed. R. Bankr. P. 9013. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

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

The Motion for Valuation of Collateral filed by 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 Travis Credit Union is 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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 22, 2014. By the court's calculation, 61 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). A 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. Here, Creditor Wells Fargo Bank, N.A. opposes confirmation of the proposed plan.

#### **OPPOSITION BY CREDITOR**

Creditor Wells Fargo Bank, N.A., argues that Debtor cannot fulfill her burden of proof that the proposed plan satisfies all the requirements of 11 U.S.C. §1325 so that the plan is considered confirmable. See, *In re Welsh*, 465 B.R. 843, 847 (B.A.P. 9th Cir. 2012); *In re Hill*, 268 B.R. 548, 552 (B.A.P. 9th Cir. 2001). Creditor asserts that the Plan does not provide sufficient treatment for the Creditor's secured claim pursuant to Section 1325(a).

Debtor proposes to pay no interest on Wells Fargo's arrearages. As of the Petition filing date, the interest rate under the Note is 6.00%. Debtor refusal to pay interest on Wells Fargo's claim secured by a Deed of Trust on the Property warrants denial of the confirmation of the Plan.

The Supreme Court has ruled that the proper rate of interest to be paid under these circumstances involves a calculation that starts with the prime rate and then adjusts it upward depending on risk in the case:

Because bankrupt debtors typically pose a greater risk of nonpayment than solvent commercial borrowers, the approach then requires a bankruptcy court to adjust the prime rate accordingly. The appropriate size of that risk adjustment depends, of course, on such factors as the circumstances of

the estate, the nature of the security, and the duration and feasibility of the reorganization plan. The court must therefore hold a hearing at which the debtor and any creditors may present evidence about the appropriate risk adjustment.

*Till v. SVS Credit Corp.*, 541 U.S. 465, 479 (2004).

Section 1325(a)(5)(A) provides that the Court shall confirm a plan if, "with respect to each allowed secured claim provided for by the plan, the holder of such claim has accepted the plan." As Debtor has not provided an adequate interest rate on Wells Fargo's arrearages, Wells Fargo does not accept its treatment under the Plan, and Debtor cannot meet her burden of proof that the Plan meets the requirements of Section 1325(a). Accordingly, Creditor argues that confirmation of the proposed Plan must be denied.

Creditor also states that Wells Fargo Bank, N.A., is incorrectly designated in Amended Schedule D and Schedule H of Debtor's Petition. Debtor identifies Wells Fargo as "Wells Fargo Bank Home Mortgage" located in Winston Salem, NC. However, the correct designation for this creditor is set forth in the Proof of Claim as: Wells Fargo Bank, N.A., 21 1st Street SW, Rochester, MN 55902.

#### **RESPONSE BY TRUSTEE**

Trustee reviews the issues raised in the opposition of Wells Fargo Bank, N.A., to confirmation of the plan. The Creditor believes that the Class 1 mortgage arrears are entitled to a 6% interest rate; the Creditor has included a copy of the Note filed as part of the declaration. The creditor filed Proof of Claim No. 5, all made to the Sacramento Commercial Bank. The Creditor asserts that Wells Fargo, N.A., is the successor in interest to the Sacramento Commercial Bank, Dckt. No. 91, although the Declaration does not explain how Wells Fargo Bank acquired the interest, Dckt. No. 92, the FDIC website reflects that Wells Fargo Bank is the successor institution.

The note provides on Exhibit I, that "THIS IS A VARIABLE INTEREST RATE NOTE. Interest on unpaid principal shall accrue at the initial rate of eleven and one-quarter percent, 11.25%, per annum. The note does not appear to provide for interest other than principal, and normally the amount to cure such a default is determined based on the underlying agreement and applicable non-bankruptcy law. 11 U.S.C. § 1322(e).

The Creditor may be entitled to an interest rate based on the court's earlier ruling, that stated the following: "The plan should propose a 4.50% interest rate" on the arrears." Dckt. No. 61. The Creditor's claim does not provide an amount of arrears, although the Plan provides for arrears in the amount of \$13,090.45 with a monthly dividend of \$218.16.

The Trustee has paid the Class 1 on-going mortgage payment to Wells Fargo Bank, N.A., located at 21 1st Street SW, Rochester Minnesota, attention: Debbie Hamilton. The Trustee has paid a total of \$30,980.00 to this creditor to date.

#### **DISCUSSION**

##### **Failure to Include Interest on Arrears**

Wells Fargo Bank, N.A., asserts that Debtor is required to pay a 6% interest rate on the mortgage arrearage, pursuant to the U.S. Small Business Administration Note signed by Debtor and held by the Creditor.

A creditor, however, may not be entitled to interest under 11 U.S.C. § 1322(e) unless the note provides for interest on late payments or applicable non-bankruptcy law requires it. Section 1322(e) provides that the amount necessary to cure a default is to be determined in accordance with the underlying agreement and applicable nonbankruptcy law.

The Creditor's claim, filed as Proof of Claim No. 5 on the claims registry, does not include a copy of the subject Note. However, the Creditor attaches the subject Note signed by the Debtor on May 8, 1991, to the Declaration of Debra M. Hamilton in support of the Creditor's objection to the proposed Chapter 13 Plan. Dckt. No. 92.

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FN.1. The Creditor filed the Declaration of Debra M. Hamilton and the cited exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3) (a).

The opposing party is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d) (1).

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As described by the Trustee, Exhibit "1" attached to the Note states that,

Interest on unpaid principal shall accrue at the initial rate of eleven and one-quarter percent (11.25%) per annum. Commencing on the first business day of the quarter following first disbursement, and quarterly thereafter, the interest rate shall increase or decrease to two and three-quarters percent (2.75%) above the lowest New York Prime Rate in effect on the first business day of the month, as published in the Money Rate Section of the West Coast Edition of the Wall Street Journal.

Exhibit 1, U.S. Small Business Administration Note for David and Bella Davis, Dckt. No. 92 at 9 [underlining omitted].

The 11.25% interest rate provided for in the Note appears to accrue only on the unpaid principal under the Note, and not on an arrears on payments. Creditor points to no contractual provision that the court can discern in the attached Note, or applicable non-bankruptcy state law, that entitles Creditor to interest on the arrearage on the Note pursuant to 11 U.S.C. § 1322(e).

The Creditor states in its opposition to confirmation of the Plan that the interest rate of the Note is 6.00% as of the Petition filing date, but does provide a citation to the Note or supporting documentation showing

that the current interest rate on Note payments is 6.00%. Moreover, Creditor does not direct the court's attention to a provision in the Note that provides that the Creditor shall receive interest payments on anything other than the principal amount owed on the Note.

It appears that in the courts' ruling on the Creditor's previous objection to the Debtor's Chapter 13 Plan filed on August 15, 2014, the court deemed the Creditor's objection as moot. The court's suggestion that the plan should propose a 4.50% interest rate applies to the payments on the principal due under the Creditor's Note, and not the arrearage that must be cured by the Debtor, as the underlying Note does not seem to provide for additional interest payments on the arrears due under the Note. Civil Minutes, Dckt. No. 61.

The Creditor not having provided a contractual or state law provision that requires the Debtor to pay interest on the arrearages due under the Creditor's Note, this part of objection of Creditor Wells Fargo Bank, N.A., is overruled.

### **Misidentification of Creditor on Schedules and Chapter 13 Plan**

Additionally, Creditor states that it is misidentified in Debtor's Schedules D and H. A review of Debtor's Schedules shows that the Creditor is listed as: Wells Fargo Bank Home Mortgage, P.O. Box 2715, Winston Salem, NC 21102 as the Creditor on an "SBA Loan" of \$126,921.54 on Debtor's Schedule D. The Creditor is also identified by the same name and address as: Wells Fargo Bank Home Mortgage, P.O. Box 2715, Winston Salem, NC 21102 on Debtor's Schedule H.

In its opposition to confirmation of the plan, the Creditor states that the correct designation for this Creditor is the entity name and address listed on the Proof of Claim, which is Wells Fargo Bank, N.A., 21 1st Street SW, Rochester, MN 55902. Moreover, the respondent Creditor states that it is not Wells Fargo Home Mortgage, which the Debtor has listed as the creditor on the claim apparently held by Wells Fargo Bank, N.A. in her case. The Debtor has not amended her schedules to reflect the correct designation of the Creditor.

Debtor's proposed Fifth Amended Chapter 13 Plan lists the creditor as "Wells Fargo Bank/100 Court" and as a Class 1 Creditor. According to Debtor's Schedule A, "100 Casey Court" is Debtor's real property, which secures the repayment of the Creditor's claim. Debtor fails to specify which Wells Fargo-associated entity is the correct creditor on this claim, however; a search of the Federal Deposit Insurance Corporation's Institution Directory shows five different entities when the search term of "Wells Fargo Bank" is being used. Institution List, Search Term "Wells Fargo Bank" (accessed July 21, 2014, 4:05 PM), <http://www2.fdic.gov/IDASP/main.asp>.

The generic description of "Wells Fargo Bank," given Debtor's initial and unclear identification of the Creditor in her schedules, can refer to any of the following institutions: Wells Fargo Bank, National Association, Wells Fargo Bank South Central, National Association, Wells Fargo Bank Northwest, National Association, Wells Fargo Financial National Bank, Wells Fargo Bank, Ltd.

The court will not approve a Plan in which a creditor receiving \$3,316 in monthly dividends is not correctly identified in the Plan or in

Debtor's bankruptcy schedules. The Plan therefore does not comply with 11 U.S.C. §§ 1322 and 1325(a), and Debtor's proposed Fifth Amended Chapter 13 Plan is not confirmed.

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

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

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

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

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 April 9, 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 to deny the Motion to Value the Secured Claim of Robert Hall and Lisa Hall, pursuant to stipulation.** 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:

#### **REVIEW OF MOTION**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1792 Hile Avenue, Marysville, California. The Debtor seeks to value the property at a fair market value of \$125,000 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 court has conflicting evidence on the issue of value. First, Debtor's Schedules A & D provide for a value of \$135,000. Second, Debtor submitted an unverified appraisal listing the value of the property at \$125,000 (Exh. C, Dkt. 28). Third, in a previous Chapter 13 case (11-43667), Judge McManus entered an Order referencing Civil Minutes from a hearing on a similar Motion to Value the secured claim of Richard and Lisa Hall. See Civil Minutes, Dkt. 80. At that hearing, Judge McManus determined the value of the real property (1792 Hile Avenue) to be \$175,000, based on an appraisal submitted by Richard and Lisa Hall. The minutes specifically state that the court was persuaded by the comparable property data and find it persuasive.

STIPULATION

On July 11, 2014, the Debtor and respondent creditors filed a stipulation entered into and signed by both parties. Dckt. No. 59. The parties agreed that:

1. The Motion to Value the Collateral located at 1792 Hile Avenue, Marysville, California will be denied.
2. Creditors Lisa and Robert Hall shall retain a secured claim in the subject property, and will be provided for as a Class 4 Claim to be paid at \$265 per month for 56 months outside of the plan, beginning on July 1, 2014.
3. The Creditors will not be required to file a motion to lift the automatic stay in order to enforce their rights against the property, and beginning on March 1, 2019, the payments to the creditors shall increase to \$750 per month for 72 month.
4. If the payments are made timely or an amount equal to the total of those payments is prepaid, Robert and Lisa Hall shall reconvey the deed of trust back to Debtor Linda Putman and her son, Andrew Putman.

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

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

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

**IT IS ORDERED** that the Motion is denied according to the terms of the stipulation signed by Debtor Lisa Putman and respondent Creditors, Robert and Lisa Hall, filed on July 11, 2014, Dckt. No. 59.

