UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

August 26, 2014 at 2:00 p.m.

1.	12-30902-C-13 SDB-3	KEVIN REYNOLDS W. Scott de Bie	MOTION TO APPROVE LOAN MODIFICATION 7-29-14 [42]

Final Ruling: No appearance at the August 26, 2014 hearing is required.

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, all creditors, parties requesting special notice, Chapter 13 Trustee, and Office of the United States Trustee on July 29, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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 non-responding parties 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.

The Motion to Approve Loan Modification filed by Kevin Lynn Reynolds, ("Debtor") seeks court approval for Debtor to incur post-petition credit. U.S. Bank, National Association, as Trustee under Securitization Servicing Agreement dated as of August 1, 2004 Structured Asset Securities Corporation, Structured Asset Investment Loan Trust Mortgage Pass-Through Certificates, Series 2005-HE3, and its servicer Ocwen Loan Servicing, LLC, ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to $973.22 a month, cover both monthly principal and interest, including taxes and insurance.

The monthly payment shall be due and payable on September 1, 2014, and continuing on the same day of each succeeding month until April 1, 2035. The new maturity date will be April 1, 2035, at which time a final balloon payment in an amount equal to all remaining amounts owed under the Loan Documents will be due.

The new principal balance of the Note will be $342,667.01. $128,917.01 of the New Principal Balance shall be deferred, and will be treated as a non-interest bearing principal forbearance. Debtor will not pay interest or make monthly payments on the Deferred Principal Balance. In addition, the deferred principal is eligible for forgiveness; the servicer shall reduce the deferred principal balance of Debtor's Note in installments, equal to one-third of the Deferred Principal Reduction Amount. Interest at the rate of 2.0000% will begin to accrue on the Interest Bearing Principal Balance as of August 1, 2014, and the first new monthly payment on the Interest Bearing Principal Balance will be due on September 1, 2014.

The Motion is supported by the Declaration of Kevin Lynn Reynolds. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. 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 Kevin Reynolds 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 court authorizes Kevin Reynolds ("Debtor") to amend the terms of the loan with , which is secured by the real property commonly known as 2025 Davis Drive, Fairfield, California, on such terms as stated in the Modification Agreement filed as Exhibit D in support of the Motion, Dckt. No. 45.

2. 14-23402-C-13 ISIDRO JIMENEZ MOTION TO CONFIRM PLAN
TOG-4 Thomas O. Gillis 7-9-14 [36]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 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).

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.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 10, 2014. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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). Opposition having been filed, 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 decision is to deny the Motion to Confirm the Amended Plan.

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

First, Debtor is $420.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of $320.00 is due on August 25, 2014. The case was filed on April 2, 2014, and and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid $540.00 into the Plan to date.

Trustee's Objection to Confirmation, DPC-1, was sustained at the hearing held on June 24, 2014, Dckt. No. 35. The Trustee raised in part in the Objection:

> A. Not All Income Reported: Debtor received a total refund of $6,147.00 for tax year 2013. No future tax refund income is

> projected on Schedule I. (While the Trustee has received and reviewed the tax returns, the Trustee has not filed them as Exhibits, and Trustee believes that they may not be necessary, but will submit the pay advices if requested or required.)
>
> B. Debtor received $4,283.00 in a federal tax refund. Debtor also received a state refund from the 2013 Return in the amount of $1,864.00. Of the $6,147.00 refund, $2,000 was from the child tax credit, since Debtor's dependents as reported on Schedule I are ages 12, 12, and 18 and the fact the debtor is retaining the real property, it appears that the tax deductions in the future are likely to remain the same or similar. If the Debtor included this income in the monthly income calculation, dividing the income monthly throughout the year, they would have at least $512.25 per month in additional income ($6,146/12). Continued tax refunds appear likely, and Debtor's income should be adjusted to either reflect the tax refund income or a lower tax expense.

Civil Minutes, Dckt. No. 33. The Debtor amended both Schedules I and J on July 9,2014, Dckt. No. 40, in which Debtor added $512.00 on Line #8h as "Tax Over-Witholding" on Debtor's Schedule I. Debtor's expenses on Schedule J, however, were increased by $512.00 per month; food was increased by $400.00 and personal care product and services by $112.00. The Debtor's declaration states that Debtors underestimated the food and incidental costs of the family, only claiming $755.00. Debtor amended the Schedule J to $1,000 for food and $142 for additional household items.

The Debtor has not, however, provided the Trustee with documentation in support of increasing the expenses on Schedule J, such as receipts, bank statements, or a check register. Debtor has increased his monthly gross income by $512.00. Schedule B lists the value of Debtor's checking account at the time of filing as $400.00. It does not appear that Debtor has the funds available from his 2013 tax refund in his checking account.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 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. 14-26110-C-13 NATALIYA SHAYNYUK — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Pro Se — 7-30-14 [35]

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on July 30, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, 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.

The court's decision is to sustain the Objection.

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

1. Debtor failed to appear and be examined at the First Meeting of Creditors held on July 24, 2014. Trustee does not have sufficient information to determine if the plan is suitable for confirmation under 11 U.S.C. § 1325. The meeting has been continued to September 18, 2014 at 10:30 am.

2. Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. §

521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).

3. Debtor has failed to provide the Trustee with Business Documents, including a questionnaire, two years of tax returns, 6 months of profit and loss statements, 6 months of bank statements, proof of license and insurance, or written statements that no such documentation exists. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1). A business questionnaire and request for documents was mailed to the Debtor on June 24, 2014.

4. Debtor is $100.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of $100.00 is due on August 25, 2014. The case was filed on June 9, 2014, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid $0.00 into the plan to date.

5. On or about July 14, 2014, the court issued an order to show cause for September 10, 2014 for a failure to pay fees. Dckt. No. 25. Debtor has not paid the filing fee installment of $77.00 due on July 9, 2014, pursuant to the Order Approving Payment of Filing Fees in Installments, Dckt. No. 7.

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 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 Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

4. 14-26512-C-13 AHISHA LEWIS — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Scott J. Sagaria — 7-30-14 [17]
Thru #5

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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 30, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, 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.

The court's decision is to sustain the Objection.

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

1. Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor proposes to value the secured claims of Capital One Auto Finance on a 2005 Infinity, and Excel Financial Group on a second mortgage, but has not filed any Motions to Value the Secured Claims to date.

2. The plan calls for payments of $1,450.00 per month for sixty months, but Debtor's Schedule J indicates on line 23c net income of $965.15. Debtor does not appear to have enough net income to make the plan payment. While Schedule I, line 13 indicates that the Debtor

expects to return to work soon, Debtor testified at the First Meeting of Creditors on July 24, 2014, that she has not been released yet to return to work.

3. Debtor is $1,450.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of $1,450.00 is due on August 25, 2014. The case was filed on June 20, 2014, and and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after the order for relief under Chapter 13. Debtor has paid $0.00 into the plan to date.

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 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 Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

5. 14-26512-C-13 AHISHA LEWIS
MRG-1 Scott J. Sagaria

OBJECTION TO CONFIRMATION OF PLAN BY CAPITAL ONE AUTO FINANCE
7-2-14 [13]

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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 2, 2014. By the court's calculation, 55 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, 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.

The court's decision is to sustain the Objection.

Creditor Capital One Auto Finance ("Creditor") opposes confirmation of the Plan on the basis that the value of the property to be distributed is less than the amount of its secured claim.

On July 1, 2014, the Creditor filed its Proof of Claim in the amount of $15,289.13, including arrearage in the amount of $2,008.08. Creditor's claim is secured by the personal property commonly described as: 2005 INFINITI G35. Creditor claims that the fair market value of the property, according the clean retail value listed on the NADA Guides valuation sheets, is $10,000.00.

Creditor asserts that pursuant to 11 U.S.C. § 1325(a)(5)(B), the value of the property to be distributed is less than the allowed amount of

Secured Creditor's claim. According to the plan, Debtor has provided for Secured Creditor's claim in the amount of $7,523.00. However, at the time of the filing of this Objection, the motion to value property under § 506(a) has not been filed, ruled on nor granted determining the allowed value of Secured Creditor's claim to be anything less than the total amount on its proof of claim, $15,289.13.

Pursuant to 11 U.S.C. §1325(a)(5)(B), the plan does not provide sufficient payments to Secured Creditor for adequate protection. According to the Plan, Debtor has provided an interest rate of only 4.25% on Secured Creditor's claim. However, the original interest rate on Secured Creditor's claim is 18.65%. According to *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004), the Supreme Court adopted a two part "prime-plus" formula to determine the property interest rate to be paid on the secured claim, in compliance with the "cram down" provisions of the Bankruptcy Code. The current prime rate is 3.25%. As such, Debtor should look to the 3.25% and adjust that rate accordingly in order for Secured Creditor to receive a rate incorporating the Debtor's risk of default.

Creditor states that using the formula approach as set forth in *Till*, the Court should find that Creditor must be paid no less than 6.25% (3.25% + 3% for risk adjustments) interest per annum on its secured claim on a fully amortizing loan.

DISCUSSION

Creditor argues that this interest rate of 4.25% is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing postpetition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. *See In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); *see also Bank of Montreal v. Official Comm. Of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. *See Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 3.25%, plus a 1.5% risk adjustment, for a 4.75% interest rate.

The court also notes that although Debtor has proposed to value the secured claim of Capital One Auto Finance, which is secured by a 2005 Infinity G35, Debtor has not filed any Motions to Value the claim. Thus, 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 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 Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

6.	14-25622-C-13 APN-1 **Thru #8**	PETER/LUDA MELNIKOV Mark Shmorgon	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 6-17-14 [19]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on June 17, 2014. Fourteen days' notice is required. That requirement was met.

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

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

Secured Creditor, Wells Fargo Bank, N.A., objects to confirmation of Debtors' Chapter 13 plan. Debtor entered into a Home Equity Account Agreement with Secured Creditor in 2007 for a credit extension of $200,600. The Agreement was secured by a Deed of Trust in 5929 Shirley Ave., Carmichael, California.

Secured Creditor objects to Debtors' Plan in that Debtors have listed the monthly payment amount to Secured Creditor as $0.00 and have attempted to avoid paying Secured Creditor on their loan account. Debtors have also attempted to avoid paying Secured Creditor interest on its claims.

Secured Creditor further objects to Debtors' plan in that it lists

Secured Creditor as a Class 2C claim without properly effectuating a valuation of secured creditor's secured claim.

Discussion

On July 1, 2014, the court heard Debtors' Motion to Value the secured claim of Wells Fargo Bank, N.A. The hearing on the Motion was continued to August 5, 2014 at 2:00 p.m. for creditor to complete an appraisal of the property.

At the August 5, 2014 hearing on this motion, the parties represented that the Bank has now obtained an appraisal and the parties believe that they can now structure plan terms to resolve this motion and the objection to confirmation. The matter was continued to this hearing date. Civil Minutes, Dckt. No. 36. Nothing further, however, was filed on the docket on this matter, suggesting that settlement is imminent, or an agreement has been reached between the Creditor and Debtors.

The Debtors also filed a Request for Dismissal of their own petition, pursuant to 11 U.S.C. § 1307, on August 21, 2014. The Debtors wishing to dismiss their Chapter 13 bankruptcy case (using their one-time, almost absolute right of conversion or dismissal under 11 U.S.C. § 1307(b)), the court will continue the instant Objection so that the court can render a decision on the Debtors' request for dismissal, at the hearing scheduled for the Motion to Dismiss.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is continued to **October XX, 2014** at **[time].**

7. 14-25622-C-13 PETER/LUDA MELNIKOV — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
DPC-1 Mark Shmorgon — 7-10-14 [31]

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 10, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's tentative decision is to continue the Objection to October XX, 2014 at **[time]**. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan because it relies on a Motion to Value the secured claim of Wells Fargo Bank, N.A. If the motion is denied, Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

On July 1, 2014, the court heard Debtors' Motion to Value the secured claim of Wells Fargo Bank, N.A. The hearing on the Motion was continued to August 5, 2014 at 2:00 p.m. for creditor to complete an appraisal of the property.

At the August 5, 2014 hearing on this objection and Creditor's Wells Fargo Bank, N.A.'s objection to confirmation of the proposed plan, the parties represented that the Bank has now obtained an appraisal and the parties believe that they can now structure plan terms to resolve this motion and the objection to confirmation. That matter was continued to this hearing date. Civil Minutes, Dckt. No. 36. Nothing further, however, was filed on the docket on this matter, suggesting that settlement is imminent, or an agreement has been reached between the Creditor and Debtors.

The Debtors also filed a Request for Dismissal of their own petition, pursuant to 11 U.S.C. § 1307, on August 21, 2014. The Debtors wishing to dismiss their Chapter 13 bankruptcy case (using their one-time, almost absolute right of conversion or dismissal under 11 U.S.C. § 1307(b)), the court will

continue the instant Objection so that the court can render a decision on the Debtors' request for dismissal, at the hearing scheduled for the Motion to Dismiss.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to Confirmation the Plan is continued to **October XX, 2014** at **[time].**

8. 14-25622-C-13 PETER/LUDA MELNIKOV
MS-1 Mark Shmorgon

CONTINUED MOTION TO VALUE COLLATERAL OF WELLS FARGO BANK, N.A.
5-29-14 [9]

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

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

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

The court's tentative decision is set the Motion to Value Collateral for an evidentiary hearing on October XX, 2014 at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

The first deed of trust secures a loan with a balance of approximately $325,444.16. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately $156,297.70.

Secured Creditor filed an objection to Debtor's Motion (Dkt. 23), asserting that the proper value should be $545,000 for the purposes of valuing its secured claim. Debtor responded with a Broker's Price Opinion asserting a value of $325,000 (Dkt. 27).

The court held a hearing on the matter on July 1, 2014 and continued the Motion for Secured Creditor to appraise the property. The court stated the matter would be set for trial in October if it was not resolved by the continued hearing date. As of August 22, 2014, neither party has uploaded a verified appraisal.

At the August 5, 2014 hearing on this objection and Creditor's Wells Fargo Bank, N.A.'s objection to confirmation of the proposed plan, the parties represented that the Bank has now obtained an appraisal and the parties believe

that they can now structure plan terms to resolve this motion and the objection to confirmation. That matter was continued to this hearing date. Civil Minutes, Dckt. No. 36. Nothing further, however, was filed on the docket on this matter, suggesting that settlement is imminent, or an agreement has been reached between the Creditor and Debtors.

The Debtors also filed a Request for Dismissal of their own petition, pursuant to 11 U.S.C. § 1307, on August 21, 2014. The Debtors wishing to dismiss their Chapter 13 bankruptcy case (using their one-time, almost absolute right of conversion or dismissal under 11 U.S.C. § 1307(b)), the court will continue the instant Motion so that the court can render a decision on the Debtors' request for dismissal, at the hearing scheduled for the Motion to Dismiss.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is to be set for an evidentiary hearing on **October XX, 2014** at **[time].**

9. 11-44025-C-13 DIANE KEATING
DPC-2 Rabin J. Pournazarian
Thru #10

CONTINUED MOTION TO DISMISS CASE
6-11-14 [57]

Final Ruling: The Chapter 13 Trustee having filed a "Withdrawal of Motion" for the pending Motion to Dismiss the Bankruptcy Case, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Dismiss the Bankruptcy Case, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Motion to Dismiss the Bankruptcy Case.**

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.
>
> A Motion to Dismiss the Bankruptcy Case having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Dismiss the Bankruptcy Case is dismissed without prejudice.

