

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

August 6, 2013 at 2:00 p.m.

1. [12-20300](#)-C-13 RUSSELL WALDEN MOTION TO APPROVE LOAN
PGM-3 Peter G. Macaluso MODIFICATION
7-5-13 [[73](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on July 5, 2013. 28 days' notice is required; that requirement was met.

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

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

Movant Debtor requests that the court approve a modification of their mortgage with Seterus concerning real property commonly known as 101 Elkhorn Boulevard, Rio Linda, California. The new loan payments will be in the amount of \$984.58 at an interest rate of 4.00% for a duration of 480 months. The modified principal balance of the note will include all amounts and arrearages that will be past due as of the effective date of the loan mod. The new principal balance of the loan will be \$200,594.91. A copy of the loan modification agreement with Seterus, containing its precise terms, is attached to the instant motion as Exhibit A (Docket Item No. 76).

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

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

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

IT IS ORDERED that the Motion to Approve Loan Modification is granted.

2. [13-26003](#)-C-13 SCOTT/MICHELLE GONZALES MOTION TO VALUE COLLATERAL OF
RAH-1 Richard A. Hall CHASE HOME FINANCE, LLC
6-17-13 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on June 18, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4090 Clover Valley Road, Rocklin, California. The Debtor seeks to value the property at a fair market value of \$305,000 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 \$316,975. Chase Home Finance LLC's second deed of trust secures a loan with a balance of approximately \$49,326. 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 Chase Home Finance LLC secured by a second deed of trust recorded against the real property commonly known as 4090 Clover Valley Road, Rocklin, 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 \$305,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

3. [13-27903](#)-C-13 ELIZABETH KIMMONS MOTION TO VALUE COLLATERAL OF
SAC-1 Scott A. CoBen ZIG ZAG BAIL BONDS
6-26-13 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 27, 2013. 28 days' notice is required. That requirement was met.

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

issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2815 Tam O Shanter Drive, El Dorado Hills, California. The Debtor seeks to value the property at a fair market value of \$351,000 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 \$417,000. Zig Zag's Bail Bonds' property lien secures a loan with a balance of approximately \$6,800. 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 Zig Zag Bail Bonds secured by a second deed of trust recorded against the real property commonly known as 2815 Tam O Shanter Drive, El Dorado Hills, 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 \$351,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

4. [13-27604](#)-C-13 SEAN MADDUX
APN-1 W. Scott de Bie
Thru #5
And #9

OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
7-10-13 [[47](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor,, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 10, 2013 14 days' notice is required. That requirement was met.

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

The court's tentative decision is to continue 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:

Secured creditor Wells Fargo Bank N.A. ("WF") objects to confirmation of the debtor's plan. WF extended the debtor a \$50,000 home equity loan at a variable interest rate, secured by real property commonly known as 232 Parkview Terrace, Vallejo, California. WF objects to the fact that the debtor's plan lists WF's debt as a class 2C claim, contending that the value of the property is high enough that the debt is at least partially secured. This objection is essentially identical in substance to WF's opposition to the debtor's motion to value the same property pursuant to 11 U.S.C. § 506, which motion is tentatively slated to be set for an evidentiary hearing on [DATE]. Accordingly, this objection shall be continued pending the resolution of that matter.

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 continued to [DATE].

5. [13-27604](#)-C-13 SEAN MADDOX MOTION TO VALUE COLLATERAL OF
SDB-1 W. Scott de Bie WELLS FARGO BANK, N.A.
6-28-13 [[18](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 28, 2013. 28 days' notice is required. That requirement was met.

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 232 Parkview Terrace, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$160,000 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 \$169,428. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$50,000. Therefore, the respondent creditor's claim secured by a junior deed of trust is ostensibly under-collateralized. However, the creditor has filed an opposition disputing the debtor's proposed valuation.

Wells Fargo Bank, N.A. states in its opposition that it objects to the valuation of the property at \$160,000. Wells Fargo claims that its own investigation into the value of the property has caused it to conclude the value at the time of filing was \$180,000. This was discovered by Wells Fargo in their Residential Evaluation Report that was ordered on February 25, 2013. This would leave the debtor with equity in the property.

The court shall issue an evidentiary hearing order in substantially in the following form holding that:

(1.) Evidence shall be presented in accordance with Local Bankruptcy Rule 9017-1.

(2.) The evidentiary hearing shall be conducted on [date].

6. [13-27604](#)-C-13 SEAN MADDOX MOTION TO AVOID LIEN OF REMIT
SDB-2 W. Scott de Bie CORPORATION
7-1-13 [[25](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on July 1, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Avoid a Judicial Lien is granted. No appearance required.

A judgment was entered against the Debtor in favor of Remit Corporation for the sum of \$9,648.98. The abstract of judgment was recorded with Solano County on May 6, 2004. That lien attached to the Debtor's residential real property commonly known as 232 Parkview Terrace, Vallejo, CA.

The motion is granted pursuant to 11 U.S.C. § 522(f) (1) (A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$160,000 as of the date of the petition. The unavoidable consensual liens total \$251,120 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b) (5) in the amount of \$200 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f) (2) (A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b) (1) (B).

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Remit Corporation, Solano County Superior Court Case No. VCM090347, Document No. 200400060312, recorded on May 06, 2004, with the Solano County Recorder, against the real property commonly known as 232 Parkview Terrace, Vallejo, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

7. [13-27604](#)-C-13 SEAN MADDOX MOTION TO AVOID LIEN OF
SDB-3 W. Scott de Bie CITIBANK (SOUTH DAKOTA), N.A.
7-2-13 [[31](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on July 2, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Avoid a Judicial Lien is granted. No appearance required.

A judgment was entered against the Debtor in favor of Citibank (South Dakota), N.A. for the sum of \$3,106.37. The abstract of judgment was recorded with Solano County on May 23, 2005. That lien attached to the Debtor's residential real property commonly known as 232 Parkview Terrace, Vallejo, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$160,000 as of the date of the petition. The unavoidable consensual liens total \$251,120.88 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$200 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Citibank (South Dakota) N.A., Solano County Superior Court Case No. FCM116197, Document No. 201100049865, recorded on June 6, 2011, with the Solano County Recorder, against the real property commonly known 232 Parkview Terrace, Vallejo, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

8. [13-27604](#)-C-13 SEAN MADDOX
SDB-4 W. Scott de Bie

MOTION TO AVOID LIEN OF
CITIBANK (SOUTH DAKOTA), N.A.
7-2-13 [[37](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on July 2, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Avoid a Judicial Lien is granted. No appearance required.

A judgment was entered against the Debtor in favor of Citibank (South Dakota) N.A. for the sum of \$17,811.29. The abstract of judgment was recorded with Solano County on May 6, 2004. That lien attached to the Debtor's residential real property commonly known as 232 Parkview Terrace, Vallejo, CA.

The motion is granted pursuant to 11 U.S.C. § 522(f) (1) (A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$160,000 as of the date of the petition. The unavoidable consensual liens total \$251,120 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b) (5) in the amount of \$200 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f) (2) (A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b) (1) (B).

ISSUANCE OF A COURT DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11
U.S.C. § 522(f) filed by the Debtor(s) having

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

IT IS ORDERED that the judgment lien of Citibank (South Dakota) N.A., Solano County Superior Court Case No. VCM106856, Document No. 201000095286, recorded on October 15, 2010, with the Solano County Recorder, against the real property commonly known as 232 Parkview Terrace, Vallejo, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

9. [13-27604](#)-C-13 SEAN MADDOX OBJECTION TO CONFIRMATION OF
TSB-1 W. Scott de Bie PLAN BY DAVID CUSICK
7-10-13 [[44](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on July 10, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that because the plan relies on a pending motions: (1) Motion to Value Collateral of Wells Fargo Bank (SDB-1), (2) Motion to Avoid Judicial Lien on Remit Corporation (SDB-2), (3) Motion to Avoid Judicial Lien of Citibank (SDB-3), and (4) Motion to avoid Judicial lien of Citibank (SDB-4). These motions are set for hearing on August 6, 2013, the same day as this motion. If they are not granted, the Debtor's plan does not have sufficient monies to pay the claims in full.

