

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

August 27, 2013 at 2:00 p.m.

1. [12-20300](#)-C-13 RUSSELL WALDEN MOTION TO MODIFY PLAN
PGM-4 Peter G. Macaluso 7-19-13 [[83](#)]

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

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

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

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

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

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

(1.) The Motion alleges facts that are questionable. Debtor received a loan modification and Trustee agrees this justifies modifying the plan to reduce the plan payment accordingly. However, Debtor is reducing the plan by an additional, unexplained \$1,280.42. Furthermore, Debtor does not explain why he is trying to shorten the plan from 60 months to 36 months and any previous explanation was not presented in the form of a declaration.

(2.) Trustee objects under 11 U.S.C. § 1325(a), asserting that the modified plan was not proposed in good faith due to the Debtor misrepresenting facts and failing to disclose the actual reason for the modification.

August 27, 2013 at 2:00 p.m.

Debtor's Response

Debtor filed a response to the Chapter 13 Trustee's Opposition. Debtor states that his declaration filed in support of his motion to modify has changed only the loan modification and not increased any line item expense. Debtor further states that his ability to complete nineteen payments versus forty-three significantly reduces the risk of the plan completing.

Debtor's representations regarding the Trustee's concerns do not fully explain the issues presented. Therefore, the modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

2. [13-29502](#)-C-13 ANDREI/ALENA HAURYLKOU MOTION TO VALUE COLLATERAL OF
CAH-1 C. Anthony Hughes WELLS FARGO BANK, N.A.
7-24-13 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 24, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is

determined to be \$700.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of personal property consisting of a bed, couch, dining table, and coffee table. The Debtor seeks to value the property at a replacement value of \$700.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the assets' value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the personal property secures a purchase-money loan incurred more than 1-year prior to filing of the petition, with a balance of approximately \$2,860. Therefore, the respondent creditor's claim secured by a lien on the assets' title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$700.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a assets described as a bed, couch, dining table, and coffee table, is determined to be a secured claim in the amount of \$700.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the assets is \$700.00 and is encumbered by liens securing claims which exceed the value of the assets.

3. [12-22307](#)-C-13 MERVYN PERERA
PGM-2 Peter G. Macaluso
Thru #4

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
7-25-13 [[35](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 5, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$1000.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of personal property consisting of a desk, hutch, and bookcases. The Debtor seeks to value the property at a replacement value of \$1000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the assets' value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the personal property secures a purchase-money loan incurred more than 1-year prior to filing of the petition, with a balance of approximately \$2,081.77. Therefore, the respondent creditor's claim secured by a lien on the assets' title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$1,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a assets described as a desk, hutch, and bookcases, is determined to be a secured claim in the amount of \$1000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the assets is \$1000.00 and is encumbered by liens securing claims which exceed the value of the assets.

4. [12-22307](#)-C-13 MERVYN PERERA MOTION TO VALUE COLLATERAL OF
PGM-3 Peter G. Macaluso WELLS FARGO BANK, N.A.
7-25-13 [[40](#)]

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

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

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$150.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of personal property consisting of a floor sample bed and mattress. The Debtor seeks to value the property at a replacement value of \$150.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the assets' value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the personal property secures a purchase-money loan incurred more than 1-year prior to filing of the petition, with a balance of approximately \$636.18. Therefore, the respondent creditor's claim secured by a lien on the assets' title is under-collateralized. The creditor's secured

claim is determined to be in the amount of \$150.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a assets described as a floor sample bed and mattress, is determined to be a secured claim in the amount of \$150.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the assets is \$150.00 and is encumbered by liens securing claims which exceed the value of the assets.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 29, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7521 Saint Philomena Way, Citrus Heights, California. The Debtor seeks to value the property at a fair market value of \$193,025.00 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 \$394,077. Bank of America, N.A. holds a second deed of trust secures a loan with a balance of approximately \$94,289. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 7521 Saint Philomena Way, Citrus Heights, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$193,025.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

6. [13-29813](#)-C-13 SANDRA JONES-RAMSEY MOTION TO AVOID LIEN OF
RK-1 Richard Kwun BENEFICIAL CALIFORNIA, INC.
7-29-13 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on July 29, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Avoid a Judicial Lien is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

A judgment was entered against the Debtor in favor of Beneficial California the sum of \$18,901.03. The abstract of judgment was recorded with Sacramento County on March 8, 2012. That lien attached to the Debtor's residential real property commonly known as 5411 Pomegranate Ave., Sacramento, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A).

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$133,000 as of the date of the petition. The unavoidable consensual liens total \$166,541 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1,000 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

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

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

IT IS ORDERED that the judgment lien of Beneficial California, Inc., Sacramento County Superior Court Case No. 34200900031404CLCLGDS, Document No. 201203080995, recorded on March 8, 2012, with the Sacramento County Recorder, against the real property commonly known 5411 Pomegranate Ave., Sacramento, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

7. [13-29813](#)-C-13 SANDRA JONES-RAMSEY
RK-2 Richard Kwun

MOTION TO VALUE COLLATERAL OF
FRANKLIN CREDIT MANAGEMENT
CORP.
7-29-13 [[10](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 29, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5411 Pomegranate Ave., Sacramento, California. The Debtor seeks to value the property at a fair market value of \$133,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$166,541. Franklin Credit Management Corporation's second deed of trust secures a loan with a balance of approximately \$29,414. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

Findings of Fact and Conclusions of Law are stated

in the Civil Minutes for the hearing.

