UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

September 16, 2014 at 2:00 p.m.

1.	13-32602-C-13 JCW-1	MARK/ELIZABETH ANDREW Mark A. Wolff	MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT 8-8-14 [44]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and the Chapter 13 Trustee, on August 8, 2014. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Nationstar Mortgage LLC, its assignees and/or successors ("Movant"), seeks court approval for Debtors Mark and Elizabeth Andrew ("Debtors") to incur post-petition credit.

The Motion states that the Movant has offered and approved the Debtors for a Loan Modification Agreement and seeks court approval of said agreement. The Movant states that the basic terms and conditions of the loan modification agreement are set forth in Exhibit "1," filed in support of the Motion as Dckt. No. 46.

The Motion claims that the according to the terms of the loan modification agreement, the new principal balance on the loan secured by the real property generally described as 9432 Lyndley Plaza Way, Elk Grove, CA, will be $142,790.78. The interest rate for years 1-40 of the loan will be 4.625%, for a combined principal and interest monthly payment of $653.45. The subject agreement changes the interest rate from an adjustable rate note, currently at 3.125% to a fixed of 4.625% and re-amortized the loan over 40 years. The Motion states that the monthly payment prior to the modification was $791.11.

The Motion is not supported by a declaration or any evidence, indicating the Debtors' desire to obtain the post-petition financing and ability to pay this claim on the modified terms. It appears that Debtors and Debtors' counsel has been excluded from this Motion. Rather, Nationstar Mortgage LLC, and its counsel have taken on the legal and fiduciary role of filing motions for the Debtors.

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

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

Although the Motion suffers from the patent defect of having excluded Debtors' counsel from bringing or filing a concurrence to the Motion to Approve the Loan Modification, it appears that Debtors' counsel has been served with the Motion and has not filed opposition to the present pleading. This court prepares its final and tentative rulings in advance of the hearings for the benefit of the attorneys, parties, and court. This motion was filed on August 7, 2014. The hearing is on September 16, 2014, 39 days later. The Creditor's Certificate of Service attests to serving Debtors and Debtors' counsel. Dckt. 47. Even if his representation of the Debtors had been circumvented, Counsel was aware of the Motion and could have met with the Debtors and filed the proper responsive pleading.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
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> The Motion to Approve the Loan Modification filed by Nationstar Mortgage, LLC, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** that the court authorizes Mark Andrew and Elizabeth Andrew ("Debtors") to amend the terms of the loan with Nationstar Mortgage, LLC, which is secured by the real property commonly known as 9432 Lyndley Plaza Way, Elk Grove, California, on such terms as stated in the Modification Agreement filed as Exhibit "1" in support of the Motion, Dckt. 46.

2. 12-37011-C-13 SAMUEL WILLINGMYRE MOTION FOR HARDSHIP DISCHARGE
BLG-1 Pauldeep Bains 8-5-14 [28]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, parties requesting special notice, the Chapter 13 Trustee, and Office of the United States Trustee on August 5, 2014. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The hearing on the Motion for Hardship Discharge is continued to 2:00 pm on October 21, 2014.

Samuel H Willingmyre, the Debtor in this case ("Debtor"), requests a hardship discharge pursuant to 11 U.S.C. § 1328(b).

REVIEW OF MOTION

Samuel H Willingmyre ("Debtor") filed for relief under Chapter 13 of the Bankruptcy Code on September 20, 2012. On October 18, 2012 the meeting of creditors was conducted and concluded. Debtor had $0.00 in non-exempt assets.

Debtor's plan filed on September 20, 2012, Dckt. No. 5, was confirmed on November 2, 2012. The Confirmed Plan proposed to pay $1,200.00 for 60 months. Debtor had projected monthly disposable income from Line 59 of CMI of $1,136.34, and Debtor estimated no less than 48.32% dividend to General Unsecured Claims.

On April 12, 2014, the Debtor, died, survived by his son, Henry Willingmyre. Exhibit A, True & Correct Copy of Debtor's Certified Death Certificate), Dckt. No. 30. As of the date of the filing of this motion, Debtor paid a total of $22,800.00 into his plan. The principle paid to Unsecured Creditors has been $19,536.64.

Rule 1016 of the Federal Rules of Bankruptcy Procedure states:

> "Death or incompetency of the debtor shall not abate a liquidation case under Chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or incompetency had not occurred. If the reorganization, family farmer's debt adjustment, or individual's debt adjustment case in pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred."

Since the Debtor was in a pending Chapter 13 case at the time of his death, the Court must make a determination whether the case should be dismissed or proceed and be concluded if further administration is possible and in the best interest of the parties. *In re Eads*, 135 B.R. 380 (Bankr. E.D. Cal. 1991) (the Court explains the effect of death of Debtor on bankruptcy case). Upon the death of the Chapter 13 Debtor, when determining whether further administration is possible and in the best interest of the parties, the court may consider whether a hardship discharge is appropriate.

11 U.S.C. § 1328(b) provides at any time after the confirmation of the plan and after notice of a hearing the court may grant a discharge to a debtor that has not completed payments under the plan only if:

> (1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;
>
> (2) the value, as of the effective date of the plan, of property actually distributed under the plan on the account of each allowed claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and
>
> (3) modification of the plan under section 1329 of this title is not practicable.

In re Bond, 36 B.R. 49 (Bkrtcy. E.D.N.C. 1984) (Debtor died in a pending chapter 13 case and the court determined a hardship discharge was appropriate under 11 U.S.C. § 1328(b)) *In re Graham*, 63 B.R. 95 (Bkrtcy. E.D. Pa. 1986) (Debtor died in a pending chapter 13 case after making a majority of the plan payment, the court determined a hardship discharge was appropriate under 11 U.S.C. § 1328(b))

Here, the Debtor passed away on April 12, 2014. In the present case, Debtor had $0.00 in non-exempt assets which would have been liquidated

in a chapter 7 case; therefore, the unsecured claim holders would have received $0.00 in a Chapter 7 case. In the 19 months of payment in his chapter 13 plan, $19,536.64 was paid to the allowed unsecured filed claims. The confirmed plan provided no less than a 48.32% dividend would be paid to General Unsecured Claims based on Current Monthly Income. The Movant states that in *In re Bond* the court found that the value of the funds distributed to each allowed unsecured claim was not less than the amount that would have been paid in a chapter 7 liquidation. In *In re Graham,* the debtor was found to have paid more to the creditors than they would have received in a chapter 7 liquidation. In the present case Debtor had $0.00 in non-exempt assets; therefore, the Motion asserts that the unsecured creditors received more than they would have in a chapter 7 liquidation.

After confirmation of a plan, circumstances may arise that prevent a debtor from completing a plan of reorganization. In such situations, the debtor may ask the court to grant a "hardship discharge." 11 U.S.C. § 1328(b). Generally, such a discharge is available only if : (b)(1) the debtor's failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor; (b)(2) creditors have receive at least as much as they would have received in a chapter 7 liquidation case; and (b)(3) modification of the plan is not possible under 11 U.S.C. § 1329. 11 U.S.C. § 1328(b)(1)-(3).

OPPOSITION BY TRUSTEE

The Chapter 13 Trustee objects to the Motion on several grounds.

Standing

The Trustee is not certain that either Pauldeep Bains or Debtor's son, Henry Willingmyre, have standing to make the present motion. The Trustee received a declaration filed by Bains, Dckt. No. 32, in support of the motion and stating that he represents that Debtor in this case, whose death occurred in April 12, 2014.

A copy of the death certificate was filed on August 5, 2014. Dckt. No. 30. Trustee has not been provided with any information regarding the impact of the estate on the bankruptcy, or if probate was opened and if any assets were liquidated. The Debtor has real property listed on Schedule A, Dckt. No. 1. The Debtor's attorney was hired by Debtor, but Debtor has apparently died and is unable to direct the attorney whether to proceed with the discharge, or allow the case to conclude without one. The attorney client relationship may have been terminated (see *O'Connell v. Superior Court*, 2 Cal.2d 418, citing *Hunt v. Rousmanier*, 21 U.S. 174, 203 [L.3d. 589], stating "We hold it to be clear, that the interest which can protect a power, after the death of a person who creates it, must be an interest in the thing itself.").

