

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

August 6, 2013 at 3:00 p.m.

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1. 13-22901-E-13 VICTOR/SANDRA GARCIA MOTION TO VALUE COLLATERAL OF
PGM-2 Peter G. Macaluso THE BANK OF NEW YORK MELLON
6-26-13 [46]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 26, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion 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 7431 Prosperity Court, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$160,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$225,000.00. Bank of New York Mellon's second deed of trust secures a loan with a balance of approximately \$25,081.23. 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 Bank of New York Mellon secured by a second deed of trust recorded against the real property commonly known as 7431 Prosperity Court, 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 \$160,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

2. [12-37004-E-13](#) GLORIA WELLINGTON
PGM-3 Peter Macaluso

MOTION TO MODIFY PLAN
6-24-13 [[95](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 24, 2013. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee states the Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). The Trustee offers evidence that the Debtor is \$100.00 delinquent under the terms of the proposed plan. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also states that the Debtor did not submit statements of income and expenses in support of the modified plan. The most recent statements of income and expense set forth in the income and expenses as of the commencement of this case on September 20, 2012, almost one year ago. See Amended Schedules I and J, Dckt. 62. The court's concern over the Debtor's income and expenses has been previously stated to counsel and the Debtor. See Civil Minutes from May 21, 2013 hearing on prior motion to confirm a plan (which was denied),

"However, the court is concerned with the proposed plan and evidence in support thereof. First, the Debtor asserts the only source of income is from support from her two children in the amount of \$3,100.00. Dckt. 62. However, the only evidence provided regarding the same is the Declaration of her daughter, who states she is willing to contribute up to \$500.00 per month. Debtor does not provide any evidence of the remaining \$2,600 in plan payments."

Dckt. 85. FN.1.

FN.1. The Debtor offers no explanation as to why and how the original Schedules I and J were incorrect and these amendments necessary. On Original Schedule J the Debtor stated that she had no rent or mortgage payment. Dckt. 1. Now, on Amended Schedule J the Debtor states under penalty of perjury that she actually had a monthly mortgage or rent payment of \$1,200.00. The Debtor also now says under penalty of perjury that her prior statement of transportation expenses of \$375 was incorrect, and now she says under penalty of perjury that the expense was truthfully only \$275 a month. The court just does not know what to believe from what comes out of the Debtor's mouth.

In support of the current Motion the Debtor provides her declaration. With respect to her income, expenses, and plan payments, the Debtor testifies,

"11. That I am able to make all payments under the plan. The primary source of my income for my household is from employment as a Real Estate Sales Person and I anticipate this income source for the remainder of the plan.

12. That I will comply with the plan and are able to remit the payments as reflected in the amended Plan.

13. That I am paying all of my disposable income to my creditors to the best of my ability.

14. My amended Chapter 13 plan proposes to surrender the collateral of Bank of New York Mellon, i.e. the real property located at 869 Christine Drive, Vacaville, CA. The amended plan provides for payments to Toyota Motor Credit for both 2007 Toyota Corollas, payments to the Franchise Tax Board and the Internal Revenue Service for taxes and a 0% dividend to the general unsecured creditors."

Declaration, Dckt. 99.

No current financial information is provided. Rather, the Debtor merely tells the Chapter 13 Trustee, U.S. Trustee, and Creditors that she will make the payments because she says she can make the payments. With respect to the court, she effectively says "I know better, you don't need to know the actual facts, just blindly sign whatever I put in front of you."

This Debtor has dramatically failed under the prior plan which she "swore" that she could fund and confirmation was proper. The Debtor did not have to prove her ability to pay in open court, but apparently convinced the Trustee that she could and would make the payments. The Trustee did not object, nor did any other creditors, so the Debtor was able to confirm a plan without having to prove the feasibility of a proposed plan. The Debtor has now proven that the financial information provided was either inadvertently not accurate or affirmatively misstated to achieve a predetermined goal irrespective of the truth. The Debtor's testimony is not credible, and her legal and factual conclusions cannot replace providing the court with evidence and leaving the court to struggle with coming to the actual factual and legal conclusions.

Lastly, the Trustee states the Debtor checked that additional provisions were attached, when none were attached. The Debtor's reply states that she checked the wrong box.

Based on the foregoing delinquency and failure to provide evidence of sufficient current income and expenses, the modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

3. [12-29412-E-13](#) MICHELLE FRAZIER MOTION TO MODIFY PLAN
CYB-2 Candace Brooks 6-14-13 [[33](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 14, 2013. By the court's calculation, 53 days' notice was provided. 35 days' notice is required.

Final Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The Motion for to Modify Plan is granted. No appearance required.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. However, Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

**LOCAL RULE 2002-1
Notice Requirements**

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

For Cases filed in the Sacramento Division:

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

For Cases filed in the Modesto and Fresno Divisions:

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

. . .

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

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

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

Internal Revenue Service
PO Box 7346
Philadelphia PA 19101-7346

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

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

The IRS Claim asserts only a \$1,906.45 for its priority claim, and \$2,800.00 general unsecured claim. Proof of Claim No. 1. The proposed plan provides for paying this priority claim in full and a 0.00% dividend on general unsecured claims. Given the very modest amount of both the priority and general unsecured claims, the court waives the defect. FN.1.

FN.1. Though waiving the defect, the court is not determining that the plan terms are binding on the Internal Revenue Service if it asserts such defect in the future. The court will have to address that issue at that time.

The court cannot understand how experienced, respected consumer counsel (and not just the attorney in this case) continue after three and one-half years, have not corrected their service list to properly serve the Internal Revenue Service. It appears that such counsel are electing to gamble that the Debtors hard work through three to five years under a plan will be binding on the Internal Revenue Service.

Counsel should not believe that such defect will continue to be waived, even when not binding on the Internal Revenue Service, and such motions may be denied even for modest or de minimum claims.

DISCUSSION OF PLAN

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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 14, 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.

4. [13-22312-E-13](#) DEBRA MCASTLE
DEF-4 David Foyil

MOTION TO VALUE COLLATERAL OF
HSBC FINANCE CORPORATION
6-26-13 [[60](#)]

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, parties requesting special notice, and Office of the United States Trustee on June 26, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$33,678.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject non-residential real property commonly known as 101 Balcaro Way #94, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$50,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Sacramento County Tax Collector has a senior statutory lien in the amount of \$16,322. HSBC Finance Corporation's second deed of trust secures a loan with an unstated balance. The value of the non-residential real property of \$50,000.00, 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 \$33,678.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of HSBC Finance Corporation secured by a first deed of trust recorded against the real property commonly known as 101 Balcaro Way #94, Sacramento, California, is determined to be a secured claim in the amount of \$33,678.00, 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 \$50,000.00 and is encumbered by senior liens securing claims.

5. [13-24512](#)-E-13 AMOS SNELL
TSB-2

**OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS**
6-27-13 [[68](#)]

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

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

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

The Motion Objection to Debtor's Claim of Exemptions having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is denied as moot, the case having already been dismissed.

6. [12-39816-E-13](#) CAROL CROUCH
PGM-4 Pete Macaluso

MOTION TO CONFIRM PLAN
6-18-13 [[85](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 18, 2013. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

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

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

TRUSTEE'S RESPONSE

The Chapter 13 Trustee states that the Debtor appears current under the proposed plan. The trustee also states that the Trustee has not made any disbursements to Objecting Creditor CAM V TRUST because the two prior plans filed did not call for any payments to this creditor, the creditor had received an unconditional order granting relief from the automatic stay on April 21, 2013, and the Trustee is not aware of any order allowing him to disburse adequate protection payments. The Trustee states that the plan states, when relief is granted, the Trustee shall not make any payments unless the court orders otherwise. No "orders otherwise" have been entered to date.

CAM V TRUST'S OBJECTION

Creditor CAM V TRUST ("Creditor") objects to confirmation on the grounds that the plan was filed in bad faith and in violation of 11 U.S.C. § 1325(a). Creditor argues that Debtor has had opportunities to propose options to repay it's claim, including a previous Chapter 13 (dismissed for failure to make plan payments), filing this bankruptcy and extending the stay on the premise that she would surrender the property, which Creditor considered when not opposing the Motion to Extend. Creditor argues that two prior plans were filed, neither providing for payment on Creditor's claim. Creditor filed

a Motion for Relief from Stay detailing its intent to foreclose, which was not opposed by Debtor and was granted by the court.

Creditor argues that Debtor's change of intention seven months into the bankruptcy is not in good faith. Creditor argues that Debtor did not mention this change in the motion.

Creditor also argues that the amended plan as proposed is an impermissible modification, as the claim is secured solely by Debtor's principal residence and Debtors proposal of \$1,300.00 is less than the normal contractual payments of \$1,400.50.

Lastly, Creditor argues that the plan is not feasible, as it has already obtained relief from the stay to foreclose on the property and the plan proposes to pay reduced payments on its claim. Creditor also states that Debtor is well aware that she has been denied for a loan modification with Creditor, as she was notified on June 25, 2013. Creditor argues that the plan does not provide for the arrears or the actual payment owing on the claim and is not feasible.

DISCUSSION

In reviewing the Section 6 Additional Provisions, it appears that the Debtors are attempting to advance Chapter 13 Plans to include a provision for a possible loan modification with Creditor CAM V TRUST. These provisions, which the court has confirmed as part of plans in other cases, has several basic points. First, the creditor is paid an adequate protection payment, applied to the post-petition payment amounts which are due. Second, the debtor must diligently pursue a loan modification. Third, if the creditor rejects the loan modification, the creditor is granted relief from the stay 14 days after the rejection unless the debtor has filed a modified plan and motion to confirm which provides for proper payment of the creditor's claim as permitted under the Bankruptcy Code without a voluntary modification by the creditor.

The court's reading of the present plan provides for Creditor's claim secured solely by the Debtors' residence by the making of adequate protection payments and attempting to negotiate a loan modification. Such a claim cannot be modified without the consent of the creditor. 11 U.S.C. § 1322(b)(2).