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Franklin Credit Management Corporation secured by a second deed of trust recorded against the real property commonly known as 5411 Pomegranate Ave., Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$133,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

8. [13-21814](#)-C-13 ALAN/KANDI BARBER MOTION TO CONFIRM PLAN
MWB-1 Mark W. Briden 7-16-13 [[38](#)]

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

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

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

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

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

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

The Chapter 13 Trustee opposes confirmation of Debtors' plan for the following reasons:

(1.) Debtors did not provide Trustee with 60 days of employer

advices received prior to filing of the petition.

(2.) Debtors' plan appear to call for a loan modification on the second deed of trust on Debtor's residence; however, the required language is missing from the plan and Trustee is not aware of any pending Motion to approve a loan modification. Trustee is not certain if the payment to the holder of the second deed of trust, as reflected in the plan, is the current contract installment or the proposed modified payment.

(3.) The plan may not be Debtors' best efforts. Debtors are under the median income, according to the Statement of Current Monthly income. Debtors' plan calls for a monthly payment directly by Debtors of \$335.00 to USAA Federal Credit Union for a trailer with a scheduled debt of \$24,000.00, for a total of \$20,000 to this one creditor. However, Debtors' plan proposes to pay \$5,183.00 to unsecured creditors and a total of \$15,000 into the plan over 60 months for the remaining creditors.

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

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

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

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

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

9. [13-28817](#)-C-13 ADRIAN ROBERTS MOTION TO VALUE COLLATERAL OF
RK-1 Richard Kwun TRIDENT INVESTMENT FUND, LLC
7-29-13 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 29, 2013. 28 days' notice is required. That requirement was met.

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

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7726 Quinby Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$136,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$175,000. Trident Investment Fund's second deed of trust secures a loan with a balance of approximately \$35,000. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Trident Investment Fund secured by a second deed of trust recorded against the real property commonly known as 7726 Quinby Way, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$136,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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 August 12, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 that the Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3180 Willow Bridge Road, Roseville, California. The Debtor seeks to value the property at a fair market value of \$500,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$518,000. Martha Flanagan's second deed of trust secures a loan with a balance of approximately \$30,000. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

holding that:

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Martha Flanagan secured by a second deed of trust recorded against the real property commonly known as 3180 Willow Bridge Road, Roseville, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$500,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

11. [13-30319](#)-C-13 BELLA DELA PAZ MOTION TO EXTEND AUTOMATIC STAY
NUK-1 Najeeb U. Kudiya 8-8-13 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on August 9, 2013. 14 days' notice is required. That requirement was met.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 361(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's

first bankruptcy case (No. 13-23904) was filed on March 22, 2013 and dismissed on May 14, 2013, because Debtors did not file all necessary documents. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor did not file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). 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(and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

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

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

Here, Debtor states the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Debtor states that she filed her previous case to repay substantial debts, including tax liabilities. Debtor explains that, despite the court granting her an extension, she was unable to procure the necessary documents regarding secondary liens securing real property owned by her estate. According to Debtor, by the time she obtained the documents, May 7, 2013, and filed them with the court, she was one day past the time set by the court for submission and her case was dismissed. Debtor states that her dismissal was not the result of her willful failure to comply with the court order or abuse the bankruptcy system.

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. Debtor asserts that she acquired all the necessary paperwork as of May 7, 2013 and this indicates she will be able to meet the filing requirements for the instant case and move more efficiently towards confirmation of a Chapter 13 plan.

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

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

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

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

counsel, and good cause appearing,

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

12. [13-26421](#)-C-13 SHARON BORDEN MOTION TO DISGORGE ATTORNEY
NLE-3 Deepak S. Parwatarikar FEES
7-29-13 [[30](#)]

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 July 29, 2013. 28 days' notice is required. That requirement was met.

No Tentative Ruling: The Motion to Disgorge Attorney Fees 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).

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 seeks to disgorge attorney fees in this case against Debtor's counsel, Deepak Parwatarikar, who has represented Debtor in the current case.

Debtor did not adequately disclose payment of attorney fees in Debtor's Plan, Rights and Responsibilities, and the Attorney Disclosure of Compensation. These documents indicate that total fees of \$3,000.00 have been charged in this case, and \$1,000.00 was paid by Debtor to Pinnacle Law Center with \$2,000.00 to be paid through the plan. According to Trustee, at the First Meeting of Creditors, Debtor testified that she already paid her attorney \$4,000.00 in connection with loan modification assistance.

At the first meeting of creditors, Debtor's counsel of record did not appear. Instead, attorney Ronald Burns appeared to represent Debtor.

Debtor's counsel was obligated to attend the meeting of creditors, as provided in Rights and Responsibilities and numerous other deficiencies exist in the plan and in the case, from the period of inception. The deficiencies include not filing a spousal waiver, tax returns or pay stubs, and a plan that calls for payments of \$501.00 per month while also calling for Trustee to make ongoing mortgage payments of \$1,479.00 per month.

Trustee asks the court to grant an Order disgorging attorney fees in the amount of \$1,000.00 in this case which was pre-paid by Debtor.

Debtor's Response

Debtor and his counsel filed a response to this motion. First, Debtor states the deficiencies cited by Trustee have been cured. On July 20, 2013, Debtor submitted an amended plan to cure the feasibility issues raised by Trustee. Trustee has not filed an objection to the amended plan. Debtor submitted the spousal waiver on July 30, 2013. Debtor states she submitted to Trustee the 2012 tax return extension form, pay advances, and proof of delinquent plan payments in the amount of \$1,002.00.