In the event that the attorney is representing an heir, executor, or administrator, the Trustee agrees that standing exists. The record does not, however, disclose this detail. Schedules B and C filed September 20, 2012, Dckt. No. 1, include a whole life insurance policy through State Farm with a value of $21,900.00. Schedule J, filed on the same day, Dckt. No. 1 at 30, includes a life insurance expense in the amount of $32.33. Trustee has not received information concerning life insurance proceeds, distribution of retirement benefits, or payments of debts through credit insurance; therefore, the Trustee cannot determine that administration is

possible and that it is in the best interest of the parties.

The Declaration filed by Pauldeep Bains states that he was notified of Debtor's death by Debtor's son, Henry Willingmyre. Schedule I filed on September 20, 2012, Dckt. No. 1 at 29, lists a 67-year old daughter as a dependent. The Trustee is uncertain whether Debtor's daughter is in favor of this motion, as no declaration was filed by her.

Notice

While Debtor has served all documents on all parties, Dckt. No. 34, where the Notice of Hearing identifies the attorney as Attorney for Debtor, and does not identify the motion is being made where the Debtor died, the Notice may be insufficient.

Substance

The Trustee does not oppose the motion if the movant has standing and has provided adequate notice.

RESPONSE TO TRUSTEE'S OBJECTION

The Movant requests that the Motion be continued to October 21, 2014, to allow the parties involved to provide the Trustee with the requested information, and to further engage in conversations to the Trustee to alleviate other concerns that the Trustee may raise regarding this matter. Dckt. No. 38.

The court will continue the hearing on this matter to 2:00 pm on October 21, 2014, per the Movant's request.

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 Hardship Discharge filed by Samuel H Willingmyre, 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 for Hardship Discharge is continued to 2:00 pm on October 21, 2014.

3. 14-26512-C-13 AHISHA LEWIS — MOTION TO VALUE COLLATERAL OF
SJS-1 Scott J. Sagaria — EXETER FINANCIAL CORPORATION
Thru #4 — 8-15-14 [27]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor the Chapter 13 Trustee, and Office of the United States Trustee on August 15, 2014. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Exeter Financial Corporation, "Creditor," is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Ahisha Lewis "Debtor" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 2187 65th Avenue, Sacramento, California, "Property." Debtor seeks to value the Property at a fair market value of $110,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parities seeking relief from a federal court.

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $125,586.69. Creditor's second deed of trust secures a claim with a balance of approximately $120,000. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Ahisha Lewis, "Debtor," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Exeter Financial Corporation secured by a second in priority deed of trust recorded against the real property commonly known as 2187 65th 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 $110,000.00 and is encumbered by senior liens

securing claims in the amount of $125,586.69, which exceed the value of the Property which is subject to Creditor's lien.

4.	14-26512-C-13 SJS-2	AHISHA LEWIS Scott J. Sagaria	MOTION TO VALUE COLLATERAL OF CAPITAL ONE, N.A. 8-15-14 [23]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent creditor the Chapter 13 Trustee, and Office of the United States Trustee on August 15, 2014. By the court's calculation, 32 days' notice was provided. 14 days' notice is required.

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

The Motion to Value secured claim of Capital One, National Association, "Creditor" is continued to XXXXX at XXXXX.

The Motion filed by Ahisha Lewis "Debtor", to value the secured claim of Capital One, National Association, "Creditor," motion is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Infinity G35, "Vehicle." The Debtor seeks to value the Vehicle at a replacement value of $7,523.00 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 May, 2010 which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $15,289.13. Therefore, the Debtor argues that the Creditor's claim secured by a lien on the asset's title is under-collateralized, and that the creditor's secured claim should determined to be in the amount of $7,523.00. *See* 11 U.S.C. § 506(a).

OPPOSITION BY CREDITOR

Capital One, National Association ("Creditor") opposes the Debtor's Motion to Value Collateral (the "Motion"). On or about July 1, 2014, the Creditor filed its Proof of Claim as Claim 2-1 in the amount of $15,289.13, including arrearage in the amount of $2,008.08. The claim is secured by the personal property commonly known as: 2005 INFINITI G35, vehicle identification number: JNKCV51E85M224590.

Creditor disputes the fair market value of the subject property cited by Debtor. Debtor argues that the property is valued at $7,523.00. Creditor states that, according to the NADA Guides, which it claims to be "the reference guide most commonly used for valuation data" by Movant in the ordinary course of its business, the "clean retail value" of the Property is $10,000.00.

Creditor attaches a copy of the purported NADA valuation as Exhibit "2" in support of its valuation and Opposition to the Motion to Value. On the basis of this differing valuation, the Creditor requests that the Property be valued at $10,000.00, and not $7,523.00 as proposed by Debtor. In the alternative, the Creditor requests the Debtor's cooperation to make the Property available for an appraisal or other expert valuation.

DISCUSSION

Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc. v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980). Here, the Debtor has provided evidence of her opinion of the value of the subject vehicle in the form a sworn Declaration, Dckt. No. 25, which attests to Debtors' estimation of the value of the 2005 Infinity G35 as $7,523.00. Debtor states that her opinion is based upon her personal knowledge of the value of sports cars, based on today's market and valuations found online. ¶ 2, Declaration of Ahisha Lewis, Dckt. No. 25.

Creditor attempts to provide contrary evidence of the Debtor's asserted value by providing a copy of what is purported to be a summary of NADA values for the subject vehicle. Exhibit 2 filed in support of the Opposition, Dckt. No. 37, appears to be a printout of a Summary with NADA values for a 2005 Infiniti, G35-V6 Sedan 4D. The NADA Guide Summary lists the "clean retail" value as $10,000, with a $0.00 adjustment for any issues and features that may be in want of repairs that are made. The Creditor provides no definition of what the "clean retail" value of vehicle indicates, and why this amount should be considered to be the most accurate reflection of the retail merchant value for the subject vehicle. FN.1.

FN.1. For instance, in previous occasions, this court has been provided

with excerpts of NADA Guide that define the term "average retail value" as follows:

> Any average retail vehicle should be clean and without glaring defects. Tires and glass should be in good condition. The paint should [illegible] and have a good finish. The interior should have wear in relation to the age of the vel[illegible]. Carpet and seat upholstery should be clean, and all power options should work. The mileage should be within the acceptable range for the model year.
>
> An average Retail vehicle on a dealer lot may include a limited warranty or guarantee, and possibly a current safety and/or emission inspection (where applicable).

See the Civil Minutes for the July 22, 2014 hearing of the Motion to Value the Secured Claim of Redwood Credit Union in *In Re: Lee Sciocchetti*, Bankr. E.D. Cal. 14-24574, Dckt. No. 32.

Here, although the Creditor asserts that the NADA Guide estimate supplies the best evidence of value and price of the vehicle (presumably as the values would be assigned in a market place for vehicles for personal purchase), the Creditor has withheld from the court the "Clean Retail" definition used by the NADA. Though the Creditor may assume that the court is familiar with such definitions, it is not appropriate for parties (be they the Debtors with their Kelly Blue Book Report or Creditor with the NADA Report) to task the court to do independent research and presentation of evidence.

The Creditor provides no basis for why it believes that the court and parties in this matter should adopt the "clean retail value" listed on the NADA Guide report as the correct valuation for this Vehicle. A range of options for values for the vehicle, including a "rough trade-in," average trade-in, clean trade-in, and clean loan values are also listed on the NADA sheet. The respondent Creditor adopts the clean retail value listed on the Guide, at the absolute highest end of the values stated in the sheet.

There are no reductions in price made for maintenance, cleaning, and preparation of a vehicle for retail merchant sale, which may include: oil change, filters, engine cleaning, transmission fluid and filter replacements, interior detailing and cleaning, used condition of tires, exterior detailing, scratch covering, and a tank of gas. Creditor does not take into account any of the repairs or work which must be made to the vehicle to get it to a "retail replacement value." On its face, the NADA valuation is for "Clean Retail" value. Only a "Mileage Adjustment" is computed to reduce the values of the rough, average, and clean trade-in prices, as well as the clean loan and clean retail prices, by $125.00 and are subtracted from the total base values. No explanation is provided as to how the Creditor arrived at that figure.