16. [13-27423](#)-C-13 MICHAEL DIGINO AND RITA MOTION FOR COMPENSATION BY THE  
CA-1 SEXTON LAW OFFICE OF CRODDY &  
Michael David Croddy ASSOCIATES, P.C. FOR MICHAEL D.  
CRODDY, DEBTOR'S ATTORNEY(S)  
7-4-14 [[18](#)]

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, Debtors, all creditors, parties requesting special notice, and Office of the United States Trustee on July 4, 2014. By the court's calculation, xx days' notice was provided. 21 days' notice is required.

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

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

**SERVICE NOT IN COMPLIANCE WITH FRBP 2002(a)(6)**

Federal Rule of Bankruptcy Procedure 2002(a)(6) requires that at least 21 days' notice be sent to parties in interest when there is hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000.

Here, the Movant, Debtors' Attorney Michael D. Croddy, has filed a Motion for Compensation requesting an additional \$1,686.92 in additional fees and costs for services that he performed in this case from May 18, 2012 through July 3, 2013. Dckt. No. 18. Movant is requesting over \$1,000 in compensation for services rendered to Debtors, thus triggering the requirements of Federal Rule of Bankruptcy Procedure 2002(a)(6).

Movant served the motion and supporting documentation to the Trustee, Debtors, and other parties in interest on July 4, 2014, which is only 18 days before the scheduled hearing date of July 22, 2014. Thus, the service for this Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 2002(a)(6), and the Motion is denied.

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

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

The Motion for Allowance of Fees and Expenses filed by Counsel having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

17. [12-34627](#)-C-13 DOROTHY SMITH MOTION FOR CONSENT TO ENTER  
SDB-5 W. Scott de Bie INTO LOAN MODIFICATION  
AGREEMENT  
6-24-14 [[63](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 24, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

Wells Fargo Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment first to \$1,187.41 starting on June of 2014.

The initial payment to accept the loan modification agreement shall be paid on or before July 2, 2014. Beginning on June 1, 2014, the interest rate on the obligation will be 2.000%. The monthly principal and interest,

including taxes and insurance, will be \$1,187.41 and shall be due and payable on July 1, 2014, and continuing on the same day of each succeeding month until June 1, 2019.

On June 1, 2019, the interest rate will be 3.000%. The monthly principal and interest, including taxes and insurance, shall be \$1,274.55 and shall be due and payable on the 1st day of July, 2019, and continuing on the same day of each succeeding month until June 1, 2020.

On June 1, 2020, the interest rate will increase to 4.000%. The monthly principal interest, including taxes and insurance, shall be \$1,362.11 and shall be due and payable on the first day of July, 2020, and continuing thereafter on the same day of each succeeding month until June 1, 2021.

On June 1, 2021, the interest rate shall be 4.125%. The monthly principal and interest, including taxes and insurance shall be \$1,372.83, and shall be due and payable on the 1st day of July, 2021, and continuing after on the same day of each succeeding month until June 1, 2036. Debtor has completed the trial period and accepts this offer.

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

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

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

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

**IT IS ORDERED** that Debtor is authorized to amend the terms of her loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 151 Scenic Way, Vallejo, California, and such other terms as stated in the Modification Agreement filed as Exhibit "C: Loan Modification Agreement Proposal," Docket Entry No. 66, in support of the Motion.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on June 18, 2014. By the court's calculation, 35 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. Debtor failed to appear and be examined at the First Meeting of Creditors held on June 12, 2014. Debtor is required to attend the meeting under 11 U.S.C. § 343, and Debtor has not presented any evidence to the court as to why he failed to appear. Debtor should be aware that he is required to attend the First Meeting of Creditors, since this is the third case filed by the Debtor since September 16, 2010. The Meeting was continued to August 7, 2014 at 10:30 am.
2. The Debtor cannot make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a) (6).
  - a. Schedule J lists Debtor's net income as -\$632.00.
  - b. Schedule J does not list an expense for the monthly filing fee of \$70.00.
  - c. Section 2.15 is blank. Debtor failed to list a dividend to the unsecured creditors.

- d. Debtor lists Chase Bank in Class 1 of the Plan. The creditor may not be entitled to interest under 11 U.S.C. § 1322(e) unless the note provides for interest on late payments or applicable non-bankruptcy law requires it.
- e. It is not clear if all of the debtor's assets have been listed on Schedule B. Debtor lists only household furnishings and wearing apparel.
- f. Debtor did not list the mailing address and description of the property as to Chase Bank.
- g. Schedules E and F were marked that the Debtor had no creditors holding priority or unsecured claims to report on Schedules E and F. It is not clear if the Debtor completed Schedules E and F properly.

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 - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2014. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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

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

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

1. According to the Trustee's calculations the Plan exceeds 60 months as opposed to 36 months proposed, this exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Debtor is proposing plan payments of \$1,500.00 for 36 months, with a lump sum payment of \$42,985.57 for a total of \$96,985.57 to be paid into the plan. Debtor is proposing to pay the following debts in the Plan:
  - a. Class 1 ongoing mortgage payment of \$3,351.29 for 36 months, totals \$120,646.44
  - b. Class 1 mortgage arrears of \$58,00.00
  - c. Butte County family support in Class 5 in the amount of \$1,960.00
  - d. The debts in the Plan total \$180,606.33 without considering Trustee compensation.
2. It appears that the Debtor cannot make the payments required 11 U.S.C. § 1325(a)(6). Debtor's monthly projected disposable income listed on Schedule J totals \$1,433.00, however the Debtor is proposing a \$1,500.00 plan payment for 36 months. Debtor did not

file a Declaration in support of the motion to confirm the amended plan.

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

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

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

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

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

20. [14-23635](#)-C-13 ROY/CHERISE WHITAKER  
RMW-2 Pro Se  
**Thru #22**

MOTION TO VALUE COLLATERAL OF  
FAST AUTO LOAN  
6-2-14 [[31](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 2, 2014. By the court's calculation, 51 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 failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to grant the Motion to Value.**

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 a 2002 Honda Civic EX Sedan 4D. The Debtors seek to value the property at a replacement value of \$2,500 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a collateral lien loan with a balance of approximately \$6,538.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$2,500. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Fast Auto Loan secured

by an asset described as 2002 Honda Civic EX Sedan 4D is determined to be a secured claim in the amount of \$2,500, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$2,500 and is encumbered by liens securing claims which exceed the value of the asset.

21. [14-23635](#)-C-13 ROY/CHERISE WHITAKER MOTION TO CONFIRM PLAN  
RMW-3 Pro Se 6-2-14 [[27](#)]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on May 30, 2014. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the plan because no amended plan has been filed.

On May 27, 2014, the Trustee filed an objection to confirmation of the on April 22, 2014. The objection was heard and sustained on June 24, 2014. On June 2, 2014, Debtors filed the current motion, but did not file a proposed amended plan. Debtors did not refer to or serve the prior plan with this motion. Trustee argues that it appears that the motion is moot and should not be granted, as there is no pending plan. While Debtors are now current, and have the pending motion to value scheduled, and presumably could exempt their FERS account (the subject of opposition to the previous motion), the plan still runs longer than 60 months and that concern has not been resolved.

There being no amended plan that has been filed and submitted for the court's review, this Motion is denied.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 16, 2014. By the court's calculation, 37 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 failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of a 2011 Silverado 1500 Crew Cab. The Debtors seek to value the property at a replacement value of \$19,400.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

However, Debtors have not established in the Motion that underlying debt is not a purchase-money loan acquired within the 910-day period prior to the filing of the petition. Debtors do not state when they purchased the vehicle, and do not allege that the date the vehicle was purchased was more than 910 days from the petition filing date. Debtors are statutorily unable to prevail on this motion to value collateral pursuant to 11 U.S.C. §1325(a).

The Debtors have not stated the prima facie case for the requested relief. See Fed. R. Bankr. P. 9013. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

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

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

The Motion for Valuation of Collateral filed by 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 is denied without prejudice.

23. [14-24236](#)-C-13 TAMMY TROTTER-SCHUETTE MOTION TO CONFIRM PLAN  
MLA-2 Mitchell L. Abdallah 5-22-14 [[23](#)]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on May 22, 2014. By the court's calculation, 61 days' notice was provided. 42 days' notice is required.

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

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

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

1. Debtor's Plan may not be the Debtor's best effort under 11 U.S.C. § 1326(b). Schedules I and J were amended on June 25, 2014. Dckt. No. 31. The monthly net income now listed on Schedule I is \$228.00. Debtor's Plan calls for 36 payments of \$172.00 per month, and it appears that the plan payments could increase by \$56.00 per month. Debtors appear below median based on Form 22c.
2. It appears that the Plan does not fulfill the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity totals \$9,372.00, and the Debtor proposes to pay the unsecured claim holders a 16.78% dividend, or approximately \$5,820.65. This is based on the 2001 Ford Excursion, 2001 Pacwest Flatbed Trailer, and 2006 Ford Fusion SEL. Debtor has not provided sufficient information to allow the Trustee to attempt to value the property for the following assets:

- a. 2011 Ford Excursion (powertrain, packages, options, and conditions not listed and described)
- b. 2001 Pacwest Flatbed Trailer (no description, indication of whether single axle or tandem axle, no options listed)
- c. 2006 Ford Fusion SEL (powertrain, options, and condition not listed and described). After a review of the Debtor's bank statement, the Trustee also notes that the Debtor received a paycheck of \$1,326.90 by direct deposit on the day this case was filed, and the pay was not listed separately on Schedule B, nor was it included on the balance on the account.

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

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

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

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

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

24. [14-24936](#)-C-13 JERRY CRUSOS  
Thru #25 C. Anthony Hughes

OBJECTION TO CONFIRMATION OF  
PLAN BY LASSEN COUNTY  
TREASURER/TAX COLLECTOR  
6-23-14 [[22](#)]

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

Correct Notice Not Provided. No Certificate of Service was filed on the docket pursuant to Local Bankruptcy Rule 9014-1(e)(2), which requires that a proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed. This requirement was not met.

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

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

#### **DEFECTIVE SERVICE**

Local Bankruptcy Rule 9014-1(e)(2) requires that a proof of service, in the form of a certificate of service, be filed with the court clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed. The proof of service must be filed as a separate document and shall bear its own Docket Control Number. Creditor has not filed a correctly formatted Proof of Service filed as a separate document on the court docket, however, indicating to whom the Motion was sent, and when and how service was effected, in violation of the provisions of Local Bankruptcy Rule 9014-1(e).

The court cannot determine whether the Creditor provided the requisite 14 days' notice under Local Bankruptcy Rule 9014-1(f)(2), in compliance with the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4), and whether the objection was filed within 7 days of the Debtor's 11 U.S.C. § 341 Meeting of Creditors.

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

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

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

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

**IT IS ORDERED** that Objection to Confirmation is dismissed without prejudice.

25. [14-24936](#)-C-13 JERRY CRUSOS OBJECTION TO CONFIRMATION OF  
DPC-1 C. Anthony Hughes PLAN BY DAVID P. CUSICK  
6-25-14 [[24](#)]

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 25, 2014. By the court's calculation, 28 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. All sums required by the plan have not been paid under 11 U.S.C. § 1325(a)(2). Debtor is \$527.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$526.00 is due on July 25, 2014. Debtor has paid \$0.00 into the plan to date.
2. On Schedule D, Debtor lists Evergreen Note Servicing as the holder of the first deed on the real property at 725250 Scott Road, Chilcoot, California. At the 11 U.S.C. § 341 meeting held on June 19, 2014, the Debtor indicated that the lien holder is actually Stephen Milstein. It appears that proper notice has not been provided to this creditor.
3. It appears that Debtor cannot make payments under 11 U.S.C. § 1325(a)(6). Debtor lists Evergreen Note Servicing in Class 4 of the

plan and indicates that \$0.00 is to be paid each month. On Schedule J, Debtor claims that the term of the first mortgage expired on August 2013, and that the loan is currently deferred. Debtor has offered no evidence to support this claim, and does not indicate when payments are to resume. Trustee is unable to determine whether Debtor's plan is feasible as Debtor does not indicate what the payment on the mortgage was or how he will be able to make the payment when it does resume.