Debtor states that Trustee's belief that Debtor's attorney failed to disclose all the fees received in connection with Debtor's bankruptcy case is not accurate. According to Debtor, and attached declarations of Debtor and Debtor's attorney, at the First Meeting of Creditors, Debtor confused Real Estate Law Center, P.C., with Pinnacle Law Center, P.C. Debtor was referred to Pinnacle Law Center for bankruptcy filing services by Real Estate Law Center, which Debtor retained for a different matter outside the scope of bankruptcy. Debtor's attorney is not a member of Real Estate Law Center and has received \$1,000.00 in attorney's fees prior to filing and expects \$2,000.00 through Debtor's plan.

Finally, Debtor points out that the Rights and Responsibilities do not require the counsel of record to attend the Meeting of Creditors and notes that Debtor was represented by a California licensed attorney.

Pursuant to 11 U.S.C. § 329, the court has authority to order an attorney to disgorge excessive fees. *In re Zepecki*, 258 B.R. 719 (B.A.P. 8th Cir. 2001). Section 329(b) provides that if compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive to the entity that made such payment. Compensation may be reduced if the court finds that the work done was of poor quality. *Hale v. U.S. Trustee*, 509 F.3d 1139 (9th Cir. 2007).

Compensation in this matter may exceed the reasonable value of the services provided because Debtor's counsel was not present at the 341 Meeting of Creditors and the misstatements leading to this Motion occurred at the 341 Meeting of Creditors. Perhaps Counsel's presence at the 341 Meeting would have prevented the issues currently before the court.

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

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

The Motion to Disgorge Attorney's Fees filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is -----.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 7, 2013. 42 days' notice is required. That requirement was met.

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

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

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

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

The Chapter 13 Trustee objection to Debtor's motion on the following grounds:

(1.) The plan will complete in 142 months, as opposed to the 60 months proposed, and this exceeds the maximum time allowed under 11 U.S.C. § 1322(d). The unsecured claim of Calvary Portfolio Services, LLC of \$29,571.00 causes the plan to exceed 60 months.

(2.) The claim for IRS in the amount of \$5000.00 is misclassified as Class 2. It appear the claim is a priority claim based on Court claim #2 filed March 21, 2013 in the amount of \$100.00 and should be provided for in Class 5.

(3.) Under 11 U.S.C. § 1325(b), the plan may not be Debtor's best effort. Debtor's amended plan adds the secured claims of Bank of America and PNC Bank to Class 4 of the plan. The collateral for the security interest is real property located at 16133 Aurora Way, Meadow Vista, California. Debtor indicates that he intends to short sale this property. On Debtor's amended Schedule J, Debtor lists an anticipated mortgage/rent expense of \$2,350.00; however, Debtor is not currently paying this expense and, therefore, Debtor should be contributing the income until that time when there is an actual expense. While Debtor also expects a large security deposit and storage expenses, Trustee is confident Debtor's extra disposable income would be enough to cover these needs.

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

and is not confirmed.

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

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

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

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

14. [12-24723](#)-C-13 DALE GANGL CONTINUED MOTION TO MODIFY PLAN
MMN-3 Michael M. Noble 6-22-13 [[62](#)]

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

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

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

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

This motion was continued from August 6, 2013.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, however, the chapter 13 trustee objects on the following grounds:

(1.) The proposed plan does not provide for the secured claim of HSBC Bank US, N.A.

(2.) According to the trustee's calculations, the plan will require 79 months to complete, in excess of the maximum of 60 months allowed under

11 U.S.C. § 1322(d). Further, the plan pays 0% to unsecured creditors.

(3.) The trustee is unsure of the debtor's income. The supporting pleadings accompanying this motion state that "the debtor's income has decreased," but insufficient verification is provided and the trustee remains uncertain as to the severity and duration of the decrease.

On August 12, 2013, Trustee filed a Supplement to his objection, asking the court to consider the following:

(1.) Trustee's calculations show that a total of \$16,284.56 will be required to complete the plan within 60 months. Trustee acknowledges the plan should actually complete within 60 months because of a provision the Trustee overlooked in the additional provisions stating: "Debtor paid the class two claim in the amount of \$242.00 in April 2012 directly to the lender."

(2.) Trustee understands that Debtor will remedy the missing treatment of HSBC Bank in the Order Confirming the Modified Plan. Trustee reiterates other items included in his previous objection, including whether Debtor's income has actually decreased as set forth in Debtor's Motion, where the current statement of income shows more than the prior Schedule I.

(3.) Trustee responds to the Declaration of Karen Morcomb, filed by creditor Karen Morcomb after the opposition was filed by Trustee to the pending motion. Trustee has four points to address:

(a.) Under the current plan, payments to creditors for allowed priority claims should commence in August with a payment of \$80.47 to be mailed on or about September 6, 2013. The payments should increase to \$535.80 by November. Under the modified plan, this will change and the first payment will be \$119.46 in February 2014, increasing in March 2014 to \$122.57 and remaining at that level until the claim is paid.

(b.) Trustee does not know if Debtor is current and paying any court domestic support obligation due since the filing of the case.

(c.) Creditor Morcomb has filed two claims (#2 and #3); however, Claim #2 was filed as unsecured for \$68,255.29 and is not scheduled to receive a dividend under the plan. Claim #2 may be subject to discharge and may be subject to an adversary proceedings. Claim #3 was filed as priority for \$4,676.74 and secured for \$6,557.63, and the secured claim is not provided for under the plan.