10. 11-44025-C-13 DIANE KEATING MOTION TO MODIFY PLAN
PLG-3 Rabin J. Pournazarian 7-9-14 [63]

Final Ruling: No appearance at the August 26, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 9, 2014. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

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.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has 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 July 9, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

approved, the Chapter 13 Trustee will submit the proposed order to the court.

11.	14-26531-C-13 DPC-1	RICHARD WALLS Timothy J. Walsh	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-30-14 [13]

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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 30, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, 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.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor has not provided Trustee with a tax transcript or copy of his Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1). The Trustee has received a copy of the 2012 federal tax return. However, the 2013 return has not been received to date.

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 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 Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

12. 12-37145-C-13 TANASHE NASH
JCW-1 Diana J. Cavanaugh

MOTION TO APPROVE LOAN MODIFICATION
7-23-14 [74]

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, the Chapter 13 Trustee, and Office of the United States Trustee on July 23, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Motion to Approve Loan Modification is denied.

The Motion to Approve Loan Modification filed by Bank of America, N.A. ("Movant"), requests an Order Authorizing a Loan Modification Agreement regarding the real property commonly known as 580 Candela Cir, Sacramento, California. The Motion states that the Movant has offered and approved the Debtor for a Loan Modification Agreement and seeks court approval of this agreement. The terms and conditions of this modification agreement are set forth in Exhibit "1," Dckt. No. 76.

The Movant states that the new principal balance on Debtor's loan will be $216,369.17 for years 1-40, with an interest rate of 4.875%. The new monthly payment for Debtor will be $1,460.09, representing the principal payment amount, in addition to interest and escrow costs.

OPPOSITION BY TRUSTEE

The Trustee objects to the Creditor's Motion on the basis that neither

the Creditor nor Debtor have filed a Declaration in support of the Motion for Order Authorizing Loan Modification Agreement, and Debtor's counsel has not joined in the Motion, or filed a statement on behalf of the Debtor supporting the approval of the modification.

The Trustee is not opposed to the terms of the loan modification, but believes that this issue must be addressed in order for relief to be granted. While the Trustee is aware the Debtor has signed the loan modification agreement, whether the Debtor still wants the agreement, or wants to obtain bankruptcy court approval of the agreement, may not be clear unless the Debtor concurs with the Motion. Additionally, Debtor's Proof of Service does not provide for service to all creditors. All creditors must be served in a motion to approve a loan modification pursuant to Federal Rule of Bankruptcy Procedure 2002(a)(3), 4001(c)(1)(C), and 4001(c)(3).

DISCUSSION

The Motion Requesting Approval of the Loan Modification is not is supported by a declaration from the Debtor, Tanashe Nash, which affirms the Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

Rather, it appears that Debtor and Debtor's counsel, Diana J. Cavanaugh have been completely excluded from this Motion. Movant Bank of America, N.A. and its counsel have taken on the legal and fiduciary role of filing motions for the Debtor.

While some courts have taken the position that creditors do not have standing to bring a motion for a debtor to obtain approval of a loan modification, this court's view has not been so narrow. Just as in approving a compromise with a trustee or debtor in possession where a creditor prepares the motion to approve the stipulation, the creditor may take the laboring oar in a motion to approve a loan modification.

However, in neither case may the attorney for the other party be non-existent in the motion. Counsel must either bring the motion jointly with the creditor, countersign the motion evidencing the Debtor, attorneys' concurrence and Debtor's support, a declaration for the Debtor prepared by Debtor's counsel, or file a separate statement of support for the motion. Only then does the court know that the Debtor, who is represented by counsel, have with the knowledge and support of such fiduciary, entered into this agreement. Otherwise it appears that counsel representation has been circumvented or that counsel has failed to fulfill his or her duties to the Debtor.

The Motion makes not mention of Debtor and the participation of Debtor's counsel in its pleading or supporting exhibits. The Motion was served, according to the Certificate of Service, to Debtor and Debtor's counsel on July 23, 2014. Counsel was aware of the Motion and could have met with Debtor to file a responsive pleading, but there is nothing filed on the docket indicating that Debtor either opposes or continues to support the terms of the modification agreement, as summarized in the Motion and displayed in Exhibit "1," Dckt. No. 76. The court cannot determine whether the requested post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan.

The Motion to Approve the Loan Modification is therefore denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Creditor Bank of America, N.A. 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 the Loan Modification is denied.

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

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

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

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

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

Continuance

The hearing on this matter was continued from August 5, 2014 to this hearing date.

REVIEW OF OBJECTION

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

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

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

RESPONSE BY DEBTORS

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

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

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

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

Debtors acknowledge that the plan payment will need to be increased to $5,025 or $35, which represents an increase of less than one percent of the plan payment, but do not propose that this revision be made in the order confirming. The Debtors do not provide for this plan increase.

Additionally, the court is denying the Debtors' Motion to Value the secured claim of JPMorgan Chase Bank, N.A., SAC-2, also scheduled for this hearing date, on the basis that the Motion seeks to impermissibly modify of the secured claim of JP Morgan Chase Bank N.A (the holder of the second deed of trust on the Debtor's principal residence) in violation of 11 U.S.C. § 1322(b)(2). The claim of JP Morgan Chase Bank, N.A., which is listed as a Class 2 claim, Dckt. No. 5, is not sufficiently provided for in the plan as a Class 2 claim reduced to the amount of $0.00 (based on the value of collateral) in the proposed plan.

The plan does not adequately provide for the claim of JP Morgan Chase Bank, N.A. (the holder of the second deed of trust on the property located at 837 Morton Way, Folsom, California), is not sufficiently funded, and does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

14.	14-24246-C-13 SAC-2	CARL ASMUS AND JODI CAMPISI ASMUS Scott A. CoBen	CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A. 5-14-14 [21]

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

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

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

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

JUNE 10, 2014 HEARING

The court continued the hearing on the Motion to Value Collateral from the original date of June 10, 2014 to this hearing date, ordering that all discovery to be completed by August 5, 2014. Dckt. No. 44.

REVIEW OF MOTION

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 837 Morton Way, Folsom, California. The Debtors seek to value the property at a fair market value of $510,000.00 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 $521,198.00. J.P. Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately $135,807.00. Debtor requests the court to enter an order vlauing the secured claim of J.P. Morgan Chase Bank, N.A. at $0.00 based on the proposed valuation.

Creditor's Objection, filed 05/27/14 (Dkt. 30)

In response, J.P. Morgan Chase Bank, N.A. argues that its claim cannot be bifurcated under 11 U.S.C. § 506 because it believes the fair market value of the property exceeds that which Debtor reports. Creditor is in the process of retaining a Residential Appraiser to provide a full interior and exterior appraisal of the property. The Motion was continued twice to allow the Creditor to present further evidence of its higher valuation of the subject property.

Supplemental Declaration of Barry R. Cleverdon

On August 5, 2014, the Creditor filed the Declaration of Barry R. Cleverdon, which states that Mr. Cleverdon is a certified residential real estate appraiser who personally conducted an interior and exterior inspection of the real property located at 837 Morton Way, Folsom, California. Dckt. No. 56.

Mr. Cleverdon states that he prepared an appraisal report concerning the subject property, which is attached to the Declaration as Exhibit A. Mr. Cleverdon identifies himself as the owner of Appraisal Service of Sacramento, and as an individual qualified to conduct property evaluations and familiar with the real estate values in the area surrounding the subject property. Based on his experience and inspection of the property, and research and analysis, Mr. Cleverdon states that it is his professional opinion that the market value of the property as of April 25, 2014, is $540,000.00.

The Residential Appraisal Report is prepared for a singly family residence located at 837 Morton Way, Folsom, California. The report includes a description of the neighborhood, possible adverse conditions on the marketability of the property, an explanation of additional features (which includes a refrigerator, washer, and dryer are personal property) a description of the neighborhood (which features parks, schools, an other neighborhoods that resembles the residential area located "near the core area of Folsom), and a detailed addendum regarding dwelling issues of the property.

The Dwelling Issues attachment includes an explanation that the lot is positioned on the downhill side of a hill, that there are plumbing issues evidenced by improper drainage of the toilets in the house, failure in the seals of several dual pane windows, water damage, large settling cracks, settling to slab, and non-adherence of the construction of the garage to the Building Code. The report also includes plat and location maps, floorplan sketches, as well as photographs of the property and of comparable units in the area. The appraisal includes an analysis of three other comparable properties in the area, with prices that bracket the appraiser's valuation of the subject property at $531,600 through 555,500.00. Exhibit A, Dckt. No. 56. The Appraiser concludes that the value of the property is $540,000.00.

The Debtors seek to value the property at a fair market value of $510,000.00 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 Creditor, JP Morgan Chase Bank, N.A., however, has submitted an appraisal of the subject property, authenticated by the Declaration of Appraiser Barry R. Cleverdon, Dckt. No. 56. The appraisal is based on a comprehensive exterior and interior inspection of the property, and values the subject property at $540,000.00. Debtors submit a declaration merely asserting that their opinion of the value of the property is $510,000.00. Weighing the evidence submitted by both parties, the court finds that the Creditor has submitted credible, competent evidence of the value of the subject property, determines that the value of the property located at 837 Morton Way, Folsom, California to be $540,000.00.

The first deed of trust secures a loan with a balance of approximately $521,198.00. J.P. Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately $135,807.00, partially secured in the remaining amount of equity after deducting the first deed of trust from the value of the property, in the amount of $18,802.00.

RULING

Debtors seek to value the secured claim of JP Morgan Chase Bank, N.A., at $0.00, arguing that the respondent creditor's claim is secured by a junior deed of trust that is under-collateralized, and that no payments in 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.

This Motion, however, seeks an impermissible modification of the secured claim of JP Morgan Chase Bank N.A, the holder of the second deed of trust on the Debtor's principal residence, under 11 U.S.C. § 1322(b)(2). 11 U.S.C. § 1322(b)(2) permits the modification of rights of holders of secured claims, **other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims**, or leave unaffected the rights of holders of any class of claims.

No evidence that the Lender has consented to, or is considering a loan modification, has been presented. If the modification has not been expressly agreed to by the creditor, the Debtors' plan may be not impose it on the creditor. 11 U.S.C. § 1322(b)(2) applies only to secured claims, meaning that a wholly unsecured claim on the debtors' primary residence may be avoided. Here, because there is equity remaining in the subject real property (which is Debtors' principal residence), the provisions of 11 U.S.C. § 1322(b)(2) apply, and the Debtors may not modify the rights of the lienholder, JP Morgan Chase Bank, N.A. See *In re Zimmer*, 313 F.3d 1220, 1226 (9th Cir. 2002); see also *In re Lam*, 211 B.R. 36, 40-41 (B.A.P. 9th Cir. 1997).

Debtors cannot modify the rights of the claim of Creditor, which is partially secured by Debtors' principal residence under 11 U.S.C. § 506(a). The Motion to Value the Secured Claim of JP Morgan Chase Bank, N.A., is therefore denied.

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

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

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

IT IS ORDERED that the Motion to Value the Secured Claim of JP Morgan Chase Bank, N.A. is denied.

15. 11-42548-C-13 DAVID O'REILLY MOTION TO MODIFY PLAN
SDB-3 W. Scott de Bie 7-15-14 [69]

Final Ruling: No appearance at the August 26, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2014. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has 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 July 15, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

approved, the Chapter 13 Trustee will submit the proposed order to the court.

16. 12-30049-C-13 SONIA ZAMORA — CONTINUED MOTION TO MODIFY PLAN
PGM-2 Peter G. Macaluso 5-7-14 [39]
Thru #17

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 7, 2014. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

No 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:

JUNE 24, 2014 HEARING

The courts continued the hearing on this matter from June 24, 2014 to this hearing date. The court planned to address with Wells Fargo Bank, N.A. its loan modification practices and documentation provided to the court when requesting court approval of such modifications.

REVIEW OF THE MOTION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes confirmation of Debtors' modified plan on the basis that it appears that Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6), and because the Plan may not be feasible. Debtor is delinquent $265.00 under the terms of the proposed modified plan.

Additionally, the modified plan is based upon Debtors receiving a permanent loan modification. Trustee states that Debtor has not received a permanent loan modification offer, but rather, a trial loan modification which was filed as Dckt. No. 37. The Class 1 creditor has filed a claim, Court Claim No. 1, indicating $6,366.52 in mortgage arrears, which are

included in the confirmed plan. $5,091.52 remains to be paid to the arrears claim. The terms of any permanent loan modification are not known at this time, including whether arrears will be capitalized. FN.1.

FN.1. The court filed its order on June 16, 2014, authorizing the Debtor to enter into a trial loan modification. Dckt. 65. That trial modification program requires payments to be made May 1, June 1, and July 1, 2014. Trial Loan Modification Agreement, Exhibit A, Dckt. 37. Clearly the time for the trial modification has not expired.

In her Reply filed on June 17, 2014, the Debtor has her counsel state, A permanent loan modification has bee[n] received by Counsel and will be set for hearing once Debtor has reviewed and signed the loan. Dckt. 60. As discussed below, no evidence of such permanent loan modification agreement has been provided to the court. Given that the trial period has not yet expired, it seems highly unlikely that the permanent loan modification documents have been drafted and are being executed. Though the Debtor may believe that by not providing testimony under penalty of perjury for a factual allegation give her an out to being truthful, it does not. Misrepresentations in all pleadings are subject to Federal Rule of Bankruptcy Procedure 9011, render the future statements of the party and arguments of counsel not credible, and may indicate that the Debtor is prosecuting this case in bad faith.

REPLY OF DEBTOR

Debtor states that they will be current on or before the hearing on this matter. Additionally, Debtor responds by stating that a permanent loan modification has been received by Debtor’s Counsel and will be set for hearing once Debtor has reviewed and signed the loan.

SUPPLEMENTAL OBJECTION TO DEBTOR'S MOTION

Trustee states that the debtor is $265.00 delinquent under the proposed plan. Another payment of $265.00 will become due July 25, 2014. Debtor has paid $42,650.00 through April 2014, payments of $265.00 were to start on May, 2014. The Debtor has made one payment of $265.00 posted on June 23, 2014. Debtor's reply, Dckt. No. 60 states a permanent loan modification has been received by counsel and will be set for hearing once the Debtor has reviewed and signed the loan.

Additionally, Trustee reiterates his second objection that the final terms of this loan modification have not been disclosed. While Debtor's Counsel has the contract, he has not incorporated or disclosed any of the terms; while the terms may not be different from the trial loan modification, the court has no evidence. Trustee argues that the Debtor cannot make the payments called for under the plan under 11 U.S.C. § 1325(a)(6).

RESPONSE TO SUPPLEMENTAL OBJECTION

Debtor responds by stating that she will be current on or before the hearing, and that she will also be filing the permanent loan modification on July 28, 2014. The motion will be set to be heard on August 26, 2014.

Exhibit A filed in support of the Motion to Approve the Loan Modification, Dckt. No. 75, appears to be a permanent Loan Modification Agreement entered between the Debtor and her husband as "Borrowers," and Bank of America, N.A., identified as the Lender. The loan modification agreement reduces the monthly principal and interest payment amount to $1,057.23 for the first three years of the new note period, an amount of $1,230.24 for Year 4, and a monthly payment of $1,342.82 for the rest of the note maturation, for Years 5-21. The Agreement was signed by Debtor and her spouse on July 23, 2014, and notarized on that same date. The Motion to Approve this agreement has been set for hearing on August 26, 2014. Dckt. No. 72.

Although the Debtor has now provided documentation showing that Debtor has been offered a permanent loan modification, Debtor has not filed further evidence showing that she is now current in payments under her confirmed plan. Thus, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed plan is not confirmed.