#### **RESPONSE BY DEBTOR**

On the issue of Debtor's delinquency in plan payments, Debtor responds by stating that the Debtor's Chapter 13 Plan calls for payments of \$527/month. By the day of the confirmation hearing, one payment of \$527 will be due. Debtor states that on June 30, 2014 the Debtor made the required payment. However, Debtor has not attached a payment slip or any receipts showing that the required payment has been made. Dckt. No. 32.

Debtor also argues that correct notice has been provided to the creditor. Debtor states that Steve Melstean is the owner/investor of the debtors real property located at 725250 Scott Road, Chilcoot, CA 96105. Debtor states that the servicer of the note is Evergreen Note Servicing, and they were served with the Plan. As a servicer Evergreen is responsible for collecting payments, negotiating workouts and modifications upon default and conducting or supervising the foreclosure process. However, the court prefers that service be made to the actual owners of the obligations, since the order confirming plan, and any other orders that may be issued by this court, including those granting motions to value, motions approving modification agreements, and motions to confirm modified plans may affect the rights and responsibilities of actual creditors, and not just their authorized servicing agents.

To address the Trustee's last point of objection, Debtor states that he has provided a declaration that explains that his mortgage payment is deferred (Dckt. No. 28). The mortgage company servicing the loan has not filed a proof of claim on behalf of the creditor and has not objected to the Plan. As pointed out by the Trustee, however, Debtor has provided no evidence independent from his declaration, that shows that the loan is currently deferred.

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

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

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

The Objection to the Chapter 13 Plan filed by the 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.

26. [14-24338](#)-C-13 JEANNIE BROWN MOTION TO CONFIRM PLAN  
FF-1 Brian H. Turner 6-5-14 [[27](#)]

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 and Debtor's Attorney on June 5, 2014. By the court's calculation, 47 days' notice was provided. 14 days' notice is required.

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

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

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

1. Debtor is \$2,192.42 delinquent in plan payments to the Trustee. The next scheduled payment of \$2,186.42 is due on July 25, 2014. The case was filed on April 28, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25<sup>th</sup> day of each month, beginning the month after the order for relief under Chapter 13.
2. It appears that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Plan calls for a lump sum payment of \$4,256.00 in month 6. Debtor has not explained the source of this lump sum payments.
3. The plan may not comply with applicable law under 11 U.S.C. § 1325(a)(1). The plan proposes to pay Ocwen Loan Servicing, LLC as Class 1, and Skye Investment, LLC, as Class 2. The Class 1 and

Class 2 sections have identical disclosures as to these debts, "Property was fraudulently foreclosed upon on 4/28/2014."

In the event that the property has been sold, these debts may be paid off and in any event are no longer secured by the Debtor's or the Estate's property. In the event that a foreclosure occurred, unless the foreclosure is unwound, these debts should not have a secured claim and should not be paid as secured under the plan.

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

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

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

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

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

Local Rule 9014-1(f)(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 25, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

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

1. It does not appear that the plan provides all of Debtors' projected disposable income for the applicable commitment period under 11 U.S.C. § 1325(b). A review of Michael Braun's paystubs reveals that his income average is higher than reported on Schedule I. The Trustee received paystubs dating from February 26, 2014 to April 30, 2014.

Debtor is paid weekly from Napa Electric where he receives an hourly wage of \$39.81. Based on the 9 weekly paystubs provided, Debtors' income averaged \$5,931.04 per month gross and \$4,323 net. Debtors report Michael Braun's gross monthly wages of \$4,138.33 and his net income of \$3,237. It appears that Debtors may have a significant amount of disposable income not reported. Debtors' paystubs are provided as Exhibit A.

Form 22 C shows that the Debtors are below median income. Dckt. No. 1, Page 44.

2. Debtors' Plan does not meet the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals \$17,032.00 and the Debtors are proposing a 25% dividend to unsecured

claim holders paying approximately \$13,417.00. Debtors' non-exempt equity consists of vehicles listed on Schedule B; a 2004 Toyota Tundra, a 2009 Toyota Matrix and a 1949 MG.

## RESPONSE BY DEBTORS

Debtors respond by stating that the joint Debtor is an electrician working in the construction industry. His income fluctuates from month to month as he gets moved from job to job. Every time there is a job change his pay rate changes. The income that is on the Debtors' Schedule I is an annual average, "as Mr. Braun never works 52 weeks a year." In 2010 he was laid off for 26 weeks of the year. In 2011 he was laid off for 5 weeks and worked 23 weeks with substandard wages. In 2012 he was laid off for 10 weeks. In 2013 he was laid off for 25 weeks and so far in 2014 he have been laid off for 5 weeks. The Debtor has submitted with this response a declaration, which confirms the explanation of his income.

The Trustee further objects to confirmation on the grounds that the Debtors fail liquidation. Debtors' attorney has actually overestimated the money due to the unsecured creditors by \$1,604.64. Debtors' attorney's corrected liquidation calculation is as follows:

\$17,032.00	non-exempt equity in Debtors' assets (vehicles)
<u>-\$ 851.60</u>	5% cost of sale
\$16,180.40	
<u>-\$ 2,368.04</u>	Chapter 7 Trustee Fee
\$ 13,812.36	
<u>-\$ 2,000.00</u>	Chapter 13 Attorney Fees
\$11,812.36	Total due to unsecured creditors

The Debtors present evidence supporting their current reported disposable income, based on the changing nature of Joint Debtor Michael Braun's income. Additionally, Debtors present a calculation showing that the Plan fulfills Chapter 7 Liquidation test, after costs of sale, and Trustee fees and attorney fees are deducted, showing that creditors would receive at least an amount equal to what would be received in a Chapter 7 case. The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled.

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 May 17, 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 the 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, 63 days' notice was provided. 42 days' notice is required.

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

**The court's tentative decision is to continue the Motion to Confirm the Amended Plan 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:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Here, the Chapter 13 Trustee objects to confirmation of the plan for two broad reasons.

First, there appear to be numerous defects with the drafting of the plan. The most recent plan, Dckt. No. 53, does not list an administrative expenses divided in Section 2.07 or Section 6 of the plan. Additional provisions indicate that attorney fees are due through the plan of \$2,650.00.

There is also an unsecured percentage error with the plan: Section 2.15 of the amended plan indicates that unsecured claim holders will receive no less than a "77,234%" dividend, and lists the total unsecured debt as "0.00." Debtor's original plan indicated that unsecured creditors were to receive 0% of \$77,234.00.

Second, Debtor's plan may not be his best efforts under 11 U.S.C. § 1325(b). The original plan called for payments of \$521.01 for sixty months, totaling \$31,260.60 over the life of the plan. Debtor's amended plan calls for payments of \$521.01 for sixteen months, then \$821.01 for twenty six months due to the completion of Debtor's \$300 support obligation in the sixteenth month of the plan. The term of the amended plan is now forty-two months. While Debtor is under median income according to the amended Form 22C, no explanation is offered in the Motion or Declaration as to why the plan now proposed is forty-two months long, when Debtor originally proposed (and could presumably afford) a sixty month plan. An explanation may be needed to satisfy 11 U.S.C. § 1325(a)(3).

Debtor will pay in a total of \$29,692.42 under the most recent plan, which is less than the original \$31,260.60 proposed. The Debtor shortened the plan length after the court sustained the Trustee's original objection to confirmation. Dckt. No. 35.

#### **RESPONSE BY DEBTOR**

Debtor responds by stating that the Chapter 13 Plan omitted to list the administrative expense dividend, and that the calculated expense dividend which was typographically omitted, is \$484.52 a month.

Debtor also concedes that Section 2.15 of the Chapter 13 Plan contains a typographic error indicating that unsecured claim holders will receive no less than a 74,234% dividend of \$0.00 total unsecured claims. Debtor requests that the court confirm the plan with an order confirming the plan, that provides for an administrative expense dividend of \$484.52, and that unsecured claims of approximately \$77,234.00 will be entitled to receive no less than a 0% dividend.

Debtor also contends that, in response to Trustee's third point of objection, Debtor is entitled to propose and confirm the current 42 month plan. However, Debtor appears to misinterpret the Trustee's objection on this issue. The Trustee is not objecting to the duration of the Plan, but rather, is confused as to why Debtor changed the plan length following the court sustaining the Trustee's objection to confirmation based on 11 U.S.C. § 1325(b). Debtor originally committed to paying \$31,260.60, and now proposes to pay \$29,682.42 under the recent plan.

For purposes of 11 U.S.C. § 1325(a)(3), in order to ensure that the present plan was proposed in good faith, the court will require that Debtor file a statement explaining why the plan is now forty-two months long, and why Debtor is now proposing to pay a total of \$29,682.42 under the plan, rather than the original \$31,260.60 proposed. The court will continue this Motion to permit Debtor to file and serve this statement.

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 continued to [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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 29, 2014. By the court's calculation, 54 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 plan. According to the Trustee's calculations, the plan will complete in 72 months, as opposed to the 60 months proposed and allowed under 11 U.S.C. § 1322(d).

In a plan paying 0% to unsecured claim holders, the Debtor is proposing a plan payment of \$1,170.00 for 8 more subsequent months, then increasing to \$1,440.00 for the final 35 months of the plan, for a total under the plan of \$79,650.00. The monthly class 1 contract installment is \$1,052.35 according to the creditor, according to the Notice of Mortgage Payment Change filed with the court on June 25, 2014. According to the Trustee's calculations, if the ongoing mortgage payment is \$1,052.35, the total term will be 72 months.

The modified Plan complies 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.

30. [14-22849](#)-C-13 DAVID BALL CONTINUED MOTION TO VALUE  
CLH-1 Cindy Lee Hill COLLATERAL OF PNC BANK  
**Thru #32** 4-23-14 [[15](#)]

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, respondent creditor, and Office of the United States Trustee on April 24, 2014.

The Notice of Hearing indicates that this Motion was served pursuant to Local Bankruptcy Rule 9014(f)(1), and advises potential respondents to serve and file with the court and Debtor's counsel written opposition at least fourteen (14) days preceding the date of the hearing. Dckt. No. 19. Local Bankruptcy Rule 9014-1(f)(1), however, that the moving party file and serve the motion at least twenty-eight (28) days prior to the hearing date. The Certificate of Service indicates that the Notice of the Motion, the Motion, and the supporting Declaration of Debtor attached to the Motion was served on April 24, 2014. By the court's calculation, 26 days' notice was provided.

**Tentative Ruling:** The Motion to Value Collateral has been not been properly 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 deny the Motion to Value the Secured Claim of PNC Bank, N.A. without prejudice.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **MAY 20, 2014 HEARING**

The court continued the hearing on the Motion to Value the Secured Claim of PNC Bank, N.A. to this hearing date.

The court also noted that Movant's Notice of Hearing was deficient. In the Notice of Hearing filed with the Motion to Value the Secured Claim of PNC Bank, N.A., (Dckt. No. 16), Debtor advises potential respondents that if opposition is filed, respondents must serve and file opposition with the Clerk of the Court not less than fourteen calendar days preceding the date of the hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1).

Local Bankruptcy Rule 9014-1(f)(1), however, requires that at least twenty-eight (28) days' notice of hearing be given to all parties, before parties are required to submit written opposition in order to respond. This Motion was set on 26 days' notice, short of the 28-day requirement of Local Bankruptcy Rule 9014-1(f)(1). Based on this procedural defect, the Motion is denied without prejudice.