The Debtor filed a response to the Trustee's opposition stating that oppositions to the Debtor's motions to value and avoid judicial liens have not been opposed and therefore the plan should be confirmed.

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.

10. [13-27605](#)-C-13 TIMOTHY GRAYSON MOTION TO VALUE COLLATERAL OF
SDB-1 W. Scott de Bie SF FIRE CREDIT UNION
Thru #11 6-25-13 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 25, 2013. 28 days' notice is required. That requirement is met.

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

The Motion to Value Collateral is set for evidentiary hearing on [Date]. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2006 Ford F250. The Debtor seeks to value the property at a replacement value of \$10,990 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 more than 910 days prior to filing of the petition, with a balance of approximately \$16,958.16. 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 \$10,990. 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.

Secured Creditor San Francisco Fire Credit Union filed an opposition to the debtor's motion. In the opposition the creditor calls into question the debtor's valuation of the vehicle. The creditor offers evidence in the form of the Declaration of Scott Brown of Auto Inspection Services, that establishes the retail value of the Vehicle at \$17,850, this evaluation was made July 22, 2013. Creditor asks the court to value the vehicle at \$17,850.

The court shall issue an evidentiary hearing order in substantially in the following form holding that:

- (1.) Evidence shall be presented in accordance with Local Bankruptcy Rule 9017-1.
- (2.) The debtor shall clarify precisely the condition of the collateral.
- (3.) The evidentiary hearing shall be conducted on [date].

11. [13-27605](#)-C-13 TIMOTHY GRAYSON
TSB-1 W. Scott de Bie

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
7-10-13 [[29](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on July 10, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that because the plan relies on a pending Motion to Value Collateral of SF Fire Credit Union, which is set for hearing on the same day as this motion. If the motion is not granted, Debtor's plan does not have sufficient monies to pay the claim in full. The motion to value has tentatively been set for an evidentiary hearing.

The Debtor filed a response to the Trustee's opposition stating that the motion has been filed and Debtor anticipates the motion will be granted.

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.

12. [13-27113](#)-C-13 ALAN/ELAINE WEMPLE MOTION TO VALUE COLLATERAL OF
TJW-1 Timothy J. Walsh JP MORGAN CHASE BANK, N.A.
7-1-13 [[17](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 1, 2013. 28 days' notice is required. That requirement was met.

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 627 Montezuma Street, Rio Vista, 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 \$163,983,000. JPMorgan Chase Bank N.A.'s second deed of trust secures a loan with a balance of approximately \$93,747. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. However, the creditor has filed an opposition disputing the debtor's proposed valuation.

JPMorgan Chase submitted as "Exhibit C" its own Broker's Price Opinion, which evidences the value of the property at \$185,000. This would make JPMorgan Chase's lien partially secured. Creditor requests that this motion be continued to allow them to obtain a verified appraisal of the subject property. Furthermore, Creditor requests the cooperation of the Debtors in permitting them to obtain an appraisal.

It is ordered that the matter is continued until **date** pending appraisal of the property.

13. [13-28215](#)-C-13 DORIS/JUAN GOMEZ MOTION TO VALUE COLLATERAL OF
MOH-1 Michael O'Dowd Hays HSBC MORTGAGE SERVICES, INC.
7-23-13 [[18](#)]

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 July 23, 2013. 14 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 516 E. Walker Street, Orland, California. The Debtor seeks to value the property at a fair market value of \$85,000 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 \$120,917. HSBC Mortgage Services Inc's second deed of trust secures a loan with a balance of approximately \$89,257. 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 HSBC Mortgage Services Inc. secured by a second deed of trust recorded against the real property commonly known as 516 E. Walker Street, Orland, 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 \$85,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

14. [13-22016](#)-C-13 JAY HORTON CONTINUED OBJECTION TO
MDE-1 Candace Y. Brooks CONFIRMATION OF PLAN BY WELLS
FARGO BANK, N.A.
3-20-13 [[22](#)]

Final Ruling: The Objection to Confirmation has been resolved by stipulation (Docket #43)

15. [13-26616](#)-C-13 MONTE/DEBRA BISS CONTINUED OBJECTION TO
PPR-1 Barry H. Spitzer CONFIRMATION OF PLAN BY
BANKUNITED, N.A.
6-20-13 [[23](#)]

Final Ruling: BankUnited, N.A. having filed a Notice of Withdrawal on July 26, 2013, 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 Motion from the calendar.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 2, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8731 Crucero Drive, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$148,612 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 \$181,516. Specialized Loan Servicing Inc.'s second deed of trust secures a loan with a balance of approximately \$32,581. 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 Specialized Loan Servicing, Inc. secured by a second deed of trust recorded against the real property commonly known as 8731 Crucero Drive, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$148,612 and is encumbered by senior liens securing claims which exceed the value of the Property.

17. [12-23420](#)-C-13 KION/LISA HILLARY MOTION TO MODIFY PLAN
LLL-4 Lawrence Lockwood 6-19-13 [[116](#)]

Final Ruling: The Movant having filed a Notice of Withdrawal on July 27, 2013 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 Motion 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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(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, however, the chapter 13 trustee objects on the following grounds: (1.) The proposed plan does not provide for the secured claim of HSBC Bank US, N.A. (2.) According to the trustee's calculations, the plan will require 79 months to complete, in excess of the maximum of 60 months allowed under 11 U.S.C. § 1322(d). Further, the plan pays 0% to unsecured creditors. (3.) The trustee is unsure of the debtor's income. The supporting pleadings accompanying this motion state that "the debtor's income has decreased," but insufficient verification is provided and the trustee remains uncertain as to the severity and duration of the decrease.

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

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

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

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

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

19. [13-20625](#)-C-13 SHARRY GOREE
John A. Tosney

OPPOSITION TO TRUSTEE'S NOTICE
OF DEFAULT AND APPLICATION TO
DISMISS CASE
7-2-13 [[44](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 22, 2012. 28 days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the motion. Oral argument will be entertained at the scheduled hearing.

The debtor received notice from the trustee that her plan payments were in default and that her case would be dismissed as a result thereof. Debtor asserts in her motion that, "pursuant to the trustee's website," she is current on all plan payments. The chapter 13 trustee filed a reply to this opposition, stating that according to his records, the debtor is at least \$4,880 delinquent on plan payments at this time.

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 Opposition to Trustee's Notice of Default filed by Debtor(s) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the debtor's motion is denied.

20. [11-46827](#)-C-13 UBONG INYANG
PGM-3 Peter G. Macaluso

CONTINUED OBJECTION TO NOTICE
OF POSTPETITION MORTGAGE FEES,
EXPENSES, AND CHARGES
3-7-13 [[57](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor, and Office of the United States Trustee on March 7, 2013. By the court's calculation, 47 days' notice was provided.

Tentative Ruling: This Objection to a Notice of Post-Petition Mortgage Fees, Expenses and Charges has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1) and Rule 3007-1(d). 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 set the matter for an evidentiary hearing. 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 ruling:

Debtor objects to a Notice of Post-Petition Mortgage Fees, Expenses and Charges filed by creditor GMAC Mortgage, LLC ("GMAC") filed on May 29, 2012, in the amount of \$525. GMAC has asserted a claim in this case, listed as Claim No. 9 in the court's official registry. The gravamen of the debtor's argument is that the Proof of Claim and the Notice at issue are defective because the signatory did not identify himself as either the creditor or the creditor's authorized agent, but instead simply signed the Proof of Claim as "Bryan Fairman, Attorney."

The Notice of Post-Petition Mortgage Fees, Expenses and Charges includes charges for attorney fees for a "pay charge letter" and a "fee notice letter" in the amount of \$100 and proof of claim fees in the amount of \$425. The debtor asserts that these attorney fees are unreasonable and should be disallowed.