17. 12-30049-C-13 SONIA ZAMORA
PGM-3 Peter G. Macaluso

MOTION TO APPROVE LOAN MODIFICATION
7-28-14 [72]

Tentative Ruling: The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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).

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.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, the Debtor, and the United States Trustee on July 28, 2014. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Approve Loan Modification is denied without prejudice.

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. Debtor, Sonia M. Zamora, requests permission to enter into a loan modification agreement with an undisclosed "Lender." Debtor's Chapter 13 was filed on May 25, 2012. The Debtor has been in the Chapter 13 for 27 months.

B. Debtor owns real property located at 16 White Lily Court, Sacramento, California.

C. The Debtor has completed trial loan modification payments and has been offered a permanent loan modification.

D. The first modified payment in the amount of $1,677.32 at 2.500% will be due on August 1, 2014. Debtor will make this payment for a total of thirty six (36) months. Interest rate increases to 3.500% in year 4 and to 4.125% in year 5 and for the remainder of the loan.

E. The modified principal balance of the Note will include all amounts and arrearages that will be past due as of the Modification Effective Date (including unpaid and deferred interest, fees, escrow advances and other costs, but excluding unpaid late charges, collectively, "Unpaid Amounts") less any amounts paid to the Lender but not previously credited to the debtor's Loan.

F. As of the Modification Effective Date the principal balance of the loan that will be due and payable is $320,589.94 (the "New Principal Balance").

G. Debtor understands that by agreeing to add the Unpaid Amounts to the outstanding principal balance, the added Unpaid Amounts accrue interest based on the interest rate in effect under the loan modification.

H. Interest at the rate of 2.500% will begin to accrue on the New Principal Balance as of July 1, 2014. The Maturity Date will be November 1, 2034.

I. The agreement will not have any direct impact on the estate, the Trustee, or any other secured creditor in this case, and/or any Discharge that the debtor may receive in this case.

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 an order authorizing the Debtor to enter into a loan modification agreement with "Lender." Dckt. No. 72. Nowhere in the Motion does Debtor identify the actual owner of the underlying loan obligation. It is as if Movant is taking care to avoid naming the Lender and executor of Debtor's Note. This omission is fatal to a Motion seeking an order approving an modification agreement entered between and requiring the permission and consent of the borrowing Debtor and lending party.

A Motion to Approve a Loan Modification that does not identify the responding lender does not set forth the relief requested with the particularity required by Federal Rule of Bankruptcy Procedure 9013. The court cannot grant relief against a respondent who is unidentified, or against a respondent whose identity is ambiguous. Fed. R. Bankr. P. 9013. Debtors fail to identify the lender who has allegedly entered into an agreement to modify their home loan, rendering the court unable to issue an order affecting the rights of a specified party. A motion that does not identify clearly the responding party does not comply with Rule 9014(a) because a motion that is ambiguous about the respondent cannot give reasonable notice and opportunity for hearing to the party against whom relief is sought. Fed. R. Bankr. P. 9014(a).

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

whether a plaintiff had met the minimum basic pleading requirements in federal court.

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

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

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

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

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

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

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

allow a party to use a memorandum to fulfill the particularity of pleading requirement in a motion, stating:

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

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

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

Based on the foregoing, the Motion to Approve the Loan Modification is denied without prejudice.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Debtor Sonia Zamora 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 the Loan Modification is denied without prejudice.

18. 14-27050-C-13 ENRIQUE/MICHELLE SERRATO MOTION TO VALUE COLLATERAL OF
SAC-1 Mikalah R. Liviakis NEIGHBORWORKS
8-11-14 [17]

Tentative Ruling: The Motion to Value 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 Defaults of the non-responding parties are entered by the court.

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.

Below is the court's tentative ruling.

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, the Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 11, 2014. By the court's calculation, 15 days' notice was provided. 28 days' notice is required. That requirement was not met.

The Motion to Value 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 defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value secured claim of Neighborworks Home Ownership, "Creditor," is denied without prejudice.

The Motion to Value filed by Enrique and Michelle Serrato, "Debtors" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtors are the owner of the subject real property commonly known as 8120 Hearthstone Place, Antelope, California, "Property." Debtors seek to value the Property at a fair market value of $220,000.00 as of the petition filing date. As the owner, 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).

OPPOSITION BY CREDITOR

Creditor Neighborworks Home Ownership opposes the Motion on the basis that Local Bankruptcy Rule 9014-1(f)(1) requires that the Motion and be filed and served at least twenty-eight days prior to the hearing date. The Motion was set on the noticing procedure set out by Local Bankruptcy Rule 9014-1(f)(1). The docket for this matter, however, reveals that the

pleadings were filed and served on August 11, 2014, less than 28 days before the hearing date.

Additionally, Creditor argues that the Debtors' Declaration is factually dubious because the Debtors' declaration is dated June 17, 2014, but the case was not filed until July 8, 2014. Dckt. No. 21.

INCORRECT NOTICE OF HEARING

In the Notice of Hearing filed with the Motion to Value the Secured Claim of Neighborworks Home Ownership (Dckt. No. 18), Debtors advise potential respondents that if opposition is filed, respondents must serve and file opposition with the Clerk of the Court not less than fourteen calendar days preceding the date of the hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1).

Local Bankruptcy Rule 9014-1(f)(1), however, requires that at least twenty-eight (28) days' notice of hearing be given to all parties, before parties are required to submit written opposition in order to respond. This Motion was set on 15 days' notice, short of the 28-day requirement of Local Bankruptcy Rule 9014-1(f)(1).

Although the Certificate of Service indicates that the Motion was served on July 28, 2014, the docket indicates that the pleadings and supporting documentation were not filed until August 11, 2014. Local Bankruptcy Rule 9014-1(e)(2) also requires that the proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed. The court cannot be certain that the pleadings were actually served and sent on July 28, 2014. Based on these procedural defects, 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 Enrique and Michelle Serrato, "Debtors," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Value the Secured Claim of Neighborworks Home Ownership is denied without prejudice.

19. 14-21752-C-13 SCOTT MILES MOTION TO CONFIRM PLAN
LBG-7 Lucas B. Garcia 7-2-14 [114]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 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).

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.

Below is the court's tentative ruling.

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

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, 2014. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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). Opposition having been filed, 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 decision is to deny the Motion to Confirm the Amended Plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Here, the Chapter 13 Trustee and Creditors have filed opposition to confirmation of the plan.

TRUSTEE'S OPPOSITION

1. Debtor's original Schedule A does not list the 144 Camino Del Mar, Cabo San Lucase Property, and Debtor has not indicated the reason for not initially including this asset in his Schedule A filed on March 10, 2014. Dckt. No. 11.

2. Debtor's Plan, in Section 2.15, provides for a 0% dividend to unsecured claim holders; however, the Additional Provisions state that all gross proceeds from the sale will go to the Trustee for a 100% disbursement to all creditors and for cost of sale requirements. The Plan must pay a 100% dividend to unsecured claim holders, or the P;an will not meet the Chapter 7 liquidation

analysis as the non-exempt assets total $1,284,125.00.

3. Debtor does not list the date sold and transferee of automobile on the statement of financial affairs, Question No. 10. Debtor lists a transfer of a 99 F550 on the Statement of Financial Affairs, Question No. 10, in the amount of $17,000.00; however, Debtor does not list the date sold, and the name and address of the transferee. The Debtor has filed a response to this issue on Dckt. No. 49, which states that the information requested cannot be provided, as the "item was sold at auction and Debtor does not have that information." Debtor could provide information regarding the auction itself, which would presumably resolve the matter.

4. Debtor may also not be able to make the payments under 11 U.S.C. § 1325(a)(6) because of excess contingent unsecured debt. An unsecured claim was filed on July 9, 2014, by Pension Plan for Pension Trustee Fund for Operating Engineers in the amount of $653,185.00. The claim appears to be for a contingent withdrawal liability under ERISA Section 4203(a). While the plan calls for various sales, Dckt. No. 117, the Debtor may not be able to generate sufficient funds to pay the claims proposed, unless the contingent liability is resolved.

OPPOSITION OF WELLS FARGO

Wells Fargo Bank, N.A. objects to the Amended Chapter 13 Plan, for several reasons.

First, because Debtor's plan proposes to create a default by withholding periodic payments to Creditor, it modifies the creditor's rights in violation of section 1322(b)(2) and cannot be confirmed. 11 U.S.C. § 1322(b)(2) provides that the plan may "modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence . . . ." The issue is whether a plan that proposes the sale of the residence at an unspecified time, with no periodic payments made to the secured creditor pending sale, impermissibly modifies the rights of the secured creditor.

Second, the Creditor asserts that the proposed Amended Chapter 13 Plan fails to provide for any pre-petition arrears on Creditor's claim. The pre-petition arrears equal $5,780.38, based on Creditor's Proof of Claim. As a result, the Plan does not satisfy 11 U.S.C. § 1325(a)(5)(ii). Furthermore, the plan fails to provide for the ongoing mortgage payment in the amount of $1,121.55, which is in turn creating a greater default on the loan of Creditor.

Third, on order to comply with 11 U.S.C. § 1322(d), Debtor will have to increase the payment through the Chapter 13 Plan to the Creditor to approximately $96.34 per month in order to cure the pre-petition arrears over sixty months. Debtor will also have to increase it's post-petition payments to Creditor to $1,121.55 to provide for the ongoing mortgage payments. Debtor will have to increase his total plan payment to $1,217.89 in order to provide for Creditor's claim.

Fourth, Debtor's Schedule J indicates that the Debtor has disposable income of $155.00. However, in order to provide for Creditor's claim, Debtor will have to increase plan payments by $1,217.89. Debtor lacks the

sufficient income needed to fund a confirmable Chapter 13 Plan.

OPPOSITION OF TRI COUNTIES BANK

Tri Counties Bank, which identifies itself as a creditor, submits an objection to the debtor's proposed second amended Chapter 13 plan.

According to Schedule D, the debtor does not dispute that it owes Tri Counties Bank a balance of $485,940.27 on a claim secured by the Whitcolm Avenue real property in Colfax and the Railroad Avenue properties in Grass Valley. Tri Counties Bank objects to the plan because it fails to pay Tri Counties Bank any interest on its claim as required by section 1325(a)(5)(B)(ii); because the Plan does not allow Tri Counties Bank to retain its lien as required by section 1325(a)(5)(B)(I); and because because it has not been proposed in good faith as required by section 1325(a)(3). Creditor argues that the plan allows far too long for liquidation of both the real property and the personal property.

The debtor states in Schedule D, that he owes Tri Counties Bank at least $485,940.27 on a claim secured by certain real property, and that Tri Counties Bank's collateral is worth at least $750,534.00. The debtor's proposed Chapter 13 plan sets forth treatment of Tri Counties Bank's secured claim in section 2.09, which provides for payment of 0.00% interest and $0.00 in monthly dividend. The plan does not provide for adequate protection payments or payments of accruing interest on Tri Counties Bank's claim under 11 U.S.C. § 1325(a)(5)(B)(ii). Tri Counties Bank argues that the PLan does not provide it distributions equivalent to the present value of the its secured claim as of the effective date of the plan.

Additionally, the debtor's description of Tri Counties' Bank's collateral is incomplete. In Schedule A, the debtor lists three enumerated real properties consisting of four APN's that comprise Tri Counties Bank's real property collateral. The plan, however, omits two of the four APN's comprising Tri Counties Bank's real property collateral. Further, the debtor signed a commercial security agreement granting Tri Counties Bank a security interest in virtually all of the debtor's personal property. The debtor's plan, however, does not include any personal property in the plan's description of Tri Counties Bank's collateral.

The plan provides one year for the liquidation of all the debtor's business-related personal property. The personal property consists solely of tangible personal property, which is easily and quickly liquidated at auction. Creditor argues that the debtor does not need an entire year for liquidation of the personal property collateral. The value of this collateral will only deteriorate as time passes. Creditor maintains that due to the extraordinary amount of time provided by the proposed plan, the plan is not proposed in good faith under 11 U.S.C. § 1325(a)(3).

Based on the foregoing, the amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

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

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

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

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

20. 13-30156-C-13 DAVID BURCH
DPC-2 Scott J. Sagaria
Thru #21

CONTINUED MOTION TO DISMISS CASE
6-2-14 [69]

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 June 2, 2014. By the court's calculation, 37 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 tentative decision is to deny the Motion to Dismiss. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

REVIEW OF THE MOTION

The Chapter 13 Trustee moves the court for an order dismissing this case pursuant to 11 U.S.C. § 1307(c) for two reasons. First, the Debtor's Motion to Confirm, SJS-3 was heard and denied on April 22, 2014. To date, Debtor has not filed an Amended Plan and set it for confirmation.

Second, Debtor is $1,050.00 delinquent in plan payments to the Trustee to date and the next scheduled payment of $1,050.00 is due on June 25, 2014. The Debtor has paid $2,100.00 into the plan to date.

Cause exists to dismiss this case. The motion is granted and the case is dismissed.

OPPOSITION BY DEBTOR

Debtor states in his opposition that he and his counsel have been meeting and conferring on the events that transpired following the conversion of the Debtor's Chapter 7 bankruptcy case to one under Chapter 13. Debtor and his counsel have been working on preparing a feasible Chapter 13 Plan, and state that they shall have a feasible Chapter 13 plan filed on or before June 25, 2015, and set it for a confirmation hearing. Dckt. No. 73.

Debtor desires to remain in his Chapter 13 bankruptcy and to obtain his discharge.

RULING

The court continued the hearing on this matter from July 9, 2014 to this hearing date, so that the Motion could be heard in conjunction with the Motion to confirm amended plan being filed by the Debtor. Civil Minutes, Dckt. No. 80.

The Debtor filed a Motion to Confirm a newly proposed Amended Plan, SJS-4, on July 9, 2014. Dckt. No. 74. The court is granting the Motion to confirm, with no opposition from the Chapter 13 Trustee, indicating that the issues raised in the Trustee's present Motion to Dismiss have been resolved. The Motion to Dismiss the Case is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to 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 Motion to Dismiss is denied.

21. 13-30156-C-13 DAVID BURCH MOTION TO CONFIRM PLAN
SJS-4 Scott J. Sagaria 7-9-14 [74]

Final Ruling: No appearance at the August 26, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 9, 2014. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

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.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has 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 July 9, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

approved, the Chapter 13 Trustee will submit the proposed order to the court.

22. 14-21056-C-13 MICHAEL BROWN — MOTION TO CONFIRM PLAN
DMB-3 David M. Brady — 7-8-14 [52]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 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).

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.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 8, 2014. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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). Opposition having been filed, 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 decision is to grant the Motion to Confirm the Amended Plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Here, Sue an *ex parte* communication drafted and filed by Ellen Terwilliger was received by the court on August 11, 2014. The letter opposes the Motion to Confirm filed by Debtor Michael Brown. Dckt. No. 63.

Ms. Terwilliger opposes the Motion by stating the following:

A. Debtor's "monies have not changed and appear will not change."

B. Ms. Terwilliger states that she does not understand how Debtor will have "any money left at the end of the 57 months to pay the balloon payment when it comes due; the amount of approximately $165,000.00."

C. The Opposition also mentions that the ongoing taxes to be paid at $100.00 per month "will not keep up with the current taxes of approximately $2,700.00 per year."

Ms. Terwilliger's opposition to the present Motion raises the same objections stated by her opposition to the previous Motion to Confirm the Chapter 13 Plan, considered by the court at a July 1, 2014 hearing. Civil Minutes, Dckt. No. 60.