This situation is slightly different. The proposed plan provision 7.02.6 states that if Creditor,

denies in writing Debtor's loan modification request and Debtor does not file an Amended Plan and Motion to Confirm Amended Plan within 14 days of the mailing of that denial, served on the Debtor and Debtor's bankruptcy counsel, or other grounds for modification exist under the terms of these Additional Provisions for the Cam V Trust secured claim, Cam V Trust may serve and file an ex parte application for relief from the automatic stay to allow it to conduct a non-judicial foreclosure sale of the property and lodge a proposed order with the court.

However, in this instance, Creditor has already obtained relief from the automatic stay pursuant to Order of this Court. The automatic stay is not

reimposed or vacated without further order of the court. Therefore, Creditor is free to exercise its rights pursuant to the Civil Minute Order, dated April 21, 2013, Dckt. 72.

Additionally, the plan states that if the Creditor denies the Debtor's loan modification in writing, the Debtor must file an Amended Plan and Motion to Confirm. Creditor has provided testimony of Jill Johnson-Sheely, custodian of records for Servis One, Inc., dba BSI Financial Services, Inc., the attorney-in-fact for CAM V TRUST, who provides that Debtor's loan modification application was denied in writing on June 25, 2013, for various reasons, including issues relating to the use of her income as well as an unacceptable debt to income ratio.

Based on the foregoing, it does not appear the proposed terms of the plan regarding the treatment of Creditor CAM V TRUST, will be successful. First, the automatic stay has been vacated as to Creditor. Second, it appears that Creditor has issued a denial of the loan modification, over 42 days ago. Therefore the terms of the proposed amended plan are not feasible.

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

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

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

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

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

7. [13-27917-E-13](#) MARKO/RADMILA LUKIC
SAC-1 Scott A. CoBen

MOTION TO VALUE COLLATERAL OF
JPMORGAN CHASE BANK, N.A.
7-8-13 [[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 Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 8, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6015 Ranger Way, Carmichael, California. The Debtor seeks to value the property at a fair market value of \$245,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$257,000.00. JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$103,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Trustee also argues that the Debtor has not provided a sufficient explanation for the changes in expenses. Debtor's motion and declaration indicate Debtors are modifying their plan due to a reduction in income. Debtor also provided statements of income and expenses on June 20, 2013. The Trustee notes the following changes:

INCOME			
	4-22-11	6-20-13	
Debtor	\$6,768.91	\$5,241.38	
Spouse	\$3,100.51	\$3,267.87	
Total	\$9,869.42	\$8,509.25	
EXPENSES			
	4-22-11	6-20-13	
Medical/Dental	\$ 200.00	\$ 400.00	+\$200.00
Transportation	\$ 213.00	\$ 313.00	+\$100.00
Charitable Contributions	\$ 0.00	\$ 300.00	+\$300.00
Auto Insurance	\$ 120.00	\$ 128.00	+ 8.00
Taxes	\$ 67.41	\$ 853.41	+\$786.00
Auto payment	\$ 474.00	\$ 0.00	-\$474.00
Business Expenses	\$ 144.00	\$ 0.00	-\$144.00
Other Expenses	\$ 431.00	\$ 285.00	-\$146.00

The Trustee notes that the large increase in taxes is due to Debtor's budgeted amount for personal income tax regarding Calpers Retirement and Calstrs, but no specific explanation is provided for the numerous other changes within the Debtor's budget, especially the decision to add \$300.00 to charitable expense.

Lastly, the Trustee states that Debtor's modified plan proposes to decrease the minimum percentage to unsecured creditors from 32.87% to 20.66%. The Trustee asserts that he has disbursed up to 63.83% to unsecured creditors to date. The Trustee also calculates the modified plan will pay unsecured creditors up to 77.63%. The Trustee asserts the difference appears to be based on the filed and allowed claims which to date do not include any deficiency balance claims or the surrender of the 14891 Lake Lane property.

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

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

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

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

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

9. [11-20322-E-13](#) RICHARD/LAUREL WATERS MOTION TO MODIFY PLAN
SCG-7 Sally Gonzales 6-12-13 [[123](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 12, 2013. By the court's calculation, 55 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee states that the Debtor checked no additional provisions were attached in the proposed plan, but additional provisions are included, stating the plan payment terms. A court review of the proposed plan confirms the Trustee's objection. Dckt. 122.

The Trustee also states that the unsecured creditors will receive no less than a 2% dividend, but according to the Trustee's calculations, the unsecured creditors will receive a 15% to 19% dividend.

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

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

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

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

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

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

10. [11-21422-E-13](#) SHMAVON MNATSAKANYAN AND CONTINUED MOTION TO MODIFY PLAN
PGM-3 YERMONIYA ARTUSHYAN 4-19-13 [[81](#)]
Peter Macaluso

CONT. FROM 6-4-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on April 19, 2013. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

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

PRIOR HEARING

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee argues that Debtor has not filed any documentation to support a loan modification or filed the appropriate motion to approve one. Trustee asserts that the court granted Debtor's prior Motion to Modify on October 23, 2012, Dckts. 70, 71, with Debtor to make direct trial loan modification payments for the months of October 2012 through January 2013. Payments in the full amount under the existing confirmed plan were ordered to resume through the Trustee in February 2013 if a final loan modification had not been filed and confirmed.

The Trustee states his office contacted Debtor's attorney on January 15, 2013 and February 20, 2013 requesting a status update of the Motion to Approve the Loan Modification. Since Debtor did not file the motion, Trustee adjusted Debtor's plan payment back to what it was pre-modification to allow

Trustee to disburse the ongoing mortgage payments effective February 2013. Debtor fell delinquent and filed the present Motion to Modify.

Debtors respond, asserting that the final loan modification has not been delivered to the Debtors and they are attempting to obtain information as to the status of the loan modification.

The court continued the motion to allow the Debtors to obtain a final loan modification documents from Bank of America, N.A.

DISCUSSION

A review of the docket confirms the procedural history of the case stated by the Trustee. The court does not see a motion seeking a permanent loan modification on the docket to date. Debtors have had four (4) months in order to obtain their permanent loan modification since the trial loan modification ended. Pursuant to the Order dated November 09, 2012, Dckt. 71, the Trustee is to resume payments in February 2013, unless a final loan modification has been filed and confirmed. As no final loan modification has been filed or confirmed, the court denies the Debtor's modified plan.

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

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

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

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

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

11. [11-23822-E-13](#) REGINALD/MELISSA POWELL MOTION TO VALUE COLLATERAL OF
JT-4 John A. Tosney HSBC MORTGAGE SERVICES, INC.
7-8-13 [[57](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 8, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

Debtor seeks to value the collateral of "HSBC Mortgage Services, Inc. (a division of HSBC Bank USA, N.A.)" However, the court cannot determine from the evidence presented which legal entity the Debtors wish the court to include in the order. HSBC Mortgage Services, Inc. or HSBC Bank, USA, N.A., with Mortgage Services merely being a division of the Bank. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid themselves in finding the true creditor. FN.1.

FN.1. It appears that counsel for the Debtors has elected to make up an entity or use an ambiguous name of an entity to try and slide a legal proceeding through the federal court. Such does not a successful prosecution of the Debtors' rights.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtor provides no evidence for the court to determine that this company is a creditor in this case. FN.2.

FN.2. The misidentification of creditors for purposes of § 506(a) motions continues to mystify the court. Any order issued by the court would be void as to the actual creditor. After performing under a plan for 3 to 5 years, the

Debtor seeks to value the collateral of "EMC MORTGAGE, LLC (a subsidiary of JPMorgan Chase Bank, N.A.)" However, the court cannot determine from the evidence presented which legal entity the Debtors wish the court to include in the order. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid themselves in finding the true creditor. FN.1.

FN.1. It appears that counsel for the Debtors has elected to make up an entity or use an ambiguous name of an entity to try and slide a legal proceeding through the federal court. Such does not a successful prosecution of the Debtors' rights.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtor provides no evidence for the court to determine that this company is a creditor in this case. FN.2.

FN.2. The misidentification of creditors for purposes of § 506(a) motions continues to mystify the court. Any order issued by the court would be void as to the actual creditor. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt secured by a second deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

The court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect. The Motion is denied without prejudice.

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

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

The Motion 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 is denied without prejudice.

13. [09-26624-E-13](#) KEVIN/SHERRIE FLOYD
SDB-4 W. Scott de Bie

MOTION TO VALUE COLLATERAL OF
U.S. BANK N.A.
7-1-13 [[50](#)]

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. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 350 Valley Oak Lane, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$280,500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$602,951.70. U.S. Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$123,864.99. 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 U.S. Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 350 Valley Oak Lane, Vallejo, 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 \$280,500.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

14. [13-25926](#)-E-13 GLENN/JACKIE LOWERY
TSB-1 Dale A. Orthner

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
6-4-13 [[22](#)]

CONT. FROM 7-2-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney, on June 4, 2013. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

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

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

PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtors did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. See 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The continued meeting of creditors was held on June 27, 2013. No Trustee's Report had been filed. The Trustee requested that the hearing on this Objection be continued to be heard after the continued meeting of creditors.

TRUSTEE'S RESPONSE

The Trustee filed a declaration on July 26, 2013, stating that the Debtor appeared at the continued meeting of creditors held July 25, 2013.

The Trustee made the following objections:

The Trustee opposes confirmation offering evidence that the Debtor is \$2,852.40 delinquent in plan payments, which represents multiple months of the \$1,425.80 plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also states that the proposed plan relied on a pending Motion to Value Collateral, which was denied June 11, 2013 and Debtor has failed to file another Motion to Value.

A review of the court docket shows that Debtor has not filed a Motion to Value Collateral after the denial of the prior motion on June 11, 2013. Based on the foregoing, the objection is sustained.

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

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

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

IT IS ORDERED that the Objection to Confirmation of the Plan is sustained and the plan is not confirmed.