(d.) Creditor Morcomb has notified Trustee that the address of records for payments to be sent is 10280 Reigl Road, Wilton, California.

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

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

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

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

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

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

15. [11-41824](#)-C-13 FRIEDA ZACHARY MOTION TO MODIFY PLAN
CAH-4 C. Anthony Hughes 7-19-13 [[44](#)]

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

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

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

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. Opposition to the Motion was filed by the Chapter 13 Trustee. However, the Opposition was withdrawn (Doc. No. 55) when Debtor's loan modification was granted on August 20, 2013. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on July 19, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the

Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

16. [13-28627](#)-C-13 ROBERT/ANN NELSON OBJECTION TO CONFIRMATION OF
CJR-1 David Foyil PLAN BY BANK OF AMERICA, N.A.
8-8-13 [[29](#)]

Final Ruling: The Objection to Confirmation of Plan by Bank of America, N.A., has been reset for hearing on September 10, 2013 at 2:00 PM.

17. [13-30229](#)-C-13 MATTHEW/MISTY BARBOUR MOTION TO EXTEND AUTOMATIC STAY
SJS-1 Scott J. Sagaria 8-13-13 [[14](#)]

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

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

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 361(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 13-28584-C-13C) was filed on June 27, 2013 and dismissed on July 15, 2013, for failure to file the balance of the Schedules, Statements, and the Chapter 13 Plan due to a clerical error at the legal office which inputting the due date for the balance.

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 Debtor did not file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). 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 11 U.S.C. § 362(c)(3) are:

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

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

Here, Debtors state the reason for the former failure was a clerical error at the legal office. Since the dismissal, Debtors have spent time reorganizing financial affairs and adjusting their monthly expenses in order to propose a feasible Chapter 13 Plan. Debtors have filed in good faith all Schedules, Statements, and a Chapter 13 Plan.

The inadvertence leading to the previous dismissal appears to be due to the negligence of Debtors' attorney, or at least the legal office of Debtors' attorney. Therefore, it is unlikely there is a presumption that Debtors' current filing is in bad faith. Furthermore, by having already filed Schedules, Statements, and a Chapter 13 Plan, Debtors have demonstrated good faith with regard to the current case.

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

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

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

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

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

18. [13-28641](#)-C-13
SLH-1
Thru #19

TAEVONA MONTGOMERY
Seth L. Hanson

MOTION TO VALUE COLLATERAL OF
REAL TIME RESOLUTIONS, INC.
7-26-13 [[15](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 26, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 131 Cedar Rock Circle, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$90,925.00 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 \$242,752.00. Real Time Resolutions' second deed of trust secures a loan with a balance of approximately \$28,643.95. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Real Time Resolutions' secured by a second deed of trust recorded against the real property commonly known as 131 Cedar Rock Circle, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$90,925.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

19. [13-28641](#)-C-13 TAEVONA MONTGOMERY MOTION TO VALUE COLLATERAL OF
SLH-2 Seth L. Hanson WELLS FARGO BANK, N.A.
7-26-13 [[19](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 26, 2013. 28 days' notice is required. That requirement was met.

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6106 Camden Street, Oakland, California. The Debtor seeks to value the property at a fair market value of \$299,765 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 \$309,862. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$54,875. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. However, Wells Fargo Bank filed an opposition to Debtor's Motion.

Creditor's Opposition

Creditor, Wells Fargo Bank, N.A., opposes Debtor's Motion on the grounds that the subject property is not Debtor's primary residence, but a rental property. According to Creditor, applicable law limits the avoidance of junior liens in Chapter 13 cases to residences and not rental properties. *In re Zimmer*, 313 F.3d 1220, 1227 (9th Cir. 2002); *In re Lam*, 211 B.R. 36, 41 (9th Cir. BAP 1997), *appeal dismissed*, 192 F.3d 1309 (9th Cir. 1999). Furthermore, Creditor objects to Debtor's valuation of the property and seeks a continuance for time to obtain a formal appraisal of the property.

Debtor's Response

In response to Creditor's Opposition, Debtor states that Creditor's interpretation of the law concerning lien avoidance and rental properties within Chapter 13 cases is incorrect. Debtor does not object to Creditor's request for a continuance to obtain a valuation of the property.

The Court is not persuaded by Creditor's arguments limiting lien avoidance to a debtor's primary residence. The holdings of *In re Zimmer* and *In re Lam* concern whether a wholly unsecured lien is protected by the antimodification clause of 11 U.S.C. § 1332(b)(2) and not whether 11 U.S.C. § 506(a) is limited to the primary residence of a debtor. Furthermore, the plain language of 11 U.S.C. § 506(a) makes the provision applicable to any "property in which the estate has an interest." However, the court will grant Creditor's request for a continuance to complete a formal appraisal of the property.

The Court's decision is to continue the hearing on the Motion to Value until [date] to give Creditor the opportunity obtain a verified appraisal of the property located at 6106 Camden Street, Oakland, California.

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

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

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

IT IS ORDERED that the hearing on the Motion to Value is continued to [date] at [time].

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

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

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

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

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

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

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

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

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

CASE DISMISSED 8/9/13

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, all creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2013. 14 days' notice is required. That requirement was met.

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

The court's final decision is to grant the motion to reconsider dismissal of case. No appearance required. The court makes the following findings of fact and conclusions of law:

Debtors seek reconsideration of the court's order dismissing Debtors' previous case on July 31, 2013 for Debtors' failure to confirm a plan or failure to set a confirmation hearing date on an amended plan.

