

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

**Honorable Christopher M. Klein**  
Chief Bankruptcy Judge  
Sacramento, California

September 10, 2013 at 2:00 p.m.

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1. [13-29806](#)-C-13 BRIAN/RACHEL DROULLARD MOTION TO VALUE COLLATERAL OF  
PK-2 Richard Kwun HARLEY-DAVIDSON FINANCIAL  
SERVICES  
8-5-13 [[19](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 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 \$12,000.00.** 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 a 2011 Harley Davidson Dyna Motorcycle. The Debtor seeks to value the property at a replacement value of \$12,000 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 lien on the vehicle's title secures a purchase-money loan incurred in an unknown amount, more than 910 days prior to filing of the petition, with a balance of approximately \$14,122. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$12,000.00. *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 Harley Davidson Financial Services secured by an asset described as 2011 Harley Davidson Dyna Motorcycle is determined to be a secured claim in the amount of \$12,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$12,000.00 and is encumbered by liens securing claims which exceed the value of the asset.

2. [13-29806](#)-C-13 BRIAN/RACHEL DROULLARD MOTION TO VALUE COLLATERAL OF  
PK-3 Richard Kwun SANTANDER CONSUMER USA  
8-5-13 [[24](#)]

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 August 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 \$6,050.00.** 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 a 2007 Volkswagen Jetta. The Debtor seeks to value the property at a replacement value of \$6,050.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in and unknown amount, more than 910 days prior to filing of the petition, with a balance of approximately \$12,397.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$6,050.00. 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 Santander Consumer USA secured by an asset described as 2007 Volkswagen Jetta is determined to be a secured claim in the amount of \$6,050.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$6,050.00 and is encumbered by liens securing claims which exceed the value of the asset.

3. [13-30112](#)-C-13 BRENT/BONNIE NAPTON  
BLG-1 Pauldeep Bains

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
8-8-13 [[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 August 8, 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 1250 Darling Way, Folsom CA 95630. The Debtor seeks to value the property at a fair market value of \$315,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$322,000.00. Wells Fargo Bank, NA's second deed of trust secures a loan with a balance of approximately \$93,153.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, NA secured by a second deed of trust recorded against the real property commonly known as 1250 Darling Way, Folsom CA 95630, 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 \$315,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

4. [13-20613](#)-C-13    TERENCE/CHRISTINA SHANE    MOTION TO CONFIRM PLAN  
CAH-2                    C. Anthony Hughes                    7-17-13 [[68](#)]

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 18, 2013. 42 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee objects to confirmation of the plan on the following grounds:

(1.) Debtors propose to value the secured claim of Bank of America, listed in Class 2 of the Plan, but has not filed a motion to value collateral. Therefore, Debtors cannot make the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6).

(2.) Co-Debtor, T. Shane, lists his income tax deduction on amended Schedule I in the amount of \$160.32 per month. This appears to be

approximately 4% of Debtors gross income of \$6,490.91 per month. This income tax deduction is not sufficient to pay Debtors' taxes and Debtors may owe taxes at the end of the year. Therefore, it appears that Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

5. [13-28113](#)-C-13 ALBERT WINSTON BAUTISTA MOTION TO CONFIRM PLAN  
BMV-2 Bert M. Vega 7-22-13 [[24](#)]

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 22, 2013. 42 days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to plan confirmation on the following grounds:

(1.) The plan relies on a pending Motion to Value Collateral of Wells Fargo, which was set for hearing on August 20, 2013. Trustee believes the motion was not granted and, if that is true, the Debtor's plan does not have sufficient monies to pay the claim in full and should be denied confirmation under 11 U.S.C. § 1325(a)(6). The court entered an order on August 22, 2013 denying Debtor's motion to value. (Dkt. 31).

(2.) Debtor is over the median income and proposes payments of \$2,290.00 for 60 months with 0% dividend to unsecured creditors. At the First Meeting of Creditors, Debtor admitted he received a tax refund of \$11,698.00 from his 2012 tax return but Debtor did not propose to pay this into the plan and has not adjusted his income tax withholdings on Schedule I to assure that he does not receive such a significant tax refund next year. The plan does not reflect Debtor's best efforts under 11 U.S.C. § 1325(b).

(3.) Debtor's pay advices reflect a deduction for a 401k loan in the amount of \$82.19 per pay period, totaling \$164.38 per month. This deduction is not listed on Schedule I or J. Debtor cannot make payments of \$2,290.00 per month as the net income on Schedule J is \$2,290.00 and the deduction referenced is not included. 11 U.S.C. § 1325(a)(6).

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

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

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

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

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

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 30, 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.) Debtors' Motion, Declaration, and Section 6.01 of the Modified Plan state Debtor paid a total of \$2,797.94 through month 19; however, Debtor has actually pay \$2,945.20 through month 19 with the last payment posted August 12, 2013 in the amount of \$142.26. Debtors' plan is not accurate.

(2.) In comparing Debtors' Schedule J with Debtors' prior Schedule J, there appears to be an unexplained increase in business expenses from \$1,150.00 to \$1,328.91. This figure is inconsistent with the declaration of co-Debtor R. Moffitt, which states that there has not been much work because the construction industry has been slow. Debtor should provide an explanation for the increased expense.

(3.) The R. Moffitt declaration reflects an understanding that payment of \$130.00 is due on August 25, 2013; however, Section 6 of the modified plan proposes this payment to begin in month 20, which is September.

(4.) Debtors' modified plan proposes a decrease in the percentage to unsecured creditors from 1.01% to 0.01% where the Trustee has already disbursed up to 0.37% and calculates the modified plan will pay approximately 1.123%.

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.

- 7. [12-33314](#)-C-13 DALE/FRANCES ODOM MOTION TO APPROVE LOAN  
PGM-5 Peter G. Macaluso MODIFICATION  
8-6-13 [[99](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on August 6, 2013. 28 days' notice is required; that requirement was met.

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

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

Movant Debtor requests that the court approve a modification of their mortgage with Bank of America, N.A. concerning real property commonly known as 3184 Bacon Island Street, West Sacramento, California. The trial period payments will be in the amount of \$2,520.97 beginning September 2013, with the last payment under the trial loan modification to be made by

November 1, 2013. Once the trial period is complete, the loan will be modified. The interest rate and monthly P&I will be fixed for the life of the mortgage unless the initial modified interest rate is below current market interest rates. A copy of the trial period loan modification agreement with Bank of America, N.A., containing its precise terms, is attached to the instant motion as Exhibit A (Docket Item No. 76).

The court will enter an order approving the trial period plan payments and requiring Debtor to submit a later motion to approve the final terms of the permanent loan modification once the trial period is complete.

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

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

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

**IT IS ORDERED** that the Motion to Approve Loan Modification is granted and the Debtor may commence making the three required payments of \$2,520.97.

**IT IS FURTHER ORDERED** that once Debtor completes the trial period plan payments and receives a permanent loan modification offer from Bank of America, N.A., a motion to approve the terms of the permanent modification will be presented to the court.

8. [12-33314](#)-C-13 DALE/FRANCES ODOM MOTION TO MODIFY PLAN  
PGM-6 Peter G. Macaluso 8-6-13 [[93](#)]

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 grant the Motion to Confirm the Modified Plan.** Oral argument may be presented by the parties at the

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this 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 because it proposes to reclassify Bank of America from a Class 1 secured creditor to a Class 4 secured claim paid directly by Debtor based on a trial loan modification. Debtor's filed a Motion for Order Approving Trial Loan Modification set to be heard in conjunction with the current Motion to Modify. Debtors' modified plan includes no provisions should be modified plan be granted and Debtor's trial loan modification denied.

**Debtors' Response**

Debtors respond to the Chapter 13 Trustee's objection, stating that Bank of America, N.A. is a T.A.R.P. recipient, which makes Debtors a third party beneficiary of the Department of Treasury contract under the terms of T.A.R.P. If the loan modification is denied, Debtors will filed an adversary proceeding against Bank of America, N.A. for bad faith denial, and/or surrender the real property to the plan terms.

Debtor received a trial period loan modification and set a motion to approve the loan modification for September 10, 2013. The court will be approving the Motion to Approve Loan Modification. Therefore, Trustee's concerns regarding Debtors' Motion to Modify are resolved.

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

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

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

The Motion to Confirm the 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 granted and the proposed Chapter 13 Plan is confirmed.