#### **REVIEW OF MOTION**

Debtor seeks a court order determining the collateral securing the second deed of trust on his real property be valued at \$0.00, with the remainder of the claim being treated as unsecured debt under the Chapter 13 Plan. The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8004 Indian Creek Dr, Orangevale, California. The Debtor seeks to value the property at a fair market value of \$560,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$683,00.00. Debtor also owes funds to the Sacramento Utility District, secured by a lien for less than \$1,000.00. Creditor PNC Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$80,708. Debtor states that the the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. Debtor argues that 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).

#### **OPPOSITION BY CREDITOR**

PNC Bank, National Association, successor by merger to National City Bank ("Creditor") files an Objection to the Debtor's Motion to Value Collateral. Dckt. No. 34.

Creditor filed a secured Proof of Claim on April 17, 2014 at Claim Number 8 on the claims registry in the amount of \$83,367.15 plus accruing interest, plus costs, fees and expenses, including attorney fees and costs accruing and incurred both before and after the petition date.

Creditor believes and asserts that the subject property has a value of at least \$690,000.00 based on a recent valuation performed on behalf of the Creditor. The Creditor argues that the valuation indicates that there is sufficient equity in the subject property, such that Creditor should be treated as a secured creditor under the Plan. Creditor asserts that the Plan proposed would improperly strip off Creditor's lien (upon completion of the plan) when there is equity for its lien to attach.

The valuation attached as Exhibit "C" in support of Creditor's opposition, Dckt. No. 35, however, is not authenticated by the entity that prepared it. Fed. R. Evid. 901. The appraisal not having been properly authenticated and no testimony having been provided by the person purporting to have an opinion as to value, the court does not have competing evidence to consider of the value of the subject real property.

Creditor requests additional time to obtain its own independent valuation of the subject property. Creditor states that its counsel contacted Debtor's counsel on May 1, 2014 and requested the Debtor's permission and cooperation to allow Creditor's appraiser to enter the property to perform a full interior appraisal. As of the filing of the opposition on May 6, 2014, Creditor's counsel had not heard back from Debtor's counsel on the issue of whether Creditor can obtain a full appraisal of the property for valuation purposes.

Pursuant to the Creditor's request for additional time to obtain a complete valuation of the subject property (and to supplant the current, inadmissible valuation document with evidence that meets the authentication requirements of the Federal Rules of Evidence that the court can consider), the court continued the hearing on this Motion to Value the Secured Claim of PNC Bank, N.A.

**APPRAISAL BY DEBTOR**

On July 11, the Debtor filed the Declaration of Tom Hubbard in support of the instant Motion to Value. In his Declaration, Mr. Hubbard states that he is an appraiser licenced by the state of California, and that he has been appraising residential properties in the eastern Sacramento Valley, Placer County and surrounding areas since 2004.

Mr. Hubbard states that the attached exhibit A is a copy of the appraisal that he performed on March 14, 2014. FN.1.

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The document prepared includes declaration and exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents, ¶(3)(a). The court's expectation is that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1).

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Mr. Hubbard states that the appraisal is his unbiased opinion based on his experience appraising properties in the area. He declares that his appraisal is not based on a minimum valuation, specific valuation for the purpose of obtaining a loan, nor is his compensation contingent on the valuation achieved. He states that personally visited the the property, and that his opinion of value is based on comparable sales in the Orangevale area.

The Uniform Residential Report consists of comparable sales listings from at least three other properties in the area, and notes on the condition of the property. The appraiser notes that physical depreciation adjustments were based on the age of the improvements, and no external depreciation was noted. Functional obsolescence was noted due to the condition of the pool, and descriptions of the foundation, interior, and exterior are included in the report. The report includes plat, flood, and location maps, as well as photographs of the property and of comparable units in the area. The appraisal includes an analysis of three other comparable properties in the area. Dckt. No. 71.

Mr. Hubbard concludes the property value was \$560,000 as of the date of the appraisal after looking at the property and comparing it to similar properties sold. The creditor has not submitted a competing valuation for the purposes of this motion. Employing the figures included in Mr. Hubbard's authenticated appraisal, the court determines that the fair market value of the property is \$560,000.00. The first deed of trust secures a loan with a balance of approximately \$683,00.00. Debtor owes funds to the Sacramento Utility District, secured by a lien for less than \$1,000.00. Creditor PNC Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$80,708. Thus, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of PNC Bank, National Association secured by a second deed of trust recorded against the real property commonly known as 8004 Indian Creek Dr, Orangevale, 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 \$560,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

31. [14-22849](#)-C-13 DAVID BALL  
NLE-1 Cindy Lee Hill

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
4-30-14 [[27](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on April 30, 2014. 14 days' notice is required. That requirement was met.

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

**The court's tentative decision is to sustain the Objection.** 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 previously continued this Objection from June 3, 2014 to this hearing date, so that the Objection could be heard with Debtor's Motion to Value the Secured Claim of PNC Bank, N.A. Dckt. No. 65.

#### **REVIEW OF OBJECTION**

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

1. Debtor's plan does not pass Chapter 7 liquidation analysis. 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$32,555 and Debtor is proposing a 3% dividend to unsecured creditors, which will pay approximately \$9,681. As proposed, Debtor's plan will actually calculate to pay approximately \$12,504, which is insufficient to satisfy the liquidation analysis. Debtor's non-exempt property includes \$32,550 of the Note for Sale of Debtor's business, Clark Heat & Air. The balance owed from the sale is \$54,489, of which Debtor had exempted \$21,934.
2. Debtor's plan proposed to pay \$6,000 in attorneys' fees. Schedule I shows Debtor has no business income. Debtor's plan and the Rights and Responsibilities indicate \$6,000 in attorneys' fees; however, only \$4,000 is permitted in a non-business case under LBR 2016-1(c)(1).

3. Debtor's plan is not his best effort. 11 U.S.C. § 1325(b). Debtor is above median income. His Form B22C shows line 59, Debtor's monthly disposable income, with a net excess income of \$644.53. Based on the applicable commitment period of 60 months, the unsecured creditors should receive \$38,671. Debtor is currently proposing a 60 months plan at 3% to general unsecured creditors; therefore, unsecured creditors are not receiving what they are entitled.
4. Trustee questions Debtor's household size. Debtor lists a household of three, with Schedule J indicating two dependent daughters, ages 22 and 24. Debtor does not report any income from either dependant, but admitted at his Meeting of Creditors that one of his daughters is the purchaser of his heat and air business and is the same daughter from whom he receives payment each month for the not payable for the sale of the business. Trustee argues it is clear that this daughter is not a dependent and that Debtor has not reported all household income. Trustee suggests that Debtor be required to report all household income.
5. Trustee recalculated Debtor's B22C deductions, and determined that Debtor's actual monthly disposable income is \$1,733.35. This figure would pay unsecured creditors \$104,000 over the life of the plan. Trustee argues that Debtor is not entitled to the deduction listed on line 19 and \$1,034 should be added back into the plan. Further, Debtor deducts payments for certain liens, but at the same time filed Motions to strip the subject liens which, if granted, would result in greater recovery for the unsecured creditors.
6. Debtor's plan relies on three pending motions. Debtor has three Motions to Value set for hearing on May 20, 2104. If the Motions are not granted, Debtor may lack sufficient funds to afford the plan payment as proposed.
7. Debtor did not use the new Official Form B6I and Official Form B6J.

### **Debtor's Response**

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

1. Debtor operated and owned the business until 2013 and the majority of his non-residential debts stem from that business. The sale transaction with his daughter involved his business and generated a considerable amount of pre-petition work to be performed by his bankruptcy counsel. Debtor argues the case is business in nature and counsel should appropriately be compensated \$6,000.
2. Debtor agreed to sell his heat and air business to his daughter for \$150,000, payable for \$30,000 down and a note of \$120,000 carried back and payable at \$500 per month. Debtor used substantially all income from that sale to stave off litigation, but was unable to sustain the demands of his creditors.

3. As for liquidation analysis, Debtor calculates non-exempt equity at \$11,589 with eventual payout to unsecured creditors of \$2,360.72, or 3%. Debtor believes Trustee is basing his calculations on valuing a note payable from Camille deNouf Ball at its principal remaining value, instead of its current market value. Debtor believes the amount owing on the note as of the date of filing is \$54,489, but further believes that the current fair market value of the note is \$32,636.
4. While Form B22C shows that Debtor can afford more than the sum proposed, the majority of the income is based on payments on the note of Camille deNouf Ball, which are not sustainable at the historical rate. Debtor asserts that despite line 29 of Form B22C, he is make his best efforts.
5. The Motion to Value the secured claim of PNC was continued to July 22, 2014.

### **Discussion**

The court's decision is to deny confirmation based on the following analysis.

#### Liquidation Analysis

Whether Debtor's plan passes liquidation analysis depends on the value assigned to the note payable to Debtor by his daughter, Camille, and the resulting non-exempt equity. The note was executed as part of the purchase agreement entered into by Debtor and Camille, whereby she purchased Clark Heat & Air Conditioning for \$30,000 down and a note of \$120,000.

Trustee values the non-exempt value of the note at \$32,555. The balance owed on the sale is \$54,489, of which Debtor exempted \$21,934.

Debtor asserts that Camille has presented evidence of additional payments Trustee did not consider in his calculations because Debtor received them after he presented the Trustee with the breakdown of payments made on the note. Debtor argues that the payments made reduce the note balance to \$31,679. Using the figures provided to the Trustee, Debtor calculated the value of the note to be \$32,693 (5% interest, payable at \$500 per month for the next 13 years). With the amount due under the new reconciliation, Debtor argues the value is closer to \$20,000. He argues that the discount taken off of face value represents the real risk that the business could fair.

The court recognizes a discrepancy in the information provided to Trustee. It is unclear whether Debtor has provided Trustee with the additional payments he now uses in calculating the value of the note. The court is sustaining the Trustee's objection as to the liquidation analysis issue. Before a new plan is presented, the court encourages Debtor to provide all updated information on note payments to the Trustee and to work with the Trustee to determine an agreeable value for the note. If the parties cannot agree to an appropriate method of calculation, the court is prepared to set an evidentiary hearing on the matter to conclusively resolve the valuation issue.

#### Attorneys' Fees

The court looks to several factors to determine whether or not a case will qualify as a "business case," for purposes of awarding a higher Guideline Fee. The following non-exhaustive list provides some factors the court will consider:

- 1) Are there employees (other than the debtors themselves) and employee-related issues?
- 2) Is there an established place of business other than the home?
- 3) Do the debtor's obligations consist primarily of consumer or trade debt?
- 4) Is there a significant amount of inventory, or equipment (e.g., vehicles, machinery, fixtures, etc.) not normally found in a home?
- 5) Are there any executory contracts or leases that need to be assumed or rejected to protect the business?
- 6) Are there business-related debt obligations that may have to be restructured?
- 7) Are there any cash-collateral issues that need to be resolved?
- 8) Are there any non-consumer related relief from stay issues?
- 9) Are there any business-related tax issues (e.g., State sales tax, payroll withholding, etc.)?
- 10) Did the debtor file a Business Income and Expenses statement? If so, what is the ratio of business expense to total business income?
- 11) Were there any objections to confirmation of the chapter 13 plan?
- 12) Are there any unusual factors that may increase the workload or risk of non-payment to debtor's attorney?

*In re Dorsett*, 297 B.R. 620, 625 (Bankr. E.D. Cal. 2003). Here, the first hurdle to Debtor's classification as a "business case" is that Debtor is an individual who does not own the business he is purporting to substantiate the basis for the "business" classification. Debtor is an employee of Clark Heat & Air Conditioning. The only other employee's the court is aware of are Debtor's two daughters: Theresa and Camille (the current owner of the business). Debtor's bankruptcy involves no contracts related to the operation of the business and Debtor did not file a Business Income and Expense statement.