15. [13-24029-E-13](#) KEVIN GIPSON
SDB-1 W. Scott de Bie

CONTINUED MOTION TO VALUE
COLLATERAL OF WMC MORTGAGE
CORPORATION
4-22-13 [[15](#)]

CONT. FROM 5-21-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on April 22, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

PRIOR HEARING

Debtor seeks to value the collateral of "WMC Mortgage Corporation" and possibly "Securitized Asset Backed Receivables, LLC, Trust 2006-Wm2 Mortgage Pass-Through Certificates, Series 2006 Wm2." First, the court cannot determine which legal entity the motion targets. The court will not knowingly issue orders that name incorrect parties or persons it cannot identify from the pleadings. Second, the California Secretary of State shows that "WMC Mortgage Corporation" is no longer active.

On Amended Schedule D the Debtor lists WMC Mortgage Corporation, c/o Ocwen Loan Servicing, LLC as the creditor having the claim secured by the second deed of trust. Dckt. 20. No information is provided as to responses to inquiries made to Ocwen Loan Servicing, LLC to identify the creditor who currently has this claim.

Though the court denies the motion as to "WMC Mortgage Corporation" and possibly "Securitized Asset Backed Receivables, LLC, Trust 2006-Wm2 Mortgage Pass-Through Certificates, Series 2006 Wm2," it is without prejudice to determining the value of a claim pursuant to 11 U.S.C. § 506(a) of whomever is the actual creditor. Before filing a new motion the Debtor shall avail himself of the right to conduct informal discovery and Rule 2004 court ordered discovery to identify the creditor holding the claim. Given that Ocwen Loan

Servicing, LLC is the loan servicer and regularly appears in this court, it is highly likely that an informal inquiry could provide this information for the Debtor.

APPLICATION FOR EXAMINATION

On July 11, 2013, Debtor filed an Ex-parte Application for Order of Examination under Federal Rule of Bankruptcy Procedure 2004(a). The court granted the Application and authorized Attorney Scott de Bie to examine the keeper of records of Ocwen Loan Servicing, LLC on the subjects specified in Federal Rule of Bankruptcy Procedure 2004(b) on July 15, 2013. Dckt. 28. The Order states the examination shall not be scheduled earlier than 30 days after service under Federal Rule of Bankruptcy Procedure as the production of documentary evidence is requested.

As the Debtor is availing himself of the right to conduct informal discovery to identify the creditor holding the claim, the court continues the motion to value the secured claim to allow time for discovery.

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 hearing on the Motion to Value is continued to 3:00 p.m. on _____, 2013.

16. [11-45130-E-13](#) SHARON ALDRED MOTION TO MODIFY PLAN
SJS-2 Scott J. Sagaria 6-11-13 [[47](#)]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on June 11, 2013. By the court's calculation, 56 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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 11, 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.

17. [13-27530-E-13](#) MICHAEL/ANE BOGITINI MOTION TO VALUE COLLATERAL OF

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 1, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$3,175.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2002 Ford F150. The Debtor seeks to value the property at a replacement value of \$3,175.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in November 2005, more than 910 days prior to filing of the petition, with a balance of approximately \$8,125.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$3,175.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

and Bank of NY. Counsel argues that the evidentiary hearing on the matter was heard on June 12, 2013 and the court ruled that the mortgage creditor breached the contract as modified by the Chapter 13 plan and awarded Debtors \$1,000.00 in damages for emotional distress and \$11,500.00 in damages for loss of income. Counsel argues that the award of fees flows from the court's finding for Debtors and the original contract between the parties allowing for the award of attorney fees in both the Note and Deed of Trust.

REVIEW OF MOTION

The Motion appears to be modeled after a motion for allowance of attorneys' fees and costs pursuant to 11 U.S.C. §§ 330 or 331. The Motion makes reference to the court awarding \$1,000.00 emotional distress damages and \$11,500.00 in economic loss damages on the Debtors' counter-claim against The Bank of New York Mellon, fka The Bank of New York, as Trustee. Judgment, Dckt. 195. (The parties agreed to conduct an evidentiary hearing, rather than an adversary proceeding to adjudicate the objection to claim and counter-claim of the Debtors against the Bank.)

As part of the judgment, the court ordered that a motion for attorneys' fees and a costs bill, if any, was to be filed and served on or before July 31, 2013. This motion for attorneys' fees is one in which the opposing party, Bank of New York Mellon, fka The Bank of New York, as Trustee, pay the Debtors' attorneys' fees. This is something separate and apart from whether counsel is allowed fees as counsel for the Debtors. FN.1.

FN.1. As a practical matter, the court determining reasonable attorneys' fees and costs that the Bank has to pay the Debtors, such amount can only be for the attorneys' fees paid, or to be paid, to counsel. An attorney cannot split fees recovered from an opposing party with his client.

The Motion makes reference to the court allowing attorneys' fees, and then ordering "Bank of America" to pay the legal fees. The various responsive pleadings to the objection to claim were filed by the attorneys for Bank of New York Mellon, fka The Bank of New York, as Trustee. While it is true that witnesses were from Bank of America, N.A., it was doing so as the servicing company for Bank of New York Mellon, Trustee, the creditor whose rights were being litigated. Bank of New York Mellon, Trustee, filed the response to the objection to claim, expressly identifying itself as the creditor. Dckt. 117. It appears that the Debtors have attempted to collapse a motion to be awarded fees as a prevailing party with counsel for the Debtors obtaining approval of the fees.

DISCUSSION

Debtors seek attorney fees pursuant to Civil Code Section 1717(a), which provides for attorney fees where the contract specifically provides attorney's fees, which are incurred to enforce the contract, to the prevailing party. Debtors state Paragraph 7(E) of the note and Paragraphs 14, 19 and 22 of the Deed of Trust specifically provide for an award of attorney fees. Debtors assert that as a result of the breach of contract by Countrywide Home Lending, Bank of America, and Bank of NY, they have incurred attorney fees totaling \$23,085.00 and costs in the amount of \$463.73.

The prevailing party must establish that a contractual provision exists for attorneys' fees and that the fees requested are within the scope of that contractual provision. *Genis v. Krasne*, 47 Cal. 2d 241 (1956). California Civil Code § 1717 provides for application of a contractual attorneys' fees provisions to any prevailing party to the contract and that the reasonable attorneys' fees shall be determined by the court.

California Civil Code section 1717(a) provides:

In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs.

Here, Debtors direct the court to two specific contractual provisions for attorney fees: Paragraph 7(E) of the note and Paragraph 14, 19 and 22 of the Deed of Trust. Paragraph 7(E) of the Note similarly provides for the Note Holder to have costs and expenses, including reasonable attorney fees, for enforcing the note. Paragraphs 14, 19 and 22 of the Deed of Trust provides for Acceleration and Remedies for the Lender, including reasonable attorney's fees.

Debtors' counsel has also provided a billing statement, showing approximately 78 hours, including 11.7 hours for research and drafting, 14.3 hours for responding and court hearings, 4.9 hours for correspondence with opposing counsel and discovery, 43 hours for evidentiary hearing preparation and attendance, and 4.1 hours for the Trustee's Motion to Dismiss. The hourly rate for attorney fees is \$295.96 on average. The court finds the rate and time charged reasonable.

Debtors also seek \$463.73 in costs, for postage and copies (\$.15 per page).

However, the person against whom the attorneys' fees award is requested is Bank of America (without identifying which of the many entities with the words "Bank of America" in its name is the intended target of the motion) and the "Bank of NY" (without identify who or what is "Bank of NY"). There is no judgment or order by which the Debtors are the prevailing party, which is necessary to bring California Civil Code § 1717 and the contractual provisions into play.

The court has awarded a judgment for the Debtors and against "Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16," as the successor creditor in this case. That is against whom the Debtors must seek to obtain an award of attorneys' fees.

FURTHER HEARING AND AMENDED MOTION

As drafted, the Motion does not request relief which the court may award attorneys' fees. Since this motion was timely filed, the court affords the Debtors and counsel the opportunity to amend this motion to:

- a. Seek an award of attorneys' fees against Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16, which may be enforced as part of the July 9, 2013 Judgment (Dckt. 195).
- b. The court makes Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7810 applicable to the present motion, allowing the Debtors to state separate claims (1) for an award of attorneys' fees against Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16, and (2) counsel's motion for allowance of such fees and authorization for them to be paid him as counsel for the Debtors.
- c. The amended motion shall have two separate sections for the relief sought. One section shall state with particularity all of the grounds upon which an award of attorneys' fees, as part of the judgment against Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16, is proper. The second section of the motion shall state with particularity the grounds upon which counsel should be allowed the fees as counsel for the Debtors. The Debtors may have a section with common facts and allegations (such as the history of the litigation), as appropriate.
- d. If the Debtors and Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16, have stipulated (or for which no objection is to be made) to an amount of attorneys' fees and costs which the bank is to pay, such stipulation or documentation of no opposition by Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16, shall be filed with the court.
- e. An award of attorneys' fees may include a provision that the fees and costs may be paid directly to counsel for the Debtors by the Bank, that counsel will deposit the monies into his client trust account, counsel will account for the relief of the monies to the Debtors and court (filing a notice of receipt of payment from Bank), and then disburse the monies from the client trust account to counsel.

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

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

The Motion for Allowance of Fees and Expenses filed by counsel having been presented to the court, and upon review of

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

IT IS ORDERED that on or before -----, 2013, the Debtors and counsel for the Debtors shall,

A. File and serve an amended motion, and any additional supporting pleadings they belief necessary or appropriate for:

1. An award of attorneys' fees and costs against Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16, as part of the Judgement (Dckt. 195) awarded Debtors against the Bank.
2. The allowance of attorneys fees relating to the Objection to Claim and Counter-Claim against Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16, (DCN: WW-5)to counsel as counsel for the Debtors in this Chapter 13 bankruptcy case.
3. The amended motion shall have two separate sections, one for each of the specific relief sought. One section shall state with particularity all of the grounds upon which an award of attorneys' fees, as part of the judgment against Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16, is proper. The second section of the motion shall state with particularity the grounds upon which counsel should be allowed the fees as counsel for the Debtors. The Debtors may have a section with common facts and allegations (such as the history of the litigation), as appropriate.