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

Correct Notice Provided. The Proof of Service filed on August 7, 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. § 704.140. Debtor is married and his spouse is not included in the bankruptcy. Debtor has not filed a Spousal Waiver for the use of the California State Exemptions under the California Code of Civil Procedure § 703.140. Debtor is not entitled to use of the Exemptions claimed on Schedule C.

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 7, 2013. 14 days' notice is required. That requirement was met.

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

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

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

(1.) Under 11 U.S.C. § 1322(d), the Debtor's Plan exceeds the maximum amount of time for the Debtor to complete payments. The Debtor lists \$64,000 in mortgage arrears with a monthly dividend of \$608.83. At this rate, the Debtor would have to pay \$1,066.67 per month to pay the entire arrearage claim within 60 months. The Debtor has filed a declaration indicating that the arrearage amount of \$64,000 is a mistake, but has not provided the correct amount of arrearage for evaluation.

(2.) The Trustee argued that the Debtor had not provided for a secured claim against the residential real property at 7726 Quinby Way, Sacramento, California, in violation of 11 U.S.C. § 1325. The Debtor, however, filed a Motion for Valuation of Collateral of the 7726 Quinby Way, Sacramento, California property, and the Motion was granted on August 27, 2013. Thus, this issue with the Plan is resolved.

(3.) The Plan may fail liquidation, in that it does not pay unsecured creditors what they would receive in the event of a Chapter 7, 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity totals \$33,930.00, while the Debtor is proposing a 0% dividend to unsecured creditors. The Debtor is married, but has not included his spouse in the bankruptcy. Additionally, Debtor has not filed a Spousal Waiver for use of the

California State Exemptions under the CCCP § 703.140. The Trustee's Objection to Exemptions, TSB-1 is set for hearing today.

(4.) The Plan does not represent the Debtor's best efforts under 11 U.S.C. § 1325(b), on the basis that Debtor's projected disposable monthly income listed on Schedule J totals \$2,495.00. The Debtor, however, is proposing a plan payment of only \$2,150.00 for the first 12 months.

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

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

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

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

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

11. [12-23420](#)-C-13 KION/LISA HILLARY MOTION TO MODIFY PLAN  
LLL-5 7-27-13 [[131](#)]

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 27, 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.) The proposed modified plan does not provide for creditor PRO Solutions. Under the confirmed plan, creditor was listed and had filed two proofs of claim for delinquent HOA fees. Trustee has disbursed a total of \$2,664.24 in principal for both claims.

(2.) Debtors are proposing to reduce dividend to unsecured creditors from 25% to 3.28%. According to Trustee's records, approximately \$2,281.03 (6.43%) has been disbursed to the unsecured creditors.

Trustee requests that the Order Confirming the Modified Plan provide that any payments made to creditors pursuant to the earlier plans of Debtor are authorized by this plan.

(3.) The supporting motion does not address plan payment due for July 25, 2013 and misstates the total Debtors have paid into the plan.

Trustee is unclear on the proposed plan payments and asks that the Order Confirming the Modified Plan provide that Debtor is to pay \$85,221.64 through July 2013 and then \$4,600.00 for the remainder of the 60 month plan.

In the Order Confirming the Modified Plan, Debtor will provide that any payments made to creditors pursuant to the earlier plans of Debtor are authorized by this plan and provide that Debtor is to pay \$85,221.64 through July 2013 and then \$4,600.00 for the remainder of the 60 month plan. The modified Plan does comply 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 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 granted and the proposed Chapter 13 Plan is confirmed.

**IT IS FURTHER ORDERED** that in the Order Confirming the Plan, Debtor will provide that any payments made to creditors pursuant to the earlier plans of Debtor are authorized by this plan and provide that Debtor is to pay \$85,221.64 through July 2013 and then \$4,600.00 for the remainder of the 60 month plan.

12. [13-26421](#)-C-13 SHARON BORDEN  
NLE-3

CONTINUED MOTION TO DISGORGE  
ATTORNEY 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 Parwatikar, 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 fo \$1,002.00.

Debtor states that Trustee's belief that Debtor's attorney did not 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).

At the hearing on the motion set for August 27, 2013, the court continued the matter until September 10, 2013. As part of the continuation, Counsel for Debtor was required to file a 2016(b) Statement with the court for attorney Robert Burns by the end of the day on August 27, 2013. The Chapter 13 Trustee was given a deadline of September 5, 2013 to file a supplemental brief in support of his motion. Debtor's response is set to be due on September 9, 2013.

#### **2016(b) Statement for Attorney Robert Burns**

As part of the continuance, counsel for Debtor was required to file a 2016(b) statement for attorney Ronald Burns by the end of the day on August 27, 2013. No such statement was filed with the court.

In lieu of a 2016(b) statement for Robert Burns, Debtor's counsel filed a "Disclosure of Compensation of Attorney for Debtor" (Dkt. 60) signed by Deepak S. Parwatikar and a "Declaration of Deepak S. Parwatikate in Support of Disclosure of Compensation of Attorney for Debtor" (Dkt. 61). In the declaration, counsel states he paid Attorneys on Demand \$150.00 to have Ronald Burns appear at the 341(a) Meeting of Creditors. Counsel attached receipt of payment to Attorneys on Demand as exhibit A to his declaration.

#### **Trustee's Supplemental Declaration in Support of Motion to Disgorge**

The Chapter 13 Trustee filed a supplemental declaration in support of his Motion to Disgorge attorneys fees and asserts the following:

(1.) Debtor's counsel did not file a 2016(B) statement for Ronald Burns with the court. This inaction, taken into consideration with the content of the documents counsel for Debtor did file with the court, leaves Trustee concerned that fees in this case were shared with non-attorneys. There is no evidence to show that Attorneys on Demand is owned and operated by an attorney.

(2.) Mr. Parwatikar filed a response to Trustee's Motion to Disgorge, stating that Debtor was referred to Pinnacle Law Center, P.C., to handle her bankruptcy filing by another firm, Real Estate Law Center, P.C. and at the 341(a) Meeting, when Debtor stated she had already paid Pinnacle \$4,000.00, she was mistaken, as that payment was to Real Estate Law Center and not Pinnacle. Mr. Parwatikar also filed a declaration in response to Trustee's Motion to Disgorge. In the declaration, he states that at the 341(a) Meeting of Creditors that he is not a member or associate of Real Estate Law Center, P.C. (Dkt. 42, Para. 6, Pg. 2). Trustee presented the following information for the court to consider in light of Mr. Parwatikar's claim that Real Estate Law Center and Pinnacle Law Center are separate entities and he is not associated with Real Estate Law Center:

(a.) Ripoff Report, listing Real Estate Law Center, P.C., with Mr. Parwatikar's name mentioned in connection with a scam complaint. (Exh. A). The same documents connects Mr. Parwatikar with Balanced Legal Group and Legal Justice Law Center. Mr. Parwatikar's profile on the California Bar Website lists his address as "The Balanced Legal Group." (Exh. B).

(b.) FindLaw listing for a profile updated on October 5, 2012 for Deepak Parwatikar, Real Estate Law Center, P.C., 695 South Vermont Avenue, Los Angeles, California. The address is almost identical to the address on file with the court for Pinnacle Law Center, with the difference being the Suite numbers. (Exh. C).

(c.) Ripoff Report, Complaint of Legal Justice Law Center, connecting Mr. Parwatikar to a scam. (Exh. E).

(d.) Real Estate Law Center Contract Review article mentioning a connection between Real Estate Law Center and Pinnacle Law Center and possible sharig of fees for referrals. (Exh. F).

(3.) At the hearing on Trustee's Motion to Disgorge, attorney Tala Rezai appeared and stated multiple times she was an associate for Pinnacle Law Center. A California Bar website search for Tala Rezai revealed and address of 5505 Newcastle Lane, Calabasas, California (Exh. G).

(4.) On the website of Real Estate Law Center, P.C., Tala Rezai is listed third on the Law Center's list of attorneys. (Exh. H). The credentials match those of the Tala Rezai reported to the California Bar. An article included as Exh. D mentions Tala Rezai in connection with Real Estate Law Center.

Trustee is concerned with the conduct of counsel and for Debtor in this case. The veracity of Mr. Parwatikar's declaration is undermined by the documents presented, as are the claims of Ms. Rezai. The Trustee questions what other information may be false, misleading, or less than badid in Debtor's petition and schedules.