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 contends that under the plain language of Federal Rule of Bankruptcy Procedure 3002.1(d), the type of Notice at issue here is not subject to the prima facie presumption of validity afforded to Proofs of Claim under Federal Rule of Bankruptcy Procedure 3001(f). GMAC, Debtor argues, has made no showing to substantiate the validity of the expenses asserted in this Notice of Post-

Petition Mortgage Fees, Expenses and Charges. Absent a presumption of validity, GMAC has the burden of showing the reasonableness of its fee claim. *Atwood v. Chase Manhattan Mortgage Co. (In re Atwood)*, 293 B.R. 227, 233 (9th Cir. B.A.P. 2003). Since, Debtor contends, GMAC has the affirmative burden of showing the reasonableness of its claim, Debtor need only point out the absence of such a showing in order to invalidate it.

Creditor's Response: Respondent creditor, through its servicing agent Green Tree Servicing, LLC, files the following response. Creditor states that pursuant to Federal Rule of Bankruptcy Procedure 3002.1, they filed a Notice of Post-Petition Mortgage Fees, Expenses and Charges on May 29, 2012, substantially as it is described by the debtor in the debtor's motion papers.

Creditor's Attorney states with respect to the issue of not having identified itself as either the creditor or the creditor's authorized agent on the Notice that it did not do so because, as the creditor's attorney, neither of those boxes adequately reflected Pite Duncan, LLP's relationship with the creditor. Nevertheless, Respondent contends, it is quite clear who the Notice was from and what Mr. Fairman's relationship to the creditor was.

Further, respondent argues that the attorneys' fees included in the Notice were reasonable. Respondent argues at some length that the fees asserted were reasonable in light of the criteria laid down by the Ninth Circuit in *LaFarge Concrets et Etudes, S.A. v. Kaiser Cement & Gypsum Corp.*, 791 F.2d 1334, 1341-42 (9th Cir. 1986). The issue, then, really, is whether Respondent provided sufficient evidence in the original Notice that the fees asserted were reasonable. On this point, Respondent notes that Debtor did not ever object to GMAC's Proof of Claim. Respondent further argues that Rule 3002.1(c) and Rule 3002.1(d) do not require additional exhibits or evidence to be submitted alongside the Notice, only that the notice shall be prepared as prescribed by the appropriate Official Form, and filed as a supplement to the holder's proof of claim.

The issue, then, is whether the respondent creditor needed to support the Notice it filed under Rule 3002.1 with authenticated, admissible evidence. The Notice at issue, filed on May 29, 2012, and viewable in the court's docket as a separate document in between Item No. 45 and Item No. 46, does appear to include invoices and documents which purport to show the reasonableness of the fees asserted. Nevertheless, the issue is whether that is sufficient to allow the attorney fees the debtor now challenges to withstand that challenge in light of the fact that Federal Rule of Bankruptcy Procedure states quite clearly that this Notice is not subject to the prima facie presumption of validity of Rule 3001(f). There is no evidence asserting the reasonableness of these fees in the form of a declaration of admissible evidence, verified under penalty of perjury in accordance with 28 U.S.C. §1746. Absent a challenge from the debtor, this Notice would, it appears, comply with the requirements of Rule 3002.1. But in light of this challenge, the reasonableness of the asserted fees is not a matter that is settled beyond dispute by the evidence currently in the court's docket. The matter must be set for an evidentiary hearing.

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

The Objection to Notice of Post-Petition Mortgage Fees, Expenses and Charges filed in this case by Debtor having been presented to the court, and upon review of the pleadings, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection is set for an evidentiary hearing on **date**.

21. [13-27531](#)-C-13 LEONARDO/VALERIE CHAVEZ OBJECTION TO CONFIRMATION OF
TSB-1 Richard A. Chan PLAN BY DAVID P. CUSICK
7-10-13 [[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 July 10, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on the Motion to Value Collateral of Real Time Resolutions that is set for hearing on August 8, 2013.

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.

22. [11-44932](#)-C-13 CHRISTOPHER/SHERYL RANEY MOTION TO AVOID LIEN OF CAPITAL
CYB-2 Candace Y. Brooks ONE BANK (USA), N.A.
6-25-13 [[37](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on June 25, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Avoid a Judicial Lien is granted. No appearance required.

A judgment was entered against the Debtor in favor of Capital One Bank (USA) N.A for the sum of \$4,816.18. The abstract of judgment was recorded with Sacramento County on October 4, 2011. That lien attached to the Debtor's residential real property commonly known as 9296 Premier Way, Sacramento, California.

The motion is granted pursuant to 11 U.S.C. § 522(f) (1) (A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$170,000 as of the date of the petition. The unavoidable consensual liens total \$382,591 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b) (5) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f) (2) (A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of

the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Capital One Bank (USA) N.A., Sacramento County Superior Court Case No. 34-2010-00088090, Book No. 20111004, Page No. 0751, recorded on October 4, 2011, with the Sacramento County Recorder, against the real property commonly known as 9296 Premier Way, Sacramento, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

23. [13-23632](#)-C-13 ROBERT CORONADO MOTION TO CONFIRM PLAN
SDH-2 Scott D. Hughes 6-19-13 [[34](#)]

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 19, 2013. 42 days' notice is required. That requirement was met.

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

The court's tentative decision is to deny the Motion to Confirm the Plan. 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 trustee opposes confirmation of this plan because the debtor is currently at least \$4,525 delinquent in plan payments. Further, the debtor has not provided for an expense for income taxes on schedules I and J, raising questions about whether the debtor will be able to make plan payments as required under 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

24. [13-22833](#)-C-13 DANIEL/MARIA VACA MOTION TO CONFIRM PLAN
JBG-3 Jared B. Gaynor 6-21-13 [[49](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2013. 42 days' notice is required. That requirement was met.

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 21, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

25. [11-39435](#)-C-13 MANUEL/KERI NUNEZ MOTION TO MODIFY PLAN
CAH-5 C. Anthony Hughes 6-28-13 [[80](#)]

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 28, 2013. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The trustee opposes this proposed modification because it may not be the debtor's best effort as required under 11 U.S.C. § 1325(b). The debtors' modified plan proposes to increase their monthly food expenses by approximately \$400 and their monthly personal care expenses by approximately

\$50. Nothing is given to substantiate the need for such increases. Debtors request a monthly food expense allowance of \$1,166, vastly above the national standard for allowable food expenses for a family of four, which is \$777.

The debtors filed a reply to the trustee's opposition, wherein they contend essentially that the food expense is not excessive in light of the debtors having two dependants to feed. This, however, does little to combat the trustee's assertion that the amount listed for food appears excessive in light of the national standard for allowable food expenses for a family of four.

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

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

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

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

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

26. [13-25936](#)-C-13 RICK/JEANNIE GREENEBAUM MOTION TO CONFIRM PLAN
RAC-3 Richard A. Chan 6-20-13 [[39](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 20, 2013. 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 Plan is granted. No appearance required.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 20, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

27. [13-27437](#)-C-13 JOANN ARTIAGA OBJECTION TO CONFIRMATION OF
ASW-1 C. Anthony Hughes PLAN BY HSBC BANK USA, N.A.
7-10-13 [[30](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Debtor and Debtor's Attorney on July 10, 2013. 14 days' notice is required. That requirement was met.

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

The court's tentative decision is to sustain the Objection. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other

issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

HSBS Bank USA, NA., opposes confirmation of the Plan on the basis that the plan fails to provide for full value of arrearage. The Debtor's plan proposes to cure no arrearage whatsoever, the actual arrearages total \$9,741.99. Debtor would need to increase the payment through the Plan to Creditor to approximately \$162.37 monthly in order to cure Creditor's pre-petition arrears over the life of the 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.