IT IS FURTHER ORDERED that any stipulation between the Debtors and Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16, or if the Bank has agreed not to file an objection to the Motion for Attorneys' Fees and Costs such stipulation or documentation of no opposition by Bank of New York Mellon, fka The Bank of New York, as Trustee for the Certificateholders of CWALT, Inc., Alternative Loan Trust 2006-OA16, Mortgage Pass-Through Certificates, Series 2006-OA16, shall be filed with the court.

IT IS FURTHER ORDERED that any opposition or responsive pleadings (including statements of non-opposition) shall be filed and served on or before -----, 2013.

obtain a post-confirmation loan modification (which was part of the resolution of a claims objection, for which a separate fee application has been filed).

The Chapter 13 Trustee has filed a statement of non-opposition to this fee application. July 12, 2013 Docket Entry.

The court grants the application and allows Wolff & Wolff, Counsel for Debtors additional attorneys' fees of \$2,367.50 and costs in the amount of \$122.83 for additional substantial outside the basic Chapter 13 case and unanticipated work. The Chapter 13 Trustee is authorized to pay these additional fees and costs as administrative expenses through the Chapter 13 Plan.

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

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

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

IT IS ORDERED that Wolff & Wolff is allowed the following fees and expenses as a professional of the Estate:

Wolff & Wolff, Counsel for the Debtor
Applicant's Fees Allowed in the amount of \$ 2,367.50
Applicants Expenses Allowed in the amount of \$ 122.83,

IT IS FURTHER ORDERED that this is a final award of fees pursuant to 11 U.S.C. § 330, and the Trustee is authorized to pay such fees from funds of the Estate as they are available.

21. [13-27532-E-13](#) JOSEPH/MARY RAMOS
TSB-1 Richard A. Chan

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
7-10-13 [[18](#)]

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. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan may fail liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity totals \$24,057.00 and the Debtor is proposing a 31.43% dividend to unsecured creditors.

The Trustee stats that the non-exempt equity reported does not include potential equity in real property listed on Schedule A with a value of \$151,516 of which Debtor lists Chapter 7 liquidation value of \$139,394 and secured liens totaling \$122,285.00. Debtors exempt \$17,109 in equity in real property on Schedule C.

Trustee states he has visited a valuation site to determine the estimated value of the real property, which showed \$174,144.00, \$22,628.00 greater than Debtor's report. The Trustee requested Debtors counsel to provide an appraisal to support the value stated by Debtors. Counsel sent the Trustee a Zillow.com report showing the value of real property at \$151,516. The Trustee is not sure if the report is accurate but that Debtors' property has greater equity than reported.

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. [12-39437](#)-E-13 JUDY BURGER MOTION TO CONFIRM PLAN
PGM-4 Peter Macaluso 6-21-13 [[87](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2013. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

The court's tentative decision is to continue the hearing on the Motion to Confirm the Amended Plan to 3:00 p.m. on October 22, 2013. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Trustee opposes the motion on the grounds that the Debtor has not provided the Trustee with a complete Business Questionnaire and business documentation. The Trustee argues the Debtor has had more than sufficient time to provide the Trustee with these documents and has failed to do so. The Trustee states that he is unable to determine if the Debtor can afford the plan payments as Debtor has failed to provide any recent convincing evidence of the income of Debtor's business such as bank statements, a copy of

the estimated quarterly tax payment for January 15, 2013, or a statement of income and expenses.

The Trustee filed a supplemental objection, stating that **Debtor provided three months of bank statements for two business accounts and a business profit and loss statement.** The Trustee amends his objection to narrow the issues before the court.

First, the Trustee states that he has reviewed the profit and loss statements for "Law Office of Judy Burger, APC" and determined that the average income appears to be \$22,468.69, which significantly exceeds the 2011 income reported on the Statement of Financial Affairs. The Trustee states the average expenses claimed by the Debtor appear to be \$20,050.61, which shows an average profit of \$2,334.73, which would be sufficient to make the plan payment if the Debtor had no personal expenses.

The Trustee also argues that there are some expenses that are extraordinary and some expenses which represent a reimbursement to the Debtor.

The Trustee also notes that the Debtor did not list bank accounts on Schedule B, but the bank statements received by the Trustee are for two accounts in the name of the Debtor's corporation.

The Trustee concludes that if the proposed profit and loss statements are accurate, they support the Debtor's ability to pay not only the current \$2,050.00, and potentially an additional \$1,218.07. The Trustee argues the bank statements need more explanation, including a declaration as to whether all income is put in these accounts, their usage, the extraordinary items and the ability to make payments.

Debtor responds, stating that the case is complex and the Trustee has required the Debtor to complete tax returns for the corporation for which she is a wage earner. The Debtor is currently waiting the for the CPA to complete the documentation that must be forwarded to the Trustee for review.

Debtor requests a continuance for 60 days in order to provide sufficient time for review and resolution of the remaining issues.

The court does not have any of the evidence to review, in which the Trustee has concerns. However, Trustee has provided sufficient evidence to warrant concern over the Debtor's statement of income and expenses. Based on the evidence presented by the Trustee, the Debtor has not provided sufficient evidence to support confirmation.

The court continues the hearing to 3:00 p.m. on October 22, 2013, to afford the Debtor the opportunity to have the tax returns completed and to provide the court and trustee with clear, properly authenticated evidence of the pre and post-petition finances and assets of the Debtor. By October 2013, this case will be closing in on being one-year old without a confirmed plan. To the extent that the financial information shows that a projected disposable income greater than that used by the Debtor to compute her plan payments to the Trustee, she shall include an explanation as to why such amount is higher and the location of the additional disposable income.

The Debtor's supplemental pleadings and financial documentation shall be filed and served on or before September 24, 2013. Any supplemental opposition or response by the Chapter 13 Trustee or any other party in interest shall be filed and served on or before October 8, 2013.

The court grants leave for the filing of related motions (such as motions to dismiss or convert the case) to be specially set at 3:00 on October 22, 2013.

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

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

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

IT IS ORDERED that the hearing on the Motion to Confirm is continued to 3:00 p.m. on October 22, 2013.

IT IS FURTHER ORDERED that on or before September 24, 2013, the Debtor shall file and serve supplemental pleadings and financial documentation. Any supplemental opposition or response by the Chapter 13 Trustee or any other party in interest shall be filed and served on or before October 8, 2013.

IT IS FURTHER ORDERED that leave is granted for the filing of any related motions (such as motions to dismiss or convert the case) by any party in interest to be specially set at 3:00 on October 22, 2013. Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed. This is without prejudice to any party in interest to filing and setting for hearing such motions prior to October 22, 2013.

IT IS FURTHER ORDERED that any motion or election to dismiss this Chapter 13 case by the Debtor shall be by noticed motion for which notice shall be provided pursuant to Local Bankruptcy Rule 9014-1(f)(2). The issues identified by the Trustee are sufficient to raise a question as to the good faith prosecution of this case and disclosure of financial information, thereby making a noticed hearing appropriate if the Debtor seeks to dismiss this case.

23. [12-39437](#)-E-13 JUDY BURGER
TSB-2 Peter G. Macaluso

CONTINUED MOTION TO DISMISS
CASE FOR UNREASONABLE DELAY
THAT IS PREJUDICIAL TO
CREDITORS AND/OR MOTION TO
DISMISS CASE
5-29-13 [[73](#)]

CONT. FROM 6-26-13

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

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

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

The court's decision is to continue the hearing on the Motion to Dismiss to 3:00 p.m. on October 22, 2013. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

PRIOR HEARING

The Trustee's Motion argues that the Debtor did not file a Plan or a Motion to Confirm a Plan following the court's denial of confirmation to Debtor's prior plan on March 19, 2013. A review of the docket shows that Debtor has not yet filed a new plan or a motion to confirm a plan. Debtor offers no explanation for the delay in setting the Plan for confirmation. This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. §1307(c)(1).

Debtor's Opposition

Debtor argues that the court should deny the motion to dismiss because Debtor will file a new plan prior to the hearing. The Debtor offers no evidence in support of this argument for cause for why she cannot prosecute her case.

On June 21, 2013, the Debtor filed an amended plan and motion to confirm. Plan and Motion, Dckts. 81, 82. The Debtor's prior Chapter 13 case was dismissed by order filed on September 16, 2013, because of \$23,051.94 in monetary defaults. Notice of Default and Order, Bankr. E.D. Cal. 09-41671 Dckts. 45, 48

The court continued the hearing on the Motion to Dismiss to follow the hearing on the Motion to Confirm.

This motion to dismiss is continued to 3:00 p.m. on October 22, 2013.

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

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

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

IT IS ORDERED that the hearing on the Motion to Dismiss is continued to 3:00 p.m. on October 22, 2013.

24. 09-27238-E-13 LEVI BOYNTON MOTION TO INCUR DEBT
WKM-1 W. Kirk Moore 7-8-13 [76]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on July 9, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

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

The court's decision is to grant the Motion to Incur Debt. No appearance required.

The motion seeks permission to purchase the real property commonly known as 9778 Collie Way, Elk Grove, California. Debtor states the estimated total monthly payment including taxes and insurance is \$2,166.74, the loan is a 60 year loan with fixed rate of 3.5%. The purchase price is \$391,000.00, with the estimated closing costs, pro-rations, PMI and advances the estimated total financed is approximately 403,903.00. Debtor states his income is currently \$4,517.00 from his pension and \$606.00 from Social Security. Debtor also states he was married post-confirmation and his spouse's current income is \$4,062.00 per month. Debtor and his spouse are both applying for the loan and

his spouse made a down payment of \$5,000, since they qualify for a VA loan, with court approval.

Debtor states his current rent is \$1,960.00, set in rise once his current term ends. Debtor also states that the current landlord is having difficulty making payments on the rental property and may lose it to foreclosure or short sale. Debtor argues that the purchase is a good investment and would be approximately the same amount as increased rent would be. Debtor states the purchase will not impair his ability to perform under the terms of the confirmed plan.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Chapter 13 Trustee filed a non-opposition on July 17, 2013.