In his opposition to the Trustee's Objection, Debtor asserts that the fees are justified because the majority of his non-residential debts stem from the business and because the sale transaction with his daughter involved a considerable amount of pre-petition work to be performed by his bankruptcy counsel. The court is not interested in compensating Debtor's counsel for pre-petition work concerning the sale transaction Debtor effectuated to stave off creditors. The court is concerned with compensation for the representation of a Chapter 13 debtor. LBR 2016-1(a).

Debtor discloses on his voluntary petition, signed under penalty of perjury, that his debts are primarily consumer debts, as defined in 11 U.S.C. § 101(8) (Dkt. 1). Some of his debts appear to derive from his prior operation of Clark Heat & Air Conditioning; however, these unsecured non-priority debts represent the only factor favoring "business case" classification.

The totality of the circumstances, including Debtor's statement that the majority of debts are consumer debts, the fact that Debtor does not own the business, and the lack of a Business Income and Expenses statement persuade the court to sustain the Trustee's objection to the fees requested and deny classification of Debtor's case as a "business case." The effect of the court's determination is the limitation of attorneys' fees to a maximum of \$4,000 for representation of a Chapter 13 Debtor under Local Bankr. Rule 2016-1.

#### Best Efforts

The court shares the Trustee's concerns regarding whether the plan and prosecution of this case represent Debtor's best efforts. First, Debtor has two employment, adult dependents residing with him and he reports no income from either dependent. Debtor explains in his declaration that the daughters do not contribute to household expenses; however, all household income should be reported to the court.

Debtor includes on Schedule I income of \$300.00 on line 8a, as net income from rental property and from operating a business, profession, or farm; however, Debtor did not attach a statement showing necessary business expenses and total net monthly income. This information is required to be disclosed. Further, there are no corresponding business expenses listed on Schedule J.

The court recognizes Debtor and Camille's Declarations that explain the decrease in the note payment from historical data and is willing to accept the Debtor's explanation contingent on the remaining confirmation issues being resolved.

#### Pending Motions

All three Motions to Value filed by the Debtor have been granted—two at the hearing held on May 20, 2013, Dckt. Nos. 56 and 57, and the Motion to Value the Secured Claim of PNC Bank, N.A. is granted on this calendar.

#### Schedule I & J Forms

Debtor filed Amended Schedules I & J on the new Official Forms (Dkt. 49). Trustee's objection is overruled as to this issue.

#### **Disposition**

For the forgoing reasons, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained where stated 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.

32. [14-22849](#)-C-13 DAVID BALL  
SAS-1 Cindy Lee Hill

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY PNC  
BANK, N.A.  
4-30-14 [[31](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on April 30, 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). A Creditor, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

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

The court previously continued this Objection from June 3, 2014 to this hearing date, so that the Objection could be heard with Debtor's Motion to Value the Secured Claim of PNC Bank, N.A. Dckt. No. 65.

Creditor, PNC Bank, N.A., opposes confirmation of the Plan because it attempts to reclassify the secured Proof of Claim filed by PNC as an unsecured claim. PNC objects to the plan as it seeks to modify the rights of PNC Bank as a creditor whose claim is secured only by a security interest in real property that is the Debtor's primary residence in direct contravention of 11 U.S.C. § 1322.

Debtor argued the Objection is not ripe at this time at the Motion to Value the secured claim was continued to July 22, 2014.

#### **REVIEW OF OBJECTION**

PNC Bank, N.A. opposes confirmation of the Debtor's plan on the basis that the Creditor's claim is only secured by an interest in real property that is the Debtor's primary residence, in contravention of 11 U.S.C. § 1322, and that PNC Bank, N.A., believes that the mortgaged premises has a value of at least \$690,000.00 based on a recent valuation performed by the creditor.

Creditor filed a secured Proof of Claim on April 17, 2014 at Claim Number 8 on the claims registry in the amount of \$83,367.15 plus accruing interest, plus costs, fees and expenses, including attorney fees and costs accruing and incurred both before and after the petition date. Creditor

believes and asserts that the subject property has a value of at least \$690,000.00 based on a recent valuation performed on behalf of the Creditor. The Creditor argues that the valuation indicates that there is sufficient equity in the subject property, such that Creditor should be treated as a secured creditor under the Plan. Creditor asserts that the Plan proposed would improperly strip off Creditor's lien (upon completion of the plan) when there is equity for its lien to attach.

The valuation attached as in support of Creditor's opposition, Dckt. No. 31, however, is not authenticated by the entity that prepared it. Fed. R. Evid. 901. The appraisal not having been properly authenticated and no testimony having been provided by the person purporting to have an opinion as to value, the court does not have competing evidence to consider of the value of the subject real property.

Creditor requested additional time to obtain its own independent valuation of the subject property. Although the court has granted Creditor additional time to obtain a complete valuation of the subject property (and to supplant the current, inadmissible valuation document with evidence that meets the authentication requirements of the Federal Rules of Evidence that the court can consider), the Creditor did not file an alternative valuation that was authenticated by the person who prepared it. Thus, the court does not have an authenticated, competing valuation of the subject property.

In the absence of authenticated evidence asserting the Creditors' valuation of the property, the court is granting Debtor's Motion to Value the Secured Claim of PNC Bank. Contrary to PNC Bank, N.A.'s argument, the anti-modification provision in 11 U.S.C. § 1123(b)(5) applies only to secured claims. This means that a wholly unsecured claim on the debtors' primary residence may be avoided. Stated differently, the anti-modification clause of section 1123(b)(5) does not apply to secured creditors holding completely unsecured claims, even if they are secured by the debtor's primary residence. See *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220, 1227 (9 Cir. 2002); see also *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36, 40- th 41 (B.A.P. 9 Cir. 1997).

Thus, the Objection of PNC Bank, N.A., is overruled. The court is simultaneously granting the Trustee's Objection to Debtor's proposed plan, however; the court has determined that the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and confirmation is denied.

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is overruled.

33. [14-23550](#)-C-13 ANNIE WAGAMAN  
TGC-1 Tommy Conlon  
**Thru #34**

MOTION TO CONFIRM PLAN  
5-19-14 [[19](#)]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on May 19, 2014. By the court's calculation, 64 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Here, the Chapter 13 Trustee opposes confirmation of the plan on the basis that the plan relies on the pending Motion to Value the Secured Claim of the Franchise Tax Board, which is set for this hearing date. The court is denying Motion to Value, TGC-2 on this hearing date. Debtor's plan does not have sufficient monies to pay the claims in full.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on May 19, 2014. By the court's calculation, 64 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 failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

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

1. Debtor moves for an order valuing the secured claim of the Franchise Tax Board.
2. Debtor's assets are valued at \$1,566.00. The personal property assets are listed on Schedule B.
3. The secured debt of Franchise Tax Board on said collateral was listed on Schedule D. The Franchise Tax Board has filed a secured claim for \$1,566.00.
4. Debtor requests that the court enter an order valuing "the collateral and secured claim of Franchise Tax Board" at \$0.00.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of some "personal property assets" valued at the amount of \$1,566.00.

The Motion to Value does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion merely states that Debtor is the owner of some undescribed, unknown "personal property assets" that are valued at \$1,566.00. The Motion instructs the court to review Schedule B to ascertain the actual items of personal property Debtor wishes to be valued. It is not for the court, however, to canvas other pleadings, and wait until the hearing, to receive additional evidence from a movant to "draft the motion" for Movant. The

Debtor does not list and describe the actual items of collateral in the Motion, instead expecting the court to sift through the schedules and Debtor's bankruptcy paperwork in the court docket to understand the relief sought in Debtor's Motion. The court cannot determine the assets that Debtor seeks valued, and cannot determine whether the respondent creditor's claim is actually secured by a lien on the assets' title which is allegedly under-collateralized.

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."

The valuation motion made pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied for not complying with the pleading requirements of Federal Rule of Bankruptcy Procedure 9013.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, the Chapter 13 Trustee, all creditors, and Office of the United States Trustee on July 8, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Employ has been 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 to Employ.** 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 applicant is the Debtor in this Chapter 13 case. The Debtor requires the services of a real estate broker to aid him in carrying out his duties in this case, in particular, to market and sell the real properties known as:

1. Whitcolm Ave., Colfax, CA 95713,
2. 258 Railroad Ave., Grass Valley, CA 95945,
3. 212 Railroad Ave., Colfax, CA 95713,
4. Main Street, Colfax, CA,
5. Bareland properties,
6. 745 Alta Powerhouse Rd., Alta, CA 95701 (collectively referred to as the "Properties."

Debtor states that his attorney has contacted Patricia Branch, the proposed realtor, to list, market and negotiate a sale of the Properties.

Applicant is informed and believes the proposed realtor is well qualified in the business of marketing, selling and negotiating sales in

California, and that it is in the best interest of the estate for Ms. Branch to list, market and sell the properties and perform the necessary related services. Applicant is informed and believes and therefore alleges the granting of this application is in the best interest of this estate and, accordingly, the Court should approve said employment as provided in 11 U.S.C. § 327 (a). The proposed terms of the sale will not be determined until a real estate purchase contract has been presented.

The Declaration of Patricia Branch, Dckt. No. 127, certifies that Ms. Branch has not been retained for any prepetition services on behalf of the Debtor or the Trustee, and that Ms. Branch has not received retainers or advanced fees. Ms. Branch attests that no one at her realty company, PRB Commercial has any connection with the debtor, the Chapter 13 Trustee, creditors and other parties of interest or their attorneys and accountant connected with this case.

Ms. Branch also states that neither she nor PRB Commercial has any connection with any creditor listed on the schedules or holds any interest adverse to the Debtor or to the estate.

## **DISCUSSION**

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate, and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of the proposed realtor, considering the declaration demonstrating that Ms. Branch does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Patricia Branch to list, market, and negotiate a sale of the properties.

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

**IT IS ORDERED** that the Motion to Employ is granted and the Chapter 13 Debtor is authorized to employ Patricia Branch to list, market, and negotiate a sale of the properties.

**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

**IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 17, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 8017 36th Avenue, Sacramento, California. The Debtors seek to value the property at a fair market value of \$143,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$190,836.00. Creditor Heritage Community Credit Union second deed of trust secures a loan with a balance of approximately \$50,479.09. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Heritage Community Credit Union secured by a second deed of trust recorded against the real property commonly known as 8017 36th 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 \$143,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Not Provided. No Certificate of Service was filed on the docket pursuant to Local Bankruptcy Rule 9014-1(e)(2), which requires that a proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed. This requirement was not met.

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

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

#### **DEFECTIVE SERVICE**

Local Bankruptcy Rule 9014-1(e)(2) requires that a proof of service, in the form of a certificate of service, be filed with the court clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed. The proof of service must be filed as a separate document and shall bear its own Docket Control Number. Creditor has not filed a correctly formatted Proof of Service filed as a separate document on the court docket indicating to whom the Motion was sent, and when and how service was effected, in violation of the provisions of Local Bankruptcy Rule 9014-1(e).

The court cannot determine whether Debtors provided the requisite 14 days' notice under Local Bankruptcy Rule 9014-1(f)(2), in compliance with the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4), and whether the objection was filed within 7 days of the Debtor's 11 U.S.C. § 341 Meeting of Creditors.

Additionally, some confusion has been created by the Creditor failing to comply with Federal Rule of Bankruptcy Procedure 9013 (requiring the motion to state with particularity the grounds for the relief requested) and Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents which require that the motion, points and authorities, each declaration, and the exhibits document to be filed as separate electronic documents.

The document prepared includes exhibits, a notice, declarations, and other pleadings in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Revised Guidelines for the Preparation of Documents, ¶(3)(a). The court's expectation is that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1).

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

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

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

**IT IS ORDERED** that Objection to Confirmation is dismissed without prejudice.

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, all creditors, parties requesting special notice, and Office of the United States Trustee on May 23, 2014. By the court's calculation, 60 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Here, the Trustee opposes confirmation of the plan for two reasons.