**Dismissal**

On September 5, 2013, the court entered an order dismissing Debtor's Chapter 13 case. (Dkt. 75).

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 -----.

13. [13-28921](#)-C-13 BURT/LORI HESTAND OBJECTION TO CONFIRMATION OF  
NLE-1 PLAN BY DAVID P. CUSICK  
8-15-13 [[17](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on August 15, 2013. 14 days' notice is required. That requirement was met.

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

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

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

(1.) Under 11 U.S.C. § 1325(a)(6), the Debtors cannot make all payments under the plan and comply with the plan. The Debtors have proposed to value the secured claim of Sierra Central Credit on a second deed of trust for the Debtor's residence, but have not yet filed a Motion to Value Collateral.

(2.) The Plan is not feasible. Debtors propose to pay a 100% dividend to unsecured creditors, but Section 2.15 lists their total unsecured debts as \$92,993.98. Debtors' Schedules D and F indicate that the total unsecured debts are actually \$125,955.00. The plan will only pay 78% of the unsecured debt within 60 months.

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

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

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

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

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

14. [13-29322](#)-C-13 ROSANNA MAGNISI MOTION TO VALUE COLLATERAL OF  
PGM-1 TOYOTA MOTOR CREDIT CORPORATION  
8-12-13 [[16](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 12, 2013. 28 days' notice is required. That requirement was met.

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

**The court's tentative decision is to set an evidentiary hearing on the Motion to Value Collateral on [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 a 2008 Scion XB. The Debtor seeks to value the property at a replacement value of \$4,700.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred on May 24, 2008, more than 910 days prior to filing of the petition, with a balance of approximately \$6,411.13. Debtor declares that the vehicle is in poor condition, and that a number of items in the vehicle (including the water pump, paint, alternator, and battery) are in need of repair, thereby reducing the retail value of the vehicle. Creditor Toyota Motor Credit Corporation filed an opposition to Debtor's Motion in response.

### **Creditor's Opposition**

Creditor, the Toyota Motor Credit Corporation, asks that the Court deny or order the Debtor to amend the Motion to Value, so that Creditor may collect the secured sums owed to it provided by the parties' 2008 Security Agreement. Creditor also takes issue with Debtor's valuation of the subject automobile at \$4,700.00.

Creditor claims that the replacement value of Debtor's 2008 Scion XB is \$14,025.00. Creditor offers the declaration of Mary Ibarra, the company's Litigation Administrator, to attest to her use of the Kelly Blue Book Auto Market Report in determining the alternative value of the property. Creditor prepared a suggested retail breakdown showing its appraisal of the subject vehicle, valued at \$14,025.00, attached as Exhibit "C" of its Opposition to the Debtor's Motion to Value. Creditor claims that this represents the actual value of the collateral for that particular year, make, model, and general features. Moreover, Creditor maintains that the vehicle has not been misused and is in good repair.

The court's decision is to set the Motion to Value for an evidentiary hearing to resolve the competing valuations of the subject collateral. The evidentiary hearing shall be set for [date] at [time].

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

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

The 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 an evidentiary hearing on the Motion to Value is to be held on [date] at [time].

15. [11-46827](#)-C-13 UBONG INYANG CONTINUED OBJECTION TO NOTICE  
PGM-3 OF POSTPETITION MORTGAGE FEES,  
EXPENSES, AND CHARGES  
3-7-13 [[57](#)]

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

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

**No Tentative Ruling:** This Objection to a Notice of Post-Petition Mortgage Fees, Expenses and Charges has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b) (1) and Rule 3007-1(d). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

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

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

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623

(9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

Debtor contends that under the plain language of Federal Rule of Bankruptcy Procedure 3002.1(d), the type of Notice at issue here is not subject to the prima facie presumption of validity afforded to Proofs of Claim under Federal Rule of Bankruptcy Procedure 3001(f). GMAC, Debtor argues, has made no showing to substantiate the validity of the expenses asserted in this Notice of Post-Petition Mortgage Fees, Expenses and Charges. Absent a presumption of validity, GMAC has the burden of showing the reasonableness of its fee claim. *Atwood v. Chase Manhattan Mortgage Co. (In re Atwood)*, 293 B.R. 227, 233 (9th Cir. B.A.P. 2003). Since, Debtor contends, GMAC has the affirmative burden of showing the reasonableness of its claim, Debtor need only point out the absence of such a showing in order to invalidate it.

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

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

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

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





ruling, the court will make the following findings of fact and conclusions of law:

Bank of America, N.A., junior lien holder on Debtors' property commonly known as 14415 Vista Ct., Pine Grove, California, objects to confirmation of the Plan on the basis that under 11 U.S.C. § 1322(b)(2), the Debtor is impermissibly modifying the Secured Creditor's original Note and Deed of Trust. 11 U.S.C. § 1322(b)(2) states, in relevant part, that a plan may:

[M]odify the rights of holders of secured claims, other than a claim secured only be a security interest in real property that is the debtor's principal residence...

Creditor argues that based on its internal Comparative Market Analysis, the subject property is actually worth more than the amount alleged by debtors. The Comparative Market Analysis reflects a range of \$156,400.00-\$211,600.00 for the value of the property. (Dckt. 34). The first lien owed is \$123,132.31. Creditor argues that based on its valuation, there is equity in the property. Therefore, its claim should be treated as secured and any pre-petition arrears should be paid in full through the plan with on-going payments to be maintained.

Creditor also asks that, in the case that the Court finds that the claim is not subject to a cram down, Creditor be allowed to object to the Plan for no providing for the maintenance of post-petition payments. Debtor's proposed Plan does not require the maintenance of ongoing post-petition monthly payments, as required by 11 U.S.C. § 1322(b)(5).

The court is faced with competing factual allegations regarding the value of the subject property. To resolve this evidentiary dispute, the court may set the Objection to Confirmation for an evidentiary hearing to determine the appropriate value for the subject property.

In the alternative, the court may deny Bank of America, N.A.'s objection as moot. The Chapter 13 Trustee filed an Objection to Confirmation of Debtors' plan that the court is tentatively set to grant on September 10, 2013. Therefore, if the court sustains Trustee's objection and denies plan confirmation, Bank of America, N.A.'s objection may be denied as moot.

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

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

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

**IT IS ORDERED** that the Objection to Confirmation is ----- .

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on August 7, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtors cannot afford to make payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors' plan relied on their Motion to Value Collateral of Bank of America, DEF-1, which was set for hearing and then withdrawn on August 14, 2013. As a result, the Plan does not have sufficient monies to pay the claim in full and the Plan cannot be confirmed.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor by certified mail, and Office of the United States Trustee on August 23, 2013. 14 days' notice is required. This requirement has been met.

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

**The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim 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 547 Santa Ana Avenue, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$130,000 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 \$144,334.35. Citibank, N.A.'s second deed of trust secures a loan with a balance of approximately \$74,091.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Citibank, N.A. secured by a second deed of trust recorded against the real property commonly known as 547 Santa Ana Avenue, 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 \$130,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

21. [11-49331](#)-C-13RONALD ROJO  
MLA-6

MOTION TO MODIFY PLAN  
7-17-13 [[94](#)]

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.) Debtor filed an amended Schedule I reflecting the same earning

sand deductions as the previous Schedule I. Trustee notes that the employee portion of social security increased to 6.2% on January 1, 2013 from 4.2% in effect in 2011. Debtor has not furnished pay stubs to support the amended Schedule I. Debtor now reports he is married but provides no information regarding his spouse. Debtor's plan is not his best efforts under 11 U.S.C. § 1325(b) and may not be proposed in good faith under 11 U.S.C. § 1325(a).

(2.) The declaration filed by Debtor is not sufficiently equivocal as required by 28 U.S.C. 1746 and is, therefore, insufficient evidentiary support for Debtor's proposed plan.

(3.) The modified plan proposes to increase payments from \$550.00 to \$764.98; however, the declaration does not address changes in Debtor's expenses. Debtor may not be able to make payments under the plan as required by 11 U.S.C. § 1325(a)(6).

(4.) Debtor's Chapter 13 Plan is not properly signed as required by Local Bankr. Rule 9004-1(c), which requires the name of the person signing the document to type their name below the signature. Debtor did not type his name below the signature.