Here, the proposed loan is sufficiently described in the motion and supporting pleadings and an agreement has been provided to the court. Dckt. 79. There being no opposition from any party in interest and the terms being reasonable, 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 the Debtor, Levi Boynton, is authorized to incur debt to purchase the real property commonly known as 9778 Collie Way, Elk Grove, California, according to the terms stated in the Purchase Agreement filed as Exhibit A, Dckt. 79.

25. [12-20038-E-13](#) HECTOR/LEESHA RIVERA
SJS-4 Scott J. Sagaria

MOTION TO MODIFY PLAN
6-19-13 [[63](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2013. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects on the grounds that he is uncertain of the Debtors' ability to pay or if the payment is the Debtors' best effort. Debtors did not file updated statements of income or expense in support of the proposed plan. The debtors' state in their declaration that their income is \$6,720.53 per month and their expenses are \$4,960.20, but the most recent statement of income and expenses reflect income of \$3,754.20 and expense of \$3,678.20. The Trustee states that the paystubs he received from March 2013 indicate that Debtors' income is approximately \$7,091.00.

The Trustee also argues that the Debtors are proposing to decrease the term of the plan to 36 months, but the confirmed plan was for a term of 60 months, and debtors have not provided an express reason they are seeking to decrease the length of the plan.

Based on the foregoing, the modified Plan complies 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. [12-39538-E-13](#) RICARDO DELREAL AND MARIA MOTION TO CONFIRM PLAN
TOG-10 BARRAGAN 6-14-13 [[69](#)]
Thomas Gillis

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 14, 2013. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on June 14, 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. [12-40838-E-13](#) JILL HARRISON MOTION TO MODIFY PLAN
EJH-1 Earl Hickman 6-25-13 [[23](#)]

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. 35 days' notice is required.

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

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

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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.

28. [08-37444-E-13](#) DEAN/STEPHANIE PORTER MOTION TO MODIFY PLAN
BHS-3 Barry Spitzer 6-21-13 [[89](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2013. 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 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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.

29. [13-27845-E-13](#) **TIMOTHY/MICHELLE ROSEN** **MOTION TO VALUE COLLATERAL OF**
WMR-1 **William M. Rubendall** **STERLING JEWELERS, INC**
7-13-13 [[18](#)]

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, respondent creditor, and Office of the United States Trustee on July 13, 2013. By the court's calculation, 24 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Value Collateral has not been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

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

The Notice provided states that any party wishing to oppose the motion must file a written response with the court no later than fourteen days (14) prior to the hearing. Dckt. 19. Therefore, movant sought to set the hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1), which requires 28 days' notice. However, the Debtor only provided 24 days' notice. Therefore notice was not proper on the parties. This is grounds to deny the motion. See Local Bankr. R. 9014-1(1).

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

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

The 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 is denied without prejudice.

30. [13-21349-E-13](#) REGINALD/TONE SCARBROUGH MOTION TO CONFIRM PLAN
ET-5 Matthew Eason 6-24-13 [[89](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 24, 2013. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Trustee objects to the motion on the grounds that the plan relies on a pending motion to value collateral, which is set for hearing August 6, 2013. The court having denied the Motion to Value Collateral of CitiBank West FSB, the Trustee's objection is sustained.

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

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

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

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

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

31. [13-21349](#)-E-13 REGINALD/TONE SCARBROUGH MOTION TO VALUE COLLATERAL OF
ET-6 Matthew R. Eason CITIBANK WEST F.S.B.
7-9-13 [[100](#)]

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 9, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

SERVICE

Debtors seeks to value the collateral of Citibank West FSB. However, the only address served for creditor was a post office box. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

Furthermore, the court cannot tell from the record who or what is "Citibank West F.S.B." A proof of claim has been filed by Citibank, N.A., which asserts a secured claim of \$99,760.85 and that the Cassandra Dr. Property is the collateral. Proof of Claim No. 16.

The Motion alleges that the Debtors believe the creditor is "Citibank West, FSB," after having spoken with Citibank, N.A. The Debtors ask the court to ignore Proof of Claim No. 16 and issue an order against an otherwise unknown

entity called "Citibank West, FSB," based on the following testimony of the Debtor,

8. I called Citibank on June 24, 2013 and received confirmation that Citibank West F.S.B. is the correct creditor on the second deed of trust.

Declaration ¶ 8, Dckt. 102.

Using the FDIC and California Secretary of State on-line data bases which are linked to the Eastern District Bankruptcy Court's webpage, no reference to an entity named "Citibank West F.S.B." could be located. The court reviewed the list of federally chartered banks from the comptroller of the currency, again with no reference to a "Citibank West F.S.B." <http://www.occ.treas.gov/topics/licensing/national-bank-lists/index-active-bank-lists.html>.

Utilizing the Google search engine, at [citibank.com](http://www.citibank.com) there is a reference to "Cal Fed is now Citibank." http://www.citibank.com/domain/calfed_convert.html.

The court cannot and will not issue orders against some possible entity, which may or may not actually exist. Alternatively, some entity called Citibank West, FSB may exist, and the Debtor was told to contact it because it is now the loan servicer for Citibank, N.A., but not the creditor in this case. It is not difficult for the court to envision a consumer debtor being confused by the switching of hats taking place in the financial community.

This court will not ignore a proof of claim which clearly states that Citibank, N.A. is a creditor in this case. If it is not, and the Proof of Claim falsely asserts that it is, then the Debtors need to object to the proof of claim. Presumably, when objecting to such a claim, the Debtors will (if they prevail) request attorneys' fees and costs pursuant to the terms of the note and deed of trust which Citibank, N.A. falsely asserted as the basis for a claim in this case.

MOTHORITIES

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

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

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

Based on the foregoing, the Motion is denied without prejudice.

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

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

The Motion 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 is denied without prejudice.

32. [09-46050-E-13](#) SANOVA/ANDROMAQUE ETIENNE MOTION TO APPROVE LOAN
RHM-3 Robert Hale McConnell MODIFICATION
6-19-13 [[41](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 19, 2013. By the court's calculation, 48 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Debtor seeks a loan modification with Creditor Wells Fargo Bank, N.A. However, the Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

- A. Debtors through their counsel hereby apply for court approval of a loan modification agreement established through negotiations between the lender, Wells Fargo Bank, and the Debtors.
- B. The terms and conditions of the loan modification are as set forth in the declaration of Debtor which is a part of this application.

The Motion to Approve Loan Modification does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based. The motion merely states that Debtor seeks a loan modification. This is not sufficient to establish the right to a loan modification. FN.1.

FN.1. When parties and their attorney cannot state even the basic terms of a loan modification in a motion, it causes the court to become concerned that the debtor does not understand the terms and counsel does not have an understanding of what he is getting approved for his or her clients. If the motion is really so simple that even the court should be able to figure it out from all of the

documents, then it should be easy for counsel to state the grounds with particularity in the motion.

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

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

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

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

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

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

pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

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

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

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

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

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

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

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

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

IT IS ORDERED that the Motion is denied without prejudice.

33. [10-29750-E-13](#) ANTONIO/MARIA RAMIREZ MOTION TO APPROVE LOAN
PGM-3 Peter G. Macaluso MODIFICATION
6-27-13 [[58](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 27, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

Debtors state Wells Fargo Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current \$1,117.17 to \$717.60. The modification will capitalize the pre-petition arrears.

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

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

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

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

IT IS ORDERED that Debtors Antonio and Maria Ramirez are authorized to amend the terms of their loan with Wells Fargo Bank, N.A., which is secured by the real property commonly known as 7576 Glacken Way, Sacramento, California,

and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 61, in support of the Motion.

34. [10-29750-E-13](#) ANTONIO/MARIA RAMIREZ MOTION TO MODIFY PLAN
PGM-4 Peter Macaluso 6-27-13 [[63](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 27, 2013. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee argues that the Debtor cannot make payments as the Debtor is \$240.00 delinquent in plan payments under the terms of the proposed plan. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also states the feasibility of the plan relies on a pending Motion to Approve Loan Modification. The court having granted the Motion, the Trustee's objection is overruled.

Debtor responds, proposing to change the Plan to state "\$66,773.87 through 5-13 and then \$400 per month starting 6-13," which would make the Debtors current.

The Debtor having addressed the Trustee's concerns, the Motion is granted, conditioned upon the changes as stated by Debtor.

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 27, 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.

35. [10-31350](#)-E-13 CHRISTINE GILMORE MOTION TO VALUE COLLATERAL OF
JT-6 John A. Tosney HSBC MORTGAGE SERVICES, INC.
7-3-13 [67]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 3, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

Debtor seeks to value the collateral of "HSBC Mortgage Services, Inc. (a division of HSBC Bank, USA, N.A.)" However, the court cannot determine from the evidence presented which legal entity the Debtors wish the court to include in the order. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid themselves in finding the true creditor.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtor provides no evidence for the court to determine that this company is a creditor in this case. FN.1.

FN.1. The misidentification of creditors for purposes of § 506(a) motions continues to mystify the court. Any order issued by the court would be void as to the actual creditor. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt secured by a second deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

The court has address this matter with counsel on other matters on the August 6, 2013 calendar and will not do so in detail for this contested matter. The motion must identify the actual person against whom relief is requested.

The court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect. The Motion is denied without prejudice.

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

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

The Motion 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 is denied without prejudice.

36. [13-27154-E-13](#) DENNIS/PATRICIA WHITCOMB MOTION TO VALUE COLLATERAL OF
GFG-87 Guillermo Geisse GM FINANCIAL/AMERICREDIT
7-17-13 [[31](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 17, 2013. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently,

the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

Debtor seeks to value the collateral of "GM FINANCIAL/AMERICREDIT FINANCIAL SERVICES, Inc." However, the court cannot determine from the evidence presented which legal entity the Debtors wish the court to include in the order. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid themselves in finding the true creditor.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtor provides no evidence for the court to determine that this company is a creditor in this case. FN.1.