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

Ms. Terwilliger has filed Proof of Claim No. 6 in this case, claiming a debt owed of $9,475.06 for delinquent payments on a mortgage note entered between Ms. Terwilliger and the Debtor, supporting her claim with a Mortgage Proof of Claim Attachment and documentation showing that Ms. Terwilliger is the obligee on a promissory note, and had transferred her deed of trust to Debtors. Ms. Terwilliger asserted that additional property taxes should be covered by the Debtors Chapter 13 plan, but these additional charges have not been provided for in her Proof of Claim. Ms. Terwilliger has not amended her Proof of Claim, and this additional amount of taxes are not stated in the Claim. In her previous opposition, Ms. Terwilliger argued that Debtor had not provided a date for the balloon payment, rendering funding of the Plan uncertain and confirmation unachievable.

In her present Opposition, Ms. Terwilliger states, rather vaguely, that Debtor's funds have not change and will not change. The court does not understand Ms. Terwilliger's objection to the Plan on this basis. Ms. Terwilliger also states that she does not understand the source of payment for Debtor's balloon payment due near the end of the plan, and that Debtor will be unable to afford ongoing taxes of $2,700.00 per year.

Section 6, the Additional Provisions section of Debtor's Plan states that Debtor plans on attempting to sell the property before the balloon payment comes due on November 15, 2018. Debtor states in Section 6.2 that the balloon payment will be paid on July 15, 2018, and that adequate protection payments will be paid through the plan in the amount of $1019 on the property covered by the purchase contract entered between Debtor and the seller, Sue Terwilliger. Proposed Plan, Dckt. No. 57. Debtor appears to be intent on selling the property securing Ms. Terwilliger's claim, and use to proceeds to pay off the balloon payment of an estimated $165,832.69 under the creditor's sales contract.

Ms. Terwilliger does not clarify whether the additional taxes mentioned in her opposition constitute property taxes on the real property securing her claim for the delinquent mortgage note. Without a definite understanding of the taxes cited in Ms. Terwilliger's opposition, the court cannot deny confirmation of the plan on this basis. Thus, Ms. Terwilliger's objection is overruled and the plan will be confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on July 8, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

23. 13-29464-C-13 ELEUTERIO/NOIDA CAPAPAS MOTION TO MODIFY PLAN
FF-3 Brian H. Turner 7-18-14 [58]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 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).

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.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2014. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, 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 decision is to grant the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the plan on the basis that Debtors do not propose a plan payment in the modified plan for July 2014. Section 6.01 of the modified plan lists proposed payments as (a)$4,209.65 per month, from August 25, 2013, through February 25, 2014; (b) $0.00 per month from March 25, 2014, through June 25, 2014; (c) $3,689.39 per month from August 25, 2014 through July 25, 2018.

The Trustee has no objection if the proposed plan payments include a July 2014 of $0.00 in the order confirming the plan.

REPLY BY DEBTOR

Debtors state that the failure to propose a plan payment in the modified plan for July, 2014, was an oversight. Section 6.01(b) should have

indicated that the Debtors were to pay $0.00 per month from March 25, 2014 through July 25, 2014, not from March 25, 2014 through June 25, 2014. Debtors propose that the order confirming the plan indicate the correct proposed plan payments as including a July 2014 payment of $0.00.

Debtors state that they will submit the correction to the Trustee for the Trustee's approval.

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 July 18, 2014, amended to provide for a July 2014 payment of $0.00, 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.

24. 14-25669-C-13 ANTHONY DAY — CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY CITIMORTGAGE, INC.
BAP-1 C. Anthony Hughes — 7-8-14 [17]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and the Chapter 13 Trustee on July 8, 2014. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

CitiMortgage, Inc., which identifies itself as a secured creditor in this case ("Creditor"), opposes confirmation of the Debtor's proposed plan. The Creditor provides a brief history of the security interest On September 30, 2004, Debtor and Joan Dominno-Day (collectively, the "Borrowers") obtained a mortgage loan (the "Loan") from Countrywide Home Loans, Inc. in the original principal sum of $312,000.00, reflected in a promissory note (the "Note") secured by a deed of trust (the "Trust Deed") encumbering the real property located at 7835 Bonny Downs Way, Elk Grove, California.

On October 11, 2011, the Borrowers entered into a Loan Modification Agreement with Citi (through its authorized agent, Bank of America, N.A.) whereby the principal balance of the Loan was modified (with a portion of the modified balance being deferred to the maturity date), the interest rate reduced to 5.00% per annum, and the maturity date extended to October 1, 2051.

Debtor's Plan lists Citi's claim in Class 4. By virtue of the inclusion of Citi's claim in Class 4, Debtor is representing that there are no pre-petition arrearages due on the Loan as of the date he filed his bankruptcy petition. Creditor asserts, however, that there are prepetition arrears due under the Note and Trust Deed. Creditor claims that there is an outstanding pre-petition escrow shortage due under the Loan in the amount of

$1,540.35, and that the plan misrepresents the loan.

Additionally, Creditor cites to the anti-modification provision of 11 U.S.C. § 1322(b)(2). 11 U.S.C. § 1322(b)(2) applies only to secured claims. This means that a wholly unsecured claim on the debtors' primary residence may be avoided. The anti-modification clause of section 1123(b)(5) does not apply to secured creditors holding completely unsecured claims, even if they are secured by the debtor's primary residence. See *In re Zimmer*, 313 F.3d 1220, 1226 (9th Cir. 2002); see also *In re Lam*, 211 B.R. 36, 40-41 (B.A.P. 9th Cir. 1997).

Creditor appears to indicate that there is still equity in the real property securing Creditor's interest in Debtor's residence; thus, Debtors cannot modify the rights of the Creditor. Creditor states that assuming *arguendo* that Debtor's inclusion of Citi's claim in Class 4 is intended as a proposed modification of the claim, such a modification is impermissible. Debtor's sworn schedules reflect that the Property is his principal residence; Creditor is therefore is protected by the anti-modification provisions of section 1322(b)(2). Creditor argues that the Plan violates section 1322(b)(2) to the extent it seeks to modify Citi's claim by eliminating the pre-petition arrearage due under the Loan.

RULING

The courts continued the hearing on this matter from August 5, 2014, to this hearing date, to afford the parties the opportunity to draft plan amendments to provide for Class 1 treatment until cured, and then automatic switching to Class 4 when current. Civil Minutes, Dckt. No. 22.

Nothing further, however, has been filed on the docket on this matter. The Debtor not having provided for the payment of the pre-petition escrow shortage due under the loan in the plan, and the Creditor's claim being impermissibly modified, 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.

25. 13-22572-C-13 LAFAYETTE HAYES CONTINUED MOTION TO MODIFY PLAN
DEF-1 David Foyil 3-10-14 [22]
Thru #26

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 March 10, 2014. 35 days' notice is required. That requirement was met.

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

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

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

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

1. Debtor settled a claim with the Yellow Cab Cooperative for $4,008.38. Debtor used this funds to help his daughter and her children relocated by buying them out of the remaining term of their lease agreement, repairing the new rental property, and paying for his daughter's divorce.

   The funds appear to be property of the estate. Debtor did not disclose receipt of the settlement until the present modified plan was filed in an attempt to correct Debtor's plan payment delinquency.

   Trustee believes Debtor has the ability to claim these funds as exempt; however, Debtor should amend his schedules to reflect this interest.

2. Debtor included a letter as Exhibit C, dated November 14, 2013, informing him that all federal student loans or TEACH Grant services obligations were discharged due to permanent disability.

   The student loan identified to be discharged is that attributed to Educational Credit Management Corporate in the

amount of $9,118.00. ECMC filed an unsecured claim on May 13, 2013 for $11,047.16 (Claim 12). Debtor's modified plan proposes to pay 76% to unsecured creditors. Debtor has not filed an objection to claim and the plan provides that the claim will be included in the distribution to unsecured creditors.

3. Debtor's modified plan proposes to adjust monthly dividends for months that have passed regarding attorneys' fees and creditor Universal Acceptance Corporation.

Section 6.01 proposes payments of $208.347 for months one (1) through twelve (12) for administrative fees un section 2.07©, where under the confirmed plan payments were $467.00 for five (5) months, then $165.00 for one (1) month. While both pay schedules equal $2,500, the Trustee has paid administrative fees in full under the confirmed plan and cannot adjust the payments after the fact.

Section 6.02 proposes a monthly dividend to Universal Acceptance Corporation of $286.76 for months one (1) through twelve (12), then $93.00 thereafter. Under the confirmed plan, payments were $189.00 for five (5) months, $491.00 for one (1) month, and then 4656.00 for months seven (7) through thirteen (13).

Through month twelve (12) under the confirmed plan, Trustee has disbursed $3,441.11 in principal and $154.20 in interest. While $286.76 for twelve (12) months totals $3,441.12, and would be equal to what the Trustee disbursed in principal, the Trustee cannot adjust the monthly dividend for payments that have already been disbursed.

Debtor's Motions indicates payments made under the confirmed plan to Universal Acceptance Corporation of $189.00 for five (5) months, $497.00 for one (1) months, $656.00 for seven (7) months, and then $586.26 for one (1) month. This is inaccurate because payment in month six (6) was $491.00, not $497.00, and there was never a payment of $568.26 made.

4. Debtor's Motion states that no unsecured claim is to be paid prior to or concurrent with any secured claims while also stating that the plan provides for payments on any unsecured claim to be made concurrently with payments on any secured claim or any other secured claim. These statements are contradictory.

Debtor's Response

Debtor filed amended Schedules B & C, per the Trustee's suggestion and included the relevant Settlement with the Yellow Cab Cooperative.

Debtor filed an objection to the claim of Educational Credit Management Corporation (Dkt. 35).

Debtor is amenable to including special provisions that do not change the disbursement amounts for previous payments made to creditors from

the trustee.

Page 7, line 21 of Debtor's motion was a clerical error (the contradiction pointed out by the Trustee). The sentence should state that unsecured and secured claims are going to be paid concurrently.

Discussion

The court continued the motion to confirm the plan to this hearing date, so that the Motion to Confirm could be heard with the Debtor's pending Objection to Proof of Claim Number 12 of Educational Management Corporation. The court recognized that Debtor has made efforts to respond to the Trustee's objections; however, the issue concerning treatment of ECMC's claim remains outstanding and the court could not confirm the plan until the objection is resolved.

The Objection to Proof of Claim No. 12, DEF-2, was continued to this hearing date to permit Debtor to provide sufficient notice under the Local Bankruptcy Rules for an initially incorrectly noticed Objection to the Claim of Educational Credit Management Corporation. The Objection was not re-noticed according to the procedures established by Local Bankruptcy Rule 9014-1(f), resulting in the denial of that Objection. The issues regarding ECMC's unsecured claim (filed May 13, 2013 for $11,047.16, Claim 12) were resolved upon the filing of the Notice of Withdrawal of Claim by the Educational Credit Management Corporation on July 30, 2014.

However, the Debtor has not proposed special provisions that maintain or the original disbursement amounts made to creditor Universal Acceptance Corporation in the modified plan. Thus, the Motion to Confirm Plan is denied, and the plan cannot be confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Modified Chapter 13 Plan filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied.

26. 13-22572-C-13 LAFAYETTE HAYES
DEF-2 David Foyil

CONTINUED OBJECTION TO CLAIM OF EDUCATION CREDIT MANAGEMENT CORPORATION, CLAIM NUMBER 12
7-14-14 [35]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 14, 2014. By the court's calculation, 16 days' notice was provided. 44 days' notice is required.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). 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 Objection to Proof of Claim number 12 of Educational Credit Management Corporation is dismissed as moot. 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:

Pursuant to Local Bankr. R. 3007-1(d)(3), objections to claims in Chapter 13 cases shall be set for hearing pursuant to Local Bankr. R. 3007-1(b)(1) or (b)(2). Local Bankr. R. 3007-1(b)(1) requires that objections be set on forty-four (44) days' notice while Local Bankr. R. 3007-1(b)(2) provides an alternate notice period of thirty (30) days. Here, Debtor has only provided sixteen (16) days worth of notice to creditors and interested parties.

The court continued the hearing on the Objection to the Claim of Educational Credit Management Corporation to this hearing date, to allow the Debtor provide sufficient notice to all potential respondents in accordance with the Local Bankruptcy Rules.

The respondent creditor, Educational Credit Management Corporation, filed a Notice of Withdrawal of Claim by the on July 30, 2014, rendering the instant Objection 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 Claim of Educational Credit Management Corporation filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim number 12 of Educational Credit Management Corporation is dismissed as moot.

27.	14-26473-C-13 DPC-1 **Thru #28**	SILVIO RODRIGUEZ AND NORMA MARROQUIN Stephen N. Murphy	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-30-14 [28]

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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 July 30, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, 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.

The court's decision is to overrule the Objection.

Chapter 13 Trustee opposes confirmation of the Plan for three reasons. First, the Debtors' plan relies on the Motion to Value the Collateral of Bank of America, which is set to be heard on this hearing date. The court is granting the Motion to Value the Secured Claim of Bank of America, N.A., thus resolving this part of the Trustee's objection.

Second, Debtors' Schedule I does not include an attachment detailing gross business income and expenses as required by the form on line 8a.

Third, Debtors' counsel's attorney fees are unclear. While the plan proposes to pay the attorney $2,500 through the plan under Local Bankruptcy Rule 2016-1(c), the Disclosure of Compensation of Attorney for Debtors, Dckt. No. 1, appears to list in Item 6 that the attorney services do not

include some services required under Local Bankruptcy Rule 2016-1(c), such as dischargeability actions, judicial lien avoidances, and relief from stay actions. Trustee believes that the attorney is effectively opting out of 2016(c)(1), and will oppose attorney fees being granted under that section, requiring a motion for any attorney fees.

SUPPLEMENTAL TO OBJECTION

On August 15, 2014, Dckt. No. 35, the Trustee filed a Supplement to this Objection, noting that Debtor filed an Amended Schedule I on August 12, 2014, Dckt. No. 34, which resolves the Trustee's issue with Debtors not detailing their business expenses in the necessary Schedule Attachment. Additionally, on July 31, 2014, the Debtor filed an Amended Disclosure of Attorney Compensation, Dckt. No. 32, which resolves the Objection raised regarding Debtors' counsel's attorney fees.

All issues raised by the Trustee in the present objection having been resolved, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a), and the objection is overruled.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the 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 Objection is overruled, Debtor’s Chapter 13 Plan filed on June 20, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

28.	14-26473-C-13 SNM-2	SILVIO RODRIGUEZ AND NORMA MARROQUIN Stephen N. Murphy	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 7-22-14 [21]

Final Ruling: No appearance at the August 26, 2014 hearing is required.

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, parties requesting special notice, respondent creditor, and Office of the United States Trustee on July 22, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Value 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 non-responding parties 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 secured claim of Bank of America, N.A., "Creditor," is granted.

The Motion to Value filed by Silvio Rodriguez and Norma Marroquin, "Debtors" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtors are the owner of the subject real property commonly known as 955 West L Street, Apt. No. 28, Benicia, California, "Property." Debtor seeks to value the Property at a fair market value of $118,000.00 as of the petition filing date. As the owner, 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 senior in priority first deed of trust secures a claim with a balance of approximately $200,062.00. Creditor's second deed of trust secures a claim with a balance of approximately $47,855.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. 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 Silvio Rodriguez and Norma Marroquin, "Debtors," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second in priority deed of trust recorded against the real property commonly known as 955 West L Street, Apt. No. 28, Benicia, 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 $118,000.00 and is encumbered by senior liens securing claims in the amount of $247,917, which exceed the value of the Property which is subject to Creditor's lien.

29. 12-40974-C-13 FLORA NANCA MOTION TO MODIFY PLAN
CAH-3 C. Anthony Hughes 7-1-14 [45]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 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).