Debtors assert that after filing their Chapter 13 petition in 2012, Mr. Jones received a \$100,000 moving bonus from his employer to relocate from Sacramento to San Francisco. In connect with this and related expenditures, the Chapter 13 Trustee require detailed documentation. Providing such documentation has proved difficult. In attempting to send Counsel the documentation, Debtors were unaware that counsel moved offices and sent the Fed-Ex'd documents to counsel's old address, where an unknown individual signed for the documents. Counsel was unable to locate the documents or the person who signed for them. After substantial delay, the documents were reassembled by Debtors and sent overnight to counsel, received less than a week before opposition to the motion to dismiss was due. Due to the complexity of the case and the confusion in obtaining documentation from Debtors, counsel was unable to timely file documents with the court.

The Chapter 13 Trustee filed a statement of nonopposition to Debtors' motion on August 20, 2013.

Federal Rules of Civil Procedure Rule 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

Here, Debtors sufficiently argue that mistake, inadvertence, surprise, or excusable neglect form the basis for reconsidering the court's dismissal of their case. The facts presented do demonstrate that mistake regarding where to send documents and surprise as to the voluminous nature of those documents were major contributing factors to Debtors' delay in meeting the court's demands. Furthermore, Trustee filed a statement of nonopposition, indicating that Debtors' mistake and the subsequent surprise were genuine.

The court will excuse Debtors' failure to timely file an amended plan and will hear the current Motion to Confirm Debtors' Third Amended Plan, filed on July 26, 2013 and set for hearing on September 10, 2013 at 2:00 PM.

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

appearing,

IT IS ORDERED that the motion to reconsider dismissal is granted and the order dismissing the case is vacated.

IT IS FURTHER ORDERED that the court will excuse Debtors' failure to timely file an amended plan and will hear Debtors' Motion to Confirm Debtors' Third Amended Plan on September 10, 2013 at 2:00 PM.

22. [11-42548](#)-C-13
SDB-2

DAVID O'REILLY
W. Scott de Bie

MOTION TO MODIFY PLAN
7-15-13 [[53](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2013. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on July 15, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

23. [12-38348](#)-C-13 TIMOTHY/RANDI SEAL MOTION TO CONFIRM PLAN
BLG-3 Bruce Charles Dwiggin 7-11-13 [[76](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 11, 2013. 42 days' notice is required. That requirement was met.

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

The court's final decision is to grant the Motion to Confirm the Plan. No appearance is required. The court makes the following findings of fact and conclusions of law:

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

The Court's decision is to continue the hearing on the Motion to Value until [date] at [time] to give Creditor the opportunity obtain a verified appraisal of the property located at 114 American Way, Vacaville, California.

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

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

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

IT IS ORDERED that the hearing on the Motion to Value is continued to [date] at [time].

25. [12-41961](#)-C-13
SNM-3

LINDA PHELAN
Stephen N. Murphy

MOTION TO SELL, MOTION FOR
DISBURSEMENT OF SALE PROCEEDS
AND MOTION FOR RELEASE OF FUNDS
HELD BY TRUSTEE
7-25-13 [[51](#)]

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

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

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

The court's final decision is to grant the Motion to Sell. No appearance is required. The court makes the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Trustee to sell property of the estate after a noticed hearing.

On June 11, 2013, in accordance with Debtor's plan and order confirming the Plan, Wells Fargo approved the short sale transaction of property located at 838 Youngsdale Drive, Vacaville, California.

In conjunction with the short sale, Debtor received \$3,000.00 in relocation assistance from the Home Affordable Foreclosure Alternatives Program (HAFA). The \$3,000 offset part of Debtor's moving and relocation expenses, leaving Debtor with out of pocket moving expenses of \$1,964.48. Debtor requests \$1,700 from funds held by Trustee to offset the remaining balance.

On July 16, 2013, pursuant to the Order Confirming the Plan, Debtor submitted an ex parte application for reimbursement of reasonable moving expenses from funds held by Trustee.

On July 22, 2013, the Chapter 13 Trustee requested a retroactive motion to approve the sale of the Property, disbursement of sale proceeds, and release of funds held by Trustee.

Debtor requests an order retroactively authorizing sale of the property, retroactively authorizing disbursement of the HAFA relocation assistance funds of \$3,000.00, and authorizing the release of funds held by Trustee in the amount of \$1,700.00 to Debtor for reasonable moving expenses.

The Chapter 13 Trustee has filed a statement of nonopposition to Debtor's motion.

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

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

The Motion to Sell, Motion for Disbursement of Sale Proceeds and Motion for Release of Funds Held by Trustee 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 Sell, Motion for Disbursement of Sale Proceeds and Motion for Release of Funds Held by Trustee is granted and the proposed Chapter 13 Plan is not confirmed.

26. [13-26065](#)-C-13 MARCO VAZQUEZ BAUTISTA CONTINUED OBJECTION TO
TSB-1 C. Anthony Hughes CONFIRMATION OF PLAN BY DAVID
P. CUSICK
6-20-13 [[41](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 20, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the debtor's plan may not be the debtor's best effort under 11 U.S.C § 1325(b). Debtor listed in Schedule J a rent expense of \$1,400; however, at

the Meeting of Creditors he testified that he is still living in the property he intended to surrender and is not yet paying rent. Thus, Debtor has more disposable income which may be paid into the plan for the benefit of unsecured creditors. Debtor has filed a Motion to Sell Real Property set for hearing on July 16, 2013, the same day as this motion. If the sale occurs, the Trustee does not oppose the Debtor's rent expense.