First, the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor's monthly projected disposable income listed on amended Schedule J filed on February 7, 2014, reflects a negative \$308.84, and the Debtor is proposing plan payments of \$1,550.00 for 60 months. Debtor filed a Declaration of Julie Carnahan, which states that she will assist Debtor when necessary, and in the event that a shortfall from his own income would either "jeopardize his Chapter 13 or his household needs." The Declaration does not state Julie Carnahan's ability to help the Debtor financially, and does not state a specific amount contributed to the Debtor.

Moreover, the Statement of Financial Affairs, Dkct. No. 1, does not reflect any contributions from the sister either year to date or for the last two calendar years. Form 22C only reflects four people in Debtor's household for the last six months, and Schedule J, Page 26, Line 2, reflects that two daughters, one son, and a domestic partner are codependents.

Second, it appears that the Plan is not the Debtor's best effort under 11 U.S.C. § 1325(b). Debtor is under median income and proposes plan payments of \$1,550.00 for 60 months, with a 0% dividend to unsecured creditors. Debtor's amended Schedule I deleted the anticipated business income of \$3,194.00 reflected in the original schedule without any explanation. Schedule J shows a domestic partner as a dependent, and

Schedule I shows rental income from a domestic partner, but does not show if this is all of the domestic partner's income.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 9, 2014. By the court's calculation, 44 days' notice was provided. 42 days' notice is required.

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

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

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

1. All sums required by the plan have not been paid under 11 U.S.C. § 1325(a)(2). Debtor is \$2,241.17 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$2,241.17 is due on July 25, 2014.
2. The Plan relies on the Motion to Value Collateral of Springleaf Financial, PLG-2, which is set for hearing on this same hearing date. The court is granting the Motion to Value, thereby resolving this portion of the trustee's objection.
3. Debtor proposes to pay secured creditor Aarons a monthly dividend of \$12.95 per month in Class 2 of the plan. Monthly disbursement payments must normally be no less than \$15.00 per month under FRBP 3010(b).
4. The Plan does not provide for all mortgage arrears; On June 24, the Bank of New York filed Proof of Claim No. 6, indicating that Debtor owes \$27,739.73 in mortgage arrears. Debtor's plan proposes to pay \$25,000. Debtor is proposing to pay in Class 2 a 2009 Camry LE at 20% interest in the amount of \$381.51 per month. Assuming Debtor is proposing to pay the creditor at the contract interest rate and at the contract rate of monthly payment, Debtor appears to be in default to the claim, as no payments to the creditor is listed on the Statement of Financial Affairs, and the proof of claim discloses

a 23.16% interest rate as well as a co-buyer. The Statement of Financial Affairs also shows that the co-buyer is the Debtor's nonfiling spouse, who is not employed according to Schedule I, and is not the Debtor's dependent according to Schedule J.

Where the Debtor is proposing to pay creditors an interest in excess of that required by law under *Till v. SCS Credit Corp*, 541 U.S. 465, 301 F.3d 583 (2004), the Debtor is not paying unsecured creditors what they should receive based on their projected expenses. The expense for a higher interest rate to these creditors is not required where it is not the contract rate and reason to protect to co-buyer is not clear.

5. Debtor has not filed a declaration supporting the motion to confirm the amended plan as required under Local Bankruptcy Rule 9014-9(d)(6). While Debtor may maintain that the court file supports the relief requested, certain details normally are not in the record as to confirmation. Federal Rule of Evidence 201(d) requires the court to take mandatory judicial notice only when it is requested by a party, and the court is supplied with the necessary information.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5916 Beaumere Way, Carmichael, California. The Debtor seeks to value the property at a fair market value of \$200,000 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 \$317,400.49. Creditor Springleaf Financial's second deed of trust secures a loan with a balance of approximately \$17,723.83. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Springleaf Financial secured by a second deed of trust recorded against the real property commonly known as 5916 Beaumere Way, Carmichael, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$200,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 12, 2014. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee opposes confirmation of the plan on the basis that Trustee is uncertain of the proposed plan payments. Debtors have listed the proposed plan payments in the additional provisions as "The Debtor has paid to date \$29,470 into the Plan. Payments into the plan shall be as follows: (a) \$2,500.00 per month from August 25, 2013 through February 25, 2014; (b) \$0.00 per month from March 25, 2014 through June 25, 2014; (c) \$3,689.39 per month from July 25, 2014 through July 25, 2018."

The supporting motion states that "Debtors will be unable to make another plan payment until August of 2014." According to the Trustee's records, Debtors' last payment of \$4,210.00 was posted on February 26, 2014.

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.

42. [14-25165](#)-C-13 MARK ALLEN OBJECTION TO CONFIRMATION OF  
DPC-1 Gerald B. Glazer PLAN BY DAVID P. CUSICK  
6-25-14 [[22](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 25, 2014. By the court's calculation, 28 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. Debtor's Plan does not fulfill the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). Debtor's non exempt equity totals \$13,600.00, and the Debtor is proposing a 0% dividend to unsecured claim holders. Debtor has non-exempt equity interest in a 2006 dodge, a 1973 Corvette, a 1988 Jeep, and a 1995 Jeep.
2. Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor's plan relies on the Motion to Avoid the Lien of 21st Century Investments, Inc., which is set for hearing on July 22, 2014, the same day as this motion. The court is denying this motion.
3. It appears that the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor admitted at the 341 Meeting that he does not receive the \$300 per month from the roommate reported on Line 11 of Schedule I. Dckt. No. 1. With Debtor's disposable

income on Schedule J being \$295.00, Debtor cannot afford the plan. Debtor also has multiple monthly expenses not reported on Schedule J, such as life insurance, transportation, and gym membership. On June 19, 2014, the Debtor filed Amended Schedules I and J, Dckt. No. 21, which change the roommate rents, overtime to be worked, and odd jobs. On Schedule J, Debtor reduced his electricity expense by \$50 and his food expense by \$50 to allow for \$100 in transportation. Debtor has not filed any declaration explaining the changes. Nor does debtor explain how he will make the payment considering he does not show expenses such as life insurance and gym membership on his budget.

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 the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

**Tentative 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).

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

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

1. 21st Century Investments, Inc. recorded an abstract of judgment against Debtor with the Sacramento County Recorder in Book 20110216, Page 0146. A copy of the abstract is filed as Exhibit A.
2. The amount owed does not represent any part of the purchase price of Debtor's real or personal property.
3. Debtor in the schedules to his bankruptcy petition has listed the equity in his real and personal property as exempt. A copy of Debtor's Schedule C is filed as Exhibit "B."
4. The existence of 21 Century Investments, Inc.'s lien on Debtor's real and personal property impairs exemptions to which Debtor is entitled under CCP 704 et. seq.

The Motion to Avoid the Judicial Lien 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 a judgment creditor recorded an abstract of judgment against Debtor, and that the lien resulting from the recordation of judgment impairs some exemption that Debtor has claimed in his bankruptcy schedules. This is not sufficient. The basis for Debtor's requested relief is not stated with particularity.

The Motion merely asserts that an abstract of judgment was recorded, but does not state the amount of the judgment and to which property the lien attached. Debtor does not state the value of the subject real property as of the filing date of the petition, and the total sum of the unavavoidable consensual liens on the property. Debtor also does not cite the California Civil Procedure Code exemption claimed by Debtor in his Schedule C. Without these figures, the court cannot determine whether there is equity to support the judicial lien, and if the fixing of this judicial lien impairs the Debtor's exemption of the real property and the fixing of the lien should be avoided subject to 11 U.S.C. § 349(b)(1)(B).

Rather than including this information in his bare bones Motion, Debtor files his schedules as exhibits on the docket, apparently expecting the court to review Debtor's petition and bankruptcy paperwork to ascertain the grounds for the relief requested. It is not for the court to canvas other pleadings, and wait until the hearing, to receive additional evidence from a movant to "draft the motion" for Movant.

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."

**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 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 Avoid Judicial Lien is denied without prejudice.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 6, 2014. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 9921 Bexley Drive, Sacramento, California. The Debtors seek to value the property at a fair market value of \$186,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$206,267.00. Creditor Citibank, N.A.'s second deed of trust secures a loan with a balance of approximately \$51,344.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Citibank, N.A. secured by a second deed of trust recorded against the real property commonly known as 9921 Bexley Drive, 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 \$186,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2014. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on June 3, 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 the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 10, 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 having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee objects to confirmation of the proposed plan on the following grounds:

1. Trustee is unable to determine whether Debtor can make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). In the joint declaration of Debtor and her non-filing spouse, the declarants explain their income earned in 2012 and 2013. Dckt. No. 280. However, Debtor provides no information and supplies no evidence of what their current household income is. Debtor does not provide current paystubs or income statements and/or profit and loss statements for Rock Bottom Landscaping for the last 6 months of the operation. Debtor has not demonstrated that she currently has the ability to support the proposed plan.
2. Debtor's case was filed on September 28, 2011 and her initial Schedules and J were filed on November 1, 2011. In support of the proposed amended plan, Debtor supplies income statements from 2013 and provides as Exhibit B an updated Schedule I and Schedule J, but has not used the new official forms B6I and B6J, which became available on December 1, 2013.
3. It does not appear that the plan provides all of the Debtor's projected disposable income for the applicable commitment period under 11 U.S.C. § 1325(b). Debtor has a non-filing spouse, and the Trustee has not received a copy of any tax returns as to the Debtor's spouse. Community property is normally part of the bankruptcy estate under 11 U.S.C. § 541(a)(2).

On the most recent household and income expense report filed, Debtor provides a fresh perspective of what their current household expenses are. Trustee objects to some of the current expenses, as they either appear to be duplicate expenses, or that they may be expenses that may conclude and additional information is necessary to determine when the payment shall increase.

a. On Schedule I, Line #4d, for the non-filing spouse, Debtor deducts \$50.00 for a tax levy, but does not indicate what tax year the spouse is being levied or when the levy will end. Debtor provide no evidence of any levy.

b. On Schedule J, Line #11d, Debtor deducts \$96.00 for homeowner/renters insurance. According to the terms of the loan modification, insurance is included in the payment each month. \$96.00 per month should be added to the plan payment.

c. On Line #12, Debtor deducts a Rock Bottom self-employment income tax of \$1200 and past due tax payment for spouse of \$650.

Self-Employment Tax: Debtor reports her spouse is earning \$3,608.33 per month from Rock Bottom Construction, with a deduction of \$1,200 for taxes, approximately 34% tax is proposed to be withheld. This may be excessive, especially considering the Debtor has a household of 8, a considerable amount of deductions. Trustee has not been provided with tax returns so that the Trustee can attempt to determine the Debtor's community share of income and tax refunds.

Past Due Tax Payment: Debtor does not provide any information relating to past due tax debt, if there is debt to be paid off, and when such debt payment will end. Trustee objects to the deduction of \$650 per month for past due tax debt, this amount should be added to the plan payment. On Line #13a, Debtor deducts \$746 for auto payment. Debtor has not reported any debts to an auto lender inside or outside of her plan. Trustee is unable to determine what this expense is for or when it is to be paid off.

4. All sums required by the plan have not been paid; Debtor is \$175.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of \$525.00 is due on July 25, 2014.
5. Debtor has not provided a tax transcript of a copy of her non-filing spouse's tax returns for 2012 or 2013 although the Trustee requested the returns. The non-filing spouse is the primary source of the Debtor's plan payments, so Trustee must have to returns to verify that all household income is being reported and to allow the Trustee to determined what, if any tax liability is owed under 11 U.S.C. § 521(a)(2)(A); FRBP 4002(b)(3).
6. The plan does not acknowledge that the Trustee refunded to the Debtor \$2,744.62 on August 13, 2012, due to Debtor's conversion to Chapter 7. This refund does affect the total paid into the plan figure when calculating the plan. Debtor's plan must allow for the payment to Debtor of \$2,744.62 in order to make the plan feasible.