Additionally, the NADA Values Guide and supporting documentation of the Creditor's Retail Installment Contract with Debtor, as well as an itemization of the secured claim asserted by Creditor, are not authenticated by testimony by the individual(s) who may have prepared the NADA estimate, drafted the Itemization of Claim, or a custodian of records who can testify

that the attached Contract is what Creditor claims it to be. Federal Rule of Evidence 901. As such, for the purposes of this matter, the court does not have competing evidence from the Creditor to consider the Creditor's estimated value of the subject vehicle.

REQUEST FOR CONTINUANCE

Although the Creditor has not provided credible, admissible evidence of its assertion that the value of the subject vehicle is $10,000.00, the Creditor has requested in the alternative that the Debtor make the property available for an appraisal or some other expert valuation. Presumably if the Creditor is able to conduct an appraisal of the vehicle, the Creditor will attend the next hearing on this matter, prepared to present evidence that more accurately reflects the value of the vehicle (and not assume, without evidentiary support, that the subject vehicle is in pristine condition), and file exhibits in accordance with the Federal Rules of Evidence and are properly authenticated for the court's consideration.

The Motion is continued to XXX.

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 Ahisha Lewis, "Debtor" having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is continued to XXXX.

5. 14-25814-C-13 DANIEL/ADRIANA NEVES
DPC-1 Julius M. Engel
Thru #7

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
7-10-14 [20]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on July 10, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

(1.) Debtors' plan relies on a Motion to Value the secured claim of Specialized Loan Servicing in Class 2; however, Debtor has not filed a Motion to Value that secured claim. Therefore, Debtor cannot make the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6).

(2.) The plan does not reflect Debtors' best efforts under 11 U.S.C. § 1325(b). Debtor is over the median income and proposes plan payments of $179.00 for 60 months with a 0.00% dividend to unsecured creditors. Based on Trustee's review of Form B22C lines 30, 31, 50, 37, and 47 require revision. See Objection to Confirmation (Dkt. 20).

The court previously continued the hearing on this Objection to this hearing date. Debtor filed a Motion to Value the secured claim of Specialized Loan Servicing on July 11, 2014. At the hearing on July 29, 2014 and the court continued the hearing to on the Motion to this hearing date to allow time for parties to submit a report from an appraiser as to the collateral's value. The court continued the hearing on the Objection to the same date with the expectation that before the date of September 16, 2014, Debtors will have resolved the Best Efforts Objection raised by Trustee in anticipation of confirming a plan at the next hearing.

The Debtors' Motion to Value the Secured Claim of Specialized Loan Servicing, JME-1, having been denied by the court on this hearing date, and the parties providing no documentation showing that the Debtors have addressed and resolved the Trustee's concerns (regarding whether the Plan represents the best efforts of Debtor, who is over median income but is providing a 0% dividend to unsecured claim holders), the proposed Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

MOTION TO CONFIRM SECOND AMENDED PLAN

The Debtors filed a Motion to Confirm a Second Amended Chapter 13 Plan, Dckt. No. 42, on September 12, 2014, four days before this hearing date. Ordinarily, the filing of a new plan would be a *de facto* withdrawal of the pending Objection and Motions to Confirm. The present Motion to Confirm the First Amended Plan would be then be dismissed as moot.

However, no Second Amended Plan has been filed by Debtors. Filed as part of the Motion (and not as a separate exhibit) is a document titled "2nd AMENDED CHAPTER 13 PLAN," Dckt. No. 42 at p. 2. The attachment of what appears to be the proposed plan is procedurally defective for two reasons.

First, Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents in this district require that the motion, points and authorities, each declaration, and the exhibits document to be filed as separate electronic documents. The plan was attached to the Debtors' Motion to Confirm as a single document, which is not the practice of this court. The court's expectation is that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the Motion to Confirm. Local Bankr. R. 1001-1(g), 9014-1(l).

Second, no Second Amended Plan has been filed with the court. It is merely an exhibit of what possibly could be filed in the future. The Debtors have not provided a Second Amended Chapter 13 Plan for review by the court, the Trustee, creditors, and all other parties in interest. Thus, the present Objection cannot be dismissed as moot; rather, the court must consider the merits of the Objection and the filed plan, given that only the first Chapter 13 Plan filed on May 30, 2014, Dckt. No. 5, has been properly presented to all parties for consideration.

The First Amended Plan, the confirmation of which the Chapter 13 Trustee opposes with the instant Objection, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained and the plan is not confirmed.

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

holding that:

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

6. 14-25814-C-13 DANIEL/ADRIANA NEVES
JME-1 Julius M. Engel

CONTINUED MOTION TO VALUE COLLATERAL OF SPECAILIZED LOAN SERVICING
7-11-14 [24]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 11, 2014. 28 days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Specialized Loan Servicing, "Creditor" is denied without prejudice.

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 6771 Langston Way, Sacramento, California. The Debtors seeks to value the property at a fair market value of $310,597.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of

approximately $360,995. Specialized Loan Servicing's second deed of trust secures a loan with a balance of approximately $44,995. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

CREDITOR'S OPPOSITION

The Bank of New York Mellon Trust Company, N.A. as Trustee for Flagstar home Equity Loan Trust 2007-1 Asset Backed Pass-Through Certificates, Series 2007-1, as serviced by Specialized Loan Servicing, LLC, opposes Debtor's Motion to Value based on the following:

(1.) Secured creditor filed a proof of claim (Claim 4) on June 30, 2014, in the amount of $45,319.07, including arrearage due of $402.43.

(2.) Debtor provided in adequate notice of this Motion under Rule 9014.1(f)(4). The Motion was filed on July 11, 2014, less than 28 days' before the hearing.

(3.) Creditor objects to Debtor's valuation of the property and provides a "Broker's Price Opinion" valuing the subject property at $373,000 (Exh. 1, Dkt.). Creditor requests a continuance to procure an appraisal of the properties value.

The Creditor submitted a Broker Price Opinion supporting its valuation of the property at the asserted value of $373,000.00. Exhibit 1, Dckt. No. 30. However, this document has not been authenticated with testimony by an individual with knowledge who can attest to preparation of the estimate, and can state that the document is the appraisal that the Creditor purports it to be. Fed. R. Evid. 601, 602, 901, 902.

DISCUSSION

The court is treating Debtor's Motion as though it was filed pursuant to LBR 9014-1(f)(2) because it was filed on fewer than 28 days' notice and is not requiring objections to be filed 14 days prior to the hearing.

The matter was continued to this hearing date to allow the Creditor to obtain a report from an appraiser. Civil Minutes, Dckt. No. 32. Nothing further has been filed on this matter on the court docket since the court's initial hearing on this matter on July 29, 2014.

Incorrectly Identified Creditor

Debtors seeks to value the collateral of "Specialized Loan Servicing." However, it has been repeatedly represented in this court that loan servicing companies including Specialized Loan Servicing, LLC, are not creditors (as that term is defined by 11 U.S.C. § 101(10)), but are mere loan servicing agents with no ownership of or in the secured claim. To state that the Second Deed of Trust is held by Specialized Loan Servicing, LLC's indicates that Debtors have no knowledge of who the actual creditor in interest is who holds the claim secured by the second deed of trust.

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

rights of such party. The Debtors provide no evidence for the court to determine who the proper creditor is on this loan. The Debtors do not testify that they borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred from a certain creditor to Specialized Loan Servicing, LLC. The Debtor does not provide the court with any discovery conducted to identify the creditor holding the claim secured by the second deed of trust.

The misidentification of creditors for purposes of § 506(a) motions will automatically be fatal to a debtor's attempts to value a secured claim. Obtaining an order valuing the "claim" of a loan servicing company does not value the claim of the creditor. In most cases where Debtors have filed a Motion to Value naming a loan servicing agent as a creditor on a claim, no motions are filed seeking to value the claim of the actual creditor, no service is attempted on the actual creditor, and no effort is made to afford the actual creditor any due process rights.