Hearing on the motion was continued on July 16, 2013 to August 27, 2013 at 2:00 PM to provide time to resolve a Motion to Sell Real Property.

The Motion to Sell Real Property was granted and an order was entered on July 16, 2013. However, on August 12, 2013, Debtor filed an Ex Parte Application requesting the court enter an Amended Order Granting Motion for an Order Allowing Debtor to Sell Real Property because the original buyer backed out and did not fulfill the agreement. Debtor sided a new purchase agreement with Jerry Garza, for the purchase price of \$200,000.00.

Therefore, the sale remains pending and the court the court cannot confirm the plan. Therefore, the court will continue the hearing on the objection until [date] at [time] to allow for resolution of the Ex Parte Application.

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

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

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

IT IS ORDERED that the hearing on the Objection to Confirmation of the Plan is continued to [date] at [time].

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

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

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

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

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

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

(1.) Under 11 U.S.C. § 1325(a)(6), Debtors cannot make required payments because they are delinquent \$1,625.00 under the terms of the proposed modified plan.

(2.) Section 2.08 of Debtors' modified plan proposes to add two post-petition payments of \$2,000. Debtors' ongoing mortgage payment is \$900.00 per month. Trustee's records reflect the current principal due in post-petition mortgage payments is \$2,700.00, three payments.

(3.) Trustee is concerned that Debtors' do not have sufficient income to make the increased plan payments proposed under the modified plan. Debtors are currently delinquent \$5,700.00 under the confirmed plan with a lesser payment.

Debtor's Response

Debtors filed a response to Trustee's objection stating that they intend to be current with the July and August payments of \$1,625.00, on or before the date of the hearing. Debtor further states that the 'current income and expenses statements' have been filed on August 15, 2013.

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

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

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

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

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

28. [13-28782](#)-C-13 SEAN/LISA CONRAD MOTION TO VALUE COLLATERAL OF
SJS-1 Scott J. Sagaria OCWEN LOAN SERVICING, LLC
7-24-13 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 24, 2013. 28 days' notice is required. That requirement was met.

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

The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. The court makes the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 329 Ashwood way, Lincoln, California. The Debtor seeks to value the property at a fair market value of \$273,666 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 \$423,000. Ocwen Loan Servicing's second deed of trust secures a loan with a balance of approximately \$45,495. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Real Time Resolutions' secured by a second deed of trust recorded against the real property commonly known as 329 Ashwood way, Lincoln, 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 \$273,666 and is encumbered by senior liens securing claims which exceed the value of the Property.

29. [13-24485](#)-C-13 ALLAN/RAQUEL TORNEROS MOTION TO CONFIRM PLAN
MDL-4 Michael D. Lee 7-15-13 [[57](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 15, 2013. 42 days' notice is required. That requirement was met.

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

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

The court's final decision is to grant the Motion to Confirm the Plan. No appearance is required. The court makes the following findings of fact and conclusions of law:

This is Debtors' second motion to confirm Debtors' First Amended Plan. Debtors' first motion was denied due to a pending motion to value collateral, Debtors' failure to contribute all disposable income to the Chapter 13 Plan; and Debtors' failure to provide a sufficient declaration under 11 U.S.C. § 1352(a). In this motion, Debtors state that objections previously raised by the Chapter 13 Trustee are resolved. The motion to value was decided and an order was entered on July 16, 2013. Debtors provided a declaration with this motion satisfying the requirements of 11 U.S.C. § 1325(a) and providing substantiation of Debtors' expenses. No opposition was filed.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on May 28, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 24, 2013. 35 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee agrees that a motion to modify is needed and approves of the modified terms of the plan permitting Debtor to obtain an early discharge with the payment of a lump sum. The Chapter 13 Trustee objects to confirmation of Debtors' Modified Plan on the basis that Trustee is not certain what lump sum is required under the plan. Based on Trustee's evaluation, to complete the modified plan, Debtor would need to pay \$347.00 for the month of August, followed by a lump payment of \$15,268 in September. Trustee requests the plan be confirmed on the basis of his understanding regarding the lump sum required under the plan.

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

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

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

IT IS ORDERED that Motion to Confirm the Modified Plan is granted. Debtor's Chapter 13 Modified Plan filed on July 27, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2013. 35 days' notice is required. That requirement was met.

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

The Motion to Confirm the Modified Plan is granted. No appearance required. The court makes the following findings of fact and conclusions of law:

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on July 18, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

32. [12-23792](#)-C-13 TREAVER BROOKS CONTINUED OBJECTION TO CLAIM OF
JDM-3 John David Maxey INTERNAL REVENUE SERVICES,
 CLAIM NUMBER 2
 10-24-12 [[43](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 24, 2012. By the court's calculation, 55 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(b)(1) and Rule 3007-1(d).

The court's tentative decision is to set the matter for evidentiary hearing on September 23, 2013 at 10:00 AM. 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:

On March 12, 2013 the court continued the hearing to set an evidentiary hearing. At the March 12th hearing the court's pre-hearing disposition posted for this matter erroneously stated that it was a final matter and no hearing was required. The parties did not appear, and the court was unable to set discovery deadlines and an evidentiary hearing.