FN.1. The misidentification of creditors for purposes of § 506(a) motions continues to mystify the court. Any order issued by the court would be void as to the actual creditor. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt secured by a second deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

The court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect. The Motion is denied without prejudice.

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

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

The Motion 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 is denied without prejudice.

37. [13-27154-E-13](#) DENNIS/PATRICIA WHITCOMB CONTINUED OBJECTION TO
TSB-1 Guillermo Geisse CONFIRMATION OF PLAN BY TRUSTEE
DAVID P. CUSICK
7-3-13 [[27](#)]

CONT. FROM 7-23-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 3, 2013. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

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

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

PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan fails to value the collateral of GM Financial. The proposed plan values the 2012 Jeep Liberty at \$13,570.00, but proposes to pay the debt in full at \$22,800.00.

The Trustee also objects on the grounds that the plan is not the debtor's best effort. Debtor is over the median income and proposes plan payments of \$1,184 for 20 months, \$1,405.18 for 15 months, and then \$1595.29 for 25 months, with 3% dividend to unsecured creditors (totaling \$6,453.29). Trustee states that the additional provisions show Debtor wife is to turn over 100% of her net bonus (after taxes and payroll deductions) to fund the plan, reserving the right to retain a portion of any particular bonus for any unexpected necessary expenses. The Trustee argues that Debtor has failed to state a specific amount to be paid into the plan or a specific date when the

proceeds will be paid into the plan. Debtor stated at the 341 meeting that she receives a net bonus of \$3,500-4,000 every three months. Since the Plan does not fully pay all claims, it must devote all of Debtors' disposable income to pay unsecured creditors. 11 U.S.C. §1325(b)(1). As Debtors' Plan fails to specifically do so, it cannot be confirmed.

The court continued the hearing to allow the Debtors to file and serve on the Chapter 13 Trustee, U.S. Trustee, and any parties requesting special notice, proposed amendments to the Plan addressing the period bonus payments received by the Debtors.

Debtor has failed to file and supplemental documentation to date. Therefore the Objection is sustained.

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.

38. [10-34955-E-13](#) JOHN WALKER
JMC-7 Joseph M. Canning

MOTION TO VALUE COLLATERAL OF
REAL TIME RESOLUTIONS, INC.
6-28-13 [[96](#)]

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

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

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

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

Debtor seeks to value the collateral of "Real Time Resolutions, Inc., Agent for JPMorgan Chase Bank, N.A., fka Chase." However, the court cannot determine from the evidence presented which legal entity the Debtors wish the court to include in the order. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid themselves in finding the true creditor.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtor provides no evidence for the court to determine that this company is a creditor in this case. FN.1.

FN.1. The misidentification of creditors for purposes of § 506(a) motions continues to mystify the court. Any order issued by the court would be void as to the actual creditor. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt secured by a second deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

The Motion on its face identifies the creditor as being JPMorgan Chase Bank, N.A., which is a federally insured financial institution. Congress created a specific rule to provide for service of pleadings, including this

contested matter, on federally insured financial institution, Federal Rule of Bankruptcy Procedure 7004(h), which provides

(h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless-

(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Here, Debtors served JPMorgan Chase Bank, N.A. at several locations, including at the address stated on the FDIC and California Secretary of State for the Bank, but neglected to serve any of the addresses by certified mail to an officer as required by the Federal Rules of Bankruptcy Procedure. None of the exceptions in Federal Rule of Bankruptcy Procedure 7004(h) apply.

The court will not speculate and hope that it has named a real creditor and that its order will have any legal effect. The Motion is denied without prejudice.

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

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

The Motion 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 is denied without prejudice.

39. [13-27355-E-13](#) CHRISTOPHER/DANA LEID
MET-1 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
7-3-13 [[16](#)]

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. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 408 Chelsea Way, Fairfield, California. The Debtor seeks to value the property at a fair market value of \$159,500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$172,779.00. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$34,241.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on May 30, 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.

41. [10-34956-E-13](#) MICHAEL HOBSON MOTION TO VALUE COLLATERAL OF
JMC-7 Joseph M. Canning REAL TIME RESOLUTIONS, INC.
6-27-13 [[101](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 27, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

Debtor seeks to value the collateral of "Real Time Resolutions, Inc., Agent for JPMorgan Chase Bank, N.A. fka Chase." However, the court cannot determine from the evidence presented which legal entity the Debtors wish the court to include in the order. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid themselves in finding the true creditor.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of

such party. The Debtor provides no evidence for the court to determine that this company is a creditor in this case. FN.1.

FN.1. The misidentification of creditors for purposes of § 506(a) motions continues to mystify the court. Any order issued by the court would be void as to the actual creditor. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt secured by a second deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

The Motion on its face identifies the creditor as being JPMorgan Chase Bank, N.A., which is a federally insured financial institution. Congress created a specific rule to provide for service of pleadings, including this contested matter, on federally insured financial institution, Federal Rule of Bankruptcy Procedure 7004(h), which provides

(h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless-

- (1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail;
- (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or
- (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Here, Debtors served JPMorgan Chase Bank, N.A. at several locations, including at the address stated on the FDIC and California Secretary of State for the Bank, but neglected to serve any of the addresses by certified mail to an orricer as required by the Federal Rules of Bankruptcy Procedure. None of the exceptions in Federal Rule of Bankruptcy Procedure 7004(h) apply.

The court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect. The Motion is denied without prejudice.

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

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

The Motion 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,

requesting a copy of the Trust along with other required documents, but has not received anything. The Trustee states he is unable to verify the assets held in the trust.

Debtor responds, stating that they will attend the 341 meeting continued to August 1, 2013. Debtor states the Motion to Value has been filed and set for hearing on August 27, 2013. Counsel states that a recent death in the family has upset her work schedule. The court confirms that a Motion to Value was filed July 31, 2013.

A review of the Motion to Value Collateral reveals several defects. First, the moving party failed to use a Docket Control Number. The Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Second, the Local Rules require that movant's notice of the hearing disclose whether or not written opposition to the motion is required. See Local Bankr. R. 9014-1(d)(3). The notice provided here did not so specify. This is improper.

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

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

As the Debtor's Motion to Value Collateral is procedurally deficient, the court sustains the Objection.

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:

The Trustee argues that the Debtors deduct \$676 for an auto payment that is no longer an expense that will be paid by the Debtors and should be added to the plan payment.

The Trustee states that the plan payment should be \$5,372.67 per month, the proposed payment of \$3,127.87, the \$676 for the auto payment and the residual disposable income of \$1,568.80.

The Trustee notes that the Debtors have proposed a 100% plan, but the Trustee's review of the statements reveals that at least one of the Debtors may have an issue with gambling - spending thousands of dollars a month at casinos in town and in Las Vegas, Nevada. Trustee states that at the 341 meeting Debtors admitted that both Debtors have a serious gambling problem and that they are currently seeking counseling to assist them, without providing any evidence. The Trustee argues that allowing the Debtors to have additional disposable income would be a detriment to the Chapter 13 plan, to all creditors, and to Debtors' potential recovery.

Additionally, the Trustee requested that due to Debtor's gambling problem, the Debtors should supply paystubs for a full 6 months prior to filing, in an attempt to gain a clearer picture. The Trustee discovered that the Debtors failed to report all income received in May 2013 causing the stated 6 month average income to be lower than the actual average as computed by the Trustee. The Trustee also states that the Debtors failed to report rental income of at least \$1,014.64 per month.

The Trustee argues that the paystubs show that the Debtor's income averages \$21,000.00 per month, and after \$1,284.98 in expenses, the net income would be \$12,154.51 per month.

Lastly, the Trustee states that the monthly dividend to Ally Financial in Class 2 of the plan is too high at \$2,296.52 per month for a balance of \$11,482.62 at 0%. Trustee argues that the balance of the loan should be paid over the life of the plan at \$192.00 per month, giving the Debtors an additional motivation to maintain their plan payment.

While the Debtors may be promising to pay creditors, the Trustee has presented evidence that the financial information provided by the Debtors is materially inaccurate.

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. [09-42762-E-13](#) WALTER WHITNACK AND CONTINUED MOTION TO SUBSTITUTE
PGM-2 NATALIE HARTMAN WHITNACK PARTY
Peter Macaluso 6-10-13 [[74](#)]

CONT. FROM 7-16-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on June 10, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Substitute Party 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 decision is to continue the Motion to Substitute Party to 3:00 p.m. on September 10, 2013. No appearance at the August 6, 2013 hearing is required.

PRIOR HEARING

Debtor, Natalie Hartman-Whitnack, moves the court for an Order for determination and for further administration of this Chapter 13 case is in the best interest of the parties, after the death of co-debtor Walter A. Whitnack. Debtor states that she was the beneficiary to their life insurance policy and the money received was used for funeral and burial expenses. The Debtors have authorized the payment by the Trustee of \$24,068.00 under the confirmed plan and while there has been a slight decrease in income, Debtor is still receiving pension funds and a decrease in expenses, which should allow her to continue the Chapter 13 plan.

TRUSTEE'S OPPOSITION

Trustee opposes the motion, stating that Debtor has not indicated how much insurance proceeds were received and how much was spent on funeral and burial expenses. The Trustee also asserts that the amount to pay unsecured creditors in a Chapter 7 at \$370,615.85, while Debtor is proposing a 34% dividend to unsecured creditors, which would pay \$32,690.00. The Trustee is not certain if insurance paid Debtors' mortgage in full and if this is the reason why the equity is not reduced by the amount of the mortgage claim.

DEBTOR'S RESPONSE

Debtor responds, asserting that this Motion is not the time to bring up confirmation issues. Debtor asserts that whether or not there is equity or funds to pay creditors is not at issue until there is a substitution of a party, which then the Debtor can modify the plan.