## RESPONSE BY DEBTOR

Debtor responds by stating that Debtor's spouse still has approximately \$50 per month deducted from his paycheck for a levy by the Franchise Tax Board. The tax levy will continue until after the end of the debtor's Chapter 13 plan. The debtor and her spouse pay approximately \$96 per month for homeowners' insurance.

Although the loan modification provides that Ocwen may collect escrow funds for insurance, it also permits Ocwen's waiver of this provision. Ocwen has waived the provision, and the debtor currently pays her own homeowners' insurance.

Debtor asserts that her spouse's deduction for taxes is appropriate. First, income from Rock Bottom Construction is self-employment income. The debtor's spouse must pay self-employment income of approximately 15 percent, or \$541. The marginal tax rate for a head of household filer for income between \$12,951 and \$49,400 is 15 per cent, and the marginal tax rate between \$49,401 and \$127,550 is 25 percent. ([www.taxfoundation.org/article/2014-tax-bracketts](http://www.taxfoundation.org/article/2014-tax-bracketts)). Even if half the debtor's spouse's taxable income from Rock Bottom falls in the 15 percent marginal range, the marginal tax rate due on Rock Bottom income will be 20 percent. Withholding of 15 percent for self-employment taxes and 20 percent for income tax is appropriate given that Rock Bottom income is additional income above the debtor's spouse's salary income from Westower.

Debtor additionally states that her spouse owes money for a car loan, which constitutes the household's only car loan. After the debtor converted her case to Chapter 7, the debtor's spouse purchased a car. The car serves as the debtor's primary vehicle for hauling their 6 children. The debtors' spouse pays \$746.47 per month for the vehicle. The car loan is the obligation of the debtor's spouse rather than the debtor.

The debtor will account for the refund paid to her by the Chapter 13 trustee after her conversion to Chapter 7 by modifying paragraph 6.01 to deduct the amount of the refund. Debtor also states that she will cure the \$175 delinquency by the time of the hearing. The debtor "did not remember" that the plan payment increased from \$350 in May to \$525 in June. Otherwise, she has made payments on a current basis since January 2014.

Debtor also states that she has the ability to make the plan payments. She and her husband, a non-debtor have testified under oath regarding their income for the six month period prior to the conversion of the Chapter 13 case. The debtor has also provided six months of paystubs from her employment, from her spouse's employment and six months of bank account statements.

## DISCUSSION

Debtor has not accounted for the \$650 being paid per month for past due tax debt, which was not added to the plan payment. Debtor has not provided any information relating to the past due tax debt, when it will be paid off, and when the payments will end. The Debtor has not provided tax returns to the Trustee, so that the Trustee can determine the Debtor's community share of income and tax refunds, and investigate Debtor and Debtor's spouse's tax withholdings for self-employment and income taxes.

It appears that Debtor has also not yet provided to the Trustee a tax transcript or copy of her non-filing husband's tax return for 2012 or 2013, even though the Trustee has requested these returns. These forms are necessary for the Trustee to confirm that all household income is being reported, and to permit the Trustee to determine what if any tax liabilities are owed. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). Debtor has also not filed her Schedules I and J on the updated Official Forms B6I and B6J.

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

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

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

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

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



Claimant Nationstar Mortgage, LLC's Notice of Post-Petition Mortgage Fees, and Charges state that Debtors owe attorney fees in the amount of \$475.00 for attorney fees. A copy of Claimant's Notice of Post-Petition Fees is filed as Exhibit "A" in support of this Objection.

The Objection states that after reviewing the court's docket, Debtors' attorney "finds it hard to believe that the \$475.00 in attorney fees justified. Debtors' attorney believes the charges are improper." Debtors request that Claimant provide the court with an explanation for why Claimant believes the charges are reasonable, and if Claimant cannot provide a logical explanation, Debtors ask that the Post-Petition fees be denied.

**REVIEW OF PROOF OF CLAIM AND NOTICE OF  
[POST-PETITION] MORTGAGE FEES**

The court has reviewed Notice of Postpetition Mortgage Fees, Expenses, and Charges. filed on May 15, 2014 by Creditor Nationstar Mortgage, LLC. Nationstar Mortgage has not filed a Proof of Claim elucidating the amount owed, and the arrearage on its claim.

On May 15, 2014, Creditor Nationstar Mortgage, LLC, filed a Notice of Postpetition Mortgage Fees, Expenses, and Charges. The notice is unclear and lacks basic details explaining the charges listed. The Notice includes fees for one item described, and one item only. The Notice lists \$475.00 as a charge incurred on the Debtors' mortgage account after the petition was filed for the account ending in the last four digits of 0644. The Notice does not calculate other fees.

The only fees listed in the Notice are "Attorney fees," included in the third line of the notice. The Notice states that these fees were incurred on February 10, 2014, and April 21, 2014, without any explanation of how these fees were incurred, and individual billing statements explaining the charges and on the statutory or contractual basis from on the fees are demanded. The Notice is signed by a Diana Duarte, identified as an Authorized Filing Agent, on the date of May 15, 2014. The contact listed below the signature line is for Jamie Holland, with an address for the Irving, Texas P.O. Box of Nationstar Mortgage, LLC.

The Creditor in this matter, Nationstar Mortgage, LLC, has not responded to this objection. The Creditor has not prepared and filed with this court any evidence or supporting documentation of how the attorney's fees listed were incurred, and the significance of the dates on the notice. The Creditor has not cited to contractual provision under the Promissory Note purportedly held by Nationstar Mortgage, LLC, or Deed of Trust securing the Note, that provides for reasonable attorney fees for prevailing parties for actions on a contract under California Code of Civil Procedure § 1717(a), or any other statutory basis for Creditor's claim on the fees.

Unless authorized by statute or agreement, attorney fees ordinarily are not recoverable as costs. Cal. Code Civ. Proc. § 1021; *International Industries, Inc. v. Olen*, 21 Cal. 3d 218, 221 (Cal. 1978). The prevailing party must establish that a contractual provision exists for attorneys' fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956). In the Ninth Circuit, the customary method for determining the reasonableness of a professional's fees is the "lodestar" calculation. *Morales v. City of San Rafael*, 96 F.3d 359, 363 (9th Cir. 1996), *amended*, 108 F.3d 981 (9th Cir. 1997). "The

'loadstar' is calculated by multiplying the number of hours the prevailing party reasonably expended on the litigation by a reasonable hourly rate." *Morales*, 96 F.3d at 363 (citation omitted). "This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). A compensation award based on the loadstar is a presumptively reasonable fee. *In re Manoa Fin. Co.*, 853 F.2d 687, 691 (9th Cir. 1988).

The Creditor has included a claim for attorney's fees in its Notice of Postpetition Mortgage Fees, Expenses, and Charges, without any explanation as to what the fees are for, who performed the services, and why Debtors are being charged for these undisclosed services. Creditor provides no statement of explanation or billing sheets that justify the fees and costs requested.

Having been served with the Debtors' to this Notice, the Creditor has failed to file any explanation of the fees charged with this court. The court will not waste Debtors an Debtors' counsel's time by ordering that Creditor file an additional explanation of the Attorney Fees requested, forcing the Debtors to incur more costs and expenses in prosecuting the Objection to this Notice. The Objection is sustained.

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 Notice of Postpetition Mortgage Fees, Expenses, and Charges 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 Notice of Postpetition Mortgage Fees, Expenses, and Charges filed by Nationstar Mortgage, LLC, on May 14, 2014, Dckt. No. 25 is sustained, and Nationstar Mortgage, LLC's claim for \$475.00 in Attorney Fees is stricken from the Notice.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 11, 2014. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 6636 Twinning Way, Citrus Heights, California. The Debtor seeks to value the property at a fair market value of \$150,000 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 \$276,851.07. Creditor the Bank of New York, as Indenture Trustee, on Behalf of the Holders of the Terwin Mortgage Trust 2006-4SL, Asset-Backed Securities, Series 2006-4SL's second deed of trust secures a loan with a balance of approximately \$88,587.89. 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 the Bank of New York, as Indenture Trustee, on Behalf of the Holders of the Terwin Mortgage Trust 2006-4SL, Asset-Backed Securities, Series 2006-4SL secured by a second deed of trust recorded against the real property commonly known as 6636 Twinning Way, Citrus Heights, California is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$150,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

49. [14-25173](#)-C-13 CHRISTOPHER/SARA VENTURA OBJECTION TO CONFIRMATION OF  
DPC-2 Pro Se PLAN BY DAVID P. CUSICK  
**Thru #51** 6-25-14 [[40](#)]

**Final Ruling:** The case having previously been dismissed, the Objection is dismissed as moot.

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

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

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

**IT IS ORDERED** that the Motion is dismissed as moot, the case having already been dismissed.

50. [14-25173](#)-C-13 CHRISTOPHER/SARA VENTURA OBJECTION TO CONFIRMATION OF  
PD-2 Pro Se PLAN BY CENTRAL MORTGAGE  
COMPANY AND/OR MOTION TO  
DISMISS CASE  
6-24-14 [[32](#)]

**Final Ruling:** The case having previously been dismissed, the Objection is dismissed as moot.

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

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

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

**IT IS ORDERED** that the Motion is dismissed as moot, the case having already been dismissed.

51. [14-25173](#)-C-13 CHRISTOPHER/SARA VENTURA  
PD-3 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
6-24-14 [[36](#)]

**Final Ruling:** The case having previously been dismissed, the Objection is dismissed as moot.

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

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

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

**IT IS ORDERED** that the Motion is dismissed as moot, the case having already been dismissed.

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 22, 2014. Fourteen days' notice is required. That requirement was met.

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

**The court's tentative decision is to grant the motion for compensation.** 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:

**FEES REQUESTED**

Michael D. Croddy, Counsel for Debtor, makes a Request for the Allowance of Fees and Expenses in this case. Counsel seeks \$5,346.54 in additional fees and costs incurred in this case for services performed from March 1, 2013 through December 17, 2013. A total of \$8,627.54 were incurred during the course of representation; however, counsel received \$3,281.00 prior to the filing of the case.

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

Counsel broke-down his tasks in the following categories:

<b>Task</b>	<b>Hours</b>	<b>Fees</b>
New Client Meeting	Senior Attorney: 1.5	\$562.50
Data Acquisition and Input	Senior Attorney: 5.6 Legal Asst.: 13	\$4,006 (\$281 expenses)
Motion to Value	Senior Attorney: 1.3	\$501.12 (\$20.62 expenses)

Meeting of Creditors	Senior Attorney: 1	\$375.00
Motion for Attorneys' Fees	Senior Attorney: 2.3	\$926.12 (\$63.64 expenses)
Objection to Claim	Senior Attorney: 1.8	\$695.62 (\$20.62 expenses)
Objection to Claim	Senior Attorney: 1.8	\$695.62 (\$20.62 expenses)
Motion to Confirm	Senior Attorney: 2.1	\$858.54 (\$71.04 expenses)
<b>TOTALS</b>	30.4	8,620.52

Prior to the filing of the instant case, counsel for Debtor received \$3,281.00. Counsel asserts that the fees previously received are insufficient as full compensation for services rendered.

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

Pursuant to 11 U.S.C. § 330(a)(3),

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

(A) the time spent on such services;

(B) the rates charged for such services;

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

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

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

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

Further, the court shall not allow compensation for,

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

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

11 U.S.C. § 330(a)(4)(A).

### **Benefit to the Estate**

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

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

*Id.* at 959.

