

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

August 20, 2013 at 2:00 p.m.

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1. [13-26003](#)-C-13 SCOTT/MICHELLE GONZALES MOTION TO CONFIRM PLAN
RAH-2 Richard A. Hall 7-1-13 [[28](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 2, 2013. 42 days' notice is required. That requirement was met.

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

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

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

Chapter 13 Trustee Opposition

The Chapter 13 Trustee opposes confirmation of the plan on the basis that Debtor admitted at his meeting creditors that his payment to Chase Manhattan Mortgage Listed as Class 1 is current and he does not have any arrearages. Therefore, it appears this creditor is erroneously classified.

Furthermore, the Chapter 13 Trustee continues to have concerns regarding whether the plan is Debtors' best effort. Trustee states that at a hearing held on July 2, 2013 the following Objection was sustained by the court:

Further, the trustee has concerns that the plan is the debtors best effort. 11 U.S.C. § 1325(b). Debtor is above median income and proposes payments of \$124.50 per month for 60 months with a 10% dividend to unsecured creditors. Form B22C as filled out by the debtor reflects a negative monthly disposable income, however the trustee believes that the

August 20, 2013 at 2:00 p.m.

debtors actual monthly disposable income is approximately \$564, because the debtor deducted ordinary and necessary business expenses on Line 3b, contrary to 11 U.S.C. § 1325(b) (1) (B). (Doc. #32)

Debtors' amended plan increases plan payments from \$124.50 for 60 months to \$124.50 for four months and \$565.00 for 56 months. Trustee is not confident that Debtors can afford to increase plan payments by \$440.50 per month for 54 months. Debtors' Schedules I & J list net monthly income as \$126.78 per month. Trustee's Objection was based on the calculations on Form B22C, not Schedule I & J. To date, Form B22C has yet to be amended.

Creditor's Opposition

J.P. Morgan Chase Bank, N.A., Creditor, holds a secured claim against Debtors' principal residence, commonly known as 4090 Clover Valley Road, Rocklin, CA 95677. Under 11 U.S.C. §§ 1322(b) (2)&(5), Creditor objects to Debtors plan because it fails to provide that post-petition monthly mortgage payments are to be tendered to Creditor by Debtors outside the plan.

The 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.

2. [13-28106](#)-C-13 CANICE/MONICA NJOKU
MAC-1 Marc A. Caraska
Thru #3

MOTION TO VALUE COLLATERAL OF
NATIONSTAR MORTGAGE AND
FLAGSTAR BANK
7-11-13 [[16](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 11, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4256 Arnold Way, Mather, California. The Debtor seeks to value the property at a fair market value of \$315,000.00 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 \$381,299.89. Flagstar Bank's second deed of trust secures a loan with a balance of approximately \$43,892.14. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

Creditor's Objection

Flagstar Bank, Creditor, Objects to Debtors' Motion to Value, estimating the value of the subject property to be closer to \$435,000.000. Creditor argues that under 11 U.S.C. § 506(a), the value of a Subject Property is a factual issue and, in this instance, requires the admission of expert testimony. Creditor requests a continuance for at least 30 days to obtain its own verified appraisal of the Subject Property. Creditor further requests the cooperation of Debtors in allowing Creditor and/or its appraiser access to the Subject Property to conduct a full inspection.

The Court's decision is to continue the hearing on the Motion to Value until [[date](#)] to give Creditor the opportunity obtain a verified appraisal of the property located at 4256 Arnold Way, Mather, California.

The court shall issue a minute order substantially in the

following form holding that:

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

The Motion for Valuation of Collateral filed by 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 [date].

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on July 25, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee objection to confirmation of the plan for the following reasons:

(1.) Under 11 U.S.C. § 1325(b), the plan is not the Debtors' best effort. Debtor is over the median income and proposes plan payments of \$100.00 for 60 months with a 3% dividend to unsecured creditors, which totals \$2,421.00. The plan fails to address whether Debtor will receive a tax refund for the remainder of the plan or if the withholdings have been adjusted, so that Debtor will not receive such a large refund and will be able to pay more into the Chapter 13 Plan for the benefit of the creditors.