28. [11-43842](#)-C-13 ALAN/SHIRLEY WILLIAMS MOTION TO BORROW
JT-4 John A. Tosney 7-19-13 [[87](#)]

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 19, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The other parties in interest did not file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) and therefore is not, therefore, 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 decision is to grant the motion to incur debt. Oral argument will be entertained at the scheduled hearing.

Debtor seeks court approval to incur further indebtedness in regards to a vehicle loan with Enterprise Car Sales. Debtors are in the 21st month of a 60-month confirmed plan, but recently their primary vehicle, a 2008 Honda CRV, was

totalled in an accident. The insurance proceeds paid off the loan, with no excess going to the debtors. Debtors now seek to purchase a 2012 Chevy Sonic for a total purchase price of \$13,716.57, \$3,000 of which will be provided by the debtors' daughter, the rest of which will be financed at an interest rate of 9.67%. The proposed payments will be \$290.38 per month.

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 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 Incur Debt 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 Debtor is authorized to incur the above-described indebtedness with lender Enterprise Car Sales for the purpose of purchasing the above-described Chevy Sonic.

29. [11-41644](#)-C-13 MARK/NANCY SNOW MOTION TO MODIFY PLAN
WW-3 Mark A. Wolff 7-1-13 [[73](#)]

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 1, 2013. 35 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this case, the trustee filed an opposition, noting that attorney fees are incorrectly stated in Section 2.06 of the plan and that the debtor proposes a dividend of no less than 4% to class 7 creditors, but according to the trustee's calculations they will be paid no less than 55%. Moreover, the trustee notes that he is uncertain of the proposed treatment of creditor Les Schwab, which creditor is listed as both a Class 2 and a Class 3 creditor. Debtors filed a response, clarifying that attorney fees will be \$3,500, that the language ("no less than") allows for payments to class 7 creditors of greater than 4%, and that Les Schwab is a Class 3 creditor. Accordingly, the trustee's objections have been resolved.

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

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

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

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

[IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on July 1, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

30. [12-39445](#)-C-13 AFFONSO LOPEZ AND LEILA MOTION TO MODIFY PLAN
SDB-3 ANDRADA LOPEZ 6-14-13 [[79](#)]

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 14, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(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 trustee filed an objection, noting that the debtor is at least \$814 delinquent under the terms of the proposed plan and that the plan is unclear because the motion and declaration propose that the debtor pay a total of \$1,300 through May, 2013, and then \$814 per month beginning in June, 2013 for the duration of the plan. Section 6.01 of the plan, however, proposes payments of \$1,300 through May, then \$814 for 42 months, then \$893 for the remaining months of the plan.

Debtors filed a reply, noting that the inconsistency noted by the trustee was the result of a typo, but that they have lost additional income and will be unable to move forward with the confirmation of this plan. Debtors intend to propose a new plan and set it for confirmation as soon as possible.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 17, 2013. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

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

32. [13-26750](#)-C-13 ADELAI DA VASQUEZ
JCW-1 Pro Se
Thru #34

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK, N.A.
7-10-13 [[34](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Debtor and Debtor's Attorney on July 10, 2013. 14 days' notice is required. That requirement was met.

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

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

U.S. Bank, N.A. opposes confirmation of the Plan on the basis that the proposed plan does not provide for arrearages owed to them. Pursuant to 11 U.S.C § 1322(b)(2), 11 U.S.C § 1322(b)(5) and 11 U.S.C § 1325(a)(5)(B), the plan must provide for full payment of the arrearages as well as ongoing monthly payments. Debtor alleges that no arrears are owed to U.S. Bank, however the actual arrears owed are in the amount of \$109,653. Debtor does not have sufficient funds available to cure the arrears in 60 months. Further, the proposed plan lists U.S. Bank in Class 2 and alleges that the value of the property is \$0.00. U.S. Bank objects to such valuation of the property and any modifications to its lien.

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.

33. [13-26750](#)-C-13 ADELAI DA VASQUEZ OBJECTION TO DEBTOR'S CLAIM OF
TSB-1 Pro Se EXEMPTIONS
7-9-13 [[27](#)]

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

Correct Notice Provided. The Proof of Service filed on July 9, 2013, states that the Motion and supporting pleadings were served on Debtor (pro se). 28 days' notice was required. That requirement was met.

Final Ruling: The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The objection to claimed exemptions is sustained and the exemptions are disallowed in their entirety. No appearance required.

The Trustee objects to the Debtor's use of the exemptions provided by the California Code of Civil Procedure without filing a Spousal Waiver form.

The Trustee's objection is sustained and the claimed exemptions are 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 Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained and the claimed exemptions are disallowed in their entirety.

34. [13-26750](#)-C-13 ADELAI DA VASQUEZ
TSB-2 Pro Se

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE DAVID P. CUSICK
7-10-13 [[30](#)]

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 July 10, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor has failed to provide a number of required documents including: Income Verification, a tax transcript or copy of their Federal Income Tax Return and a Spousal Waiver. Furthermore, the plan is incomplete in that it fails to propose payment to any creditors and fails to list mortgage arrearage amount. Finally, the debtor also fails to list all debts and creditors in the 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.

35. [13-28353](#)-C-13 JILL BETHUNE
SAC-1 Scott A. CoBen

MOTION TO VALUE COLLATERAL OF
U.S. BANK
7-3-13 [[11](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 3, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 610 Elizabeth Street, West Sacramento, California. The Debtor seeks to value the property at a fair market value of \$90,000 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 \$107,031. US Bank's second deed of trust secures a loan with a balance of approximately \$3,000. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of US Bank secured by a second deed of trust recorded against the real property commonly known as 610 Elizabeth Street, West 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 \$90,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

36. [13-21455](#)-C-13 JOEY WONG MOTION TO CONFIRM PLAN
JAD-1 Jessica A. Dorn 6-13-13 [[32](#)]

Final Ruling: The Movant having filed a Notice of Withdrawal on July 29, 2013, 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 Motion from the calendar.

37. [11-40557](#)-C-13 ANTHONY MINTER OBJECTION TO CLAIM OF FRANCHISE
RWH-3 Ronald W. Holland TAX BOARD, CLAIM NUMBER 10
6-26-13 [[65](#)]

CASE DISMISSED 5/10/13

38. [13-27557](#)-C-13 CHARLES/IRENE BRUCE
SJS-1 Scott J. Sagaria
Thru #39

MOTION TO VALUE COLLATERAL OF
HSBC BANK USA, N.A.
6-26-13 [[17](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 27, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8236 Mulrany Way, Antelope, California. The Debtor seeks to value the property at a fair market value of \$160,000 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 \$161,967. HSBC Bank USA, N.A.'s second deed of trust secures a loan with a balance of approximately \$36,317. 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 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.

40. [13-27160](#)-C-13 REMEDIOS COPELAND CONTINUED OBJECTION TO
TSB-1 Ronald W. Holland CONFIRMATION OF PLAN BY DAVID
P. CUSICK
7-3-13 [[17](#)]

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 July 3, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor failed to appear at the First Meeting of Creditors and the Continued meeting of Creditors scheduled on July 25, 2013.

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.

41.	13-26161 -C-13	MAYLENE RAMAGOZA	OBJECTION TO DEBTOR'S CLAIM OF
	TSB-2	Pro Se	EXEMPTIONS
			6-27-13 [31]

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

Correct Notice Provided. The Proof of Service filed on June 27, 2013. states that the Motion and supporting pleadings were served on Debtor (pro se). 28 days' notice was required. That requirement was met.

Final Ruling: The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The objection to claimed exemptions is sustained and the exemptions are disallowed in their entirety. No appearance required.

The Trustee objects to the Debtor's use of the auto exemption provided by CCP § 703.140(b) (2) to exempt household goods and clothing. The Trustee's objection is sustained and the claimed exemptions are 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 Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained and the claimed exemptions are disallowed in their entirety.