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

### **FEES ALLOWED**

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

Michael Croddy, Senior Attorney: \$375 per hour  
Georgianna Wells, Paralegal/Legal Assistant: \$125 per hour

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate counsel and rates for the services provided. Additional fees and costs in the amount of \$5,346.54 are approved to be paid through the Debtor's Chapter 13 Plan.

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

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

The Motion for Allowance of Fees and Expenses filed by Michael Croddy having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Michael Croddy is allowed the following fees and expenses as a professional of the Estate:

Michael Croddy, Counsel for the Estate Applicant's Fees Allowed in the amount of \$8,150 in fees and Applicant's Expenses Allowed in the amount of \$477.54,

which amount, after accounting for application of \$3,000.00 retainer and \$281 paid to counsel for the filing fee, results in a total of \$5,346.54 in additional allowed Fees and Expenses,

which amount may be paid Counsel by the Chapter 13 Trustee from unencumbered assets, after full credit applied for any retainers or prior amounts paid to Counsel.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on July 8, 2014. Fourteen days' notice is required. That requirement was met.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 12-40994) was filed on December 5, 2012 and dismissed on May 1, 2014, for Debtor's delay in confirming a modified plan. Therefore, pursuant to 11 U.S.C. § 362(c) (2) (A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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

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

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

Here, there is no indication that the second filing was not in good faith. In Debtor's previous case, he attempted to modify the terms of the first mortgage on his property; however, the court ended up dismissing the case because Debtor was unable to provide any certainty that the refinance Debtor sought would be available and because of general delay in prosecuting the case, up to that point.

Now, Debtor has a commitment letter from a lender indicating the potential of refinancing the loan on the property (Exh. A, Dkt. 14).

Debtor has presented sufficient evidence for the court to conclude that the filing of the instant case was in good faith.

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

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

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

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

**IT IS ORDERED** that the Motion is  
granted and the automatic stay is extended  
pursuant to 11 U.S.C. § 362(c) (3)(B) for all  
purposes, unless terminated by further order of  
this court.

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 June 3, 2014. 35 days' notice is required. That requirement was met.

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

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

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

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

(1.) Debtors are proposing to add to Class 1 a post-petition arrears claim in the amount of \$8,500, to the detriment of unsecured creditors. Eighteen monthly contract installments have become due under the plan. The Trustee has disbursed fifteen monthly contract installments. The creditor is due three monthly contract installments totaling \$5,832 and not \$8,505 as stated by Debtors.

(2.) Debtors are delinquent \$3,040 under the proposed modified plan and \$11,340 under the confirmed plan. The last payment received by the Trustee was posted April 8, 2014. The declaration filed by Debtors does not address this delinquency. 11 U.S.C. § 1325(a)(6).

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) (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 19, 2014. Fourteen days' notice is required. That requirement was met.

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

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

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

1. Co-Debtor Delmar Reynolds did not appear at the First Meeting of Creditors held on June 12, 2014. Co-Debtor Karen Reynolds and non-Debtors Clark Nicholas and Joshua Wesley did appear. Pursuant to 11 U.S.C. § 343, Debtors are required to appear at the meeting. The continued meeting is set for August 14, 2014.
2. Debtors' plan relies on a Motion to Value the secured claims of GM Financial and Souther Oregon Pawn Shop. Debtors have yet to file Motions to value these secured claims. Without granting of the Motions, Debtors' plan lacks sufficient monies to pay all claims in full. 11 U.S.C. § 1325(a) (6).
3. Debtors' plan was filed with two (2) M-3 Attachments. The local rules of the court no longer permit these forms to be used to value collateral.
4. The plan proposes to pay counsel \$2,681 through the plan under LBR 2016-1(c); however, the Disclosure of Compensation of Attorney for Debtors appears to list that the attorney services do not include some services required under LBR 2016-1(c). Trustee takes the position that counsel for Debtor

is effectively opting out of 2016-1(c)(1) and will oppose any attorneys' fees being granted under that section.

5. The plan may not comply with applicable law and may not be proposed in good faith. 11 U.S.C. §§ 1325(a)(1)&(3).

The plan calls for the payment of the claim of U and I Trading and identifies this as debt secured by guns and, where the debt was obtained by a third party, the Debtors may intend that the plan require the return of the collateral to the Debtor. The plan does not address what occurs if the claim is paid in full. The collateral includes thirty-five (35) guns and, given the various state and federal regulations of firearms, Debtor should address issues concerning possession and transportation of this collateral directly.

The plan proposes to pay two creditors that appear to be pawn transactions - Southern Oregon Pawn Shop and U and I Trading - as secured debts over sixty (6) months of the plan. Only the year 2014 is listed for these debts on Schedule D, where the normal minimum loan period under Oregon law for a pawn broker is 60 days (O.R.S. § 726.400). It is not clear if a right to redeem still exists. Further, Debtor has indicated that some property was "pawned by a friend," so it is unclear whether Debtor even has a right to the subject property. No pawn tickets are disclosed on Schedule B.

Debtors' plan may not be their best effort. Inaccuracies between Debtors' pay stubs, Schedule I, and Form 22C suggest there are gross misrepresentations.

6. Trustee is concerned that Debtors will not be able to make the payments required under the plan. 11 U.S.C. § 1326(a)(6). One of the Debtors works in Alaska and regularly flies back to California every three weeks. The Schedules do not reflect sufficient income to cover these expenses.
7. The plan does not provide for all priority debts. 11 U.S.C. § 1322(a)(2). Schedule E discloses a monthly contract installment for Delmar Reynolds of \$22,394 as a priority debt, but the plan provides for the debt as a Class 4 secured debt at \$300.00 monthly contract installment.

The court's decision to deny confirmation. The numerous deficiencies highlighted by the Chapter 13 Trustee clearly illustrate that Debtors and their counsel need to work out many issues if they anticipate crafting a plan worthy of 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.

56. [12-41786](#)-C-13 JAMES LANINI  
SDH-6 Scott D. Hughes

OBJECTION TO CLAIM OF THE LAW  
OFFICES OF BRENDA C. SMITH,  
CLAIM NUMBER 9  
6-5-14 [[95](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 5, 2014. Forty-four days' notice is required. That requirement was met.

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

**The court's tentative decision is to sustain the Objection to Proof of Claim number 9 of Law Office of Brenda C. Smith and disallow the claim without prejudice.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Proof of Claim at issue, listed as claim number 9 on the court's official claims registry, asserts \$482.50 claim. The Debtor objects to the Claim on the basis that the claim was filed after the claims bar date of April 24, 2013.

#### **Creditor's Response**

Creditor, Law Office of Brenda C. Smith, opposes Debtor's objection to proof of claim 9. Creditor asserts she never received notice from the Debtor of the bankruptcy filing or that she was required to file a claim.

Creditor asserts that she only discovered the bankruptcy filing after conducting an Order of Examination on March 24, 2014; after which she filed the proof of claim.

Creditor argues her claim should not be time barred because of lack of notice regarding the claims bar date.

#### **Discussion**

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the

creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Debtor objects to the proof of claim on the ground that it was late filed. The court's review of the Master Address List indicates that Creditor was provided notice of the bankruptcy case after April 2, 2014. The first date set for the Meeting of Creditor's in Debtor's bankruptcy case was January 24, 2013.

Federal Rule of Bankruptcy Procedure 3002(c) establishes the claims bar date at 90 days after the first date set for the meeting of creditors. 11 U.S.C. § 502(b)(9) provides that untimely filed proofs of claims may be disallowed, except to the extent tardy filing is permitted by provisions of the Bankruptcy Code. However, a creditor must have been afforded the minimum due process mandated by the Constitution before a claims bar date may be enforced against a creditor's late-filed claim. 4 Collier on Bankruptcy ¶ 501.02 (Alan N. Resnick & Henry J. Sommer eds. 16<sup>th</sup> ed.).

While creditor asserts she did not have notice of the bankruptcy case and, based on the Master Address List, the court may reasonably conclude she lacked sufficient notice to file a timely proof of claim, Creditor has not moved the court for leave to file the proof of claim and have it deemed timely filed. Until leave is granted and the claim is deemed timely filed it will be disallowed.

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

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

The Objection to Claim of Law Office of Brenda C. Smith filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim number 9 is sustained and the claim of the Law Office of Brenda C. Smith is disallowed without prejudice.

57. [14-24287](#)-C-13 BYAN SCHULTZ  
DPC-2 Eric W. Vandermey

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
6-5-14 [[22](#)]

**Final Ruling:** The Chapter 13 Trustee having filed a Notice of Withdrawal on July 14, 2014, no prejudice to the responding party appearing by the dismissal of the Motion, the parties, having the right to dismiss the motion pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii) and Fed. R. Bankr. P. 9014 and 7041, and no issues for the court with respect to this Motion, the court removes this Objection from the calendar.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on 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.

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 all creditors, the U.S. Trustee, and Chapter 13 Trustee on June 5, 2014. 28 days' notice is required; that requirement was met.

**Tentative Ruling:** The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Chapter 13 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 Approve Loan Modification.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors request the court enter an order approving the terms of a permanent loan modification. Debtors' Motion lacks any reference to the party creditor; however, from supporting documents the court reasonably believes the modification concerns Claim No. 25, which the plan provides for in Class 1. The modification is permanent in nature, following Debtors' successful completion of a trial loan modification. The first modified payment in the amount of \$1,952.42 at 4% interest will be due June 1, 2014. Debtors will continue to make this payment for sixty (60) months.

As of the modification effective date, the principal balance of the loan is \$517,982.63. Of the principal balance, \$155,394.76 will be deferred with no interest accruing. This results in an interest bearing principal balance of \$362,587.87.

Debtors will modify their current Chapter 13 plan to conform with the details of the loan modification.

The modification is attached at Exhibit 1 at Docket No. 100.

### **Chapter 13 Trustee Response**

The Chapter 13 Trustee does not oppose granting the Motion to Approve Loan Modification but notes that the modification is referred to as "Carrington Loan Modification" in the Exhibit (Dkt. 109); while, the original proof of claim (Claim No. 25) and Transfer of Claim (Dkt. 102) state that the current creditor is Christiana Trust, A Division of Wilmington Savings Fund Society, FSB, A Division of Wilmington Savings Fund Society, FSB, as trustee for Normandy Mortgage Loan Trust, Series 2013-8 c/o Carrington Mortgage Services, LLC.

It is the Trustee's understanding that Carrington Mortgage Services, LLC is acting as servicing agent for the creditor, and that the loan modification is sought on behalf of the creditor.

### **Debtors' Response**

Debtors' response confirms that the Trustee's interpretation of the proper parties and their relationship to one another is correct. Debtors assert that obtaining a loan modification in this case has been difficult and Debtors request the Motion be granted.

### **Disposition**

The court's decision is to deny the Motion to Approve the Loan Modification. While Debtor clarifies that Carrington Mortgage Services, LLC is the servicer for Christiana Trust, the court remains perplexed as to the identity of the lender.

The Modification Agreement lists the "Lender" as "Carrington Mortgage Services, LLC" on the first page of the actual Home Affordable Modification Agreement (Dkt. 100). Christiana Trust is listed as the claimant on the claims register, but the documents attached to Claim No. 25 refer to CitiMortgage as the secured creditor. On April 12, 2014, the court entered an order approving the Trial Loan Modification on 804 Woburn Court, Vacaville, California between Debtors and CitiMortgage, yet the permanent loan modification papers for the same property are executed between Debtors and Carrington Mortgage Services, LLC. Further muddling the situation is a Notice of Mortgage Payment Change for the subject property, filed on June 26, 2014, by CitiMortgage, listing the creditor as "CitiMortgage, Inc. c/o Carrington Mortgage Services."

The record is unclear as to which entity is the subject creditor participating in this proceeding. The court cannot enter an order modifying the rights of a secured creditor when it cannot deduce the identify of the subject creditor. For this reason, the Motion is denied without prejudice.

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

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

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

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