The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. It also does not to comply with 28 U.S.C. 1746 and Local Bankr. Rule 9004-1(c).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on August 12, 2013. 28 days' notice is required; that requirement was met.

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

**The Motion to Approve Short Sale is granted.** No appearance required. The court makes the following findings of fact and conclusions of law:

Movant Debtor requests that the court enter an order authorizing Debtors to short sell their real property located at 5161 Metate Trail, Placerville, California. The property is listed in the Chapter 13 Plan as a surrender. The buyer, MNB Development, Inc. is not related to Debtors and will purchase the house at the sale price of \$316,382.50.

Debtors will received \$3,000.00 in proceeds from the sale, to be used for Debtors' moving expenses. All costs of sale will be paid in full from sale proceeds.

The Chapter 13 Trustee filed a statement of non-opposition to Debtors' Motion.

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

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

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

**IT IS ORDERED** that the Motion to Approve Short Sale is granted.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 17, 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 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 Motion to Confirm the Plan is granted.** No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. Creditors, Dianne and Jason Tiffany filed a statement of non-opposition to Debtors' plan. 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 July 16, 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 - No Opposition Filed

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on August 9, 2013. 28 days' notice is required; that requirement was met.

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

**The Motion to Approve Loan Modification is granted.** No appearance required. The court makes the following findings of fact and conclusions of law:

Movant Debtor requests that the court approve a modification of their mortgage with Seterus, Inc., as agent for Lender, BAC Home Loan Servicing, concerning real property commonly known as 1987 Woodland Drive, Yuba City, California. The new loan payments will be in the amount of \$936.69 at an interest rate of 4.00% for a duration of 480 months. The modified principal balance of the note will include all amounts and arrearages that will be past due as of the effective date of the loan modification. The new principal balance of the loan will be \$159,951.79. A copy of the loan modification agreement with Seterus, Inc. as agent for lender, containing its precise terms, is attached to the instant motion as Exhibit A (Docket Item No. 76).

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 13, 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 overrule the Objection.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposed confirmation of the Plan on the basis that at the time of the filing, the plan relied on a pending Motion to Value Collateral of Katherine Webb, which was set for hearing on July 2, 2013. The Trustee also opposed confirmation on the basis that Debtor may not be able to make the payments under the plan or comply with the plan under 11 U.S.C § 1325(a)(6) due to secured judgment liens held by Bancard Portfolios, Inc, Citibank and FIA Card Services. At the time of the original hearing of the Trustee's Objection to Confirmation, Debtor had filed to avoid these 3 liens.

#### **Debtor's Reply**

The debtor replied to the Trustee's opposition by agreeing that the plan should not be confirmed until these motions are approved. The motions to avoid judgment liens held by Bancard Portfolios, Inc, Citibank and FIA Card Services were heard on July 2, 2013 by this Court. All were granted. Debtor's Motion to Value Collateral of Katherine Webb was set for an evidentiary hearing before the Honorable David Russell. On August 19, 2013, Judge Russell granted Debtor's Motion to Value Collateral of Katherine Webb.

Because Debtor's motions to avoid the 3 judgment liens and the Motion to Value Collateral of Katherine Webb have been granted, Debtor has corrected the deficiencies objected to by the Trustee, rendering Trustee's objections to the Plan moot.

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is overruled and the proposed Chapter 13 Plan is confirmed.

26. [13-28641](#)-C-13 TAEVONA MONTGOMERY OBJECTION TO CONFIRMATION OF  
EAT-1 PLAN BY WELLS FARGO BANK, N.A.  
8-8-13 [[28](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and the Office of the United States Trustee on August 8, 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 to Confirmation to September 24, 2013 at 2:00 p.m.** 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:

Objecting Creditor, Wells Fargo, N.A., opposes confirmation on the following grounds:

Creditor is the holder of a promissory note dated November 8, 2005 in the original principal sum of \$340,000.00, collateralized by a first

priority deed of trust encumbering Debtor's real property located at 6106 Camden Street, Oakland, California. Creditor is also the holder of an Equity Line of Credit Agreement, dated May 15, 2006, collateralized by a second priority deed of trust encumbering the same property above.

Debtor's Schedule A reflects that subject property is a rental, and not Debtor's primary residence. Debtor's Plan at Section C also identifies the Property as a rental. On July 26, 2013, Debtor filed a Motion to Value Property to deem Opposing Creditor's Second Deed of Trust as wholly unsecured. The hearing on Debtor's Motion to Value the property was continued to September 24, 2013. Creditor submits that the property is not Debtor's residence, and that the Motion is inappropriate and should be denied.

Furthermore, Debtor's Plan does not meet the feasibility requirement set out under 11 U.S.C. § 1325(a)(6). Creditor argues that even if Debtor is successful at valuing the subject property at \$299,765.00, the required monthly installment would not be less than \$4,996.08. Debtor's Schedule J shows a reported monthly net income of \$3,600, with no listing of any monthly mortgage payments--making Debtor's expenses appear understated. Debtor has not disclosed additional verifiable sources of funding. Debtor's disposable income, according to her own budget, is insufficient to fully amortize Creditor's claims under the terms of the Plan.

Debtor's plan relies on the pending Motion to Value Collateral of Wells Fargo Bank, N.A. The court continued the hearing on the Motion to Value until September 24, 2013 to permit Wells Fargo time to obtain a verified appraisal of the property located at 6106 Camden Street, Oakland, California. As it stands, the plan is not confirmable under 11 U.S.C. §§ 1322 and 1325 because of the pending Motion to Value.

The court's decision is to continue the hearing on Creditor's Objection to Confirmation to September 24, 2013 at 2:00 p.m., to be heard simultaneously with Debtor's Motion to Value Collateral of Well's Fargo Bank, N.A.

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

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

The Objection to the Chapter 13 Plan filed by the 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 is continued to September 24, 2013 at 2:00 p.m.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 7, 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 to Confirmation to September 24, 2013 at 2:00 p.m.** 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 under 11 U.S.C. § 1325(a)(6), the Debtor cannot make all payments under the plan and comply with the plan.

The Debtor's plan relies on two motions: 1.) Motion to Value Collateral of Wells Fargo Bank, SLH-2, which was set for hearing on August 27; and 2.) Motion to Value Collateral of Real Time Resolutions, SLH-1, which was set for hearing and granted on August 27, 2013. The Court continued the hearing on the Motion to Value Collateral of Wells Fargo Bank, N.A. to give the creditor the opportunity to obtain a verified appraisal of the subject property.

The Motion to Value Collateral of Wells Fargo Bank, N.A. is set for September 24, 2013 at 2:00 p.m. Because Trustee's objection rests on the outcome of the Motion to Value, and to be consistent with Creditor Wells Fargo Bank, N.A.'s objection to confirmation, the court's decision is to continue the hearing on Trustee's Objection to Confirmation to September 24, 2013 at 2:00 p.m., to be heard simultaneously with Debtor's Motion to Value Collateral of Well's Fargo Bank, N.A.

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

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

The Objection to the Chapter 13 Plan filed by the 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 is continued to September 24, 2013 at 2:00 p.m.

28. 13-28842-C-13 JOHN/SHIRLEY MITCHELL OBJECTION TO CONFIRMATION OF  
TSB-1 PLAN BY DAVID P. CUSICK  
8-7-13 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtors and Debtors' Attorney on August 7, 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). The Debtors filed a Response to Trustee's Objection to Confirmation of the Chapter 13 Plan on September 3, 2013.

**The court's tentative decision is to sustain the Objection to Confirmation and not confirm the plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

(1.) The Debtors both did not to appear at the first meeting of creditors held on August 1, 2013, required by 11 U.S.C. § 341. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while not appearing to be questioned by the Trustee and any creditors who appear represents uncooperative behavior. See 11 U.S.C. § 521(a)(3). This is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

(2.) All sums required by the Plan have not been paid, pursuant to 11 U.S.C. § 1325(a)(2). The Debtors are delinquent in their payment plan.

(3.) The Debtors' Plan does not reflect their best efforts under 11 U.S.C. § 1325(b). Debtors are above median income and propose a 50 month plan paying \$247.00 per month with a 14% guaranteed dividend to unsecured claims. On Schedule I, Debtors report that Debtor Shirley Mitchell is a self-employed artist and teacher, but shows no income for the operation of a business. Debtors' 2012 Tax Return does not report any income or expenses from the operation of a business. On Schedule J, however, Debtors deduct \$430.00 per month for business expenses. The Plan should increase by

\$430.00 a month.