42. [12-29762](#)-C-13 LARRY/LINDA NAMANNY MOTION TO MODIFY PLAN
THS-2 Timothy H. Stearns 6-14-13 [[65](#)]

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 14, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(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 objects to the instant motion for the following reasons:

First, the plan may not be feasible, as it will apparently require 64 months to complete, in excess of the maximum of 60 allowed under 11 U.S.C. § 1322(d). Second, the court's docket indicates that the modified Plan has not been filed except as an exhibit, raising questions about whether all affected parties have received effective notice of the modified plan. Third, the plan now calls for the retention of three vacant lots of real property, lots whose sale is contemplated in the previous confirmed plan. The trustee avers that this amounts to speculation at the expense of

the unsecured creditors. Fourth, the debtors' declaration does not adequately explain changes in their Schedule J. Finally, the plan does not appear to adequately cure mortgage arrears.

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

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

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

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

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

43. [13-27563](#)-C-13 AMANDA STONE OBJECTION TO CONFIRMATION OF
TSB-1 Scott J. Sagaria PLAN BY DAVID P. CUSICK
7-10-13 [[16](#)]

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 October 31, 2012. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the debtor failed to attend the First Meeting of Creditors held on July 3, 2013. The meeting has been continued to August 1, 2013. The Trustee does not have sufficient information to determine whether or not the plan is suitable.

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.

44. [13-26870](#)-C-13 JANET BROWN CONTINUED OBJECTION TO
TSB-1 Mohammad M. Mokarram CONFIRMATION OF PLAN BY DAVID
P. CUSICK
6-27-13 [[15](#)]

Final Ruling: The Chapter 13 Trustee having filed a Notice of Withdrawal on July 25, 2013, 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 Motion from the calendar.

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

Correct Notice Provided. The Proof of Service, while it was not uploaded to the court's docket until July 26, 2013, states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 28, 2013. 42 days' notice is required. That requirement was met.

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 24, 2013, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(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 20, 2013. 42 days' notice is required. That requirement was met.

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

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

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 trustee objects to the proposed plan for the following reasons: First, the plan reflects an amended lease, but the trustee cannot locate any document in the court's docket indicating that a motion to enter into a new lease post-petition was approved by the court. Secondly, the amended lease calls for the payment of lump sums and balloon payments, and the trustee notes that there is no evidence that the debtor will be able to meet these obligations. Third, the debtor has not disclosed how she came to be more than \$130,000 delinquent in payments under this lease. Finally, it appears that the debtor's business operates at a net loss.

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

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

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

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

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

47. [13-21773](#)-C-13 SHARMA BROWNING
TJS-1 Brunella M. Palomino
JP MORGAN CHASE BANK, N.A.
VS.

MOTION FOR ADEQUATE PROTECTION
7-1-13 [[58](#)]

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, debtor, debtor's attorney, and Office of the United States Trustee on July 1, 2013 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). 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 not considered to be the equivalent of a statement of non-opposition.

The court's tentative decision is to grant the motion. Oral argument will be entertained at the hearing date.

The motion is brought by secured creditor JPMorgan Chase ("Chase"). The debtor is secured by a 2009 Kia Spectra. The amended plan of the debtor proposes adequate protection payments to Chase of \$123/month. Chase states that by now they should have received four payments but have received none. Movant seeks an order requiring the chapter 13 trustee to immediately commence adequate protection payments to Chase pursuant to 11 U.S.C. § 1326(a)(1) and for retroactive adequate protection payments of \$492 for March through June, 2013. The motion having been served upon the chapter 13 trustee and the debtor, and no opposition thereto currently appearing in the court's docket, the court's tentative decision is to grant the motion.

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

IT IS ORDERED that the Motion is granted.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 1, 2013 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6354 Villa Drive, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$201,749 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 \$213,949. JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$79,649. 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 JPMorgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 6354 Villa 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 \$201,749 and is encumbered by senior liens securing claims which exceed the value of the Property.

49. [12-40175](#)-C-13 TIMOTHY/TERESA ROCHA MOTION TO MODIFY PLAN
HLG-2 Kristy A. Hernandez 6-13-13 [[45](#)]

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 13, 2013. 35 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(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 trustee opposes this motion, noting the following issues: The debtors have appended two different schedules of plan payments (Docket Item No. 44, Pgs. 7-8) and the trustee notes that the debtors would be delinquent under either schedule. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

50. [12-38276](#)-C-13 JANE LEPISTO MOTION TO CONFIRM PLAN
ET-4 Matthew R. Eason 6-25-13 [[102](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 25, 2013. By the court's calculation, 42 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 Plan is granted. No appearance required.

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

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

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

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

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

51. [11-33577](#)-C-13 TERRIE MOTION TO MODIFY PLAN
RAC-1 CRONKHITE-NISHIMURA 6-19-13 [[42](#)]
Richard A. Chan

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2013. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 19, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

52. [11-32380](#)-C-13 JUDITH WILCOX CONTINUED MOTION TO MODIFY PLAN
WW-3 Mark A. Wolff 7-13-12 [[65](#)]
Thru #54

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

Notice and service appear correct. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, and Office of the United States Trustee on July 13, 2012. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and 3015-1(d), and Federal Rule of Bankruptcy Procedure 3015(g).

The hearing on Motion to Confirm the Modified Plan is continued to September 10, 2013 at 2:00 p.m. No appearance required.

On May 14, 2013 the court continued the hearing.

On April 2, 2013 the court continued the hearing.

On February 12, 2013 the court continued the hearing to be heard in conjunction with the hearing on Objection to Claim of U.S. Bank, National Association and the Objection to Notice of Mortgage Payment Change.

On December 11, 2012 the court continued the hearing.

On December 6, 2012 the parties filed a stipulation (Dkt. 115, Exhb. A) to continue the hearing to January 15, 2012 at 2 p.m. The parties agreed to the following deadlines:

1. Respondent's opposition to Debtor's Objection to Notice of Mortgage Payment: January 1, 2013
2. Supplemental opposition to Objection to Claim of U.S. Bank, National Association: January 1, 2013
3. Opposition to Notice of Mortgage Payment Change: January 1, 2013
4. Respondent to provide accounting of subject loan to Debtor's Counsel no later than December 5, 2012
5. Parties to meet and confer on or before December 7, 2012
6. Deadline for responding to Debtor's discovery to be extended to December 30, 2012
7. Objections to Debtor's discovery to be served no later than December 4, 2012

8. Court ordered status report to be filed by Debtor on or before January 8, 2013

On September 18, 2012 the court continued the hearing to be heard in conjunction with the objection to claim.

On August 28, 2012 the court continued the hearing to be heard in conjunction with the Objection to Claim.

The Certificate of Service filed on July 13, 2012, attests to serving an entity known as "Specialized Loan Servi" at 8742 Lucent Blvd Ste 300, Highlands Ranch, Colorado. The proposed plan lists Specialized Loan Servicing as a creditor. U.S. Bank National Association filed Proof of Claim Number 7 and is the Creditor named on the proof of claim. Specialized Loan Servicing has not provided evidence that it is the creditor. The court will not issue an order purporting to grant relief against an ambiguously named person.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Trustee objects on the grounds that the plan will complete in 74 months. Trustee states that the plan proposes monthly payments of \$1,670, which amounts to only \$1,594.85 after Trustee fees. Trustee states that the modified plan will complete in 60 months and Debtor has already completed 14 months of the plan.

Second, Trustee argues that attorney fees are stated in correctly as "\$4.50.00" in Section 2.06 of the plan. Trustee states that fees paid through the plan should be \$3,200.

Third, Trustee objects to the Additional Provisions section of the plan, which instructs Trustee to modify court claim number 6 to add post petition mortgage arrears to the creditor's filed claim.

Debtor's Reply

Debtor states that she has objected to the claims of U.S. Bank, National Association (Claim No. 7) which is set for hearing on September 18, 2012. Debtor asks that the claim be reduced to \$3,219.94 based on duplicate escrow. Debtor argues that the objection to claim will resolve Trustee's concerns. The plan cannot be confirmed until the objection to claim is resolved if the plan relies on additional funds being paid into the plan.