In these situations, all orders issued by the court would be void as to the actual creditor. These circumstances would prove highly inconvenient to the moving debtors as well. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt secured by a third deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

Debtor provide no exhibits showing that Specialized Loan Servicing, LLC is the actual owner of the underlying obligation. Debtors' Schedule D lists the Creditor holding a second deed of trust in the 6771 Langston Way, Sacramento, California property as "Specialized Loan Servicing," which holds a claim valued at $310,597.00 without deducting the value of the collateral. Dckt. No. 1 at 19. In this contested matter, no attorneys purporting to represent Specialized Loan Servicing, LLC, have appeared to represent the interests of the named respondent entity.

No assignment or transfer of claim appears on the docket transferring any interest to Specialized Loan Servicing, LLC. The court is not certain how Debtors can name Specialized Loan Servicing, LLC as the actual lender for an obligation that appears to be owed to another originating entity. The court will not approve an loan modification that will not be effective against the actual owner of the obligation. The court will not issue an order valuing the secured claim that will not be effective against the actual owner of the obligation. No Proof of Claim has been filed on the claims registrar by Specialized Loan Servicing, LLC, which may assert that it is the holder of the Note secured by the deed of trust, or any other party claiming that it is the actual owner of the subject claim.

There have been multiple instances in which different loan servicing companies have misrepresented to the court, debtors, Chapter 13 Trustee, U.S. Trustee, creditors, and other parties in interest that the loan servicing company is the "creditor" as that term is defined in 11 U.S.C. § 101(10). In each of those cases, the loan servicing company was merely an agent with very limited authority to service the loan. The servicer was not granted a power of attorney to modify the creditor's rights, was not authorized to contract in its own name to bind the creditor, or was the authorized agent for service of process for the creditor. FN. 1

FN.1. This court has previously addressed this issue with multiple

servicing agents the requirement that it accurately identify its status in a bankruptcy case – whether creditor, loan servicer for the creditor, agent of the creditor, or holder of a power of attorney authorized to act for the creditor in legal proceedings or in executing documents in the name of the creditor. In the *Edwin L. and Cynthia Crane* bankruptcy case, Bankr. E.D. Cal. 11-27005, Dckt. 124, the court entered an order requiring Green Tree Servicing, LLC to correctly identify the creditor in cases, and for Green Tree Servicing, LLC not to identify itself as the creditor,

> "unless it is the holder of all legal rights to enforce the claim in its own name, as the assignee for collection, or as the holder of a power of attorney for another and is the agent for service of process for all purposes for any other person who holds any legal rights to enforce the claim. Any proofs of claim shall have attached to them documentation of the assignment, power of attorney, and general agent for service of process for any claims for which Green Tree Servicing, LLC asserts it is a creditor."

See Civil Minutes of the November 8, 2011 hearing in the *Crane* case in which the court addressed and rejected the contention that a mere agent or loan servicer may present itself as the actual creditor with a claim. *Id.*, Dckt. 111.

Other cases in which the court has issued orders to show cause for servicing companies (Green Tree Servicing, LLC, in the example highlighted by this footnote) has filed responses and represented that its practices have been modified to correctly identify the creditor include: *John and Susan Jones*, Bankr. E.D. Cal. 11-31713; and *Matthew and Kristi Separovich*, Bankr. E.D. Cal. 11-42848.

This court will not issue "maybe effective, maybe not effective" orders. The residential mortgage market has already suffered serious black eyes from incorrectly identified lenders, transferees, nominees, robo-signing of declarations and providing false testimony under penalty of perjury, and documents which do not truthfully and accurately identify the parties to the transaction. It is not too much for least sophisticated consumer debtors to have the true party with whom they are purportedly contracting identified in the written contract.

Based on the foregoing, the valuation motion filed pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Value is denied without prejudice.

7. 14-25814-C-13 DANIEL/ADRIANA NEVES
MDE-1 Julius M. Engel

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.
6-27-14 [17]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on July 10, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

The Bank of New York Mellon Trust Company, N.A., as serviced by Specialized Loan Servicing, LLC, objects to confirmation of Debtors plan on the following grounds:

1. Pursuant to 11 U.S.C. § 1322(b)(5), the plan does not provide for the curing of the default on Creditors claim.

2. Pursuant to 11 U.S.C. § 1325(a)(6), the plan does not provide how Debtors will be able to make all payments under the plan and to comply with the plan.

The court continued the hearing on this objection to this hearing date, as the Debtors filed a Motion to Value the secured claim of Specialized Loan Servicing, which appears to be the subject claim in this Objection The court recognized that Debtors were in the process of prosecuting the Motion to Value, and that a resolution of the Motion to Value will likely resolve this Objection. The hearing on the Motion to Value was continued to permit the parties to submit a report from an appraiser as to the collateral's value.

The Debtors' Motion to Value the Secured Claim of Specialized Loan Servicing, JME-1, having been denied by the court on this hearing date, the grounds for the Creditor's Objection remain. Since the Motion to Value the secured portion of the claim has been denied, the Plan does not provide for the curing of the default on the Creditor's claim. The Creditor is not fully provided for in the Plan and the Plan will not sufficiently fund the value of the Creditor's claim. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

MOTION TO CONFIRM SECOND AMENDED PLAN

The Debtors filed a Motion to Confirm a Second Amended Chapter 13 Plan, Dckt. No. 42, on September 12, 2014, four days before this hearing date. Ordinarily, the filing of a new plan would be a *de facto* withdrawal of the pending Objection and Motions to Confirm. The present Motion to Confirm the First Amended Plan would be then be dismissed as moot.

However, no Second Amended Plan has been filed by Debtors. Filed as part of the Motion (and not as a separate exhibit) is a document titled "2nd AMENDED CHAPTER 13 PLAN," Dckt. No. 42 at p. 2. The attachment of what appears to be the proposed plan is procedurally defective for two reasons.

First, Local Bankruptcy Rule 9004-1 and the Revised Guidelines for Preparation of Documents in this district require that the motion, points and authorities, each declaration, and the exhibits document to be filed as separate electronic documents. The plan was attached to the Debtors' Motion to Confirm as a single document, which is not the practice of this court. The court's expectation is that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the Motion to Confirm. Local Bankr. R. 1001-1(g), 9014-1(l).

Second, no Second Amended Plan has been filed with the court. It is merely an exhibit of what possibly could be filed in the future. The Debtors have not provided a Second Amended Chapter 13 Plan for review by the court, the Trustee, creditors, and all other parties in interest. Thus, the present Objection cannot be dismissed as moot; rather, the court must consider the merits of the Objection and the filed plan, given that only the first Chapter 13 Plan filed on May 30, 2014, Dckt. No. 5, has been properly presented to all parties for consideration.

The First Amended Plan, the confirmation of which the Bank of New York Mellon Trust Company, N.A., opposes with the instant Objection, 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 Bank of New York Mellon Trust Company, N.A., as serviced by Specialized Loan Servicing, LLC, 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.

8. 14-27119-C-13 MASON/MAGIC MUNSON — OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
DPC-1 Scott J. Sagaria — 8-20-14 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 20, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtors afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors provide the Trustee with profit and loss statements for their business, Magic Salon, for January 2014 to June 2014, where Debtors report a loss each month. This is the sole source of their income. It appears that Debtors do not have sufficient income to support the plan.

   On Schedules I, Dckt. No. 1, Debtors report income of $3,499.17 from their business, and an attachment sheet shows business expenses of $3,325.53 per month. Debtors also show on Schedule J their household expenses of $3,520.97. Based on these figures, it does not appear that Debtors have sufficient income to support their

household, the business, and the Plan at this time.

2. Debtors cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because an Internal Revenue Service Claim is not provided for. On July 23, 2014, the Service filed Proof of Claim NO. 1, indicating that $8,186.00 in priority unsecured tax debt is not provided for the plan. The claim should be paid in Class 5 of Debtors' Plan.

3. The Debtors have not provided proof of their Social Security Numbers to the Trustee to establish the Debtors' identity pursuant to the requirements of the United States Trustee and the Chapter 13 Trustee under 11 U.S.C. § 521(h)(2).