On November 1, 2012 the parties filed a stipulation to continue hearing on Debtor's objection to claim to February 12, 2013.

On January 28, 2013 the parties filed a stipulation continuing the hearing to March 12, 2013 at 2 p.m. On March 12, 2013, the hearing was continued to April 23, 2013, to set an evidentiary hearing. The hearing was again continued on April 23, 2013 to August 27, 2013.

Debtor objects to proof of claim number 2 filed by Creditor Internal Revenue Service ("IRS"). Debtor contends that the claim is inaccurate and/or false and disputes civil penalties assessed in the amount of \$27,334.70. Debtor lists seven different civil penalties and the corresponding interest assessed. Debtor states that Creditor's claims are disputed and will not receive distribution from the Trustee's office until the court allows the distribution.

Debtor states that Creditor argues that Debtor is a responsible person for her son's corporation, River City Protection, Inc. and that on this basis willfully did not pay corporate tax liability. Debtor disputes that she is a responsible person.

Background

Debtor states that on January 29, 2007 her son created a corporation known as River City Protection, Inc. Debtor states that the corporation is not defunct and that she did not participate in the day to day operation of the

corporation. Debtor contends that her only involvement was signing one payroll check, which was signed in her son's absence. Debtor states that she only had authority to sign the check because the bank required two signatures on the account. Debtor states that it appears that her son was not making trust fund payments and Creditor assessed civil penalties as a result.

Debtor filed the instant case on February 28, 2012 to dispute Creditor's claim. Debtor states that on March 28, 2012 Creditor filed a proof of claim in the amount of \$27,334.70.

First, Debtor contends that she is not a responsible person for the subject corporation and therefore is not liable for civil penalties assessed against her. Debtor states that her son set up the corporation with the intent and understanding that Debtor would not participate in running the business. Debtor states that she was listed as the secretary for the corporation, but did not participate in activities of the corporation. Debtor states that she was not responsible for collecting, accounting, or paying employment or excise taxes to Creditor. Debtor states that she was not aware that withholding taxes and tax returns were not being filed or paid and that she did not hire or fire employees. Debtor states that she had check signing authority and only signed one check. Debtor states that she had no control over which creditors should be paid and did not sign corporate tax returns. Debtor states that she does not have an ownership interest in the corporation.

Debtor maintains that pursuant to Internal Revenue Code § 6672(a) Creditor must demonstrate that Debtor was responsible and acted wilfully in not paying taxes.

Second, Debtor argues that Creditor, in proving willfulness, must make a factual showing that Debtor acted with more than mere negligence. Debtor states that she was not involved in preparing checks and did not know whether payroll taxes were being paid. Debtor states that even if she had a duty to perform certain tasks, her inaction can only amount to mere negligence.

Creditor IRS' Opposition

Creditor responds that its claim filed in the amount of \$27,334.70 arises from assessed outstanding federal Trust Fund Recovery Penalty liabilities, plus statutory interest provided by law. Creditor states that penalties were assessed pursuant to 26 U.S.C. § 6672 as a result of unpaid employment taxes of River City Protection, Inc., the subject corporation. Creditor states that penalties were assessed for the following quarters:

1. December 31, 2008;
2. March 31, 2009;
3. June 30, 2009;
4. September 30, 2009;
5. December 31, 2009;
6. March 31, 2010; and
7. June 30, 2010.

Creditor contends that the court should not rule on the objection pending discovery in order to allow counsel to determine whether a compromise of Creditor's claim is possible.

Creditor argues that Debtor has not satisfied her burden in disputing the prima facie validity of Creditor's proof of claim.

First, Creditor argues that Debtor is a responsible party within the meaning of Internal Revenue Code § 6672 since she was an owner and officer of the subject corporation and had signatory authority on a company bank account. Creditor states that Debtor signed numerous checks.

Notably, this appears to be a contested fact since Debtor maintains that she signed only one check shortly after the corporation was formed.

Creditor makes the following allegations in support of its opposition:

33. Debtor signed numerous checks
34. Debtor had signatory authority over the company bank account
35. Debtor had the authority to direct or authorize payment of creditors
36. Corporation was run out of Debtor's home
37. Debtor used corporate funds to pay personal expenses
38. Debtor continued to draw a salary despite tax liabilities

Second, Creditor argues that Debtor acted willfully when she paid other creditors and her family members while employment taxes were outstanding. Creditor states that determinations under § 6672 are fact-driven and in some cases such determinations warrant the abstention of a tax determination by a bankruptcy court. Creditor states that if Debtor seeks to challenge its claim, discovery is warranted.

Creditor requests that the court set the objection for a scheduling conference to allow the parties to set discovery deadlines so that Creditor can take depositions and request documents.

The court shall issue an Evidentiary Hearing Order for this Objection to Claim setting forth the following dates and deadlines:

1. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1
2. The Evidentiary Hearing on Objection to Claim shall be conducted at 10:00 AM on September 23, 2013.

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

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

The Objection to Claim 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

1. Evidence shall be presented pursuant to Local Bankruptcy Rule 9017-1.

2. The Evidentiary Hearing on Objection to Claim shall be conducted at 10:00 AM on September 23, 2013.

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

Correct Notice Provided. The Proof of Service filed on July 26, 2013, states that the objection and notice of hearing was served on Debtor and Debtor's Attorney. 28 days' notice is required. That requirement was met.