Second, Debtor asks to correct the attorney fees in the order confirming plan.

Third, Debtor states that she will alter the language in the additional provisions section. Debtor states that Trustee may have missed required mortgage payments, which Trustee has been paying as a Class 1 Claim. Debtor understands that the mortgage payment and pre-petition arrears must be provided for separately in the plan. The plan cannot be confirmed until Debtor and Trustee clarify which, if any, Class 1 mortgage payments were missed.

Trustee's Supplemental Declaration

On January 8, 2013 Trustee filed the Supplemental Declaration of Ed Weedman in support of Trustee's objection to Debtor's Motion to Confirm. Mr. Weedman states that Debtor has paid \$16,300 to the Trustee and is delinquent \$8,045 under the proposed modified plan. Mr. Weedman states Debtor is delinquent in the amount of \$15,374.29 under the confirmed plan.

Debtor's Status Report

On January 8, 2013 Debtor filed a status report regarding the objection to claim of U.S. Bank, National Association. The Status Report indicates that the two objections to claim have not been resolved but the parties have made considerable headway.

Trustee's Opposition

On June 4, 2013 Trustee filed an opposition stating that Debtor is \$16,395 delinquent under the terms of the second modified plan filed July 13, 2012. Trustee states payments totaling \$32,695 have come due under the proposed plan and Debtor has paid \$16,000 to the Trustee. Trustee states Debtor is \$26,216.54 delinquent under the terms of the plan confirmed on September 22, 2011.

Second, Trustee states the Debtor is causing unreasonable delay as the Trustee initially objected to the proposed plan on August 13, 2012 and Debtor responded that she filed an objection to claim of U.S. Bank National Association. Trustee notes that the court has continued the hearing eight times in order to allow Debtor and Creditor U.S. Bank National Association to resolve issues.

The court continues the hearing on motion to confirm to **September 10, 2013 at 2:00 p.m.** to be heard in conjunction with the hearing on Objection to Claim of U.S. Bank, National Association and the Objection to Notice of Mortgage Payment Change.

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

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

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

IT IS ORDERED that the hearing on Motion to Confirm the Plan is continued to **September 10, 2013 at 2:00 p.m.**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 3, 2012. By the court's calculation, 46 days' notice was provided. 44 days' notice is required.

Final Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (1) and Rule 3007-1(d). 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 hearing on Objection to Proof of Claim number 7 of U.S. Bank, N.A. is continued to September 10, 2013 at 2:00 p.m. . No appearance required.

On May 14, 2013 the court continued the hearing.

On April 2, 2013 the court continued the hearing.

On March 1, 2013 the court continued the hearing.

The Certificate of Service filed on August 3, 2012, attests to serving an entity known as "Specialized Loan Servicing LLC" at 8742 Lucent Blvd Ste 300, Highlands Ranch, Colorado and an entity known as "US bank, National Association" at "425 Walnut Street, Cincinnati, Ohio." The objection refers to the creditor as "US Bank, National Association as Serviced by Specialized Loan Servicing LLC." Creditor U.S. Bank National as Indenture Trustee, on behalf of the holders of the Terwin Mortgage Trustee 2007-QHL 1, Asset-Backed Securities, Series 2007-QHL1 by and through its servicer, Specialized Loan Servicing LLC filed an opposition on September 4, 2012. Specialized Loan Servicing has not provided evidence that it is the creditor in this case. The court will not issue an order purporting to grant relief against an ambiguously named person.

On December 11, 2012 the court continued the hearing.

On December 6, 2012 the parties filed a stipulation (Dkt. 115, Exhb. A) to continue the hearing to January 15, 2012 at 2 p.m. The parties agreed to the following deadlines:

1. Respondent's opposition to Debtor's Objection to Notice of Mortgage Payment: January 1, 2013
2. Supplemental opposition to Objection to Claim of U.S. Bank, National Association: January 1, 2013
3. Opposition to Notice of Mortgage Payment Change: January 1, 2013

4. Respondent to provide accounting of subject loan to Debtor's Counsel no later than December 5, 2012
5. Parties to meet and confer on or before December 7, 2012
6. Deadline for responding to Debtor's discovery to be extended to December 30, 2012
7. Objections to Debtor's discovery to be served no later than December 4, 2012
8. Court ordered status report to be filed by Debtor on or before January 8, 2013

On September 18, 2012 the court continued the hearing to allow U.S. Bank, N.A. the opportunity to investigate with its counsel the computation of the pre-petition escrow arrearage and the 187% increase in the escrow amount for post-petition insurance and property taxes, and in good faith communicate the information to support its claim and Notice of Mortgage Payment Change.

The court ordered Debtor and counsel to consider and determine the amount of post-petition monthly mortgage payments necessary for the Debtor to properly pay the loan as modified (including the insurance and property taxes) to meet and confer in good faith to determine what disputes actually exist and the correct amount of the post-petition monthly mortgage payment.

The court ordered Debtor to file and serve a status report identifying the remaining issues, if any, to be determined by the court on the objection to claim, and what proceedings have been commenced to determine the correct amount of post-petition monthly mortgage payment, if that issue has not been resolved.

The Proof of Claim at issue, listed as claim number 7 on the court's official claims registry, asserts \$228,182.03 claim. The Debtor objects to the Claim on the basis that the claim does not correctly state the escrow amounts and does not reflect the amount of the claim per the post-petition loan modification.

Debtor objects to the claim of Creditor U.S. Bank, N.A. serviced by Specialized Loan on the grounds that Creditor duplicated escrow amounts and included excessive late charges. Debtor argues that the claim should be reduced by \$3,219.94.

Second, Debtor objects to Creditor's Notice of Mortgage Payment Change and asks the court to determine that the claimed fees, expenses, and changes are not required by the underlying agreement. Debtor requests that the court determine that post-petition payments were to be made in amounts specified in Debtor's motion and were to include principal, interest, taxes, and insurance. The court notes that Debtor filed a separate objection to notice of mortgage payment change, docket number 96.

Third, Debtor asks the court to determine whether Creditor was required to maintain insurance.

Fourth, Debtor asks that Creditor pay her attorneys' fees.

Debtor filed a declaration in support of her objection to claim. Debtor states that she entered into a loan modification after filing for bankruptcy. Debtor states that in addition to the loan modification an impound account was set up to cover taxes and insurance. Debtor states that in late 2010 she realized that the amount she was paying under the loan modification

was different than the payments required by Creditor. Debtor argues that Specialized Loan Servicing was not honoring the loan modification.

Creditor's Opposition

Background

Creditor states that on May 11, 2007 Debtor executed a note and deed of trust in the amount of \$204,750. Creditor states that the notice and deed of trust were serviced by Specialized Loan.

Creditor states that on March 1, 2010 it entered into a loan modification.

Creditor states that on May 18, 2011 Debtor filed a Chapter 13 petition and that a plan was confirmed on December 2, 2011. Creditor states that on May 8, 2012 Creditor filed a notice of mortgage payment change stating that the new monthly payment was \$1,154.63 as stated in the loan modification.

Creditor states that on June 15, 2012 the Chapter 13 Trustee filed a notice of default because Debtor fell behind in plan payments. Creditor states that it filed a timely proof of claim stating pre-petition arrears of \$8,780.01. Creditor states that the loan modification states that monthly payments only cover interest and principal and do not include other payments, such as that required for an impound account.

First, Creditor argues that the Objection lacks evidence since Debtor does not include any exhibits. While the Debtor's Declaration is valid evidence in support of the motion, the court notes that a copy of the loan modification would aid Debtor's argument.

Second, Creditor argues that its claim conforms to the loan modification and states that the amount in default is \$8,780.01, which is the same amount provided for in the plan.