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 the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

9. 14-25726-C-13 TODD/DEBRA BURNS MOTION TO CONFIRM PLAN
PGM-2 Peter G. Macaluso 8-5-14 [19]

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 5, 2014. By the court's calculation, 45 days' notice was provided. 42 days' notice is required.

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

The court's decision is to grant the Motion to Confirm the Amended Plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee files opposition to confirmation of the proposed Chapter 13 Plan.

OPPOSITION BY TRUSTEE

The Chapter 13 Trustee argues that the Debtors cannot make the proposed payments under 11 U.S.C. § 1325(a)(6).

Debtors' original Schedule I, Line 5e, listed a deduction for insurance in the amount of $879.52; however, Debtor filed an Amended Schedule I on August 5, 2014, and changed the deduction to $472.18 without any explanation. Debtors' pay advices dated March 1, 2014 through March 31, 2014, lists a total deduction of $772.62 for insurance. The Debtors are paid semi-monthly, and the following deductions are listed on the pay advice for insurance, Exhibit "A":

Pre-tax medical $318.26 (2 times per month)
Pre-tax dental $49.86 (2 times per month)
Pre-tax vision $11.94 (2 times per month)
Accidental Death $6.25 (2 times per month)

Total deduction for March, 2014 is $772.62

Debtor also added a deduction of $106.66 for Mandatory contributions for retirement plans on Amended Schedule I, Line 5b. However, based on March 2014 pay advices, attached as Exhibit "A," the deduction for the DComp 401K of $54.17 and $135.42 totals $189.59 for the month of March 2014.

REPLY OF DEBTORS TO TRUSTEE

1. Insurance Deduction Change

The Debtors respond that the Joint Debtor who works for Bank of America, in January received a slight annual increase which resulted in changes in the deductions for 401K and insurance. The Debtor added the direct out of pocket costs to the insurance to remedy skin cancer, allergies and asthma for the children who have been reduced upon completion. The actual insurance is agreed to be at $772.62 through the payroll deductions.

2. Mandatory Retirement

The Debtors state that they do not have two 401k deductions "as the amount of $54.17 to $135.42, the difference being voluntary" (the court is not sure what this means, and how this statement is responsive to the Trustee's Objection). The Debtors state that they had a deduction of $54.17, which was increased to $135.42, but that increase is voluntary not mandatory.

3. Debtors Are Able to Make Payments

The Debtors state that they have the ability to make the payments called for under the proposed plan. The Debtor has the potential to receive end of the year performance bonus of up to $11,000, before deductions and taxes which would amount to approximately $326.00 of disposable income.

4. Health Care Deductions

The Debtors assert that the family has had many medical issues; the Debtor has had skin cancer, the wife has liver issues, and the kids have asthma, allergies along with hearing loss.

The deductions of $879.52 have been corrected, but the correction $772.62 had been corrected as reported on the Amended Current Monthly Income Statements that have been filed. As such, the Debtors have both medical deductions from the paychecks and direct payment issues.

The Debtors state that as the changes affect only the income, and not Debtors' expenses. The Debtors disposable income increases from $294.00 to $326.00 with the revisions to Debtors's schedules.

The Debtors having filed an Amended Schedule I and explaining the changes and deductions in Debtors' healthcare insurance payments (Supplemental Declaration of Todd Burns, Dckt. No. 37), the amended Plan

complies with 11 U.S.C. §§ 1322, 1323 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 August 5, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

10.	14-24246-C-13 DPC-1	CARL ASMUS AND JODI CAMPISI ASMUS Scott A. CoBen	CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-5-14 [36]

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

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

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

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

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

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

The court's decision is to sustain the Objection.

Continuance

The hearing on this matter was continued from August 5, 2014, and further continued from August 26, 2014 to this hearing date to allow for further settlement negotiations. Civil Minutes, Dckt. No. 60. Nothing further has been filed on the docket for this matter.

REVIEW OF OBJECTION

The Chapter 13 Trustee opposes confirmation of the Plan for three reasons. First, the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on May 29, 2014. The Trustee does not have

sufficient information to determine whether or not the cause is suitable for confirmation with respect to 11 U.S.C. § 1325. The meeting has been continued to June 26, 2014, at 10:30 am. Prior to the Meeting, Debtors' counsel contacted the Trustee's office indicating that Debtor could not attend, due to graduations scheduled for the same day. The Trustee does not oppose continuing this hearing on the Motion until after June 26, 2014.

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

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

RESPONSE BY DEBTORS

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

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

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

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

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

Additionally, the court is denying the Debtors' Motion to Value the secured claim of JPMorgan Chase Bank, N.A., SAC-2, also scheduled for this hearing date, on the basis that the Motion seeks to impermissibly modify of the secured claim of JP Morgan Chase Bank N.A (the holder of the second deed of trust on the Debtor's principal residence) in violation of 11 U.S.C.

§ 1322(b)(2). The claim of JP Morgan Chase Bank, N.A., which is listed as a Class 2 claim, Dckt. No. 5, is not sufficiently provided for in the plan as a Class 2 claim reduced to the amount of $0.00 (based on the value of collateral) in the proposed plan.

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

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

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

11.	14-24246-C-13 SAC-2	CARL ASMUS AND JODI CAMPISI ASMUS Scott A. CoBen	CONTINUED MOTION TO VALUE COLLATERAL OF JPMORGAN CHASE BANK, N.A. 5-14-14 [21]

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

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

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

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

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

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

The Motion to Value secured claim of J.P. Morgan Chase Bank, N.A., "Creditor" is denied.

AUGUST 26, 2014 HEARING

The court continued the hearing on the Motion to Value Collateral from the original date of June 10, 2014 to August 26, 2014, ordering that all discovery to be completed by August 5, 2014. Dckt. No. 44. At that hearing, the court again continued the hearing on this matter to September 16, 2014 to allow further settlement negotiations. Dckt. No. 61.

Nothing further on this matter has been filed since the hearing held on August 26, 2014.

REVIEW OF MOTION

The motion is accompanied by the Debtors' declaration. The Debtors are the owner of the subject real property commonly known as 837 Morton Way, Folsom, California. The Debtors seek to value the property at a fair market value of $510,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately $521,198.00. J.P. Morgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately $135,807.00. Debtor requests the court to enter an order vlauing the secured claim of J.P. Morgan Chase Bank, N.A. at $0.00 based on the proposed valuation.

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

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

Supplemental Declaration of Barry R. Cleverdon

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

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

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

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

The Debtors seek to value the property at a fair market value of $510,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

RULING

Debtors seek to value the secured claim of JP Morgan Chase Bank, N.A., at $0.00, arguing that the respondent creditor's claim is secured by a junior deed of trust that is under-collateralized, and that no payments in shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Value Collateral filed by Debtors, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Value the Secured Claim of JP Morgan Chase Bank, N.A. is denied.

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

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

Below is the court's tentative ruling.

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

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

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

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

CONTINUANCES

The courts continued the hearing on this matter from June 24, 2014 to August 26, 2014, so that the court could address with Wells Fargo Bank, N.A. its loan modification practices and documentation provided to the court when requesting court approval of such modifications.

The court again continued the hearing on the Motion to Confirm the Modified Plan to this hearing date. Dckt. No. 78. Nothing further has been filed on the court's docket on this matter.

REVIEW OF THE MOTION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes confirmation of Debtors' modified plan on the basis that it appears that Debtor cannot make the

payments or comply with the plan under 11 U.S.C. § 1325(a)(6), and because the Plan may not be feasible. Debtor is delinquent $265.00 under the terms of the proposed modified plan.

Additionally, the modified plan is based upon Debtors receiving a permanent loan modification. Trustee states that Debtor has not received a permanent loan modification offer, but rather, a trial loan modification which was filed as Dckt. No. 37. The Class 1 creditor has filed a claim, Court Claim No. 1, indicating $6,366.52 in mortgage arrears, which are included in the confirmed plan. $5,091.52 remains to be paid to the arrears claim. The terms of any permanent loan modification are not known at this time, including whether arrears will be capitalized. FN.1.