CONTINUANCE

The Debtor agreed to provide the Trustee with the necessary information concerning the life insurance policies. If the information provided is determined to be satisfactory, counsel for the Debtor shall prepare an order substituting Natalie Hartman-Whitnack as the representative for the interests of the late co-debtor Walter A. Whitnack. The Trustee shall approve the order as to form and lodge it with the court. The court may then remove this matter from calendar and enter the order substituting Ms. Hartman-Whitnack as the representative of the late co-Debtor.

DEBTOR'S SUPPLEMENTAL RESPONSE

Counsel for Debtors states that Debtor is gathering the relevant documentation and expects to submit a detailed response addressing the Trustee's concerns shortly. Debtor seeks a continuance for an additional 30 days.

The court grants a further continuance to 3:00 p.m. on September 10, 2013. The Debtor shall file supplemental pleadings with the court documenting the existence of the insurance, all of the insurance proceeds which have been spent, and the location of all remaining insurance proceeds. The court grants the Chapter 13 Trustee, U.S. Trustee, Creditors, and other parties in interest leave to file a motion to dismiss or convert the case to be held at 3:00 p.m. on September 10, 2013.

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

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

The Motion to Substitute Party 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 hearing on the Motion is continued to 3:00 p.m. on September 10, 2013.

IT IS FURTHER ORDERED that Debtor shall file supplemental pleadings with the court documenting the existence of the insurance, all of the insurance proceeds which have been spent, and the location of all remaining insurance proceeds, and serve such pleadings on the Chapter 13 Trustee, U.S. Trustee, and anyone requesting special notice in this case.

IT IS FURTHER ORDERED that leave is granted the Chapter 13 Trustee, U.S. Trustee, Creditors, and other parties in

interest to file a motion to dismiss or convert the case to be held at 3:00 p.m. on September 10, 2013. denied.

45. [12-26563-E-13](#) YASWANT/KAMINI SINGH CONTINUED MOTION TO CONFIRM
PGM-4 Peter Macaluso PLAN
3-22-13 [[154](#)]

CONT. FROM 5-14-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on March 22, 2013. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Trustee objects on the grounds that the plan relies on a loan modification.

DEBTORS' REPLY

Debtors reply that they negotiated a new balance, payment, interest rate, and payment schedule. Debtors state that they will obtain approval in the adversary proceeding settlement process and subsequently in the Chapter 13 case. Debtors seek to continue the hearing on confirmation for 90 days to finalize the loan modification.

CONTINUANCE

The hearing on motion to confirm was continued to allow Debtors to finalize loan modification.

On July 16, 2013, the court granted a Motion to Approve a Loan Modification with Rudolph and Evelyn Satterfield, secured by the real property

commonly known as 13711 Cherokee Lane, Galt, California. The Debtor having addressed the Trustee's concerns, 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 Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on March 22, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

46. [11-20466](#)-E-13 BENJAMIN/JANE GARCIA MOTION TO MODIFY PLAN
SDB-5 W. Scott de Bie 6-17-13 [[80](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 17, 2013. By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to

the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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.

47. [12-34967-E-13](#) ROBERTA CURTIS
PGM-2 Peter Macaluso

MOTION TO MODIFY PLAN
6-28-13 [[65](#)]

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, 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.

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

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

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

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

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

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

48. [12-33369-E-13](#) CHARLES/LINDA MEARS
CAH-4 C. Anthony Hughes

MOTION TO MODIFY PLAN
6-27-13 [[62](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 27, 2013. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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 27, 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.

49. [12-41569-E-13](#) RENY/NELIA ABASTA
MSP-3 Mandip Purewal

MOTION TO CONFIRM PLAN
6-14-13 [[70](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 14, 2013. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Trustee opposes confirmation offering evidence that the Debtor is \$2,090.00 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also states that the Motion states the Debtor seeks confirmation of the 4th Amended Plan filed on or about May 15, 2013, but the most recently filed plan is dated March 26, 2013.

Lastly, the Trustee states the Proof of Service fails to list any plan as being served concurrently with the Motion. A copy of the Plan was not sent with the notice of hearing as required by Federal Rule of Bankruptcy Procedure 3015(d).

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

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

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

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

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

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

50. [13-28069-E-13](#) ROSENDA DESMOND MOTION TO VALUE COLLATERAL OF
DEF-1 David Foyil HOME AMERICAN MORTGAGE
CORPORATION
7-1-13 [[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 July 1, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6579 Sunnyfield Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$150,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$213,088.27. Home American Mortgage Corporation's second deed of trust secures a loan with a balance of approximately \$22,142.19. 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 Home American Mortgage Corporation secured by a second deed of trust recorded against the real property commonly known as 6579 Sunnyfield Way, Sacramento, California, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$150,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

51. [10-37075-E-13](#) RUBEN/PATRICIA AVALOS
JT-2 John A. Tosney

MOTION TO SUBSTITUTE DECEASED
PARTY PURSUANT TO FEDERAL RULE
OF BANKRUPTCY PROCEDURE 7025
7-9-13 [[38](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 9, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion to Substitute Deceased Party 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 Substitute Deceased Party is granted. No appearance required.

Debtors move the court for an order approving the motion to substitute Debtor Patricia Avalos for deceased Debtor Ruben Avalos. Debtors state they have filed a suggestion of death, as Debtor Ruben Avalos passed away on February 19, 2013.

Debtor states that she is capable of substituting herself and a modified plan and amended schedules will be filed soon to accommodate for the loss. Debtor states there was a life insurance policy, a term policy in the total amount of \$2,500, which was completely spent on the funeral arrangements.

Debtor states that further administration of this case is possible and in the best interests of the parties.

The Trustee filed a non-opposition on July 17, 2013.

DISCUSSION

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

Cal. 1991). As a result, a party must take action when a debtor in chapter 13 dies. *Id.*

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

Based on the testimony of Debtor Patricia Avalos and that she is capable of continuing the Chapter 13 case with a modified plan forthcoming, the court grants 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 to Substitute Deceased Party filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and Co-Debtor Ruben M. Avalos is substituted by Co-Debtor Patricia M. Avalos.

52. [11-39275-E-13](#) MARK/DIANE WERNER
RK-1 Richard Kwun

MOTION TO MODIFY PLAN
6-29-13 [[96](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 29, 2013. By the court's calculation, 38 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 continue the hearing on the Motion to Confirm the Modified Plan to 3:00 p.m. on August 26, 2013. 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 motion on several grounds. First, the Trustee argues that the proposed plan is only signed by the joint debtor. No motion to substitute party had been filed. The court notes that the motion to substitute party is set to be heard on August 26, 2013. The court continues the motion to that time to be heard in conjunction with the Motion to Substitute Party.

The Trustee also states the debtor incorrectly stated the amount paid in and checked there were no additional provisions when appended additional provisions exist. The Trustee also states the debtor is proposing to treat creditor Bank of America, N.A. pursuant to a loan modification which has not been approved by the court to date.

The Debtor responded, addressing the amount paid in and the additional provisions can be amended per the Order Confirming. The Debtor also states that the motion can be continued to the August 29, 2013 date to be heard with the Motion to Substitute Party.

The court continues the hearing on the Motion to Confirm to 3:00 p.m. on August 26, 2013, to be heard in conjunction with the Motion to Substitute Party.

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 hearing on the Motion to Confirm is continued to 3:00 p.m. on August 26, 2013.

53. [11-39275-E-13](#) MARK/DIANE WERNER MOTION TO APPROVE LOAN
RK-2 Richard Kwun MODIFICATION
7-9-13 [[102](#)]

**DEBTORS SHALL PROVIDE CONFIRMATION AT THE
HEARING THAT THE AUGUST 1, 2013 TRIAL
LOAN MODIFICATION PAYMENT WAS MADE BY THE DEBTORS**

Local Rule 9014-1(f)(1) Motion - Limited 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 July 9, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Tentative Ruling: The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Bank of America, N.A., serviced by Specialized Loan Servicing, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current \$2,085 to \$969.99. The modification will capitalize the pre-petition arrears and provides for an interest rate of 2.0% per annum. Debtors state to obtain the permanent loan modification, they must make three direct payments of \$969.99 with each payment due June 1, 2013, July 1, 2013, and August 1, 2013.

Creditor Specialized Loan Servicing, LLC, as servicer for the Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-15, filed a limited opposition, stating that Debtors are not eligible for the permanent loan modification until they make all three preliminary payments, one which is still outstanding, the August 1, 2013 payment.

The court grants the motion for the Debtor to enter into a permanent loan modification, the motion complying with the provisions of 11 U.S.C. § 364(d) and the terms set forth being reasonable. If the debtor has not made the required August 1, 2013 payment to date, the Creditor may assert its rights under the original contract.

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

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

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

IT IS ORDERED that Mark and Diane Werner, Debtors, are authorized to amend the terms of their loan with Specialized Loan Servicing, LLC, as servicer for the Bank of New York Mellon FKA The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-15, which is secured by the real property commonly known as 4821 El Camino Avenue, Sacramento, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 105, in support of the Motion.

54. [13-20879-E-13](#) BRADLEY NYDEGGER
WSS-1 W. Steven Shumway

MOTION TO CONFIRM PLAN
6-20-13 [[29](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 20, 2013. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee objects on the grounds that the plan will complete in 80 months as opposed to the 60 months proposed. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d).

The Trustee also states that the attorney fees in the proposed plan are not clear. The plan lists \$0.00 attorney fees to be paid, but the prior plan listed \$1,800.00 owed through the plan.

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

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

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

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

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

55. [13-23180-E-13](#) TONG/ARLENE BE
EJS-2 Eric John Schwab

MOTION TO CONFIRM PLAN
6-21-13 [[56](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2013. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

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

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

TRUSTEE'S OBJECTION

The Trustee objects on the grounds that the Debtor's plan lists FWCA-Auburn Village to be paid its post-petition rents as an administrative expense in the amount of \$31,356.00 at the rate of \$523.00 per month, when the claim has been filed in the amount of \$31,356.64.

The Trustee also states the debtors failed to date and sign the Motion to Confirm.