Third, Creditor argues that the objection raises irrelevant issues since the objection disputes the amount of post-petition payments under the note and deed of trust. Creditor states that a proof of claim addresses pre-petition events only and does not control post-petition payments. Creditor argues that post-petition events have no bearing on the claim and that Debtor does not provide adequate support for her argument that there is an escrow shortage.

The court notes that Debtor does not provide an accounting of the escrow paid versus the amount still owed.

Fourth, Creditor argues that Debtor incorrectly brings this objection since Debtor does not contest her liability to Creditor and does not dispute the amount of the claim. Creditor argues that Debtor brings this objection because she cannot make plan payments and is attempting to lower her plan payment to Creditor, the largest secured creditor.

Debtor's Reply

Debtor replied arguing that she has provided valid evidence and relies principally on documents filed with the court in this case. Debtor argues that she is permitted to raise issues regarding the notice of fee changes in an

objection to claim because the notices of fee changes are supplements to the proof of claim. Debtor states that it follows that she may object to the notice since they are part of Creditor's proof of claim.

Debtor argues that the May 11, 2012 notice of mortgage change was not provided with the required 21 days' notice.

Status Report

On December 4, 2012 the Debtor filed a status update stating the following:

1. On August 3, 2012 Debtor filed an objection to claim of U.S. Bank, National association. On September 4, 2012 U.S. Bank filed a response.
2. On July 13, 2012 Debtor filed a second modified chapter 13 plan and motion to confirm. The hearing was continued to be heard in conjunction with the objection to claim.
3. The hearings on motion to confirm and objection to claim were continued to December 11, 2012.
4. After the September 18th hearing U.S. Bank took no further action and did not provide Debtor with an accounting or documentation to support the claim or amendment to the claim.
5. On November 1, 2012 Debtor propounded discovery on U.S. Bank, including requests for admission, interrogatories, and requests for production of documents.
6. On November 9, 2012 Debtor filed an objection to notice of mortgage payment change filed by U.S. Bank.
7. On November 30, 2012 the Chapter 13 Trustee filed a motion to dismiss case.
8. As of December 4, 2012 U.S. Bank has not responded to discovery requests and there have been no significant discussions between the Debtor and Creditor about the issues raised in the objections.
9. On November 29, 2012 Mark Estle contacted counsel for Debtor regarding the possibility of Mr. Estle representing U.S. Bank.
10. A stipulation relating to the proposed continuance of all of the pending motions and proposed new deadlines to respond to discovery is being circulated. Debtor anticipates that the stipulation will be filed together with an ex-parte application to continue all pending motions.
11. The November 9, 2012 objection deals with various notice of mortgage payment change notices filed with the court. The August 3, 2012 objection also raises issues raised with the original claim filed by Creditor.
12. While there are outstanding issues with both the November 9th and August 3rd objections to claim, the most significant outstanding issues relate to the amount of the post-petition monthly payments due to U.S. Bank.
13. U.S. Bank has not justified the significant increases in payments and notice of payment changes are not entitled to prima facie validity as a proof of claim.
14. On August 17, 2011 U.S. Bank filed a proof of claim stating that monthly payments were \$808.73 starting June 1, 2011.
15. U.S. Bank filed three notice of mortgage payment change notices. The March 8, 2012 notice advised an increase of payments to \$1,154.62 starting April 1, 2012.

16. U.S. Bank filed two notice of mortgage payment change notice on May 11, 2012, the first of which advised of a retroactive increase in payments to \$1,357.20 starting April 2012. The second payment change advised of an increase to \$1,737.24 starting June 2012.
17. The following outstanding issues relate to payment increases: (a) collection of forced hazard I in addition to Debtor's homeowners insurance and (b) collection of shortage in escrow account which is believed to be included in Creditor's claim.

Status Report

On January 8, 2013 Debtor filed a status report stating the following:

1. Debtor propounded discovery in relation to two objections to claim.
2. By agreement of the parties the due date for responses to discovery has been extended and the parties conducted two meet and confer sessions to discuss possible resolution of Debtor's Objections as well as merits of underlying objections.
3. The parties have made progress and certain information has been provided to Debtors by Creditor.
4. Debtor understands Creditor will withdraw most recent Notice of Payment Change.
5. Parties anticipate that the objections raised to the Notice of Payment Change and Objection to Claim will be resolved.
6. Final resolution of the two objections has not been reached, but parties have made headway and anticipate a resolution.
7. If a resolution is not reached the parties will have narrowed the issues to present to the court.

The court continues the hearing to **September 10, 2013 at 2:00 p.m.** to allow parties to reach a resolution of the objections to claim or narrow the issues presented to the court.

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

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

The Objection to Claim of U.S. Bank, N.A. 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 hearing on objection to Proof of Claim number 7 of U.S. Bank, N.A. is continued to **September 10, 2013 at 2:00 p.m.** .

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

Incorrect Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 9, 2012. By the court's calculation, 32 days' notice was provided. 44 days' notice is required.

Final Ruling: This Objection to Notice of Mortgage Payment Change has not been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (1) and Rule 3007-1(d). 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 hearing on Objection to Notice of Mortgage Payment Change is continued to September 10, 2013 at 2:00 p.m. No appearance required.

On May 14, 2013 the court continued the hearing.

On April 2, 2013 the court continued the hearing.

On March 1, 2013 the court continued the hearing.

U.S. Bank National as Indenture Trustee, on behalf of the holders of the Terwin Mortgage Trustee 2007-QHL 1, Asset-Backed Securities, Series 2007-QHL1 by and through its servicer, Specialized Loan Servicing LLC filed an objection to notice of mortgage change. Specialized Loan Servicing has not provided evidence that it is the creditor in this case. The court will not issue an order purporting to grant relief against an ambiguously named person.

On December 11, 2012 the court continued the hearing.

On December 6, 2012 the parties filed a stipulation (Dkt. 115, Exhb. A) to continue the hearing to January 15, 2012 at 2 p.m. The parties agreed to the following deadlines:

1. Respondent's opposition to Debtor's Objection to Notice of Mortgage Payment: January 1, 2013
2. Supplemental opposition to Objection to Claim of U.S. Bank, National Association: January 1, 2013
3. Opposition to Notice of Mortgage Payment Change: January 1, 2013

4. Respondent to provide accounting of subject loan to Debtor's Counsel no later than December 5, 2012
5. Parties to meet and confer on or before December 7, 2012
6. Deadline for responding to Debtor's discovery to be extended to December 30, 2012
7. Objections to Debtor's discovery to be served no later than December 4, 2012
8. Court ordered status report to be filed by Debtor on or before January 8, 2013

The Proof of Service indicates that only 32 days' notice was provided. Local Bankruptcy Rules 9014-1, 3007-1(b)(1), and 3007-1(d) require 44 days' notice. Defective notice is grounds for denial of the motion.

Opposition of Creditor U.S. Bank National Association

Creditor states that the Loan Modification Agreement provides for the following monthly payment schedule:

1. Commencing April 1, 2010, interest only payment of \$609.14;
2. Commencing April 1, 2011, interest only payment of \$696.16;
3. Commencing April 1, 2012, interest only payment of \$1,154.63;
4. Commencing April 1, 2013, principal and interest payment of \$1,212.94;
5. Commencing April 1, 2014, principal and interest payment of \$1,270.82;
6. Commencing April 1, 2015, principal and interest payment of \$1,328.12.

Creditor states that the March 8, 2012 Notice of Mortgage Payment Change identifies the payment change under the Loan Modification Agreement.

Creditor states that the May 11, 2012 Notice of Mortgage Payment Change represents an increase as a result of including \$202.57 per month on the escrow account.

Creditor states that the May 11, 2012 Notice of Mortgage Payment Change represents a change resulting from an increased payment to the escrow account from \$202.57 to \$582.61 per month.

Creditor filed two notices of mortgage payment change on May 11, 2012. See Debtor's Exhibits B and C. Dkt. 99. One of the notices reflects no escrow payment while the other reflects an old escrow payment of \$202.57 and a new escrow payment of \$582.61.