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

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

REPLY OF DEBTOR

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

SUPPLEMENTAL OBJECTION TO DEBTOR'S MOTION

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

Additionally, Trustee reiterates his second objection that the final terms of this loan modification have not been disclosed. While Debtor's Counsel has the contract, he has not incorporated or disclosed any of the terms; while the terms may not be different from the trial loan modification, the court has no evidence. Trustee argues that the Debtor

cannot make the payments called for under the plan under 11 U.S.C. § 1325(a)(6).

RESPONSE TO SUPPLEMENTAL OBJECTION

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

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

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

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

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

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

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

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

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

Below is the court's tentative ruling.

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

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

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

The Motion to Approve Loan Modification is denied without prejudice.

CONTINUANCE

This matter was continued from August 26, 2014, to this hearing date to allow Debtor to identify the lender that is party to the subject loan modification agreement, Civil Minutes, Dckt. No. 79. However, nothing further has been filed the court docket, identifying the lending entity with particularity under the requirements of Federal Rule of Bankruptcy Procedure 9013.

REVIEW OF MOTION

The Motion states the following grounds with particularity pursuant to Federal Rule of Bankruptcy Procedure 9013, upon which the request for relief is based:

A. Debtor, Sonia M. Zamora, requests permission to enter into a loan

modification agreement with an undisclosed "Lender." Debtor's Chapter 13 was filed on May 25, 2012. The Debtor has been in the Chapter 13 for 27 months.

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

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

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

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

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

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

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

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

The Motion to Approve Loan Modification does not comply with the requirements of Federal Rule of Bankruptcy Procedure 9013 because it does not plead with particularity the grounds upon which the requested relief is based.

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

A Motion to Approve a Loan Modification that does not identify the responding lender does not set forth the relief requested with the particularity required by Federal Rule of Bankruptcy Procedure 9013. The court cannot grant relief against a respondent who is unidentified, or

against a respondent whose identity is ambiguous. Fed. R. Bankr. P. 9013. Debtors fail to identify the lender who has allegedly entered into an agreement to modify their home loan, rendering the court unable to issue an order affecting the rights of a specified party. A motion that does not identify clearly the responding party does not comply with Rule 9014(a) because a motion that is ambiguous about the respondent cannot give reasonable notice and opportunity for hearing to the party against whom relief is sought. Fed. R. Bankr. P. 9014(a).

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

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

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

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

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

> The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations.

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

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

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

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

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

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

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

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

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

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

IT IS ORDERED that the Motion to Approve the Loan Modification is denied without prejudice.

14. 14-27050-C-13 ENRIQUE/MICHELLE SERRATO — CONTINUED MOTION TO VALUE COLLATERAL OF NEIGHBORWORKS
SAC-1 Mikalah R. Liviakis — 8-11-14 [17]
Thru #15

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

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

Below is the court's tentative ruling.

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

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

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

The Motion to Value secured claim of NeighborWorks Home Ownership, "Creditor," is granted and Creditor's secured claim is determined to have a value of $00.00.

The Motion to Value filed by Enrique and Michelle Serrato, "Debtors" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtors are the owner of the subject real property commonly known as 8120 Hearthstone Place, Antelope, California, "Property." Debtors seek to value the Property at a fair market value of $220,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

OPPOSITION BY CREDITOR

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

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

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

INCORRECT NOTICE OF HEARING

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

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

Although the Certificate of Service indicates that the Motion was served on July 28, 2014, the docket indicates that the pleadings and supporting documentation were not filed until August 11, 2014. Local Bankruptcy Rule 9014-1(e)(2) also requires that the proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed. The court cannot be certain that the pleadings were actually served and sent on July 28, 2014.

CONTINUANCE AND CONSIDERATION OF THE MOTION ON ITS MERITS

On August 31, 2014, the court signed an order continuing the hearing on this matter to this hearing date, following the parties' apparent mutual agreement to continue the Motion to Value to September 16, 2014. Notice of Continued Hearing, Dckt. No. 32. Presumably, the Creditor has agreed to waive the procedural issues raised in its initial response to the Motion, and discussed by the court above. The court proceeds to consider the pleadings and evidence submitted in support of the Motion.

The Motion to Value filed by Enrique Serrato and Michelle Serrato, "Debtors" to value the secured claim of NeighborWorks, the "Creditor," is accompanied by Debtors' declaration. Debtors are the owner of the subject real property commonly known as 8120 Hearthstone Place, Antelope, California, "Property." Debtors seek to value the Property at a fair market value of $220,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parities seeking relief from a federal court.

The senior in priority first deed of trust secures a claim with a balance of approximately $305,000.00. Creditor's second deed of trust secures a claim with a balance of approximately $14,000. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Enrique and Michelle Serrato, "Debtors," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Neighborworks Home Ownership secured by a second in priority deed of trust recorded against the real property commonly known as 8120 Hearthstone Place, Antelope, 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 $220,000.00 and is encumbered by senior liens securing claims in the amount of $305,000.00, which exceed the value of the Property which is subject to Creditor's lien.

15. 14-27050-C-13 DPC-1 | ENRIQUE/MICHELLE SERRATO
Mikalah R. Liviakis | CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-13-14 [24]

Local Rule 9014-1(f)(2) Motion - no opposition.

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 13, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to overrule the Objection as moot.

PRIOR HEARING

The court heard the Trustee's Objection on September 9, 2014 and continued the matter to the present date to be heard in conjunction with a simultaneously pending Motion to Value.

OBJECTION

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

1. Debtors cannot afford to make the plan payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

2. Debtors' plan relies on the Motion to Value Collateral of NeighborWorks.

On August 26, 2014, the Court continued the Motion to Value Collateral of NeighborWorks, Creditor, until September 16, 2014. At the hearing on September 16, 2014, the court is prepared to grant the Motion to Value the secured claim of NeighborWorks. Granting of this Motion resolves the Trustee's Objection, which will be overruled as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to 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 hearing on the Objection to confirmation the Plan os overruled as moot.

16.	14-27250-C-13	MATTHEW/JENNIFEROBJECTION TO CONFIRMATION OF
	DPC-1	JUHL-DARLINGTONPLAN BY DAVID P. CUSICK
	Thru #16	Douglas B. Jacobs8-19-14 [23]

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

opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 19, 2014. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtors cannot make the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6). On July 24, 2014, the Internal Revenue Service filed Claim #2 indicating $73,827 in secured claim not provided for in Debtors' plan. The IRS also claims a $228,112 priority tax.

2. Debtors propose to pay USAA Federal Savings Bank's Second Deed of Trust as a Class 4 debtor; however, the creditor filed Claim #5 alleging $50,822 due with arrearage of $3,160. The creditor should be provided for in class 1.

3. Debtors did not report all assets. On Schedule J, Matthew Darlington reports an expense for life insurance; however, on Schedule B, Debtors did not report interest in any life insurance. Debtor Jennifer Darlington has a deduction of $676.13 per month for STRS retirement; however, the only retirement account listed on Schedule B is a 401K held at Charles Schwab.

4. Debtor Jennifer Darlington has not reported all deductions from payroll properly. Debtor's pay stubs include deductions of $102.00 per month for union dues, $676.13 per month for STRS, $17.95 for life insurance and $715.07 for tax withholding. The only deduction reported on Schedule I is $720.00 for taxes. Her net income actually averages about

$5,531.90 per month, $791.10 less than reported on Schedule I.

Debtors' Response

Debtors agree with the Trustee and state they will file an amended plan correcting the Trustee's objections.

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.

17.	14-27250-C-13 MDE-1	MATTHEW/JENNIFEROBJECTION TO CONFIRMATION OF JUHL-DARLINGTONPLAN BY USAA FEDERAL SAVINGS Douglas B. JacobsBANK 7-31-14 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 31, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

Creditor, USAA Federal Savings Bank, opposes confirmation of the Plan on the basis that the plan does not provide for the arrears on its secured claim. 11 U.S.C. § 1322(b)(5).

The Trustee filed a concurrent Objection, to which Debtor's responded they agreed and would be filing an Amended Plan. Included in Debtor's non-opposition was concurrence that the plan needed to provide for USAA's arrears.

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 Creditor 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.