FW-CA AUBURN VILLAGE, LLC OBJECTION

Creditor FW-CA Auburn Village, LLC objects to Debtors plan for "reasons discussed with counsel." Dckt. 67. Creditor states the Debtor agreed to file a second amended plan, rendering this plan moot. The Creditor reserves its rights to object to the plan. The Debtor having failed to file a second amended plan, the parties may bring their objection at the hearing on this matter.

EDWARD WADE'S OBJECTION

Creditor Edward Wade objects to the motion on the grounds that Debtors have undervalued their assets, as the La Bou restaurant's value lies in its

goodwill and going concern value. Creditor contends that the schedules fail to list and goodwill or going concern value, but only list the nominal \$20,000 value of the La Bou franchise license. Creditor also contend that Debtors have grossly undervalued their residence stated at \$350,000 where it should be valued at \$500,000.

Creditor argues that Debtors failed to successfully run their prior business and will not be able to be successful at th new location. Creditor argues that Debtors have not met their burden demonstrating they will be able to perform their obligations under the plan.

Lastly, Creditor argues that the plan was not filed in good faith, as they moved their business down the street from their prior location, and significantly undervalued their residence and La Bou goodwill.

DISCUSSION

Creditor Edward Wade provides the Declaration of Malcolm R. Carlin-Smith, CPA, who provides hearsay testimony as to the value of the Debtor's residence. Mr. Carlin-Smith does not testify to personal knowledge regarding the value of the residence, the goodwill or going concern value, or any evidence regarding the Debtor's ability to successfully run a business. The court does not have any evidence to consider to support the Creditor Edward Wade's objection.

Furthermore, Creditor FW-CA Auburn Village, LLC does not provide the basis of their objection for which the court to consider.

Lastly, the Trustee raises two valid objection. The Debtor must sign and date the proposed plan.

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

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

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

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

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

56. [07-29284-E-13](#) FRANK GASTELUM
PGM-1 Peter G. Macaluso

MOTION TO APPROVE LOAN
MODIFICATION
7-1-13 [[54](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 2013. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

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

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

Nationstar Mortgage LLC, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current \$1,200.00 (not including property taxes and insurance) to \$1,041.86 (including escrow, arrearage, and other costs). The modification will capitalize the pre-petition arrears and provides for an interest rate of 2%.

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

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

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

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

IT IS ORDERED that Debtor Frank Gastelum Junior is authorized to amend the terms of his loan with Nationstar

Mortgage, LLC, which is secured by the real property commonly known as 3124 NE 115th Avenue, Vancouver, Washington, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 57, in support of the Motion.

57. [13-24684-E-13](#) TOD BELLETTO MOTION TO CONFIRM PLAN
PGM-1 Peter G. Macaluso 6-21-13 [[29](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 21, 2013. By the court's calculation, 46 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee objects on the grounds that the Debtor may not be able to make payments. The Trustee argues the amended plan calls for payments of \$100.00 through June 2013, \$300.00 for six months, and then \$1,100.00 for 52 months, but Debtor lists net income of \$300.00. The Trustee states the Debtor states the increase in plan payments is due to their payoff of a 401k loan, which was not listed on Schedule I.

The Trustee also objects on the ground that confirmation relies on a pending Motion to Value Collateral. As the court grants this motion, the Trustee's objection is overruled.

Debtor responds, stating that the Debtor is current under the plan and that his employment with the U.S. Postal Service includes a bi-weekly payment to a 401k loan in the amount of \$371.62, which ends December 2013.

Even with the income diverted from the 401k loan, it appears the debtor still does not have sufficient income to make the \$1,100.00 proposed payment. The Debtor does not appear capable to make the proposed increased plan payments based on the evidence presented.

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

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

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

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

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

58. 13-24684-E-13 TOD BELLETTO MOTION TO VALUE COLLATERAL OF
PGM-2 Peter G. Macaluso CITIMORTGAGE, INC.
6-26-13 [42]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 26, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$25,000.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject non-residential real property commonly known as 7349 Bayside Drive, Bay Saint Louis, Missouri. The Debtor seeks to value the property at a fair market value of \$25,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value.

See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$108,700.29. 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 \$25,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Citimortgage, Inc. secured by real property commonly known as 7349 Bayside Drive, Bay Saint Louis, Missouri is determined to be a secured claim in the amount of \$25,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$25,000.00 and is encumbered by liens securing claims which exceed the value of the asset.

59. [13-26986-E-13](#) DOUGLAS/BUNNIE OUGHTON MOTION TO VALUE COLLATERAL OF
RAC-1 Richard A. Chan WELLS FARGO BANK, N.A.
6-26-13 [[15](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on June 26, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

The Motion 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 6632 Pepperwood Way, Carmichael, California. The Debtor seeks to value the property at a fair market value of \$216,267.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$234,810.00. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$100,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 6632 Pepperwood Way, Carmichael, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$216,267.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

60. 09-42890-E-13 ROBERT SMITH MOTION TO INCUR DEBT
CAH-2 C. Anthony Hughes 7-8-13 [32]

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 and Office of the United States Trustee on July 8, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Chapter 13 Trustee filed opposition and the court will take up 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 Incur Debt without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion seeks permission to obtain credit to purchase real property commonly known as 2821 Paymaster Trail, Cool, California as his primary residence. Debtor states he and his non-filing spouse have entered into a contract to purchase the property for \$295,000.00 with \$5,000.00 deposit and \$10,000.00 down payment. The funds for the deposit and downpayment came from Debtor's holiday pay and paid vacation time at his employment with the State of California, Department of Corrections.

Flagstar Wholesale Lending approved the financing of the property, subject to approval of the court for a FHA 30 year fixed loan in the amount of \$279,812.00 at a 3.75% interest rate, including principal, interest and impound. The monthly payment will be \$1,987.52. Debtor testifies that he will

be able to afford this monthly mortgage and has filed updated income and expense statements.

TRUSTEE'S OPPOSITION

Trustee opposes the motion on the basis that the proposed purchase may not be in the best interest of the estate, increasing Debtor's expenses by \$357.57 with the new mortgage expense over the prior rent. The Trustee is also not sure of the tax advantage to which the Debtor refers from purchasing the home. The Trustee also notes several differences that Debtor has not explained from the current statement of income and expenses, including increased income, the appearance of two sons (no ages) and decrease in income due to budget cuts in addition to several increases in expenses.

DEBTOR'S RESPONSE

Debtor responds, stating that the two children are the children of Debtor's spouse that have been and are living with the Debtor, ages 23 and 24 years of age. These children are working part-time and do not have enough income to support themselves on their own and do not contribute to the household. Debtor did not anticipate these children being dependents when he filed the petition.

Debtor also states that the increases in expenses are due to the support of a family of four, four cell phones, food for four, and transporting all four driving to work and home. Debtor states that his insurance has decreased because he has retired and no longer drives as many miles, which decreased the policy.

Debtor also states that the spouse's car payment increased because her previous car had mechanical problems and she had to purchase a new vehicle in December 2011.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Here, the proposed loan is sufficiently described in the motion and supporting pleadings. However, the court is concerned with the Debtor ability to afford the payments on the proposed loan. While Debtor has explained many of the issues the Trustee pointed out, the court remains concerned with some of the explanations. The two adult children now listed have income, but Debtor has not clarified this information. The Debtor also states a new car was purchased in December 2011, during which this bankruptcy was pending. The court is not sure if the Debtor was involved in this purchase, and if he was,

a Motion to Incur Debt was not filed, nor was the court notified of such an event.

Based on the above stated inconsistencies, the court is not convinced that the Debtor is capable of making the required payments on the proposed loan and the Motion is denied without prejudice.

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

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

The Motion to 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 the Motion is denied without prejudice.

61. [11-24292-E-13](#) EDWARD/IMELDA CACHUELA MOTION TO MODIFY PLAN
JV-9 Justine L. Villanueva 6-18-13 [[103](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 18, 2013. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to

the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

The Motion to Confirm the Chapter 13 Plan filed by the 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 11, 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. [13-24993](#)-E-13 DENNIS/SANDRA CUVA MOTION TO VALUE COLLATERAL OF
PGM-3 Peter G. Macaluso ELROY AND MARY BRAATZ
7-5-13 [[40](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 5, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 11865 Trish Court, Nevada City, California. The Debtor seeks to value the property at a fair market value of \$500,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$760,054.03. Elroy and Mary Braatz's third deed of trust secures a loan with a balance of approximately \$41,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Elroy and Mary Braatz secured by a junior deed of trust recorded against the real property commonly known as 11865 Trish Court, Nevada City, 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 \$500,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

63. [09-22497-E-13](#) STANLEY/JUDITH CANTRILL MOTION TO VALUE COLLATERAL OF
JT-2 John A. Tosney JPMORGAN CHASE BANK, N.A.
7-8-13 [[42](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 8, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

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

The Debtor is the owner of the subject real property commonly known as 462 S. Township Road, Yuba City, California. Debtor offers the Declaration of James A. Chaussee, a licensed real estate appraiser with over 39 years' experience, who opines that the value of the property is \$314,000.00.

The first deed of trust secures a loan with a balance of approximately \$344,658.64. JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$37,166.95. 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 462 S. Township Road, Yuba City, 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 \$314,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

64. [09-40797-E-13](#) JEFFREY/MONIKA GOLD
JT-5 John A. Tosney

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
6-28-13 [[82](#)]

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

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

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

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

The Debtor is the owner of the subject real property commonly known as 6529 Sun Ranch Drive, Sacramento, California. Debtor offers the Declaration of James A. Chaussee, a licensed real estate appraiser with over 38 years' experience, who opines that the value of the property is \$126,000.00.

The first deed of trust secures a loan with a balance of approximately \$252,268.86. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$21,978.24. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 6529 Sun Ranch 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 \$126,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

65. 13-21399-E-13 LARRY/MARIANNE HAVENS MOTION TO CONFIRM PLAN
HDR-1 Harry D. Roth 6-12-13 [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 Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 12, 2013. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on 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.