(2.) Under 11 U.S.C. § 1325(a)(4), the plan fails Chapter 7 liquidation analysis. Debtors' non-exempt assets total \$13,117 and Debtor is proposing to pay 3% to unsecured creditors, totaling \$2,421. The non-exempt amount is from the real property listed on Schedule A as 8198 Stevenson Ave, Sacramento. The property is valued at \$143,000 and the claim against the property is \$129,883, leaving \$13,117 non-exempt as Debtor has failed to exempt this equity on Schedule C.

(3.) The plan fails to provide a monthly dividend for Trustee to pay attorney's fees.

(4.) Debtors and their attorney have not signed the plan.

(5.) Attorney's fees paid are not clear because Debtor filed Rights and Responsibilities indicating that attorney's fees were paid in the amount of \$1,500 prior to filing; however, the Disclosure of Compensation of Attorney indicated that \$2,500 has been charged, \$0.00 paid, and \$2,500 due.

(6.) Plan relies on pending Motion to Value Collateral of Flagstar Bank.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 2, 2013. 35 days' notice is required. That requirement was met.

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

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

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

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

(1.) Trustee is unclear of the proposed total paid into the plan. The proposed modified plan states that it shall be considered current with \$2,591 paid in through June 25, 2013; however, Debtor's supporting declaration states that a total of \$2,491 has been paid into the plan as of June 25, 2013.

(2.) Trustee is unsure of the reduction in the plan term from 60 months to 35 months because it is unexplained in the supporting motion and declaration.

Debtor's Response

Debtor responds to Trustee's two points as follows:

(1.) The inconsistency between Debtor's Declaration and the modified plan, concerning total paid into the plan, was a clerical error. The correct amount is \$2,491.00 as stated in Debtor's Declaration. Debtor seeks leave to correct this error in the Order Confirming the Plan.

(2.) The original plan term was 60 months to ensure that Debtor could afford plan payments. Debtor has since obtained a loan medication which lowered his monthly payments and eliminated the mortgage arrears; consequently, Debtor no longer requires a 60 month 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 to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,,

IT IS ORDERED that Motion to Confirm the Modified Plan is granted with leave to amend to correct the clerical error regarding the amount paid into the plan in the Order Confirming the Plan. Debtors' Chapter 13 Modified Plan filed on July 5, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

5. [13-28113](#)-C-13 ALBERT WINSTON BAUTISTA MOTION TO VALUE COLLATERAL OF
BMV-1 Bert M. Vega WELLS FARGO HOME EQUITY
7-22-13 [[19](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 22, 2013. 28 days' notice is required. That requirement was met.

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

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

The Motion is accompanied by the Debtor's declaration; however, the declaration was not executed under penalty of perjury, as required by 28 U.S.C. § 1746. A declaration which complies with § 1746 must unequivocally state the witness testimony under penalty of perjury. The only other evidence presented to support Debtor's Motion is an appraisal conducted by Mr. Victor Arias. The appraisal is similarly lacking because it is not accompanied by Mr. Arias' declaration or authenticated in any other manner. The Court will grant a continuance to allow Debtor to submit sufficient evidentiary support for the Motion to Value.

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 pursuant to 11 U.S.C. § 506(a) is continued to [date].

7-19-13 [[39](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on July 19, 2013. 28 days' notice is required; that requirement was met.

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

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

Movant Debtor requests that the Court approve a modification of their mortgage with Bank of America, N.A. concerning real property commonly known as 8438 Gooseberry Ct., Antelope, California. The new loan payments will be in the amount of \$1,460.98 at an interest rate of 4.75%. The new principal balance of the loan will be \$175,274.74. The arrearage, if any, in the mortgage payments will be cured. The other terms and conditions of the loan will remain unchanged. A copy of the loan modification agreement with Bank of America, N.A., containing its precise terms, is attached to the instant motion as an Exhibit (Docket Item No. 42).