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on August 5, 2014. Forty-two days' notice is required. That requirement was met.

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

The Motion to confirm is denied without prejudice.

The Chapter 13 Trustee opposes confirmation based on the following:

1. Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtors' projected monthly disposable income listed on Schedule J is negative $1,228.31 and Debtors propose a plan payment of $100.00 per month for month 1 and $2,000.00 per month for months 2 through 60.

2. Debtors have not listed all assets. Debtors have reported paying prior counsel, Jeffery Yazel, $10,000, plus court fees, for prosecuting this case under Chapter 11. On August 11, 2014, the court ordered Yazel to disgorge all funds received for fees and costs. These funds are an asset of the estate and are not disclosed on Debtors' Schedules.

3. Debtors propose to pay One West Bank, FSB's First Deed of Trust as a Class 4 debt. One West filed Court Claim #2

asserting a secured claim of $412,370.17, with arrearage of $26,099.35. It appears One West should be provided for in Class 1 of the plan.

4. Debtors propose to pay Toyota Motor Credit Corporation in Class 2A of the plan. Debtors owe Toyota $4,951.55. Debtors propose a monthly dividend of $24,40 per month; however, this amount is insufficient to pay the proof of claim ($4,951.55) in 60 months. To pay the amount in the Claim, the dividend needs to be no less than $98.00 per month.

5. Debtor has not provided Trustee with 60 days of employer payment advices received prior to the filing of the petition pursuant to 11 U.S.C. § 521(a)(1)(B)(iv).

6. Debtor did not provide the Trustee with Business Documents,. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required 7 days before the date set for the first meeting of creditors. 11 U.S.C. § 521(e)(2)(A)(i).

Debtors' Response

Debtor responds as follows:

1. Debtor asserts that despite the One West Bank, FSB proof of claim, there is no arrearage due. Debtor is not concerned about placing this creditor in Class 4. Any attorney' fees associated with the claim will be added to principal and will not be due at the end of any billing month.

2. Debtor asserts that the claim of Toyota Motor Credit Corporation has been paid in full.

3. Counsel asserts that the lack of pay advices was a technical error. Counsel believes that Trustee is no in receipt of all § 521 documents.

4. Debtors have signed the required Business Examination form; however, Debtor's counsel is concerned about some of the entries and will prepare a revised form for Debtors to sign.

Discussion

The court's decision is to deny the motion to confirm.

Debtor provided the court with what appears a copy of the Certificate of Title for the vehicle against which Toyota Motor Credit Corporation held a lien. The document is partially illegible and lacks proper authentication. Counsel for Debtor attempts to authenticate the title document through a short attached declaration in which he testifies that Debtor handed him the original and he made a copy before handing the original back to debtor. Not only is this declaration self-serving, it lacks the testimony of a witness with knowledge that the item is in fact what Debtor and Debtor's counsel purports it to be. There is also no evidence that the document is a public record, which would have also authenticated the documented. *See* F.R.E. 901.

Debtor's response explains the treatment of One West Bank, FSB, but Debtor does not provide a declaration or any other evidence concerning the treatment of the claim. The court lacks confirmation that Trustee received the missing pay advices. Debtor's counsel is preparing a revised business examination form; which suggests that this objection also remains outstanding. Finally, counsel for Debtor does not address whether Debtor has sufficient income to sustain a plan, nor the outstanding asset issue with regard to the fees the court ordered prior counsel to disgorge.

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.

19.	14-26756-C-13	LEIF NILSSON AND ELLENMOTION TO CONFIRM PLAN
	JMC-1	BRYSON8-4-14 [13]
		Joseph M. Canning

Final Ruling: No appearance at the September 16, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 4, 2014. Forty-two days' notice is required. That requirement was met.

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

The Motion to Confirm the Amended Plan is granted.

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. 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 August 4, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for

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

20.	14-26160-C-13 DPC-1	MICHAEL MCCALLOBJECTION TO CONFIRMATION OF Charnel J. JamesPLAN BY DAVID P. CUSICK 8-20-14 [42]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 20, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

Trustee opposes confirmation of the Plan on the following grounds:

1. Debtor did not appear at the First Meeting of Creditors held on August 14, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.

2. Debtor is $1,248.33 delinquent in plan payments to the Trustee to date and the next scheduled payment of $1,248.33 is due on August 25, 2014. Debtor has paid $0.00 into the plan to date.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the xxxx 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.

21.	14-26373-C-13 DPC-1 **Thru #21**	SUSAN WILSONOBJECTION TO CONFIRMATION OF Michael O'Dowd HaysPLAN BY DAVID P. CUSICK 8-20-14 [20]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 20, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

Trustee opposes confirmation of the Plan on the following basis:

1. Debtor cannot make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtor proposes to value the secured claim of Bank of America Home Loans, but has not filed a motion to value collateral.

2. Debtor's plan is not feasible. Trustee calculates the plan will complete in 999 months, as opposed to 60 months. Debtor proposes to pay 100% of unsecured claims and plans on treating the claim of Bank of America's Second Deed of Trust as general unsecured if the Motion to Value is granted.

Debtor has not filed the requisite Motion to Value. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

22.	14-26373-C-13 MDE-1	SUSAN WILSONOBJECTION TO CONFIRMATION OF Michael O'Dowd HaysPLAN BY NATIONSTAR MORTGAGE, LLC 7-21-14 [15]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 21, 2014. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

Creditor, Nationstar Mortgage, LLC, opposes confirmation of the Plan because it does not provide for the curing of the default on secured creditor's claim. 11 U.S.C. § 1322(b)(5). Creditor filed a proof of claim for $201,064.07, including arrearage in the amount of $16,021.51. Once arrears are included in the plan, the payment as proposed will be insufficient. 11 U.S.C. § 1325(a)(6).

Debtor has not proposed adjusting the proposed plan to account for Creditor's arrearage. The court is simultaneously sustaining the Chapter 13 Trustee's Objection to Confirmation. 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 Creditor 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.

23.	14-26976-C-13 DPC-1 **Thru #23**	MICHAEL LITTLEOBJECTION TO CONFIRMATION OF Michael O'Dowd HaysPLAN BY DAVID P. CUSICK 8-20-14 [26]

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

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

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

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

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

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

The court's decision is to sustain the Objection.

Trustee opposes confirmation of the Plan based on the following:

1. Debtor did not appear at the First Meeting of Creditors held on August 14, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.

2. While the plan proposes to pay Debtor's counsel $3,000 under LBR 2016-1(c), the Disclosure of Compensation appears to list that attorney services do not includes some services required under LBR 2016-1(c). Trustee interprets this as counsel opting out of the "no look" provisions and will require a motion for fees.

3. Debtor classified the claim of Rush Financing in Class 1 of the plan, but lists no mortgage arrears. It appears the claim will be paid in full prior to the conclusion of the plan and should be provided for in class 2.

4. Debtor's plan provides for refinancing the claim of Sterling Bank and Trust. Debtor has proposed a conditional offer by Capital Alliance to loan Debtor $375,000 at 11% interest for twenty-four (24) months. The terms of the proposed financing would expire during the life of the plan. The proposal does not state what is to occur at the end of the 24 month term. It does not appear that the proposal will cure debtor's mortgage issues.

5. Debtor's plan may not pass Chapter 7 liquidation analysis. 11 U.S.C. § 1325(a)(4) as Debtor may not have listed all assets. Debtor operates Stairways Empowered Living, a sole-proprietorship offering supportive living environments to adults with disabilities. Debtor has not listed the business as a "DBA" and has not listed the business or its assets on Schedule B.

6. Trustee is unable to determine feasibility of the plan as Debtor did not attached to Schedules I & J a business budget detailing gross business income and itemizing the business expenses.

Debtor's Response

Debtor agrees with the Trustee's objections and will file an Amended Plan.

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.

24.	14-26976-C-13 SW-1	MICHAEL LITTLEOBJECTION TO CONFIRMATION OF Michael O'Dowd HaysPLAN BY STERLING BANK AND TRUST, FSB 8-21-14 [30]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 21, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

Creditor, Sterling Bank and Trust, FSB, opposes confirmation of the Plan on the basis that debtor's proposed plan is not feasible because the contemplated refinance proposed by the plan does not provide for the payment of creditor's loan upon maturity. 11 U.S.C. § 1325(a)(5).