(4.) Line 59 of Form B22 should be positive, in the amount of \$798.03. Currently, the Debtors show line 59 as negative \$376.06. The bases for the Trustee's recalculation are as follows:

(a.) On line #30 (taxes), Debtors deduct 1,425.13 for monthly tax deductions. Debtors deduct \$1,208.91 for taxes on Schedule I. \$216.22 should be added back into line #59.

(b.) On line #44, Debtors deduct \$36 for additional food and clothing expenses. Line #44 states that the Debtor must demonstrate that the claim is reasonable and necessary, but have not done so. \$36.00 should be added back into line #59.

(c.) On line #57, Debtors deduct \$921.87. \$921.87 should be added back into line #59.

Debtors itemize this deduction in 3 categories: a) Business expense/artist \$35.87; b) business expense/rent \$430.00; and c) reduction in pension annuity effective 06/30/13 \$456.00. As stated above, Debtors have no income from the operation of a business and cannot claim business expenses. Additionally, Debtors deduct \$456.00 for reduction of pension annuity effective on June 30, 2013. Debtors have not indicated how long they were receiving the pension at the original amount of \$3,127.00; they do not indicate why the pension is now being reduced, how long the reduction will last, or if it was voluntarily requested. The Debtor is currently contributing an additional \$489.58 per month towards his future retirement, according to Schedule I.

(5.) The Debtors' Plan may fail the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). The Debtors report on Schedule A, interest in real property located at 1557 S. Carmelina Avenue, Los Angeles, California. The Debtors list the value of the real property at 733,000.00 and liens totaling \$643,434.51, leaving equity of approximately \$89,565.49. The Trustee could not verify whether the Debtors are entitled to their claimed exemption of \$175,000.00 under C.C.C.P. § 704.730 because Debtors did not attend the creditors' meeting scheduled for August 1, 2013.

### **Debtors' Response**

Debtors responds with the following:

(1.) Debtors shall attend the continued meeting of creditors scheduled for September 26, 2013. Debtors were unable to attend because of conflicts with work-related travel.

(2.) Debtors are now current with their payments to the Chapter 13 Trustee. Debtors have made two payments for the amount due for the months of July and August, 2013.

(3.) The \$430.00 listed for business expenses relate to the Debtor wife's rental of a room in her home. Debtor wife provides room and board for foreign students. On Debtors' Schedule I, the income listed is \$700.00 per month of present rental income. Because Debtors began receiving this

income in January, 2013, the income is not reported on the Debtors' statement of financial affairs for 2011 and 2012 because there was no rental income for those years.

(4.) Debtor husband's income and tax deductions at his job with the State of California has changed, as he now earns \$7,303.00 a month. Debtor husband was not aware that the furlough deduction from his paycheck would be discontinued, and the furlough day would be given back to him until July, 2013. For this and other reasons, debtors will file an amended budget and Plan to reflect these changes.

Debtors will also recalculate the income tax deductions on Form B22C line #30, and show the correct income tax deductions on an amended Form B22C. Debtors also explain that they deducted additional food and clothing expenses because they are reasonable and necessary. During the work week, Debtor husband stays and works in Sacramento, while Debtor wife lives in Los Angeles; Debtor husband travels to Los Angeles frequently on weekends and holidays to be with his wife. Debtors' maintenance of two separate households causes an additional burden on the Debtors' expenses.

The \$921.97 deduction for special circumstances on Line #57 of Form B22C was for Debtor wife's average monthly business expenses as an artist, including her expenses incurred in her purchase of art supplies, business expense in renting to foreign students, and a deduction of \$456.00 for a mistaken anticipated reduction of debtor husband's pension annuity income. Debtors agree to amend Form B22C to remove the \$456.00 deduction.

Debtors do not contribute to any optional retirement funds. The PERS deduction of \$489.58 on Debtor husband's paycheck stub is a mandatory PERS deduction.

(5.) Debtors have ordered an appraisal for their home. Debtors question the accuracy of the Trustee's Zillow valuations, which they feel overestimates the value of their home. Debtors noticed that Zillow indicates that the debtors' house is a 4BR, 2BA house, which is incorrect. Debtors state their house is only 3BR, 1BA. Debtors will share the appraisal report with the Chapter 13 Trustee upon receipt.

(6.) Debtors shall amend the bankruptcy petition to include their full names.

As it stands, confirmation of Debtor's plan is contingent on Debtors filing an updated petition, Form B22C, presenting an appraisal to the court to value the property located at 1557 S. Carmelina Avenue, Los Angeles, California, and attending the continued 341(a) meeting. These contingencies render Debtor's plan not presently capable of confirmation pursuant to 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

cause appearing,

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

29. [13-28444](#)-C-13 JOHN/CHERI LAROSE OBJECTION TO CONFIRMATION OF  
NLE-1 PLAN BY DAVID P. CUSICK  
8-15-13 [[15](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on August 7, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

(1.) Debtors' plan does not provide for secured claim of BAC Home on real property located at 19837 Loop Street, Anderson, California. Not providing treatment may indicate that Debtor cannot afford to make plan payments due to the uncertainty of Debtors' housing situation. 11 U.S.C. § 1325(a) (6).

(2.) The plan does not reflect the best efforts of Debtors under 11 U.S.C. § 1325(b) based on the following:

(a.) Debtors lists their address as 3009 Joyce Drive, Anderson, California and state in their budget a mortgage payment of \$610.00 per month and \$407.00 per month mobile home space rent. However, Schedule I does not list any rental income for the Loop **Street** property and Debtors have not disclosed whether anyone lives in this 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 Debtor, Debtor's attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on August 20, 2013. 14 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Convert 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 continue the hearing on the Motion to Convert Case from Chapter 13 to Chapter 7 to October 2, 2013 at 10:00 a.m.** 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:

Creditor, Sterling Savings Bank, moves the court to convert Debtor's case from Chapter 13 to Chapter 7, pursuant to 11 U.S.C. § 1307(c). Creditor moves based on the following reasons:

(1.) Unreasonable delay that is prejudicial to creditors. Creditor asserts Debtor's delay includes filing five previous Chapter 13 bankruptcy cases in serial fasion, all dismissed because Debtor did not comply with court and code requirements.

(2.) Not filing a plan timely pursuant to 11 U.S.C. § 1321.

(3.) Not commencing timely payments pursuant to 11 U.S.C. § 1336.

(4.) Denial of confirmation of a plan under 11 U.S.C. § 1325.

(5.) Debtor's inability to confirm a Chapter 13 plan, based on bad faith and repeated material violations of the requirements mandated by federal bankruptcy law, including false disclosures and omissions. Debtor has prosecuted undisclosed lawsuits, providing false disclosures in his statements that he was not a party to any pending litigation prior to the filing of the case.

On request of a party in interest, and after notice and a hearing,

the court may convert or dismiss a case, whichever is in the best interest of creditors and the estate, under this chapter to a case under chapter 7 for cause. 11 U.S.C. § 1307(c). Here, Creditor argues cause exists to convert the case pursuant to 11 U.S.C. § 1307(c)(1) & (3)-(5).

Under 11 U.S.C. § 1307(c)(1), the court may convert or dismiss a case for "unreasonably delay by the debtor that is prejudicial to creditors." Creditor concludes, without argument, that creditors were prejudiced by Debtor's previous filing of five chapter 13 cases, which were dismissed due to his own shortcomings.

Under 11 U.S.C. § 1307(c)(3), the court may convert or dismiss a case for "failure to file a plan timely under section 1321" of the bankruptcy code. Debtor filed a plan on March 12, 2013 (Dkt. 26) but did not file a Motion to Confirm with the plan. Debtor has not filed a subsequent amended plan.

Under 11 U.S.C. § 1307(c)(4), the court may convert or dismiss a case for "failure to commence making timely payments under section 1326" of the bankruptcy code. As evidenced by the Chapter 13 Trustee's Motion to Dismiss, filed on March 28, 2013, Debtor was not making timely plan payments. It is unclear whether Debtor has remedied this issue.

Under 11 U.S.C. § 1307(c)(5), the court may convert or dismiss a case for "denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or a modification of a plan." Debtor has not filed a motion to confirm his pending plan and, therefore, there is no denial of confirmation in the instant case upon which Creditor's argument can stand.