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

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

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

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

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 18, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1050 Raven Brook Drive, Galt, California. The Debtor seeks to value the property at a fair market value of \$112,728.00 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 \$219,867.00. Fremont Bank's second deed of trust secures a loan with a balance of approximately \$38,901.00. 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.

Fremont Bank filed a statement of non-opposition to Debtors' Motion.

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

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

The Motion for 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 Real Time Resolutions' secured by a second deed of trust recorded against the real property commonly known as 1050 Raven Brook Drive, Galt, 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 \$112,728.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

8. [13-28627](#)-C-13 ROBERT/ANN NELSON MOTION TO VALUE COLLATERAL OF
DEF-1 David Foyil BANK OF AMERICA, N.A.
7-1-13 [[7](#)]

Final Ruling: The Movant, Debtors, filed a Withdrawal of the Motion to Value Collateral of Bank of America, N.A. Therefore, the Motion to Value Collateral of Bank of America, N.A. was dismissed without prejudice, and the matter is removed from the calendar.

9. [13-23935](#)-C-13 STEPHANIE EPPERSON MOTION TO CONFIRM PLAN
DPR-1 David P. Ritzinger 7-3-13 [[49](#)]

Final Ruling: The case having previously been dismissed on August 9, 2013, the Motion is denied as moot.

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

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

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

IT IS ORDERED that the Motion is denied as moot.

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 July 16, 2013. 35 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. 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 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on July 16, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on July 17, 2013. 28 days' notice is required; that requirement was met.

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

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

Movant Debtor requests that the court approve a modification of their mortgage with Ocwen Loan Servicing concerning real property commonly known as 7146 Snowy Birch Way, Sacramento, California. The new loan payments will be in the amount of \$1,165.48 at an interest rate of 4.375%. The new principal balance of the loan will be \$159,885.36. The loan modification is contingent on Debtors making three direct payments of \$1,165.48 with each payment due July 1, 2013; August 1, 2013; and September 1, 2013. A copy of the loan modification agreement with Ocwen Loan Servicing, containing its precise terms, is attached to the instant motion as Exhibit A (Docket Item No. 38).

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

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

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

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

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 12, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The declaration states it is under penalty of perjury as far as being executed at Fairfield, CA. The declaration does not state is under penalty of perjury regarding the information contained in the document, it merely states: "The undersigned has read and knows the contents of above, I know the same to be true of my own knowledge except as to those items that I allege based upon information and belief, and as to those items, I believe them to be true." Debtor presents no other evidence in support of its Motion.

The declaration does not comply with 28 U.S.C. § 1746 because it did not sufficiently, unequivocally state the witness' testimony under penalty of perjury. Therefore, the Court will continue the Motion to allow for the submission of a sufficient declaration.

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 pursuant to 11 U.S.C. § 506(a) continued under [date].

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

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

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

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

A judgment was entered against the Debtor in favor of Citibank (South Dakota), N.A. for the sum of \$5,043.29. The abstract of judgment was recorded with Sacramento County on July 18, 2011. That lien attached to the Debtor's residential real property commonly known as 9423 Torchy Court, Sacramento, California.

The motion is granted pursuant to 11 U.S.C. § 522(f) (1) (A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$148,945 as of the date of the petition. The unavoidable consensual liens total \$277,506.94 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b) (5) in the amount of \$1,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f) (2) (A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b) (1) (B).

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Citibank (South Dakota) N.A., Sacramento County Superior Court Case No. 34-2010-00071922, Document No. 0006887392, recorded on July 18, 2011, with the Sacramento County Recorder, against the real property commonly known as 9423 Torchy Court, Sacramento, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 2, 2013. By the court's calculation, xx 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. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee has filed an opposition to Debtor's Motion.

The Chapter 13 Trustee objects to Debtor's because on July 2, 2013, the IRS filed Court claim #4, which caused the plan to exceed 60 months. According to Trustee's calculations, the Plan will complete in 73 months, a period of time which exceeds the maximum time allowed under 11 U.S.C. § 1322(d).

The 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.