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.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 1, 2014. By the court's calculation, 56 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, 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 decision is to deny the Motion to Confirm the Modified Plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Here, the Chapter 13 Trustee opposes confirmation of the proposed plan on the following grounds:

1. Debtor afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor is delinquent $4,750.00 under the terms of the proposed modified plan.

2. According to the proposed modified plan, payments of $80,655.00 have become due. Debtor has paid a total of $75,905.00 to the Trustee, with the last payments posted on May 27, 2014 totaling $4,500.00. According to the Trustee's calculations, the Plan will complete in more than the 60 months proposed, possibly taking 67 months. This exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Debtor's original plan was $4,750.00 per month for 60 months.

Debtor became delinquent, however, as of May 2014 by $4,845.00, as well as had a small priority claim that was not provided for by the plan, in the amount of $1,327.79, Trustee's Motion to Dismiss, Dckt. No. 37, filed on June 9, 2014. Debtor did not pay in June or July so they would be delinquent two additional payments under the original plan, $14,345.00, but the modified plan will supersede the original plan if it is not disapproved. 11 U.S.C. § 1329(b)(2). Debtor appears to propose to add $4,845.00 in post-petition arrears to Class 2, Dckt. No. 46. Where Debtor is delinquent more than three payments under the confirmed plan, $7,323.64 appears due to these creditors.

3. Debtor proposes to add post-petition mortgage arrears regarding two separate properties, and two individual creditors to Class 2. Class 2A 1 does not provide the creditor's names or descriptions of collateral, but provides the amount claimed as $4,845.00, and refers to additional provisions for the monthly dividend. The additional provisions state, "The monthly divided [*sic*] for the missed Chapter 13 payment will be $125.98/month for 42 months."

   This statement is confusing as it would seem Debtor is proposing to add missed plan payments to Class 2. Debtor's intent appears to provide for missed mortgage payments in Class 2. Dckt. No. 34, page 2, lines 6-8. In any event, Debtor appears to have lumped two creditors together, Bank of America and One West Bank, regarding post-petition mortgage arrears including two separate properties and provides one monthly dividend of $125.98. This would be impossible to administer as proposed.

   Debtor should list each creditor individually, and propose a separate monthly dividend for each. Additionally, Debtor is presently two payments delinquent on each mortgage. The principal due to Bank of America is $3,666.04 (2 payments of $1,833.02), and the principal due to One West Bank is $3,657.60 (2 payments of $1,828.80) for a total of $7,323.64.

4. The Trustee is uncertain of the treatment of One West Bank: the plan provides for treatment regarding the first and second Deed of Trust for the property located at 5235 Ehrhardt Avenue. The proposed modified plan includes this property in Class 1 for ongoing mortgage and arrears, presumably Class 2 for post-petition arrears, and Class 2C for the Second Deed of Trust which has been valued. The plan also provides for this creditor in Class 3 surrender for the First Deed of Trust. The Trustee is uncertain whether Debtor's intention under the modified plan is to continue payments through the plan, or if they intend to surrender the property.

5. Section 6 of Debtor's modified plan proposes a plan payment of $75,905.00 as of the 18th month (June, where Debtor's petition was filed on December 4, 2012, $4750.00 for 1 month, then $4,909.02 for 42 months. Debtor is proposing a 61 month plan (18+1+42 = 61).

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

holding that:

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

30. 14-26474-C-13 DPC-1 — JANE WEEKS, Frank X. Ruggier — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 7-30-14 [20]

Final Ruling: The Chapter 13 Trustee having filed a Withdrawal of the Objection to Confirmation of Plan, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the** Objection to Confirmation of Plan **was dismissed without prejudice, and the matter is removed from the calendar.**

31. 14-25080-C-13 DELMAR/KAREN REYNOLDS — OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
DPC-2 Clark D. Nicholas — 6-19-14 [34]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 19, 2014. By the court's calculation, 58 days' notice was provided. 28 days' notice is required. That requirement was met

Tentative Ruling: The Objection to Debtor's Claim of Exemptions 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 sustain the Objection to Debtor's Claim of Exemptions. 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:

EXEMPTION CLAIMED IN GUNS

The Chapter 13 Trustee objects to the Debtors' exemptions on the basis that Debtors claim an exemption in "35 guns (pawned)" under California Civil Code of Procedure § 703.140(b)(5) in the amount of $6,000, while asserting that the property is worth $10,000.00. Dckt. No. 23.

On Schedule B, Dckt. No. 23, the Debtor identifies the property as "35 guns U and I Trading, Klamath Falls, OR W $10,000." Debtor has not adequately identified the property for either valuation or claiming an exemption, including details of the year, make, or model of the gun. Because of the nature of the property, where ownership or transfer is often restricted by law, Debtor should be familiar with the description of the property involved.

Additionally, Trustee points out that the Debtor has identified these guns as pawned, implying that the Debtor did not possess the property at the time of filing, and the rights to the property may have expired--depending on when the property was pawned, or whether the period for redemption had expired. Where under Oregon law, the holder of the pawn ticket is normally presumed entitled to redeem under O.R.S. § 726.310.), and where Debtor does not list pawn tickets on the Schedule B, the claim of exemption in the "35 guns (pawned)" cannot be allowed.

Debtor may have transferred this property pre-petition, and no longer be entitled to claim it as exempt. Schedule D reflects that this

property was pawned by a friend. This, combined with not scheduling pawn tickets, implies that the property was given to a friend pre-petition to allow them to pawn it, and that this friend might be in possession of the pawn tickets.

EXEMPTION CLAIMED IN JEWELRY

Debtor claims an exemption for Jewelry under California Civil Code of Procedure § 703.140(b)(4) for $3,000.00, while asserting that the value of the property is $2,000.

On Schedule D, the Debtor schedules Jewelry twice, once as "Jewelry So OR Pawn, Medford OR W $1,500.00," and once as Jewelry U and I trading W $500.00." This identification is not adequate. Furthermore, Debtor did not hold the jewelry based on the pawn status, so the claim of exemptions should not be allowed under California Civil Code of Procedure § 703.140(b)(4), which requires that the jewelry be "held primarily for the personal, family, or household use of the debtor or a dependent of the debtor."

Debtor may have also transferred this property pre-petition and no longer be entitled to claim it as exempt. While at least one of the items was pawned by a friend, and without more information as to the other pawn transaction, Trustee argues that the court should not allow the claim of exemption at this time.

DECLARATION OF KAREN MARIE REYNOLDS

On August 7, 2014, the Debtors filed an Amended Schedule C to address some of the Trustee's concerns. In her Declaration, Dckt. No. 53, Joint Debtor Karen Marie Reynolds states that she believed that there were 35 guns, but that "it became clear" after she laid out all of her pawn tickets that there were only 23 guns listed.

Debtor vaguely states the following:

> these guns were pawned during 2013 and 2014 by me taking them to a friend that lives in Oregon and she taking them in to U & I Trading Post and pawning them for me. If I said I "gave" them to her, I meant that I took them to her for her to pawn; not that I made a present of them to her. She then immediately returned and gave me the money she obtained and the pawn tickets. Every time the loan period was about due to expire, I would take the tickets in and pay the interest due to renew them so that they were all still redeemable on May 14, 2014 when we filed our bankruptcy, and I had possession of all of the pawn tickets...
>
> After my attorney told me that he had been informed by the Trustee's attorney that the Trustee was not going to redeem the guns or anything else, I made a deal with my acquaintance that lives in Oregon and used to run a pawn shop that I would transfer to him the rights to the pawn tickets and rights to the guns and ring pawned at U & I Trading Post; and he in turn would guarantee me the right to, within one year, repurchase from him the guns that were my father's and grandfather's personal guns, that have sentimental value to me. I did not receive any money or any

> other thing of value from him. On July 11, 2014 I went with him and my friend that had pawned the guns for me, and a FFL (Federal Firearms Licensee) he knew; and then my friend that had pawned the guns for me presented the pawn tickets and the money to get them all out of pawn. Joshua Wesley, after some time and phone calls, decided to let them be redeemed. I did not regain possession of them; they will all go into the possession of the acquaintance of mine that lives in Oregon and used to run a pawn shop, and who put up the money to get them out of pawn.

Debtor then states that in on June 16, 2014, an attorney for the Southern Oregon Pawn Shop emailed her attorney, offering to purchase the items from the debtors for $2,000. The owner of the shop offered an additional $500 to purchase the items, terminate the loan, and be excluded from bankruptcy. Debtor states that she ultimately decided to take the offer, but it was after the deadline given by the pawn shop that she settled on that decision. The Debtor tried contacting the Pawn shop's counsel, but there was no response. The items had to be redeemed by July 14, 2014.

Debtor then states that:

> Finally an acquaintance of mine said he would buy the pawn tickets and the rights to redeem them from me for $500.

It appears that Debtors liquidated their interest in the guns by selling their pawn tickets to a friend. Debtors did not file a Motion to Sell or issue notice of this sale under Federal Rule of Bankruptcy Procedure 6004. Debtors appear to have transferred their interest and sold this property of the estate. The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." Debtors filed this bankruptcy case on May 14, 2014; thus, the bankruptcy estate encompassed Debtors' guns, which Debtors attempted to claim an exemption in. However, now that Debtors have sold the guns, the property is no longer property of the estate, and Debtors are not permitted to claim an exemption in these assets.

Additionally, Debtor states that on July 10, 2014, Joint Debtor Karen Reynolds went with her friend, who was now presumably in possession of the pawn tickets for the guns, to Southern Oregon Pawn, where the friend "put out the money to redeem my wedding ring and Indian jewelry, and took possession of those items. He did give me $500 in addition, but that was less than the $1,000 that requires court approval pursuant to Local Bankruptcy Rule 3015-1(b)(1)."

A debtor may claim an exemption in an asset which is property of the bankruptcy estate. The vast majority of exemptions under California Law (the applicable bankruptcy exemptions in California, Cal. Code Civ. Pro. § 703.140) are for monetary amounts in assets of the estate. Such assets continue to remain property of the estate until used, sold, or abandoned from the estate. *Schwab v. Reilly*, 130 S.Ct. 2652, 2667, 177 L. Ed. 2d 234 (2010); *Gebhart v. Gaughan* (*In re Gebhart*), 621 F.3d 1206, 1210 (9th Cir. 2010). A debtor does not have the ability to claim exemptions which did not exist as of the commencement of the case or post-petition increases in the value of the property in excess of the amount claimed as exempt. *In re*

Hyman, 967 F.3d 1316, 1319, n. 2 (9th Cir. 1992). To be claimed as exempt the property must exist and become part of the bankruptcy estate. *Owen v. Owen*, 500 U.S. 305, 314, 111 S. Ct. 1833, 1838.

In their Amended Schedules, Debtor attempt to claim exemptions in a diamond ring, Indian jewelry, 23 guns, 22 pawn tickets, and 3 other pawn tickets at So. OR Pawn. Joint Debtor Karen Reynolds' Declaration indicates that all of these items and Debtors' interests in these items have been liquidated and sold. The property having been sold, and no longer being part of the bankruptcy estate, the Debtors cannot claim exemptions in these assets. Thus, the Trustee's Objection to Debtors' Claim of Exemptions is sustained, and the foregoing exemptions are disallowed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to Debtor's Claim of Exemptions filed by 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 sustained and Debtor is denied the $3,000.00 exemption claimed in the real the .80 diamond ring and Indian jewelry pursuant to California Civil Code of Procedure § 703.140(b)(5); the $500.00 exemption in a .50 diamond 14k ring claimed pursuant to California Civil Code of Procedure § 703.140(b) 703.140(b)(5); the $6,950.00 exemption claimed in the 23 guns pursuant to California Civil Code of Procedure § 703.140(b)(5); the $500.00 claimed in 22 pawn tickets for U&I Trading under California Civil Code of Procedure § 703.140(b)(5); and the $500.00 exemption claimed in 3 Pawn tickets with So. OR Pawn pursuant to California Civil Code of Procedure § 703.140(b)(5).

32. 14-24184-C-13 DONCELLA LOGAN
APN-1 Lucas B. Garcia
Thru #33

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
5-30-14 [14]

TOYOTA MOTOR CREDIT CORPORATION VS.

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, and Office of the United States Trustee on May 30, 2014. Twenty-eight days' notice is required. This requirement was met.

Tentative Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to dismiss the Motion for Relief as moot. 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:

CONTINUANCE

The court continued this matter from July 29, 2014, to this hearing date, to allow time for the parties to reach a settlement. Civil Minutes, Dckt. No. 38. However, nothing further on this matter has been filed on the docket, and nothing has been filed in the matter showing that a settlement agreement is forthcoming, or that the present Motion for Relief has been resolved.

The court also continued the hearing on the Motion for Relief from Stay, so that this matter could be heard in conjunction with the Motion to Confirm Debtor's proposed Chapter 13 Plan. On June 12, 2014, Debtor cause to be filed an amended Chapter 13 Plan and Motion to Confirm the amended Plan. The hearing on the plan is set for July 29, 2014. In the Amended Plan, Debtor moves Movant's claim from Class 4 to Class 2 and lists the amount claimed by Movant as $7,000.00 and proposes a monthly dividend of $120.00. Based on the information provided by Movant, the claim amount is $11,569.91.

REVIEW OF MOTION

Creditor, Toyota Motor Credit Corporation ("Creditor"), seeks relief from the automatic stay with respect to an asset identified as a 2004 Nissan 350Z, VIN # ending in 2233. Movant has provided a properly authenticated copy

of the Certificate of Title to substantiate its claim of ownership as the Legal Owner of the subject vehicle. Dckt. No. 17. The moving party has provided the Declaration of Cheryl Nishimura to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Nishimura Declaration asserts that Debtor and non-filing Co-Debtor, Mitchell Logan, executed a written contractual agreement on March 6, 2009 to purchase a 2004 Nissan 350Z. The Security Agreement was assigned by Lexus of Sacramento to Movant on March 6, 2009. Pursuant to the terms of the agreement, Debtor and/or non-filing co-Debtor are obligated to pay Movant forty-eight (48) monthly payments of $549.55. Under the Chapter 13 Plan proposed by Debtor, Movant is to be paid directly, under the terms of the prevailing agreement.

The agreement reach maturity on November 7, 2013 and Debtor remains in possession of the vehicle. The contractual balance of $11,569.91 is due an owing. Movant asserts that the vehicle is valued at $11,835.91.

Chapter 13 Trustee

The Chapter 13 Trustee filed a statement of non-opposition on June 2, 2014.

Debtor's Opposition

Debtor argues that the vehicle is a necessity for her to work and maintain a stable income. Debtor states that she amended her plan to allow for payment of the Creditor.

DISCUSSION

Creditor brings this Motion pursuant to 11 U.S.C. § 362(d)(1) for "cause" based upon Debtor's failure to make the requited post-Petition payments. As set forth in *In Re Ellis*, 60 B.R. 432, the failure to make required payments constitutes "cause" to vacate the pending automatic stay provisions.

The Creditor states that contractual agreement that serves as the basis for Creditor's claim reached maturity on November 7, 2013, and the Debtor and/or her nonfiling Co-Debtor remains in possession of the vehicle at this time. The matured contractual balance of $11,569.91 is due and owing, and Creditor maintains that it has not received payments in this amount at thie time.

Creditor asserts that Debtor has also not provided provide valid, written proof of insurance coverage for the property, which not only violates the terms of the parties' contractual agreement, but which also the applicable laws of the State of California. Accordingly, Creditor argues that it cannot be assured of repayment of the outstanding balance on the account which is the subject hereof nor can it be assured of the proper operation, care, or maintenance of the property. Creditor argues that it lacks the adequate protection it is entitled to receive pursuant to the applicable provisions of 11 U.S.C. § 362.