Creditor's loan matures on April 1, 2015. The outstanding principal balance plus accrued interest and charges due on that date will be in excess of $403,749.35. The plan provides for a refinance on the loan with Capital Alliance in the amount of $375,000. This is an insufficient amount to repay the trust deed obligation owing to Creditor.

Creditor further objects because the plan doe not provide for the correct amount of arrearage owed. The arrears set forth in the plan are $35,907; however, the arrears owing total $65,184.30.

Creditor takes issue with the conditional nature of the refinance and the insufficient amount.

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 Creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

25.	11-35278-C-13 SDB-2	ADELA MORALESMOTION TO VALUE COLLATERAL OF W. Scott de BieJP MORGAN CHASE BANK, N.A. 8-11-14 [58]

Final Ruling: No appearance at the September 16, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 11, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of J.P. Morgan Chase Bank, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1921 Hummingbird Drive, Fairfield, California. The Debtor seeks to value the property at a fair market value of $275,000 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 $317,040.44. Real Time Resolutions' second deed of trust secures a loan with a balance of approximately $14,330.48. 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 J.P. Morgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 1921 Hummingbird Drive, Fairfield, 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 $275,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

26.	14-25080-C-13 CDN-4	DELMAR/KAREN REYNOLDS Clark D. Nicholas	MOTION TO VALUE COLLATERAL OF AMERICREDIT FINANCIAL SERVICES, INC. 8-19-14 [59]

Final Ruling: No appearance at the September 16, 2014 hearing is required. Motion resolved via stipulation (*See* Court Docket No. 72).

27. 11-31695-C-13 THOMAS/BRENDA DE VORE — MOTION FOR CONSENT TO ENTER INTO LOAN MODIFICATION AGREEMENT
ASW-1 Gerald B. Glazer — 8-12-14 [45]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on August 12, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Approve Loan Modification is denied without prejudice.

The Motion to Approve Loan Modification filed by Nationstar Mortgage, LLC ("Creditor") seeks court approval for Debtor to incur post-petition credit. Creditor, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $1,951.50 a month to $1,907.60 a month. The modification will reduce the interest rate from 5.375% to 4.625%, extend the term of the loan from 360 months to 480 months and reduce the principal balance from $348,500 to $313,164.53.

The Motion is supported by a copy of the loan modification agreement. No declaration was filed with the Motion.

Chapter 13 Trustee Response

Trustee has reviewed the terms of the loan modification and has no objection to the terms. Trustee objects on the basis that Creditor lacks the legal authority to move for the requested relief.

Local Bankr. Rule 3015-1(b)(1) provides:

> *Transfers of Property*. The debtor shall not transfer, encumber, sell, or otherwise dispose of any personal or real property with a value of $1,000.00 or more other than in the ordinary course of business without prior Court authorization. To obtain Court authorization, the debtor shall comply with LBR 3015-1(i).

Pursuant to 11 U.S.C. § 363(b), the 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. There is no indication that Creditor has the power under 11 U.S.C. § 363(b) to make this motion. While the court may find the creditor has derivative standing to exercise powers otherwise reserved to the Trustee (*In re Godon*, 275 B.R. 555, 565 (Bankr. E.D. 2002)), no declaration was filed by the debtor affirming that they seek, or still seek, the requested relief.

The loan modification agreement is in the name of Brenda DeVore (Dkt. 47). Exhibit 5 to Docket 47 is a death certificate reporting a date of death of 06/06/13 for Brenda DeVore, and appointment of Thomas DeVore as administrator of the decedent's estate. The document is not signed by Mr. DeVore on behalf of the estate or as administrator of the estate.

Trustee is uncertain if the probate estate of Brenda DeVore has closed or remains open. Exhibits filed by movant show that Mr. DeVore was appointed as administrator of the estate; however, no declaration was filed by Mr. DeVore as to the status of the probate estate.

Finally, no notice of death was filed with the court nor a Motion to Substitue Party.

Discussion

The court decision is to deny the Motion to Approve Loan Modification. The court incorporates into its discussion and decision the objections cited by the Trustee. The evidentiary record is lacking and Debtors need to ensure the parties are adequately and properly represented in the matter. Specifically, the loan modification agreement lists Brenda DeVore as the borrower and contains a signature; however, the signature appears to be that of Thomas DeVore. Further, Creditor has not demonstrated through a declaration of Debtor that it has the requisite power to bring this Motion.

The court takes no issue with the substance of the Motion, only the procedural defects and irregularities that require streamlining before the Motion can be granted.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Nationstar Mortgage, LLC having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

28. 14-21752-C-13 LBG-10 — SCOTT MILES, Lucas B. Garcia — MOTION TO SELL O.S.T. 9-5-14 [169]

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

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

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditors, and the US Trustee on September 5, 2014.

The Motion to Sell was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The court's decision is to deny the motion without prejudice.

The Bankruptcy Code permits the Chapter 13 Debtor ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here Movant proposes to sell the "Property" described as follows:

A. 1987 Kenworth Mixer Truck

B. C500 Kenworth Dump Truck

C. 1990 357 Peterbilt Mixer Truck

D. 314C Caterpillar Hydraulic Excavator

The Movant proposes to engage Ritchie Bros. Auction to sell the property. Debtor's declaration estimates the sale will generate $50,000. Debtor requests, pursuant to the terms of the proposed plan, that 90% of the proceeds be turned over to the Trustee for administration through the plan and 10% be turned over to the Debtor for living expenses.

Debtor's plan is yet to be confirmed; however, Debtor alleges he is up to date with the terms and conditions of the plan, as they relate to Debtor's duties and obligations under the plan.

The Motion seeks to sell Property free and clear of the lien of Tri Counties Bank ("Creditor"). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

> "(f) The trustee [debtor in possession or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–
>
> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
>
> (2) such entity consents;
>
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
>
> (4) such interest is in bona fide dispute; or
>
> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

11 U.S.C. § 363(f)(1).

For this Motion, the Movant has not established why the sale should be made free and clear of Tri Counties lien. Movant merely states that Tri Counties Bank holds a UCC lien in the items proposed for sale.

Trustee's Opposition

Trustee states that Debtor has not confirmed a plan to date. Debtor's most recent plan was filed on July 2, 2014 and, in section 6, calls for all gross proceeds from the sale of the items that might be the subject of this motion (as well as other items) to go to the Trustee for disbursements at 100% payoff. Debtor's Motion appears to alter the terms of the plan without adequate notice to creditors. The Motion seeks to retain 10% of the sale proceeds for the Debtor's living expenses.

The Trustee cannot discern whether the items listed in section 6 are the same as the items subject to this motion. Debtor's declaration does not

indicate any minimum bid or reserved bid for any piece of property and Trustee cannot be certain that the property will be sold for the expected $50,000.

Debtor seeks to sell the property free and clear of Tri Counties Bank's UCC lien. The proof of claim filed by Tri Counties Bank (Claim No. 11) is for $492,069.42. Proofs of claim have also been filed by the Internal Revenue Service and Pension Plan for Pension Trust Fund for Operating Engineers. It is unclear to Trustee whether theses creditors were adequately served and wether the possible interest of these creditors have been adequately addressed.

Discussion

The court's decision is to deny the Motion to Sell. The court concurs with the Trustee's Objections and emphasizes that the lack of clarity in Debtor's pleadings makes reviewing the merits of this Motion very difficult for the court. The court cannot discern whether the items subject to this motion fall within the items listed in section 6 of the plan. If some of the items crossover between the motion and the plan, then Debtor's request to reserve 10% of the proceeds for living expenses is contradictory to the proposed plan. The court lacks sufficient information to determine whether an estimate of $50,000 as a sale price is sufficient and reasonable. The court cannot determine whether Tri Counties Bank consents to the sale and Debtor did not plead other grounds that would permit the sale free and clear of the Bank's lien. The court lacks sufficient evidence to determine whether the sale is in the best interest of the estate.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Sell Property 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 Sell is denied without prejudice.