15. [13-20464](#)-C-13
CA-1

SCOTT/ALISON BRODEUR
Michael David Croddy

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF CRODDY &
ASSOCIATES, P.C. FOR MICHAEL
DAVID CRODDY, DEBTOR'S
ATTORNEY(S), FEES: \$3,429.00,
EXPENSES: \$0.00
7-26-13 [[23](#)]

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

Notice and Service Appear to be Correct. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2013. 14 days' notice is required. That requirement was met.

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

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

FEES REQUESTED

Michael D. Croddy, Counsel for Debtor, makes a Request for the Allowance of Additional Fees and Expenses in this case. The period for which the fees are requested is October 10, 2012 through February 21, 2013.

Counsel stated that he incurred fees and expenses in the amount of \$3,710.00 for work performed pre-Chapter 13 confirmation and that fees previously allowed are not sufficient to fully compensate him for services rendered. Counsel is requesting the Court allow fees and costs of \$3,710.00 for services and that \$3,429.00 (\$3,710.00 minus \$281.00 previously received) be paid through the Chapter 13 Plan to the extent available and directly by Debtors to the extent not available through the Chapter 13 Plan.

Description of Services for Which Fees are Requested

Meeting with Debtors, document preparation and filing, and attendance at 341 Meeting of Creditors.

Chapter 13 Trustee filed a statement of non-opposition to Movant's Application for Compensation.

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

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

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

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

Michael Croddy, Counsel for the Estate
Applicant's Fees Allowed in the amount of \$3,429
Applicant's Expenses Allowed in the amount of \$0.00,

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on July 17, 2013. 28 days' notice is required. That requirement was met.

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

The hearing on the Motion to Avoid a Judicial Lien is continued until [date]. 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:

Under 11 U.S.C. § 522(f)(1)(A), only judicial liens are avoidable. Here, Debtor has failed to demonstrate a judicial lien actually exists. Debtor's declaration asserts that on December 28, 2011 an abstract of judgment was filed in favor of GCFS, Inc. for the sum of \$14,646.13 against Debtor's residential real property commonly known as 3368/3358 Heavenly Valley Road, South Lake Tahoe, California. However, Debtor has not provided a copy of the recorded abstract of judgment and, therefore, debtor's assertion that there is a judicial lien is hearsay. Debtor does not meet the requirements for avoiding a judicial lien under 11 U.S.C. § 522(f)(1)(A) and the Court will continue the hearing on Debtor's Motion to allow for the submission of sufficient evidence.

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

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

The Motion to Avoid Lien of GCFS, Inc., 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 Avoid Lien of GCFS, Inc. is continued until [date].

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 July 12, 2013. 35 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. 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 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

18. [13-23372](#)-C-13 CHRISTOPHER/SARA VENTURA OBJECTION TO CONFIRMATION OF
PD-2 Pro Se PLAN BY WELLS FARGO BANK, N.A.
7-15-13 [[58](#)]

Final Ruling: The case having previously been dismissed on August 9, 2013, the Objection is overruled as moot.

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

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

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

IT IS ORDERED that the Objection is overruled as moot.

19. [13-28572](#)-C-13 DANNY GERWER MOTION TO VALUE COLLATERAL OF
SLH-1 Seth L. Hanson BANK OF AMERICA, N.A.
7-18-13 [[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 18, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5392 No Name Land, Loomis, California. The Debtor seeks to value the property at a fair market value of \$232,717.00 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 \$289,910.00. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$123,910.00. 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 Bank of America, N.A.'s secured by a second deed of trust recorded against the real property commonly known as 5392 No Name Land, Loomis, 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 \$232,717.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on July 25, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan because it is not Debtor's best effort under 11 U.S.C. § 1325(b). Debtors are over the median income and proposes the following plan payments: \$1,675 for 60 months with a 0% dividend to unsecured creditors. Trustee asserts that Debtors have an additional \$1,800 in income that should be contributed to the Plan. The Plan proposes to surrender Debtor's residence at 127 Rutherford Drive, Vacaville, California. Debtors continue to live at the residence, not having made a mortgage payment since December 2012. Debtors listed projected rent on Schedule J in the amount of \$1,800; however, the Debtors are not paying rent at this time, making the \$1,800 available for the Plan.