Debtor offers no evidence or specific factual contentions, refuting

the Creditor's assertion that payments of $11,835.91 are due and owing on the contract on Debtor's 2004 Nissan, and that Debtor and the non-filing co-debtor are delinquent in monthly payments ot the Creditor. Debtor offers no evidence or sworn testimony indicating that she is properly required vehicle insurance on the vehicle, mandated under the parties' Security Agreement. Debtor merely asserts in her opposition (which is not substantiated by a declaration made under the penalty of perjury in accordance with 28 U.S.C. § 1746), that the vehicle is necessary for her commute to work, and that she intends to amend her plan to make payments to the Creditor. However, Debtor appears to remains delinquent on her monthly payments to Creditor, which allows the Creditor to be obtain relief from the stay for "cause" based on Debtor's default on the payments called for under the parties' prevailing contract.

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

Additionally, Debtor was granted a discharge in a Chapter 7 case on July 5, 2013. *See* Discharge of Debtor, Bankr. E.D. Cal. No. 12-28510, Dckt. 90, July 5, 2013. Granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. *See* 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

The court shall issue an order terminating and vacating the automatic stay to allow Toyota Motor Creditor Corporation, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 2004 Nissan 350Z (last four V.I.N digits ending in 2233), including appropriate judicial proceedings and other remedies to obtain possession thereof.

The Movant has not alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Relief From the Automatic Stay filed by Toyota Motor Creditor Corporation ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11

U.S.C. § 362(a) are vacated to allow Toyota Motor Creditor Corporation and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2004 Nissan 350Z (last four V.I.N digits ending in 2233).

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Donacella Melinda Logan ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived for cause shown by Movant.

No other or additional relief is granted.

33. 14-24184-C-13 DONCELLA LOGAN — CONTINUED MOTION TO CONFIRM PLAN
LBG-1 Lucas B. Garcia — 6-12-14 [21]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, all creditors, and Office of the United States Trustee on June 12, 2014. 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). 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:

CONTINUANCE

The court continued this matter from July 29, 2014, to this hearing date. Civil Minutes, Dckt. No. 39. However, nothing further on this matter has been filed on the docket, and nothing has been filed in the matter indicating that a settlement agreement is imminent (or that the present Motion and the issues raised in Creditor's opposition to confirmation of the plan have been resolved).

REVIEW OF MOTION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. Here, the secured creditor, Toyota Motor Credit Corporation ("Creditor") opposes the Motion to Confirm Second Amended Chapter 13 Plan.

The Creditor states that on March 6, 2009, the Debtor entered into a written Retail Installment Sale Contract - Simple Interest Finance Charge with Lexus of Sacramento. The Security Agreement was assigned by Lexus of Sacramento to the Creditor on or about March 6, 2009. Upon executing the Security Agreement, the Debtor agreed and became obligated to pay the sum of $16,897.25, with interest accruing at the contract rate of 23.29% per annum, for the financed purchase of the subject property.

History of Discharges

The Creditor states that it objects to Debtor's inclusion of this

obligation in Debtors' Chapter 13 Plan, because the Debtor has been discharged of her personal obligation to pay for the property as a consequence of her Chapter 7 bankruptcy filed on May 1, 2012, and her subsequent discharge of the indebtedness on July 5, 2013. Debtor's prior Chapter 7 bankruptcy filed in the Eastern District of California is identified by Case Number 12-28510. In addition to the foregoing, Creditor further observes that as a consequence of the Debtor's current bankruptcy representing the second bankruptcy case within four (4) years, and having received a discharge pursuant to May 1, 2012, Chapter 7 bankruptcy petition, the Debtor is not entitled to discharge in the present proceeding pursuant to 11 U.S.C. §1328(f) and as a consequence thereof is not entitled to cram down the amount of Secured Creditor's lien.

Although the granting of a discharge to an individual in a Chapter 7 case terminates the automatic stay as to that debtor by operation of law, (replacing it with the discharge injunction), the stay is not terminated as to the bankruptcy estate. *See* 11 U.S.C. § 362(c)(2)(c). A debtor who has received a discharge in a Chapter 7 case may no longer be personally liable for debts discharged in her Chapter 7 case, but may chose to file a subsequent Chapter 13 Case.

As this court described in the recent case of *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), affd., 469 B.R. 803 (ED Cal. 2012),

> The filing of a Chapter 7 case to discharge debts and subsequent filing of a Chapter 13 case and plan providing to modify a secured claim which rode through the prior Chapter 7 case is commonly referred to as a "Chapter 20." Prior to the enactment of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"), 119 Stat. 23, a Chapter 20 was a useful tool for a debtor who exceeded the monetary limits for a Chapter 13 case. See *11 U.S.C. § 109(e)*. By filing the Chapter 7 case to discharge unsecured indebtedness, debtors could reduce their debts to be within the monetary limits for the filing a subsequent Chapter 13 case. Then, through the subsequent Chapter 13 plan debtors could save their residence from foreclosure by curing any arrearage through the plan or establish a court enforced repayment plan for nondischargeable debt, such as tax obligations.

A Debtor filing a subsequent Chapter 13 case could seek to have a claim secured by a junior lien valued pursuant to 11 U.S.C. § 506(a) for treatment under a Chapter 13 plan and "strip" the lien upon completion of the Chapter 13 Plan. *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), affd., 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping" in Chapter 13 case); *Martin v. CitiFinancial Services, Inc*. (In re Martin), 491 B.R. 122 (Bankr. E.D. CA 2013).

Exceeds Maximum Time

Creditor further objects to Debtor's inclusion of this obligation in Debtors' Plan, in that Debtors are attempting extend their monthly payments to Creditor over the sixty (60) month term of the Plan, when in fact the Agreement reached maturity on November 7, 2013, prior to Debtor's filing of this bankruptcy proceeding. As such, Debtors' proposed Plan will extend

payment to Creditor approximately five (5) years beyond the maturity date of the prevailing Agreement and therefore expose Creditor to significantly greater risk of loss due to the extension of the loan period. In essence, Debtors' proposed Plan will turn Debtor's original four (4) year obligation with Creditor into a nine (9) year obligation.

Valuation

Based upon information derived from the automated Kelley Blue Book Auto Market Report, a true and correct photocopy of which is filed separately herewith and which is incorporated herein by reference, pursuant to 11 U.S.C. §506(a)(2) the property is currently believed to have a retail, replacement value to Debtor of $11,835.00. This is the value indicated for collateral of this year, make, model and general features in the reference guide most commonly used source of valuation data used by Movant in the ordinary course of business for determining the value of this type of collateral.

Creditor further objects to the $7,000.00 valuation allocated to its secured collateral under Debtor's proposed Plan in that should Secured Creditor be forced to accept the low valuation of its secured claim hereunder, Secured Creditor's security interest will be severely diminished on collateral which already depreciates at a rapid rate during the normal course of its use.

The value allocated to Creditor's collateral under Debtor's proposed Plan is substantially below the value given in the Kelley Blue Book. In the absence of further evidence explaining the valuation discrepancy, Secured Creditor contends that Debtor has not satisfied the burden under 11 U.S.C. §506(a)(2). Based thereupon, Debtor's proposed Plan does not comply with 11 U.S.C. § 1325(a) because it does not pay Creditor the present value of its secured claim and, therefore, Debtor's Plan cannot be confirmed as is presently proposed.

Adequate Protection Payments

Creditor further objects to the $120.00 monthly adequate protection payments offered it under Debtor's proposed Plan in that the value of Creditor's security will depreciate at a much higher rate than that at which Creditor will receive adequate protection payments under the Plan.

Interest Rate

Moreover, as a matter of law and of equity, and pursuant to 11 U.S.C. § 506(b), Creditor, an oversecured creditor hereunder, is entitled to receive the contract rate of interest of 23.29% on its secured claim, as opposed to the low rate of 4.00% proposed by Debtor hereunder.

Lack of Insurance Coverage

Moreover, pursuant to the terms and conditions of the prevailing Security Agreement, Debtor agreed to keep the property properly insured at all times in an amount and with an insurer acceptable to Secured Creditor. Debtor further agreed to make the loss payable clause of any and all such insurance coverage payable in the name of Secured Creditor for as long as Debtor was indebted to it.

After reviewing the books and records concerning Debtor's account, Creditor discovered that it had not been provided with valid, written proof of Debtor's current insurance coverage for the property. In light of the foregoing, Creditor contends that Debtor is operating the property without having any insurance coverage thereon and, accordingly, due to Debtor's failure to provide Creditor with proof of insurance coverage on the property and in order to properly protect its security interest therein, Secured Creditor will be forced to purchase its own insurance coverage.

This lack of insurance coverage on the property has not only violated the parties' contractual agreement which has placed Creditor in an unfavorable and questionable position under this bankruptcy proceeding, but has also violated Section 16451 of the California Vehicle Code as it applies to mandatory insurance coverage, which acts have placed an undue, unnecessary burden on Creditor.

Creditor believes that if it is forced to accept its inclusion under Debtor's Plan as is presently proposed, Creditor will be prejudiced by its position thereunder and Creditor will continue to suffer substantial, mounting losses. Lastly, Debtor has an outstanding balance of $11,569.91 on the account with Creditor. As such, Creditor is entitled to payment of its reasonable attorneys' fees and costs pursuant to the applicable provisions of 11 U.S.C. § 506(b) and pursuant to the applicable provisions of the prevailing Security Agreement in light of the fact that Debtor has :forced Creditor to defend its position under the above-entitled matter."

RULING

The objecting creditor in this matter, Toyota Motor Creditor Corporation, has sought and been granted relief from the automatic stay, so that the automatic stay provisions of 11 U.S.C. § 362(a) have been vacated to allow Toyota Motor Creditor Corporation and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2004 Nissan 350Z (last four V.I.N digits ending in 2233). The court granted the Creditor's Motion for Relief from the Automatic Stay, made pursuant to 11 U.S.C. § 362(d)(1), APN-1, on this hearing date.

Since the automatic stay has been terminated to permit the objecting Creditor to repossess or foreclose upon the collateral securing its interest in its claim in Debtor's case, the Debtor is no longer obligated to provide for the treatment of Creditor Toyota Motor Creditor Corporation's claim in her Chapter 13 Plan pursuant to the requirements of 11 U.S.C. § 1322(a). The singular objection to the Motion to confirm is overruled and the plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

34. 14-26488-C-13 KATHRYN CAMPAU
DPC-1 Richard L. Jare
Thru #35

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-30-14 [22]

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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 30, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, 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.

The court's decision is to overrule the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor's Plan relies on the pending Motion to Value the Collateral of Santander Consumer USA, Inc., which was heard on July 29, 2014, and was continued to this hearing date. The court grants the Motion to Value the Secured Claim of Santander Consumer USA, Inc., thus resolving the Trustee's singular objection to the proposed plan. The Objection is therefore overruled. The Plan now complies 11 U.S.C. §§ 1322 and 1325(a).

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 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 Objection is overruled, Debtor's Chapter 13 Plan filed on June 20, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

35. 14-26488-C-13 KATHRYN CAMPAU
RJ-1 Richard L. Jare

CONTINUED MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC.
7-14-14 [14]

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were originally served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 14, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Value secured claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Motion to Value secured claim of Santander Consumer USA Inc, "Creditor" is granted.

The Motion filed by Kathryn Campau, "Debtor", to value the secured claim of Santander Consumer USA Inc, "Creditor," motion is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Dodge Journey Automobile, "Vehicle." The Debtor seeks to value the Vehicle at a replacement value of $18,998.94 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 debtor's opinion of the collateral's actual replacement value is actually $15,270. However, since the Loan has seasoned only approximately 16 months, Debtor argues that the valuation sought by the motion will be a balance

reduction based upon a calculation which takes into account the total amount financed of $26,063.14, less the sum of $4,400, stated in the agreement at line "P" as the portion of the negative trade-in which is financed. Over the course of time, the amount financed of 26,063.14 has been paid down to the sum of $22,857.82.

On July 16, 2014, the Creditor filed a claim 2 days after this motion was initially served. This claim is for $22,857.82, secured. The total dollar amount of the obligation represented by Santander Consumer USA Inc.'s, financing agreement which is the subject of this motion was initially estimated at $22,537.00, per her declaration. This differs only slightly from the $22,857.82 asserted in the proof of claim.

The balance was paid down to 87.70% of the initial amount financed. By applying and prorating this percentage to the $4,400 stated in the agreement at line "P", it can be calculated that $3858.88 is the remaining amount of the negative trade-in balance as of the petition date. Therefore, Debtor argues that $22,857.82 - $3858.88 = $18,998.94 is the appropriate secured claim to be allowed.

The lien on the Vehicle's title secures a purchase-money loan incurred in March 2, 2013, which is less than 910 days prior to filing of the petition. While Debtor acknowledges that the loan has not seasoned for 910 days as of the petition date, the debtor does state in her declaration that the purchase transaction was a negative trade-in. The Ninth Circuit Court Appeals held has held that a secured vehicle lender does not have a purchase money security interest in that portion of the claim representing finance of the negative equity on a debtor's trade-in vehicle. *Americredit Financial Services, Inc. v. Penrod* (*In re Penrod*), 611 F.3d 1158 (9th Cir. 2010). The over 910-days restriction of 11 U.S.C. § 506 therefore does not limit the application of that section on this claim. Here, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of $18,998.94. *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 Kathryn Campau, "Debtor" having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of [name of creditor], "Creditor," secured by an asset described as 2013 Dodge Journey Automobile, "Vehicle," is determined to be a secured claim in the amount of $18,998.94, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is $18,998.94 and is encumbered by liens securing claims which exceed the value of the asset.

36.	14-24289-C-13 MRL-4	ISAAC NYDEN AND CAROLA ALICE MAY Mikalah R. Liviakis	MOTION TO AVOID LIEN OF DAWN LORRAINE MCGRATH 7-23-14 [61]

Tentative Ruling: The Motion to Avoid 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).

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.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on July 24, 2014. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

The Motion to Avoid 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 defaults of the non-responding parties and other parties in interest are entered.

The Motion to Avoid Judicial Lien is denied without prejudice.

This Motion requests an order avoiding the judicial liens of Dawn Lorraine McGrath ("Creditor"). A judgment was entered against Debtor in favor of Creditor in the amount of $24,843.02. An abstract of judgment was recorded with Solano County on March 11, 2014.

Creditor's first judiical lien was recorded against the real property of Issac Nyden and Carola May ("Debtors") commonly known as 910 Branciforte Street, Vallejo, California. The value of the Property is listed as totaling $109,000. Debtors state that the Property is subject to liens senior to that of McGrath in the amount of $204,092.77, or $124,658.36 after deducting liens that will be removed pursuant to the motions to value filed by Debtors, which the Court granted on June 5, 2014 (Dckt. No. 38 and 39).

The Motion states that the second lien was recorded against Debtors' personal property, but Debtors do not describe the personal property against which the lien was recorded. The Motion simply states that the value of the Debtors' personal property (not identified) is approximately $27,196. The Motion references Exhibit B, which is a copy of Debtors' Schedule C. Debtors

do not pinpoint which assets on Schedule C constitute the personal property which are encumbered by the lien. The Motion further states that:

> Included in the $27,196 is a 2011 Nissan Juke worth approximately $9,391. This Nissan is subject to a lien of approximately $15,055. Debtor's Schedule D, Dckt. No. 1. So, there is approximately $17,805 worth of unencumbered personal property assets.