Creditor presents information that may justify either conversion or dismissal in this case. The Chapter 13 Trustee filed a Motion to Dismiss Debtor's case on March 28, 2013 for reasons similar to Creditor's Motion to Convert. The hearing on Trustee's Motion was continued multiple times to allow Debtor to submit missing information. The Trustee's Motion is set to be heard again on October 2, 2013. Therefore, it would be most reasonable for the court to hear Creditor's Motion at the same time as Trustee's Motion. As the court previously stated, pursuant to 11 U.S.C. § 362(a)(1)(A), no automatic stay went into effect upon the filing of the instant case and creditors will not be prejudiced if this matter is continued.

The court's decision is to continue the hearing on Creditor's Motion to Convert to October 2, 2013 at 10:00 a.m.

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 Convert Case From Chapter 13 to Chapter 7 filed by Sterling Savings Bank 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 Convert Case From

**September 10, 2013 at 2:00 p.m.**

32. [11-41247](#)-C-13  
PGM-5

KAREN WALKER-PUGH

MOTION TO MODIFY PLAN  
7-30-13 [[124](#)]

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 30, 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.) The additional provisions of the plan, Section 6.02 Secured Claim, reports the creditor to be BAC Home Loan Servicing, L.P. Court Claim #3, names the Creditor as U.S. Bank, N.A., as Successor Trustee to Wachovia Bank, N.A. as Trustee for the Certificate Holders of the MLMI Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8.

(2.) Debtor's previously filed modified plan (Dkt. 91) was continue twice to allow Debtor to provide evidence of a loan modification. The motion was eventually denied on July 2, 2013 (Dkt. 120). Debtor has still not provided evidence of an attempted loan modification, other than a statement in Debtor's declaration stating she has been aggressively working on a loan modification. (Dkt. 126, Pg. 1, Lines 24-25).

**Debtor's Response**

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

(1.) Creditor's complete name is: U.S. Bank, N.A., as Successor Trustee to Wachovia Bank, N.A. as Trustee for the Certificate Holders of the MLMI Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-A8, **C/O Bank of America, N.A.** Debtor proposes to include the full name in the Order Confirming the Plan.

(2.) The only admissible evidence that Debtor has a pending loan modification is Debtor's declaration that the application has been supplied and counsel's tracking system.

(3.) Debtor states language is included in the proposed plan to provide for adequate protection payments in the event the application is denied, and as such, disbursement to the creditor is proper.

As is, Debtor's plan relies on a pending loan modification and, if approved, is contingent on court approval of the loan modification.

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.

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

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 29, 2013. 42 days' notice is required. That requirement was met.

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

**The Motion to Confirm is granted and Debtor's Plan is confirmed.** No appearance required. The court makes the following findings of fact and conclusions of law:

The court will approve a plan proposed in compliance with 11 U.S.C. §§ 1322 and 1325(a). Here, the Chapter 13 Trustee filed an objection to confirmation, which was later withdrawn when Debtor remedied Trustee's concerns. (Dkt. 71). Trustee's concern being resolved, and there being no other objections to confirmation, the court find that the Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

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

34. [13-23761](#)-C-13  
BLF-5

IOAN/FLOARE DEJEU

MOTION TO CONFIRM PLAN  
7-21-13 [[47](#)]

**CASE DISMISSED 8/6/13**

**Final Ruling:** The case having previously been dismissed on August 6, 2013, the Motion is denied as moot.

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

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

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

**IT IS ORDERED** that the Motion is denied as moot.

35. [13-23761](#)-C-13  
BLF-6

IOAN/FLOARE DEJEU

MOTION TO VALUE COLLATERAL OF  
WELLS FARGO BANK, N.A.  
7-30-13 [[52](#)]

**CASE DISMISSED 8/6/13**

**Final Ruling:** The case having previously been dismissed on August 6, 2013, the Motion is denied as moot.

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

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

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

**IT IS ORDERED** that the Motion is denied as moot.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 25, 2013. 42 days' notice is required. That requirement was met.

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

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

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

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

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

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

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

Local Rule 9014-1(f)(2) 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 17, 2013. 28 days' notice is required. That requirement was met.

**Tentative Ruling:** The Motion to Convert Case From Chapter 13 to Chapter 7 has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

**The court's tentative decision is to grant the Motion to Convert Case from Chapter 13 to Chapter 7.** 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, a party in interest, brings the current motion to convert for the following reasons:

(1.) Debtor is in material default under the terms of the confirmed plan and the default is prejudicial to creditors. Debtor has paid in a total of \$13,600.00 into the plan, with the last payment of \$1,700.00 on May 17, 2013. Debtor is delinquent \$3,400.00, with an additional payment coming due by July 25, 2013.

(2.) The estate may include an asset property located at 4206 Painter Way, which has been the subject of litigation in this proceeding (Dkt. 31). In the event this property is part of the estate, where the property may have been foreclosed on pre-petition, the estate may lose any interest in the property if the case is not converted to Chapter 7.

### **Debtor's Response**

Debtor responds stating that he intends to be current on or before the date of the hearing on this motion. Debtor agrees that general unsecured creditors would be better served in a Chapter 7, rather than a dismissal.

On request of a party in interest, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 for cause. 11 U.S.C. § 1307(c). Sufficient cause to effectuate conversion includes material default by debtor with respect to a term of a confirmed plan. 11 U.S.C. § 1307(c)(6). As Debtor has not, to date, provided confirmation that plan payment delinquencies were cured, Debtor remains in material default and cause exists to convert the case to Chapter 7.



more than four years has expired since the filing of that case and, therefore, it appears Debtor would be entitled to a discharge in this case under 11 U.S.C. § 1328(f). Debtor filed a response to Trustee's Opposition.

### **Debtor's Response**

Debtor responds to Trustee's Objection agreeing with Trustee's conclusion that Debtor is entitled to discharge. Debtor requests the court permit her to correct inaccuracy in the Order Confirming 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 Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is denied and the proposed Chapter 13 Plan is confirmed.

**IT IS FURTHER ORDERED** that Debtor correct the stated inaccuracies concerning entitlement to discharge in the Order Confirming the Plan.

39. [13-30263](#)-C-13      FRANCES PATTERSON      MOTION TO VALUE COLLATERAL OF  
VS-1      GREEN TREE MORTGAGE  
8-21-13 [[14](#)]

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 the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 22, 2013. 14 days' notice is required. This requirement has been met.

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

**The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim 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 2125 Glengary Drive, Redding, California. The Debtor seeks to value the property at a fair market value of \$85,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$107,632.40. Green Tree Mortgage's second deed of trust secures a loan with a balance of approximately \$57,000. 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 Green Tree Mortgage secured by a second deed of trust recorded against the real property commonly known as 2125 Glengary Drive, Redding, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$85,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 6, 2013. 28 days' notice is required. That requirement was met.

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

Pursuant to Fed. R. Civ. P. 25, as incorporated by Fed. R. Bankr. P. 7025, Debtors move for an order to proceed with the bankruptcy case "as though the death of the co-debtor, Tamra M. Brown has not occurred."

The surviving heir of co-debtor is Hermon Brown. Mr. Brown is also co-debtor of deceased and seeks, in his capacity as Debtor, to represent his interests as heir of the deceased.

### **Chapter 13 Trustee Opposition**

The Chapter 13 Trustee opposes Debtors' motion on the following grounds:

(1.) Debtors' most recent Schedule I, filed July 3, 2012 (Dkt. 126), includes disability income for co-debtor Tamara Brown in the amount of \$2,152.00. Trustee is unsure whether surviving co-debtor is receiving this or any other income as the result of Tamara Brown's death. Debtors have presented not evidence demonstrating replacement income that would support the plan.

**Debtors' Response**

Debtors' responds to Trustee's opposition, clarifying that the purpose of the motion is to proceed as though the death of the co-debtor, Tamara Brown, did not occur and that Debtors are not seeking to modify a plan. At this time, Debtor only seeks to substitute party. Debtor is researching and gathering information to determine whether amended Schedules and a motion to modify the plan is appropriate.