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

The objection to claimed exemptions is sustained and the exemptions are disallowed in their entirety. No appearance required. The court makes the following findings of fact and conclusions of law:

The Trustee objects to the Debtor's use of the California exemption C.C.P. § 704.730 in the amount of \$152,000, exempting Debtors' interest in real property located at 1124 Cresthaven Drive, Roseville, California. Debtors admitted they are not eligible for that exemption in their Ex Parte Application to Convert from Chapter 7 to Chapter 13 (Doc. No. 22, Page 2, Lines 8-12).

The Trustee's objection is sustained and the claimed exemptions are disallowed.

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

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

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

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

CASE DISMISSED 8/6/13

Local Rule 9014-1(f)(3) 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 August 8, 2013. As a 9014-1(f)(3) motion, there is no required notice period.

No Tentative Ruling: The Motion to Confirm the Modified Plan Proposed After Confirmation has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Debtor seeks an order Vacating the Order to Dismiss the Case entered on August 6, 2013 (Doc. No. 212). The case was dismissed for unreasonable delay that is prejudicial to creditors.

Federal Rule of Civil Procedure 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1.) Mistake, inadvertence, surprise, or excusable neglect;
- (2.) Newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b).
- (3.) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4.) The judgment is void;
- (5.) The judgement has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6.) Any other reason that justifies relief.

Fed. R. Civ. P. 60(b). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir.

1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted in extraordinary circumstances, *id.* at 863 n.11.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., *MOORE'S FEDERAL PRACTICE* ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

Here, Debtor asserts that the prior order dismissing the case should be vacated because the court inappropriately based its dismissal, under 11 U.S.C. § 1307(c), on unreasonable delay that was prejudicial to creditors. The Debtors argue that the court's order was entered without mention of how the delay was "unreasonable" or how the delay was "prejudicial" to creditors.

Debtor recognizes that there were delays in achieving confirmation of their Chapter 13 plan. In the earlier stages of the case, Debtors were faced with set-backs while trying to negotiate a loan modification and second mortgage forgiveness with Bank of America. According to Debtors, the "flip flopping" nature of Bank of America resulted in several amended plans and several amended income and expense schedules. As of the Fourth Amended Plan, Debtors state that all required payments to Bank of America had been established.

The Fourth Amended Plan was filed on March 25, 2013. None of Debtors' secured creditors opposed the plan; however on May 21, 2013, the plan was not confirmed due to the objection of unsecured creditor Smedberg. Debtors' motion to confirm was denied because the court was unable to evaluate feasibility of a plan because the secured status of Smedberg was in question and because Debtors' income and expense information was old and amendments made to Schedules I and J only corrected errors on the original Schedules. Civil Minutes, Dckt. 194.

On July 30, 2013, Debtors filed a Fifth Amended Plan (Doc. No. 203) and Motion to Confirm the Fifth Amended Plan (Doc. No. 205). Debtors state it is identical to the Fourth Amended Plan, but includes an explanation of Debtors history with Bank of America, how Debtors' income varied, and how a misunderstanding occurred with the Trustee, all of which required several amended plans with slightly different payments. Debtors allege that the set-backs did not prejudice creditors or delay any required payments to any secured creditor or Trustee.

In conclusion, Debtors remind the court that the Chapter 13 Trustee did not object to Debtors' Fourth Amended Plan, which is identical to the Fifth Amended Plan and that no secured creditors objected to Debtors' Fourth Amended Plan. Furthermore, Debtors highlight that none of the factors under 11 U.S.C. § 1307(c) apply in this instance and the court did not find unreasonable delay that prejudiced creditors in its order to dismiss. Finally, Debtors reassert that the only objector to their plan is Smedberg, who is the entity that caused the delay at issue and is only interested in receiving payment

prior to secured creditors.

Trustee's Opposition to Debtor's Motion to Vacate

Trustee opposes Debtor's Motion on the following grounds:

Trustee notes that on August 19, 2013, Debtors filed a Notice of Appeal of the Court's Order Dismissing Debtors' case. The dismissal Order was entered on August 6, 2013. Trustee asserts that Debtors' pending appeal denies the Court jurisdiction to vacate the order.

Trustee basis his argument on *In re Marino*, where the 9th Circuit B.A.P. reiterated that a "pending appeal divests a bankruptcy court of jurisdiction to vacate or modify an order which is on appeal." 234 B.R. 767, (9th Cir. BAP 1999), citing *In re Hagel*, 184 B.R. 793, 798 (9th Cir. BAP 1995). The *Marino* court further stated that filing a notice of appeal "confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *In re Marino*, 234 B.R. at 767, citing *Trulis v. Barton*, 107 F.3d 685, 694-95 (9th Cir. 1995). The rule that divests lower courts of jurisdiction of aspects of a case involved in an appeal is a judge made doctrine, created to avoid confusion and waste of time. *In re Padilla*, 222 F.3d 1184, 1190 (9th Cir. 2000), citing *In re Thorp*, 655 F.2d 997, 998 (9th Cir. 1981).

Trustee further argues that if the court determines that jurisdiction over the Motion to Vacate is proper, then it find that the Order granting Trustee's Motion to Dismiss was not an error. Trustee then reiterates the procedural history of the case outlining unreasonable delay, pursuant to 11 U.S.C. § 1307(c). Notably, Trustee highlights the four Motions to Dismiss filed for unreasonable delay and Debtors' four previous motions to approve the original and amended plans of Debtors.

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 Vacate Dismissal 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 Vacate Dismissal is -----, and the August 6, 2013 order of this court dismissing the Chapter 13 case, Dckt. 212, is -----.