Debtors only specify one piece of property in the personal property that now secures the lien Creditor's lien. Debtors state that there is approximately $17,805 worth of unencumbered property assets, but does not describe the property with particularity.

OPPOSITION BY CREDITOR

Dawn Lorraine McGrath responds to Debtors' Motion by stating that in their motion, Debtors assert that Ms. McGrath's judicial lien on their rental property impairs an unidentified exemption pursuant to 11 U.S.C. Sec. 522(b). However, the only exemption claimed is $1.00 under C.C.P. § 703.140(b)(1, which applies only to the Debtors' residence.

Creditor states that Debtors have claimed as exempt every piece of property they have, and then point to their filed schedules and say that the value of their property is exceeded by the exemption. Creditor asserts that the Court has already found that Debtors' schedules are not reliable and, at least partially on that basis, denied Debtors' motion to confirm their plan. Civil Minutes, Dckt. No. 58.

Creditor argues that Debtors' schedules are directly contradicted by their testimony at the First Meeting of Creditors. In both Ms. McGrath's and the Trustee's objections to the Debtors' previously proposed plan, the Crditor and Trustee objected to the completeness, accuracy and trustworthiness of Debtors' schedules. (Trustee's Objection, Document 28; Ms. McGrath's Objection, Document 40.) The court determined that Debtors' have not adequately disclosed their income, expenses and debts. Dckt. Nos. 58 and 77. Debtors' schedules are so unreliable that at the hearing on their motion to confirm their plan, the Court informed Debtors that their schedules contained serious problems.

The court cannot determine the value of the property encumbered by the lien, because Debtors have not described their personal property with particularity. The court therefore also cannot determine the unvaoidable consensual liens on the property as of the commencement of this case and whether there is equity to support the judicial lien after the application of 11 U.S.C. § 522(f)(2)(A). Without a complete and accurate understanding of the property against which the Creditor's judicial lien has been recorded, the court cannot determine whether the fixing of this judicial lien impairs the Debtors; exemption of the real property and the fixing of the lien should be avoided under 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 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Avoid the Judicial Lien is denied without prejudice.

37. 14-27989-C-13 GENTRY/MARIA LONG MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso 8-12-14 [13]

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Motion to Extend the Automatic Stay is granted.

Debtors seek to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 14-23660-13C) was dismissed on August 7, 2014, after Debtors defaulted on their plan payments and Debtors did not file an amended plan and set it for confirmation after their first Motion to Confirm was denied. *See* Order, Bankr. E.D. Cal. No. 14-23660-13C, Dckt. 53, July 9, 2014. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B).

The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors — including those used to determine good faith under §§ 1307(c) and 1325(a) — but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?

2. What has changed so that the present plan is likely to succeed?

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. In their Declaration, Dckt. No 13, Debtors state that they are refiling their bankruptcy due to their case being dismissed, which was filed without representation.

Debtors state that they did not know how to complete the necessary motions, and lost control of their case. *Id*. at ¶ 11. Debtors state that they incurred a loss of income since their first filing, as Esther (Maria) lost her job. Since their case was dismissed, however, they have retained an attorney to help their case "succeed." Debtors' Motion states that the the instant case was filed in order to retain their vehicles. Joint Debtor Gentry William Long is a Field Superintendent for Fenceworks, Inc., and states that he has been employed for more than six years, has a current gross monthly income of $4,983.33, deductions of $628.11, and a net monthly income of $4,355.22.

Further, Debtors state that their Schedule I and B22C reflect that they are earning enough wages and money to cover all their necessary obligations in addition to the proposed chapter 13 plan. Debtors state that they have reasonable and necessary expenses of approximately $3,970.22, allowing for a monthly plan payment of $385.00, and the ability to fund the current plan, and obtain a discharge (*See In re Charles*, 334 B.R. 207, 219 (Bank. S.D.Tex. 2005)).

The Debtors have sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

The Motion to Extend the Automatic Stay filed by the 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 and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

38. 11-48691-C-13 STEVEN/SUZAN POVEY — CONTINUED MOTION TO APPROVE LOAN MODIFICATION
PGM-6 Peter G. Macaluso — 6-5-14 [106]
Thru #39

Tentative Ruling: The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The 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).

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.

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on June 5, 2014. 28 days' notice is required; that requirement was met.

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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Approve Loan Modification is XXXXXX.

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

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

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

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

Chapter 13 Trustee Response

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

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

Debtors' Response

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

Disposition

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

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

The record is unclear as to which entity is the subject creditor participating in this proceeding. The court cannot enter an order modifying the rights of a secured creditor when it cannot deduce the identify of the subject creditor.

REPLY OF DEBTORS TO ORDER CONTINUING THE HEARING

Debtors state that it has contacted the Law Offices of Les Zieve and Pite Duncan, LLP as to the Court's Order to Show Cause. On August 10, 2014, the Christina Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for Normandy Mortgage Loan Trust, C/O Carrington Mortgage Services

transferred the Claim to Rushmore Loan Management Services, LLC, Dckt. No. 135.

SUPPLEMENTAL ORDER GRANTING THE MOTION TO AMEND THE PREVIOUS ORDER AND REQUIRING THE APPEARANCE OF CITIMORTGAGE, INC.

The court issued a supplemental order for the appearance of CitiMorgage, Inc. and Counsel for the August 26, 2014 Hearing. In the order, the court states that it has ordered CitiMortgage, Inc. and its counsel to appear at the continued hearing on a motion to approve a loan modification (DCN: PGM-6) in this case.

This motion filed by the Debtors did not identify the creditor with whom the loan modification was requested, but merely used the generic term "Lender" as the other party to this motion. Exhibits filed with the motion identified the term "Lender" with "Carrington Mortgage Services, LLC." Dckt. 109. The loan being modified was identified in Proof of Claim No. 25 (filed June 21, 2012) listing CitiMortgage, Inc. as the creditor. On June 26, 2014, a Notice of Mortgage Payment Change was filed by CitiMortgage, Inc., as the creditor with Proof of Claim No. 25. CitiMortgage, Inc. was ordered to appear to address why and how its claim, Proof of Claim No. 25, was not clearly identified to the Debtors and identify what interest, if any, it had in that claim.

On August 14, 2014, CitiMortgage, Inc. filed the declaration of Howunna Johnson, one of its Assistant Vice Presidents, in 4 response to the Order to Appear. Dckt. 138. The declaration states that the note upon which Proof of Claim No. 25 is based was in the possession of CitiMortgage, Inc. during the period of June 7 23, 2006, through April 29, 2013.

Johnson further testifies that on April 29, 2013, possession of the note was transferred, but does not state to whom the note was transferred. Later in the Declaration Johnson states that "on or around April 29, 2013" possession of the note was transferred to "Carrington's custodian of documents." The declaration continues to state that on July 15, 2013, a letter was sent to the Debtors advising them that "the mortgage loan servicing for the Loan was being transferred to Carrington Mortgage Services, LLC effective July 31, 2013." No testimony is provided that CitiMortgage, Inc. notified the Debtors of any change in the identity of the creditor, but merely the loan servicer. CitiMortgage, Inc. provides a copy of the July 15, 2013 letter as Exhibit 1. Dckt. 139. That letter advises the Debtor that only the servicing of the loan has been transferred, and none of the terms or conditions of the loan documents have been changed. The declaration concludes providing testimony that CitiMortgage, Inc. did not authorize the issuance of the June 26, 2014 notice of payment change, nor did it authorize any person to use its name for that Notice.

CitiMorgage, Inc., then filed a Motion to Amend the Order Requiring the Appearance of CitiMortgage, Inc., which did not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 to state the grounds for the requested relief with particularity. The court noted that the Motion did not plead the grounds upon which modification of the order would be justified; however, in doing counsel's work and having shuffled through the Movant’s Points and Authorities, current Declaration, prior Declaration, and Exhibits filed with the Prior Declaration, the court determined that a case can be made for allowing CitiMortgage, Inc. to appear by phone. CitiMortgage, Inc. provided evidence that it no longer asserts

that it is a creditor in this case. Further, CitiMortgage, Inc. provides unequivocal testimony that the filing of the Notice of Mortgage Payment Change was not authorized and was not accurate.

In considering the evidence and the equities of the Movant's arguments, the court allowed the senior management representative of CitiMortgage, Inc., to appear telephonically at the August 26, 2014 hearing. Bryan S. Fairman, counsel for CitiMortgage, Inc., however, was ordered to appear in person in open court, no telephonic appearance permitted, for the August 26, 2014 hearing.

Supplemental Declaration of Tina Mathis in Support of Loan Modification

On August 22, 2014, Tina Mathis, who identifies herself as the Manager of Carrington Mortgage Services, LLC, the formerly authorized and acting loan servicing agent on behalf of Christiana Trust, a Division of Wilmington Savings Fund Society, FSB, as Trustee for Normandy Loan Trust, Series 2013-8, states that on June 31, 2013, Carrington Mortgage Services, LLC, purchased the servicing rights to the property located at 804 Woburn Court, Vacaville, California from Citi Mortgage.

At the time of transfer, Carrington Mortgage Services, LLC, took possession of all loan documents, including the Note to the Deed of Trust. The Declarant further states that, at the time of the addition of the transfer, Carrington Mortgage Service, LLC, obtained all rights to modify the loan or to honor any prior modifications on the loan. ¶ 6, Declaration of Tina Mathis, No. 162. Declarant states that on or about January 22, 2013, Citi Mortgage offered the Debtors a trial loan modification requiring the Debtors to make payments in the amount of $2,562.69 from March 1, 2013, to May 1, 2013.

Citi Mortgage reached out to Carrington Mortgage Services, LLC's Bankruptcy Department, asking that Carrington Mortgage Services, LLC "reactivate" the loan modification offer that Citi Mortgage had made prior to the service transfer. After an internal review, Declarant states that Carrington Mortgage Services LLC, decided to honor the modification previously offered by Citi Mortgage, and offered Debtors a loan modification pursuant to the Home Affordable Modification Program on Carrington Mortgage Services, LLC's cover letter. Carrington Mortgage Services, LLC, asserts and maintains that they had the right to modify the loan pursuant to a power of attorney agreement, but was simply finalizing a loan modification made by the prior servicer. Carrington Mortgage Services, LLC, elected to honor the modification for the benefit for the benefit of Debtors, and Carrington Mortgage Services, LLC, did not want to prejudice the Debtors for an error made by the Trustee or prior servicer.

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 XXXXX.

39. 11-48691-C-13 PGM-7 — STEVEN/SUZAN POVEY — Peter G. Macaluso — CONTINUED MOTION TO MODIFY PLAN — 6-9-14 [111]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 9, 2014. By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee opposes confirmation of the Plan, however, on the following grounds:

1. Trustee is uncertain of the treatment proposed for creditor Carrington Mortgage. The creditor is included in Class 1 with a monthly contract installment amount of $1,952.42. The creditor is also included in Class 4 with the Debtors making the payment. The creditor was originally CitiMortgage, Inc., Claim No. 25, but was transferred per Dckt. No. 102.

2. The Trustee is uncertain of the Debtors' ability to make the payments required under 11 U.S.C. § 1325(a)(6). Debtors have not filed Amended Schedules I and J in support of the Motion. The most recent Schedules I and J filed were dated February 15, 2013, Dckt. No. 76. The Schedule I reflected the spouse was receiving $1,800.00 unemployment at the time.

3. The Debtors' loan modification has not been granted. Debtors' Plan is based upon a loan modification which has not been granted.

Debtors' Motion to approve a loan modification, PGM-6, is set for hearing on July 22, 2014.

4. Debtors have added Class 5 Internal Revenue Service claim for post-petition tax claim in the amount of $6,702.00. The creditor has not filed a claim for post petition taxes, and only the creditor has the ability to do so under 11 U.S.C. § 1305.

5. Debtors incorrectly state in Section 1.01 that $114,365.78 is paid through May 20, 2014. This is actually the amount for June 3, 2014.

RESPONSE BY DEBTORS

Debtors respond to Trustee's first ground for objection to the plan that "the Trustee is correct." Citimortgage transferred the loan to Carrington Mortgage on December 4, 2013. The ongoing mortgage payment pursuant to the loan modification shall remain as a Class 1 Claim to be paid through the Chapter 13 Plan.

Debtors respond to Trustee's second point that the loan modification on which the plan relies has not been granted by stating simply, that "the proposed loan modification should be approved on July 22, 2014." At the July 22, 2014 hearing, however, this court denied the Debtors' Motion to Approve the Loan Modification, PGM-4, on the basis that the court was confused as to the identity of the lender. In the ruling on that Motion, the court noted that the Modification Agreement presented by the Debtors listed the "Lender" as "Carrington Mortgage Services, LLC" on the first page of the actual Home Affordable Modification Agreement (Dkt. 100), while Christiana Trust is listed as the claimant on the claims registrar the documents attached to Claim No. 25, however, refer to CitiMortgagr as the Creditor.

The court had previously entered an order approving the Trial Loan Modification on 804 Woburn Court, Vacaville, California between Debtors and CitiMortgage, yet the permanent loan modification papers for the same property that were executed between Debtors and Carrington Mortgage Services, LLC. Further muddling these circumstances was that a Notice of Mortgage Payment Change for the subject property, filed on June 26, 2014, by CitiMortgage, listed the creditor as "CitiMortgage, Inc. c/o Carringon Mortgage Services." Because the court remained perplex as to which entity was the subject creditor participating in the proceeding, the court denied the motion.

Debtors also respond to the Trustee's third reason for opposing the plan by stating that "[a] 11 U.S.C. 1305 claim is being processed by the Internal Revenue Service," so that presumably the Debtors will withdraw their claim. However, this response is vague as to the meaning of what Debtors will do with their placeholder claim.

In reply to Trustee's objection that the Debtors incorrectly state in Section 1.01 that $114,365.78 is paid through May 20, 2014 (which actually represents amount for June 3, 2014, Debtors make a request that this correction be incorporated into the order confirming.

Although the court previously continued this matter from July 29, 2014, to this hearing date, so that the Objection could be heard in conjunction with Debtors' Motion to Approve a Loan Modification, there are

remaining objections by the Trustee that have not yet been resolved and hinder confirmation of the Debtors' Plan.

The Trustee is uncertain of the Debtors' ability to make the payments required under 11 U.S.C. § 1325(a)(6) because Debtors have not filed Amended Schedules I and J in support of the Motion. Updated schedules have not been file to evidence Debtors' ability to make the payments called for by the plan. Additionally Debtors have added Class 5 Internal Revenue Service claim for post-petition tax claim in the amount of $6,702.00. The creditor, however, has not filed a claim for post petition taxes. Debtors also incorrectly state in Section 1.01 that $114,365.78 is paid through May 20, 2014, which is actually the amount for June 3, 2014.

The status of Debtors' loan modification notwithstanding, the plan still does not have sufficient monies to that claim in full, and the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329. 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 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.

40.	14-25796-C-13 DPC-2	ROBERT/JILL VOSBERG Ashley R. Amerio	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 7-25-14 [32]

Final Ruling: The Chapter 13 Trustee having filed a Withdrawal of the Objection to Debtors' Claim of Exemptions, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the** Objection to Debtors' Claim of Exemptions **was dismissed without prejudice, and the matter is removed from the calendar.**

41. 14-27196-C-13 JENNIFER SALAZAR — MOTION FOR SANCTIONS FOR VIOLATION OF THE AUTOMATIC STAY
HLG-1 Jared A. Day — 8-12-14 [24]

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

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent Creditor, and Office of the United States Trustee on August 12, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Damages for Violation of the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Motion for Damages for Violation of the Automatic Stay is --------.