Pursuant to Fed. R. Civ. P. 25, as incorporated by Fed. R. Bankr. P. 7025:

[I]f a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

FRCP 25(a)(1); FRBP 7025(a)(1). Here, Debtor filed the appropriate procedure in bringing the motion. Debtor filed a statement noting the death of Tamara Brown on July 30, 2013 (Dkt. 134). On August 6, 2013, well within the ninety (90) day time frame, Debtor filed a motion for substitution. As the Debtors' motion is limited to substituting Hermon Brown in place of deceased co-debtor, Tamara Brown, the court will grant the motion. Trustee's concerns relate to the substance of the plan and not procedural irregularities that would prevent granting the instant motion.

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

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

The Motion to Substitute Party 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 Substitute Party is granted.

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. 42 days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtor's plan on the following grounds:

(1.) Debtor's plan does not provide for Fernando Caro's secured lien against Debtor's business or the secured claim of GCFS, Inc. Debtor filed a motion to avoid the lien of GCFS, Inc.; however, no motion is pending for Caro's claim. Not providing for treatment of these claims indicates that Debtors may not be able to afford the payments called for under the plan, as required pursuant to 11 U.S.C. § 1325(a)(6).

To date, Debtor has not filed a motion to avoid Caro's secured claim. Debtor filed a motion to avoid the lien of GCFS, Inc. on July 17, 2013 and the court entered an order denying the motion on August 27, 2013 (Dkt. 76). Debtor filed a second motion to avoid the lien of GCFS, Inc. on August 21, 2013. The motion is set for hearing simultaneously with Debtor's motion to confirm. The court's tentative decision is to deny the motion. Debtor's plan has not provided for treatment of these secured claims. 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,





Debtor's Declaration lists monthly income from the following sources in the following amounts:

(a.) Daycare Provider:	\$2,000.00
(b.) Piano Instruction:	\$280.00
(c.) Medical Transcribing:	\$500.00
(d.) Domestic Support:	\$640.00
(e.) Family Assistance:	\$800.00
TOTAL:	\$4,220.00

Debtor's most recent Schedule I lists the following sources of income:

(a.) Support Income:	\$640.00
(b.) Daycare Provider:	\$1,700.00
(c.) Medical Income:	\$125.00
(d.) Piano Income:	\$1,000.00
TOTAL:	\$3,465.00

Amended Schedule I and Debtor's declaration constrain inconsistencies and amended Schedule I leaves out Family Assistance. Debtor's original Schedule I included \$2,500.00 in income from "Family and Friends." Based on the forgoing, the plan is not the Debtor's best efforts as required by 11 U.S.C. § 1325(b).

**Debtor's Response**

Debtor responds to Trustee's objection stating that Debtor's "family and friends" income is based on a sliding scale. It adjusts (increases) when Debtor's income is low due to the holidays, etc. Debtor asserts that in this case she has worked diligently to build her business and not depended on family and friends. Debtor has increased her income by more than \$1,500.00.

Based on Debtor's motion, for the month of August, Debtor's business income was \$2,583.35, plus \$640.00 in domestic support obligations. The total income was \$3,223.36, less business expenses of \$775.00, less household expenses of \$1,830.00, equaling \$643.36 (based on the numbers provided, \$618.35 is the correct figure). Debtor received \$991.00 in family support for this month.

Debtor requests the court overrule the objection and confirm the plan or, in the alternative, provide a continuance an review Debtor's progress in ninety days.

To confirm the plan in accordance with 11 U.S.C. § 1325(b), the court needs Debtor to provide a reliable, projected disposable income. The evidence of income presented demonstrates inconsistencies in Debtor's reported income. Based on the evidence presented, the Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1325(b). However, the court recognizes that Debtor is making efforts to increase, and hopefully stabilize her income. Therefore, the court will provide Debtor with a continuance to submit clarified and reliable evidence of income upon which confirmation of a plan may be made.

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

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

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

**IT IS ORDERED** that the hearing on the Motion to Confirm the Plan is continued under **[date]** at **[time]**.

45. [11-32380](#)-C-13 JUDITH WILCOX CONTINUED MOTION TO MODIFY PLAN  
WW-3 7-13-12 [[65](#)]

**CASE DISMISSED 8/26/13**

**Final Ruling:** The case having previously been dismissed on August 26, 2013, the Motion is denied as moot.

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

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

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

**IT IS ORDERED** that the Motion is denied as moot.

46. [11-32380](#)-C-13  
WW-4

JUDITH WILCOX

CONTINUED OBJECTION TO CLAIM OF  
US BANK, NATIONAL ASSOCIATION,  
CLAIM NUMBER 7  
8-3-12 [[70](#)]

**CASE DISMISSED 8/26/13**

**Final Ruling:** The case having previously been dismissed on August 26, 2013, the Motion is denied as moot.

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

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

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

**IT IS ORDERED** that the Motion is denied as moot.

47. [11-32380](#)-C-13  
WW-8

JUDITH WILCOX

CONTINUED OBJECTION TO NOTICE  
OF MORTGAGE PAYMENT CHANGE  
11-9-12 [[96](#)]

**CASE DISMISSED 8/26/13**

**Final Ruling:** The case having previously been dismissed on August 26, 2013, the Motion is denied as moot.

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

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

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

**IT IS ORDERED** that the Motion is denied as moot.

**CONT. FROM 08/20/2013**

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

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

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

**The court's tentative decision is to sustain the Objection and not 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:

On August 20, 2013, at the hearing on the Objection, the court continued the matter to allow counsel for Debtors to provide the Trustee with information of actual rental and moving expenses, and a projected timetable for when such expenses will be incurred.

No documents on the docket demonstrate that Debtors provided such information to the Trustee. Therefore the court's previous tentative finding that the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) still stands and the objection is sustained and the Plan is not confirmed.

**The Chapter 13 Trustee's Objection**

The Chapter 13 Trustee opposes confirmation of the Plan because it is not Debtor's best effort under 11 U.S.C. § 1325(b). Debtors are over the median income and proposes the following plan payments: \$1,675 for 60 months with a 0% dividend to unsecured creditors. Trustee asserts that Debtors have an additional \$1,800 in income that should be contributed to the Plan.

The Plan proposes to surrender Debtor's residence at 127 Rutherford Drive, Vacaville, California. Debtors continue to live at the residence, not having made a mortgage payment since December 2012. Debtors listed projected rent on Schedule J in the amount of \$1,800; however, the Debtors are not

paying rent at this time, making the \$1,800 available for the Plan.

### **Debtors' Response**

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

(1.) Trustee wants Debtors to pay \$1,800 more into the plan for the one month after their plan was filed;

(2.) Trustee wants Debtors to pay \$1,800 more per month indefinitely until Debtors actually move out; or

(3.) Trustee seeks an \$1,800 increase for the life of the Plan.

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

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

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

### **Trustee's Reply to Debtors' Response**

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

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

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

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

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

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

The Objection to the Chapter 13 Plan filed by the

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

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

49. [13-23881](#)-C-13  
EJH-3

TIMOTHY CHARSHAF

MOTION TO CONFIRM PLAN  
7-28-13 [[52](#)]

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 28, 2013. 42 days' notice is required. That requirement was met.

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

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

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

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

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

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

cause appearing,

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

50. [13-28782](#)-C-13 SEAN/LISA CONRAD OBJECTION TO CONFIRMATION OF  
TSB-1 PLAN BY DAVID P. CUSICK  
8-7-13 [[25](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtors' Attorney on August 7, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

(1.) Debtors have not filed the plan in good faith under 11 U.S.C. § 1325(a)(7). Debtors propose a 36-month plan paying \$100.00 per month with a guaranteed dividend of no less than 0% to general unsecured claims. Other than proposing to pay Debtors' counsel fees of \$2,781.00, the Debtors are doing nothing to restructure their finances. The Debtors' Plan list the following 3 claims in Class 4 to be paid directly by the Debtors:

(a.) Toyota Financial Services, for a payment of a 2011 Toyota

Tundra at \$652.17 per month. Schedule D reports the balance on the account as \$31,787.00. On July 10, 2013, Toyota filed Court Claim #1, which shows that Debtors purchased the vehicle in September 2011, with the agreement that the payment term would last 72 months.

(b.) Travis Credit Union, for payment of a 2012 Toyota Highlander at \$492.44 per month. Schedule D reports the balance on the account as \$28,327.00. On July 17, 2013, Travis Credit Union filed Court Claim #3, which shows that the Debtors purchased the vehicle in October, 2011, with the agreement that the payment term would last for 83 months.