Creditor states that Debtor objects to this increase on the grounds that Debtor at all times maintained homeowner's insurance such that there was no need for forced place hazard insurance. Creditor states that Debtor's homeowner's insurance was cancelled on April 21, 2011 at which point Creditor was forced to obtain its own policy on July 9, 2011 retroactive to April 21, 2011. Creditor states that its policy is more expensive than the policy Debtor retained. Creditor states that the unforeseen cost of obtaining insurance was not factored into the original escrow analysis and that Debtor's monthly escrow payment of \$202.57 created a shortage, raising the escrow portion of Debtor's monthly payment.

Creditor states that it has agreed to conduct a further escrow analysis to assess whether the escrow amounts provided for in its proof of claim were credited in determining the shortage amount.

Status Report

On January 8, 2013 Debtor filed a status report stating the following:

1. Debtor propounded discovery in relation to two objections to claim.
2. By agreement of the parties the due date for responses to discovery has been extended and the parties conducted two meet and confer sessions to discuss possible resolution of Debtor's Objections as well as merits of underlying objections.
3. The parties have made progress and certain information has been provided to Debtors by Creditor.
4. Debtor understands Creditor will withdraw most recent Notice of Payment Change.
5. Parties anticipate that the objections raised to the Notice of Payment Change and Objection to Claim will be resolved.
6. Final resolution of the two objections has not been reached, but parties have made headway and anticipate a resolution.
7. If a resolution is not reached the parties will have narrowed the issues to present to the court.

The court continues the hearing to **September 10, 2013 at 2:00 p.m.** to allow parties to reach a resolution of the objection to notice of mortgage payment or narrow the issues presented to the court.

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

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

The Objection to Notice of Mortgage Payment Change 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 hearing on Objection to Notice of Mortgage Payment Change is continued to **September 10, 2013 at 2:00 p.m.**

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

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

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 19, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

56. [13-27880](#)-C-13 HORMOZ RAD AND PARVANEH MOTION TO VALUE COLLATERAL OF
PGM-2 VAKILI CITIMORTGAGE, INC.
Peter G. Macaluso 7-9-13 [[22](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 10, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6916 Woodmore Oaks Drive, Orangevale, 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 \$286,007. Citi Mortgage, Inc.'s second deed of trust secures a loan with a balance of approximately \$47,871.66. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon review of the

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of CitiMortgage, Inc. secured by a second deed of trust recorded against the real property commonly known as 6916 Woodmore Oaks Drive, 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 \$200,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

57. [11-37083](#)-C-13 ANDREY GINZBURG AND OLENA MOTION TO MODIFY PLAN
MLA-12 KOVBASY 6-14-13 [[126](#)]
Mitchell L. Abdallah

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 14, 2013. 35 days' notice is required. That requirement was met.

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

The court's tentative decision is that the Motion to Confirm the Modified Plan is denied. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the trustee objects, noting the following issues:

(1.) The plan no longer authorizes payments to creditor Toyota Motor Credit Corp. (2.) The plan lists the debtors list an interest in a property at 2650 Kalamer Way in Sacramento and the trustee is uncertain if this is a rental property from which the debtors are receiving income. (3.) The order

confirming the plan (Dkt. 71) reflects attorney fees of \$4,496 paid prior to filing, and the proposed plans list attorney fees paid prior to filing as \$3,500. (4.) Debtors are above median income and propose a 45-month plan, in violation of 11 U.S.C. § 1325(b) (1) (B).

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

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

The Motion to 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 denied and the plan is not confirmed.

58. [13-26783](#)-C-13 CARLA JOHANSEN OBJECTION TO CONFIRMATION OF
PPR-1 Pro Se PLAN BY THE BANK OF NEW YORK
Thru #60 MELLON
6-20-13 [[27](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Debtor (pro se) on June 20, 2013. 14 days' notice is required. That requirement was met.

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

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

The Bank of New York Mellon (NYM) opposes confirmation of the Plan on the basis that the plan is not adequately funded. The amount provided in the plan for arrears is insufficient to cure the pre-petition arrears owed to NYM. The actual arrearage amount will be disclosed in a timely-filed

proof of claim before the deadline of October 1, 2013. Given the Plan's failure to provide for the cure of arrears, even if all payments are made pursuant to the plan, they will not be sufficient to satisfy NYM's claim in full. The plan also attempts to modify NYM's Note and Trust Deed in direct violation of 11 U.S.C § 1322(b) (2) because this is the debtors principal residence. The plan lists NYM under Class 3 which states the claim shall be paid in full. However, the plan lists the total amount to be paid as \$0.00 with 0% interest over 0 months.

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.

59. [13-26783](#)-C-13 CARLA JOHANSEN OBJECTION TO DEBTOR'S CLAIM OF
TSB-1 Pro Se EXEMPTIONS
7-9-13 [[33](#)]

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

Correct Notice Provided. The Proof of Service filed on July 9, 2013, states that the Motion and supporting pleadings were served on Debtor (pro se). 28 days' notice was required. That requirement was met.

Final Ruling: The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

The objection to claimed exemptions is sustained and the exemptions are disallowed in their entirety. No appearance required.

The Trustee objects to the Debtor's use of California Code of Civil Procedure §703.140(b) (5) to exempt \$81,000 worth of personal property when the statute allows for the exemption of a maximum of \$26,925 in assets.

The Trustee's objection is sustained and the claimed exemptions are 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 Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained and the claimed exemptions are disallowed to the extent they exceed \$26,925.

60. [13-26783](#)-C-13 CARLA JOHANSEN OBJECTION TO CONFIRMATION OF
TSB-2 Pro Se PLAN BY DAVID P. CUSICK
7-10-13 [[36](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 10, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the debtor failed to file the correct standard Chapter 13 plan. The

debtor used F 3015-1.01.CHAPTER13.PLAN, a Central District of California Form. The proper form is EDC 3-080 (eff. 5-1-12). Furthermore, the Debtor's plan is currently proposing a 36 month plan at 1% to unsecured creditors; therefore unsecured creditors are not receiving what they are entitled to, the commitment period should be 60 months. Additionally, Debtor's Plan fails the Chapter 7 liquidation analysis under 11 U.S.C § 1325(a)(4). The debtor exempts all personal property under 703.140(b)(5) but rather than exempt the value of the property, she exempts each item at a value of \$6,750. The total allowed exemption under 703.140(b)(5) is \$26,925; however the debtor exempted a total of \$81,000. The Debtor additionally did not provide the Trustee with tax returns. Finally, the Trustee is unable to determine the feasibility of the plan because the debtor has failed to provide the Trustee with a Business Budget detailing her business income and expenses.

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.

61. [12-29884](#)-C-13 CAROL SMITH MOTION TO CONFIRM PLAN
CAH-3 C. Anthony Hughes 6-12-13 [[75](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 12, 2013. 42 days' notice is required. That requirement was met.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore,

the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 12, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

62. [13-22384](#)-C-13 EVANGELINE MARAKAS
SCG-1 Sally C. Gonzales

MOTION TO VALUE COLLATERAL OF
GEORGE K. SCOTT
6-24-13 [[91](#)]

CASE DISMISSED 7/16/13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on xxxx, <year>. By the court's calculation, xx 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 Plan is granted. No appearance required.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 19, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

64. [13-29296](#)-C-13 ERIC ENGSTROM MOTION TO EXTEND AUTOMATIC STAY
JFB-1 James F. Bunnell 7-17-13 [[8](#)]

Final Ruling: The Movant having filed a Notice of Withdrawal on July 30, 2013 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 Motion from the calendar.

65. [13-24997](#)-C-13 CATHY CHAVEZ CONTINUED MOTION TO VALUE
GG-1 Gerald B. Glazer COLLATERAL OF COUNTRYWIDE HOME
LOANS, INC.
5-3-13 [[16](#)]

Final Ruling: Motion to Value Collateral was resolved by stipulation (Docket #40).