Debtors' Response

Debtors respond, arguing it is unclear what the Trustee is seeking. Debtors state there are three interpretations of the Trustee's Objection:

- (1.) Trustee wants Debtors to pay \$1,800 more into the plan for the one month after their plan was filed;
- (2.) Trustee wants Debtors to pay \$1,800 more per month indefinitely until Debtors actually move out; or
- (3.) Trustee seeks an \$1,800 increase for the life of the Plan.

Debtors estimate they need to set aside at least 4-5 month's worth of net rent to be able to afford to move out of the residence and being forced to pay the projected rent into the plan will prevent them from being able to relocate.

Debtors state that at the 341 Meeting they testified that they might attempt to inquire about a mortgage loan modification. If they choose this route, Debtors would need to make adequate protection payments to the mortgage lender and retaining the \$1,800 per month would provide for such payments.

Debtors argue that Form 22C demonstrates that their monthly disposable income under 11 U.S.C. § 1325(b)(2) is negative and the plan does reflect their best efforts.

Trustee's Reply to Debtors' Response

Trustee argues that they Debtors' plan is premised on an \$1,800 expense that does not currently exist and may not exist for an extended period of time. He believes the plan payment should increase until the expense is reasonably projected to occur. Debtor has yet to reasonably project when the expense is to be incurred.

Trustee recognizes that Debtors will need to set aside funds for relocating; however, Debtors have not attempted to project these expenses as required by Schedule J, Line 19. Trustee points out that six months have elapsed without a rent expense being paid, totaling \$10,800.

Furthermore, Debtor might attempt to seek a loan modification, which implies that Debtors may not be willing to comply with the plan, which requires surrender of the residence.

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.

OVK-3
Thru #22

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 16, 2013. 42 days' notice is required. That requirement was met.

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

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

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

This Motion was continued on July 16, 2013. The chapter 13 trustee opposed the instant motion, because the plan relied on a loan modification application that was still pending, if pending at all, and no evidence of the application was submitted. Further, the plan's proposal to make adequate protection payments to JP Morgan Chase was vague and failed to adequately propose a timeline by which the debtor would obtain the referenced loan modification. As drafted, the plan did not provide for JP Morgan Chase's secured claim.

Debtors submitted to the Court a Motion to Supplement its First Amended Plan with Additional Provisions. The Motion is set to be granted by the Court on August 20, 2013. The Additional Provisions appear to sufficiently remedy Trustee's concerns about the Plan providing for JP Morgan Chase's secured claim. The Trustee did not oppose the Additional Provisions. However, Debtors' have not remedied Trustee's initial objection concerning the presentation of evidence of a pending HAMP loan modification application; therefore, the Plan still 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.

22. 13-23483-C-13 IRINA/DMITRIY BEREZENKO MOTION TO SUPPLEMENT FIRST
OVK-4 Oxana V. Kozlov AMENDED PLAN WITH CERTAIN
ADDITIONAL PROVISIONS
7-30-13 [[70](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on July 30, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 grant the Motion. 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 at any time before confirmation. Debtors' request to supplement Section 6 of their Plan is the equivalent of a modification to their First Amended Plan.

Debtors filed this Motion in response to the Chapter 13 Trustee's Objection to Debtors' Motion for Plan Confirmation. The Additional Provision identically match those provided as an example by the Chapter 13 Trustee in his Objection. Therefore, the Court will grant Debtors' Motion to Supplement.

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.

\$2,065.36 (\$3,871.36 minus \$1,806.00 previously received) be paid through the Chapter 13 Plan to the extent available and directly by Debtors to the extent not available through the Chapter 13 Plan.

Description of Services for Which Fees are Requested: Met with Debtor; document preparation and filing; attendance at 341 Meeting of Creditors.

The Chapter 13 Trustee filed a notice of non-opposition to Movant's Application.

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

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

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

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

Michael Croddy, Counsel for the Estate
Applicant's Fees Allowed in the amount of \$2,065.36
Applicant's Expenses Allowed in the amount of \$0.00,

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