(c.) Ocwen Loan Service for payment of the 1<sup>st</sup> Deed of Trust on real property at 329 Ashwood Way, Lincoln, CA at \$1,088.81 per month. Debtors reported the balance on Schedule D as \$423,000.00.

The Trustee is disturbed that the two auto loans were taken out in relatively close proximity to the filing of this bankruptcy case. Debtors have effectively reduced the amount of net income they have available to pay into the Plan by \$1,144.61 per month, to the detriment of unsecured creditors.

(2.) The Debtors' plan is not the best effort under 11 U.S.C. § 1325(b). Debtors are below median income and propose a 36 month plan with a dividend of 0% to unsecured claims. Debtors have not reported all income.

Debtors' bank statements from Safe Credit Union reveal that Debtors deposit significantly more money per month than reported on Schedule I. Debtors have not report why the deposits differ from the amount of income reported on Form B22C for the six months prior to filing, which shows an average monthly income total of \$2,711.22. Additionally, in their 2012 Tax Returns, Debtors did not report \$5,056.00 in Federal and State Tax returns Debtors received on either Schedule I or B22C. Debtors' tax refund exceeded the amount that Debtors pay into the plan in a one year period, which comes out to \$1200.

(3.) The Plan relies on a pending motion. Debtor's Motion to Value Collateral of Ocwen Loan Servicing was heard and granted on August 27, 2013. Therefore, this issue was resolved.

Because Debtors have not made the requisite showing that the Plan was filed in good faith and represents their best efforts, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

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

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

51. [11-45083](#)-C-13  
RWH-1

MARK/ELIZABETH ALVAREZ

MOTION TO MODIFY PLAN  
7-12-13 [[54](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 12, 2013. 35 days' notice is required. That requirement was met.

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

**The Motion to Confirm the Modified Plan is granted.** No appearance required. 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 12, 2013 is



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

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

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

53. [13-30387](#)-C-13 SURENDRA JANAM MOTION TO VALUE COLLATERAL OF  
TOG-1 BANK OF AMERICA, N.A.  
8-7-13 [8]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 7, 2013. 28 days' notice is required. This 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 5523 Bibly Rd., Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$200,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$243,600. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$68,000. 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 Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 5523 Bibly Rd., Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$200,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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 23, 2013. 42 days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 23, 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 all creditors, the U.S. Trustee, and Chapter 13 Trustee on July 8, 2013. 28 days' notice is required; that requirement was met.

**Tentative Ruling:** The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Chapter 13 Trustee filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

Movant, the Bank of New York Mellon FKA the Bank of New York as Trustee for the Certificate Holders CWMBS, Inc. CHL Mortgage Pass-Through Trust 2005-HYB 4, Mortgage Pass-Through Certificates, Series 2005-HYB4, requests that the court enter an order approving a modification of Debtors' mortgage, held by Movant, on real property located at 2249 Baseline Road, Roseville, California.

The new loan payments will initially be in the amount of \$1,718.58 at an interest rate of 3.00% for a duration of 60 months. After 60 months, for a period of 201 months, the monthly payment will be in the amount of \$1,415.41 at an interest rate of 3.87%. The new principal balance of the loan will be \$253,663.00. A copy of the loan modification agreement containing its precise terms, is attached to the instant motion as Exhibit 5 (Docket Item No. 68).

Movant states it is seeking court approval because Debtors' plan was already confirmed and, as such, a loan modification does not likely constitute an "ordinary course of business" transaction for Debtors.

### **Chapter 13 Trustee Objection**

The Chapter 13 Trustee objects to Movant's Motion because Movant did not to state the legal authority for the motion, as required under LBR 9014-1(d)(5).

Trustee asserts that under 11 U.S.C. § 363(b), Trustee, after notice and a hearing, may use property of the estate other than in the ordinary course of business and 11 U.S.C. § 1303 grants exclusive rights under § 363(b) to the debtor in a Chapter 13 case.

Trustee cites *In re Godon, Inc.*, standing for the proposition that the

court may permit a creditor to have derivative standing to exercise powers otherwise reserved to the trustee, for the benefit of the estate. 275 B.R. 555, 565 (Bankr. E.D. Cal. 2002), citing *In re Curry and Sorensen, Inc.*, 57 B.R. 824, 828 (9th Cir. 1986). However, Trustee argues Debtors have not filed a Declaration affirming they seek the relief requested. Therefore, Movant does not have standing to bring the motion.

### **Debtors' Joinder**

On August 29, 2013, Debtors filed a Joinder to Movant's Motion to Approve Loan Modification. In support of its Joinder Debtors filed a declaration supporting approval of the loan modification and stating that they intend to file a first modified plan and motion to confirm the modified plan and will be amending Schedules I and J to reflect the current income and expenses with the modified monthly mortgage payment.

Debtors have joined and are moving with Movant in seeking an order approving the loan modification. The court is satisfied that the procedural posture of this case is proper and will grant the motion.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 27, 2013. 14 days' notice is required. This requirement has been met.

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

**The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim 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 2659 Monterey Street, Chico, California. The Debtor seeks to value the property at a fair market value of \$197,893.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$234,936.24. Citimortgage Inc's second deed of trust secures a loan with a balance of approximately \$43,999.16. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Citimortgage, Inc. secured by a second deed of trust recorded against the real property commonly known as 2659 Monterey Street, Chico, 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 \$197,893.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

57. [12-39695](#)-C-13  
SJS-3

MICHAEL/SHAUNIE BRIGGS

MOTION TO CONFIRM PLAN  
7-19-13 [[59](#)]

**CASE DISMISSED 8/9/13**

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

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

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

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

**IT IS ORDERED** that the Motion is denied as moot.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtors' Attorney on August 7, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan for the following reasons:

(1.) The Plan relied on the pending Motion to Value Collateral of Bank of America, SJS-1, which was set for hearing on August 13, 2013. The Motion to Value Collateral was granted and Bank of America's secured claim was determined to be \$0.00. No payments will be made on the secured claim under the Plan. Therefore, this issue has been resolved.

(2.) It appears that Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). On Schedule 6, Debtor does not deduct as an expense for the property tax on her real property, and indicates that the expense is not included in her monthly mortgage payment.

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

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

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

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

appearing,

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

59. [12-41499](#)-C-13  
JRH-3

MALCOLM PRUITT

MOTION TO CONFIRM PLAN  
7-12-13 [[85](#)]

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

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

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's



Creditor also disputes Debtor's valuation of the property and states it is in the process of procuring an appraisal to supplement its Opposition. Creditor seeks a continuance to procure an appraisal of the property.

### **Stipulation**

On August 30, 2013, the parties to the Motion to Value Collateral of Onewest Bank, FSB entered into a Stipulation agreeing to the following:

- (1.) The value of the property commonly known as 114 American Way, Vacaville, California is set at \$210,000.00.
- (2.) The Second Deed of Trust dated May 1, 2006, which encumbers the Property, shall be avoided in its entirety.
- (3.) Secured Creditor's claim shall be allowed as a non-priority general unsecured claim. Secured Creditor may file an amended Proof of Claim listing its claim as unsecured to be paid in accordance with the Debtors' Plan. If an amended claim is not filed, the Trustee may treat any claim on the debt filed by Secured Creditor as unsecured upon the entry of this order.
- (4.) The avoidance of Secured Creditor's lien is contingent upon Debtors' completion of the Chapter 13 Plan and receipt of a Chapter 13 Discharge. Secured Creditor shall retain its lien in its full amount in the event of either the dismissal of the Debtors' Chapter 13 case, the conversion to any other chapter under the Bankruptcy Code, or if the Property is sold or refinanced prior to the Debtors' completion of the Chapter 13 Plan and receipt of a Chapter 13 Discharge.
- (5.) In the event that the holder of a senior lien forecloses on its interests and extinguishes Secured Creditor's lien prior to the completion of the Chapter 13 Plan and receipt of a Chapter 13 Discharge, Secured Creditor's lien shall attach to the surplus proceeds of the foreclosure sale in its full balance at the time of sale.
- (6.) Upon Debtors' completion of the Chapter 13 Plan and receipt of a Chapter 13 Discharge, Secured Creditor shall reconvey and release its lien within the time required by applicable state law.

The Stipulation entered into between the parties resolved the matters contested in the Motion to Value Collateral. Therefore, the court's decision is to deny the Motion to Value Collateral as moot.

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

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

The Motion 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 to Value is denied as moot.