The present Motion for Damages for Violation of the Automatic Stay provided by 11 U.S.C. § 362(a) and for damages pursuant to 11 U.S.C. § 362(k) and the inherent power of this court has been filed by Debtor, Jennifer Brooke Salazar.

The Debtor, Jennifer Brooke Salazar, commenced her bankruptcy case on July 11, 2014. The meeting of creditors was conducted and concluded on August 8, 2014. As a result of the filing of the petition, an automatic bankruptcy stay was initiated under 11 U.S.C. § 362.

The Motion states that the Creditor in this matter, First Choice Auto at 2680 Auburn Boulevard, Sacramento, California ("Creditor"), was properly listed as a creditor in this case for a claim secured by Debtor's 2004 Volkswagen Passat GL Sedan Vehicle on Schedule D. Debtor and her counsel testify that they were very careful to list the appropriate address for

Creditor on the bankruptcy schedules to ensure that it would receive timely notice of Debtor's Chapter 13 bankruptcy filing at its place of business located at 2680 Auburn Blvd., Sacramento, California. Declaration of Jared Day, Dckt. No. 27. The Certificate of Notice issued by the Bankruptcy Noticing Center indicates that Creditor was served at the aforementioned address by mail with the other creditors in this case.

On August 1, 2014, at 12:15 pm, Debtor states that she received a text message from the phone number 916-896-8933, stating that her car payment was late and to please contact Creditor to make a payment. Debtor responded to the text message on August 1, 2014, at 1:58 pm and informed Creditor that she had filed for Chapter 13 protection. Debtor also provided Creditor with her case number and her bankruptcy counsel's name and phone number.

The Motion further states that at some point between 1:58 pm and 6:45 pm on August 1, 2014, the Debtors' vehicle was repossessed from her place of employment located at 2525 Natomas Park Drive, Sacramento, California. Debtor immediately contacted the Sacramento Police Department on August 1, 2014, and at approximately 7:00 pm wherein they verified that the vehicle was listed as a repossession.

Upon confirmation of the repossession, Debtor sent an email to Creditor at 7:56 pm on August 1, 2014, to the e-mail address listed on Creditor's website (firstchoiceauto@yahoo.com), again informing Creditor of her bankruptcy filing and requesting that her vehicle be returned by 8:00 am on August 2, 2014, due to the violation of the automatic stay. Exhibit A, Debtor's E-mails to Creditor, Dckt. No 28.

Debtor provided and attached her bankruptcy paperwork, including her Schedule D, which identifies Creditor as the lien holder, to the creditor. Debtor also faxed the same documents to 916-993-6352, which is the fax number listed on the business card of Tarek Maana, manager of Creditor.

At approximately 8:00 pm on August 1, 2014, Debtor called and spoke to an unidentified man at Creditor's office stating he was the manager and requested that her vehicle be returned. Debtor was told he knew nothing of Debtor's bankruptcy, had received nothing from Debtor's attorney, and that Debtor was not to call again. Declaration of Jennifer Salazar, Dckt. No. 26.

The alleged manager then told Debtor that any additional phone calls would be considered harassment and hung up the phone on Debtor. *Id.* at 9. On August 2, 2014 at 10:32 am, Debtor again e-mailed Creditor to request that her vehicle be returned due to a violation of the automatic stay. *Id.* On August 3, 2014, Debtor confirmed that her vehicle was listed in the available sale inventory on Creditor's website.

Thereafter, Debtor's significant other, used Creditor's website inquired as to the availability of the vehicle; he received an email response from Creditor indicating that Debtor's vehicle is actively available for purchase (the court notes, however, that this statement is a hearsay statement for which no grounds for admissibility has been shown (Fed. R. Evid. 801, 802, 803, 804), and that no Declaration of Jason Foley or documentation of Creditor and Mr. Foley’s communications have been provided for review by the court).

On August 4, 2014, Debtor's counsel became aware of the situation and contacted Creditor directly. Debtor's counsel spoke to two employees for Creditor including the manager, Tarek Maana. After attempting to explain the

Bankruptcy Code's automatic stay restrictions to each employee in an effort to resolve the matter informally, Creditor maintained that the vehicle was properly repossessed for nonpayment despite the bankruptcy filing. Debtor's counsel notified Creditor that he would be filing this Motion in the Bankruptcy Court if Creditor was unwilling to rectify the situation by releasing the vehicle to Debtor voluntarily and complying with federal bankruptcy law. Creditor refused to discuss the matter further and hung up the phone on Debtor's counsel. Declaration of Jared A. Day, Dckt. No. 27.

The Motion asserts that notwithstanding receiving a copy of the notice of meeting of creditors and Chapter 13 plan in this case from the Bankruptcy Noticing Center and directly from Debtor, Creditor continues to refuse to return or release the vehicle back to Debtor's control and possession. To date, Creditor has not requested relief from stay from the Court.

LEGAL STANDARD

A request for an order of contempt by the United States Trustee or another party in interest is made by motion governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9020. A bankruptcy judge has the authority to issue a civil contempt order. *Caldwell v. Unified Capital Corp. (In re Rainbow Magazine)*, 77 F.3d 278, 283-85 (9th Cir. 1996). The statutory basis for recovery of damages by an individual debtor is limited to wilful violations of the stay, and then typically to actual damages, including attorneys' fees; punitive damages may be awarded in "appropriate circumstances." 11 U.S.C. § 362(k)(1). The court may also award damages for violation of the automatic stay (an Congressionally created injunction) pursuant to its inherent power as a federal court. *Steinberg v. Johnston*, 595 F.3d 937, **(9th Cir. 2011).**

Attorneys' fees may only be recovered for work involved in bringing about an end to the stay violation, not for pursuing an award of damages. *Sternberg v. Johnston*, *id.*, 947-48 (9th Cir. 2011) ("[P]roven injury is the injury resulting from the stay violation itself. Once the violation has ended, any fees the debtor incurs after that point in pursuit of a damage award would not be to compensate for 'actual damages' under § 362(k)(1)."), *cert. denied*, 2011 U.S. LEXIS 6502 (2011). A monetary penalty may not be imposed on a creditor unless the conduct occurred after the creditor receives notice of the order for relief as provided by § 342. 11 U.S.C. § 342(g)(2).

The automatic stay imposes an affirmative duty on compliance on the nondebtor. *State of Cal. Emp't Dev. Dep't v. Taxel (In re Del Mission Ltd.)*, 98 F.2d 1147, 1151-52 (9th Cir. 1996). A party which takes an action in violation of the stay has an affirmative duty to remedy the violation. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1191-92 (9th Cir. 2003).

DISCUSSION

Bankruptcy Code § 362(a)(3) states that the automatic stay applies to, "any act to obtain *possession of property of the estate* or *of property from the estate* or to exercise control over property of the estate." (Emphasis added). As one of the fundamental principles girding the Bankruptcy Code, "the automatic stay requires a creditor to maintain the status *quo ante* and to remediate acts taken in ignorance of the stay." *Franchise Tax Bd. v. Roberts* (*In re Roberts*), 175 B.R. 339, 343 (B.A.P. 9th Cir. 1994). "The operation of the automatic stay applies to property merely in the debtor's possession at the

time of filing, and remains in effect until and unless the debtor abandons such property or relief from the stay is sought."

Here, the Debtor filed her bankruptcy case on July 11, 2014, which imposed the automatic stay on all creditors in Debtor's case at the inception of the case. The subject Creditor, First Auto Sales was sent notice of Creditor's petition filing at their business address, located at 2680 Auburn Boulevard, Sacramento, California at an undisclosed date. After this notice was sent, Debtor directly informed Creditor that she had filed her Chapter 13 case, on August 1, 2014, and again by email that she had filed for bankruptcy and that any actions taken to seize the subject vehicle would be in violation of the automatic stay. Debtor sent an email to the Creditor on August 1, 2014 at 7:56 pm, demanding that her vehicle be returned due to the Creditor's violation of the automatic stay. Debtor called Creditor on August 1, 2014, speaking to an unidentified man at the Creditors office, to request that her vehicle be returned, and again to remind Creditor that she had filed her bankruptcy.

Despite Debtor and Debtor's counsel's sending notice of Debtor's bankruptcy to the Creditor, and Creditor being directly informed of Debtor's bankruptcy filing, the Creditor repossessed the subject vehicle on August 1, 2014, sometime between 1:58 pm and 6:45 pm at her place of employment in Sacramento. This constitutes a violation of the automatic stay under 11 U.S.C. § 362, and Debtor is entitled to filing a request for an order of contempt by the motion procedure governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 9020.

As a direct and proximate result of the actions taken by Creditor, Debtor states that has suffered damages arising from the lack of the use and enjoyment of her 2004 Volkswagen Passat GL Sedan. As a result of Creditor's actions, Debtor was stranded late at work on August 1, 2014 without transportation home. Debtor states that she gave up a planned two-weeks of summer visitation time with her three children, the need to take the bus to work 30 miles from her home due to a lack of transportation, and the general inconvenience and emotional stress of being without a vehicle. The Motion states that Debtor has experienced a great deal of unexpected loss of the use of her vehicle has caused and continues to cause great financial and personal turmoil. In addition to the return and release of the vehicle back into her possession (or its equivalent value), Debtor seeks an award of damages in the amount of $1,500.00 to compensate her for the loss of transportation, bus fare costs, and emotional distress.

Debtor states that her counsel has also expended time and effort seeking to obtain the return of the vehicle to Debtor's possession and control. On August 1, 2014 Debtor's counsel (Jared A. Day, Esq.) personally called Creditor and spoke to an individual identifying himself as Tarek Maana, the manager of First Choice Auto Sales. Debtor's counsel advised Creditor of the filing of Debtor's Chapter 13 bankruptcy petition and requested the return of the 2004 Volkswagen Passat GL Sedan in an effort to resolve this matter informally. In spite of these efforts, Creditor indicated to Debtor's counsel that Creditor was acting within its rights to repossess the vehicle and refused to return possession and control to Debtor.

Debtor seeks attorney fees in the amount of $1,000.00 to cover the time Debtor's counsel spent corresponding with Creditor to resolve this matter informally and for the time spent drafting the Motion that is now before the Court. Debtor's counsel charges $250.00/hour for these services and has spent

approximately four hours on this matter. To the extent that the Court finds appropriate, Debtor requests punitive damages for "malicious and egregious" in the amount of $5,000.00. Said damages are computed at two (2) times Debtor's actual damages ($1,500.00 + $1,000.00 x 2).

The Creditor violated the automatic stay by wrongfully repossessing Debtor's 2004 Volkswagen Passat GL Sedan Vehicle in the post-petition period of Debtor's bankruptcy, under 11 U.S.C. § 362.

Based on the evidence presented, the court awards Debtor damages of XXXXX for Creditor's willful violation of the automatic stay under 11 U.S.C. § 362(k).

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 Damages for Violation of the Automatic Stay by Jennifer Brooke Salazar, "Movant," 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.
>
> **IT IS FURTHER ORDERED** that the court finds that First Choice Auto Sales has willfully violated the automatic stay provisions of by 11 U.S.C. § 362(a).
>
> **IT IS FURTHER ORDERED** that Movant is awarded and shall recover from First Choice Auto Sales $ Xxxx in damages. The damages consist of $xxxx in compensatory damages, $xxxx emotional distress damages, $xxx punitive damages.
>
> **IT IS FURTHER ORDERED** that the Movant shall file and serve on or before xxxxx, 20xx, a cost bill and motion for attorneys' fees, if any, incurred in connection with and which were necessary to rectify the violation of the automatic stay pursuant to 11 U.S.C. § 362(k), or for which there is a legal or contractual right to fees. The allowed costs and attorneys' fees, if any, shall be enforced as part of the monetary award under this order against First Choice Auto Sales.
>
> This Order constitutes a judgment (Fed. R. Civ. P. 54(a) and Fed. R. Bankr. P. 7054, 9014) and may be enforced pursuant to the Federal Rules of Civil Procedure and Federal Rule of Bankruptcy Procedure (including Fed. R. Civ. P. 69 and Fed. R. Bankr. P. 7069, 9014)

42. 14-28055-C-13 TERRY CONANT
PGM-1 Peter G. Macaluso

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
8-18-14 [13]

Tentative Ruling: The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2014. By the court's calculation, 8 days' notice was provided.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Motion to Extend the Automatic Stay is granted.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 14-21391-13C) was dismissed on May 5, 2014. *See* Notice if Entry of Order of Dismissal, Bankr. E.D. Cal. No. 14-21391-13C, Dckt. 52, May 6, 2014. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the

Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); *see also* Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors — including those used to determine good faith under §§ 1307(c) and 1325(a) — but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?

2. What has changed so that the present plan is likely to succeed?

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why Debtor's multiple cases were dismissed. Debtor filed as a *pro se* Debtor for all of his past cases that were dismissed, which were all dismissed for the Debtor's failure to prosecute in one form or another. In his Declaration, Dckt. No. 15, Debtor states the following:

- "I am refiling bankruptcy due to financial hardship. I initially hired Robert Huckabee to represent me in a Chapter 7 bankruptcy in 2009, as I was overwhelmed with debt after building my home and the subsequent economic collapse...

- On March 22, 2012, I refiled Chapter 13 without representation and the case was dismissed because I was unable to get all the schedules completed timely while I was engaged in trying to get a loan modification with the bank.

- On May 21, 2012, I refiled for bankruptcy and inadvertantly filed for Chapter 7, instead of Chapter 13 as I intended. I tried to convert, but Judge McManus denied the switch. The case turned into an adversary proceeding and ultimately the case was dismissed without prejudice due to not enough time between Chapter 7 filings.

- On September 17, 2012 I filed again without representation. This case was an absolute hardship due to the fact that I was trying to deal with this while I was in Hawaii working. Ultimately the plan was not approved and the case was dismissed.

- On April 11, 2013 I filed again without representation. The judge dismissed this case, due to not having filed credit counseling prior to filing.

- On February 14, 2014 I filed again without representation. In this case, I voluntarily dismissed the case, due to the fact that I was not able to complete the necessary forms properly and construct an approved payment plan. The Trustee's representative at the

creditor's meeting suggested that I seek counsel, due to the complex nature of trying to navigate a bankruptcy.

- Since my case was dismissed, my situation has changed as my business has picked up a substantial amount. More importantly, I have retained Peter Macaluso as my attorney, and am confident of his ability to represent me and propose a solid Chapter 13 Plan that will allow me to pay my creditors to the best of my ability. I feel that under his guidance, this will be my best shot at trying to resolve something with Wells Fargo."

Declaration of Terry Conant, Dckt. No. 15. Debtor states that since his cases were dismissed, his financial circumstances have improved and business has picked up a substantial amount. Debtor has not retained an attorney, his counsel of record, Peter Macaluso, and states that he will be able to resolve his debt with the primary lienholder in his case, Wells Fargo, as well as pay his creditors to the best of his ability under the guidance of his attorney.

The Motion further states that the instant case was filed in order to cure pre-petition arrears owed on the primary residence and to stop a foreclosure sale. The debtor is a self employed glazer, and has a net monthly income of $3,750.00. The Motion states taht Debtor's Schedule I and B22C reflect that he is earning enough wages and money to cover all his necessary obligation sin addition to the proposed chapter 13 plan. The Debtor reflects reasonable and necessary expenses of approximately $1,750.00, which Debtor argues allows for a monthly plan payment of $2,000.00, and the ability to fund the current plan, and obtain a discharge (*See In re Charles*, 334 B.R. 207, 219 (Bank. S.D.Tex. 2005)).

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Extend the Automatic Stay filed by the 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 and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.