

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

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

**September 17, 2013 at 2:00 p.m.**

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

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

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

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

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

The hearing on this motion was continued from August 27, 2013 to September 17, 2013.

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

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

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

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

### **Debtor's Response**

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

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

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

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

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

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

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 9, 2013. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

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

3. [13-29313](#)-C-13 ALEKSEY/YELENA VASILEVICH OBJECTION TO CONFIRMATION OF  
JCW-1 Lisa M. Edgar-Dickman PLAN BY BANK OF AMERICA, N.A.  
**Thru #4** 8-22-13 [[19](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, and Chapter 13 Trustee on August 22, 2013. 14 days' notice is required. That requirement was met.

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

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

Creditor, Bank of America, objects to confirmation of Debtor's Chapter 13 Plan on the following:

(1.) Creditor is entitled to receive payments pursuant to a promissory note which matures on February 1, 2037 and is secured by a Deed of Trust on property known as 515 Arlingdale Circle, Rio Linda, California. As of July 14, 2013, the amount in default was \$46,087.46. (Exh. 1).

(2.) The proposed plan does not provide for repayment of the full arrearages due and, therefore does not comply with 11 U.S.C. § 1322(b) (2) & (5) and 1325(a) (5) (B). Debtors allege in the plan that arrears owed to Creditor are \$38,400.00, while the actual amount is \$46,087.46. To cure this amount, Creditor must receive \$768.12 per month in payments through Debtors' plan over the course of sixty (60) months. Currently Debtors' plan provides for Trustee to make payments in the about of \$1,649.01 per month for 60 months; however, pursuant ot Debtors' Schedules I & J, Debtors have a monthly net income of \$49.01. The plan is not feasible because Debtors do not have sufficient net income to fund the plan or increase the plan payment to cure the arrears.

(3.) Section 6 of Debtors' plan states that Debtors intend to seek a loan modification from Creditor and do not intend to pay any of the arrearages. Creditor objects to this treatment as speculative and prejudicial. It is unknown whether Debtor will obtain a loan modification



following reasons:

(1.) Debtors list the mortgage on their rental property (515 Arlingdale Circle, Rio Linda, California), held by Bank of America in Class 1 of the plan. The Plan does not propose a monthly dividend to be paid toward mortgage arrears totaling \$38,400. Plan also does not disclose the ongoing mortgage payment amount to allow the Trustee to make proper ongoing mortgage payments.

(2.) The plan does not propose an ongoing mortgage payment in Class 1. On Debtors' Schedule J, Debtors report an expense for Bank of America mortgage of \$1,600.00. This ongoing mortgage amount should be provided in the monthly contract amount to be paid by the Trustee in Class 1 of the plan.

(3.) In Section 7 of the plan, Debtors propose additional provisions indicating that Debtors are attempting to obtain a loan modification and wish that no payments be made on the mortgage arrears while Debtors attempt to negotiate the loan modification. Debtors do not provide a timeline for which the Debtors and creditor have to report the approval or denial of the loan modification and when the Trustee and creditors may anticipate a modified plan. Debtors do not indicate whether they intend to comply with the requirement to obtain court approval of a loan modification. Debtors did not include in their plan the language related to ongoing loan modifications under which the court has approved Chapter 13 plans.

(4.) The plan is not Debtors' best efforts under 11 U.S.C. § 1325(b). Maintenance of Debtors' rental property is detriment to Debtors and their estate. The value of the property is significantly less than the lien about and Debtors are losing at least \$250.00 per month. If Debtors are denied a mortgage modification, they will be required to pay no less than \$640.00 per month toward mortgage payments. Debtors' Schedule I reports income from rents of \$1,400.00; however, at the 341(a) Meeting of Creditors, Debtor Y. Vasilevich reported receiving \$1,300.00 per month from rents.

(5.) Debtors' plan proposes to pay remaining attorney's fees of \$2,000.00, but does not propose a monthly dividend in Section 2.07.

(6.) Debtors did not provide Trustee with proof of income for the 60 days preceding filing of the bankruptcy. 11 U.S.C. § 521(e) (2) (A); FRBP 4003(b) (3). This is required 7 days before the date set for the first meeting. 11 U.S.C. § 521(e) (2) (A) (i).

(7.) Debtors are below median income; however, Debtors may not have reported all income. Debtors received \$4,610.00 in federal tax refunds from their 2012 tax return. (Exh. A). Debtors may have received a state refund, also. The plan is not Debtors' best efforts under 11 U.S.C. § 1325(b).

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.

5. [12-33219](#)-C-13                      MARK/LOIS FORSTER                      MOTION TO SELL  
CAH-3                                      C. Anthony Hughes                      8-16-13 [[50](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on August 16, 2013. 28 days' notice is required. That requirement was met.

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

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

Debtors seek an order allowing the sale of real property commonly known as 8908 Melodic Court, Elk Grove, California. The prospective buyer, Wendy Rockwood, made an offer to purchase the property at \$215,000.00 (Exh. A). Debtors want to short sell the property to reduce liability and prevent foreclosure. JP Morgan Chase Bank, N.A. holds the first deed of trust against the subject property in the amount of \$374,805.47. Debtors will not receive any proceeds from the sale.

The motion does not seek to force a sale on the lender; it seeks authorization to close the transaction with the lender's consent. The lender retains the right to consent or not consent, even after the granting of the motion.

The Bankruptcy Code permits the trustee to sell property of the

estate after a noticed hearing. 11 U.S.C. § 363(b). Pursuant to 11 U.S.C. § 1303, a Chapter 13 debtor has the rights and powers of a trustee under § 363(b). Therefore, pursuant to § 363(b), Debtors can properly bring this motion to sell and the court grants the motion.

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

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Sell 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 granted.

6.	<a href="#">13-29322</a> -C-13 APN-1 <b><u>Thru #7</u></b>	ROSANNA MAGNISI Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY TOYOTA MOTOR CREDIT CORPORATION 8-22-13 [ <a href="#">25</a> ]
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Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, Chapter 13 Trustee, and the United States Trustee on August 22, 2013. 14 days' notice is required. That requirement was met.

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

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

Creditor, Toyota Motor Credit Corporation, objects to confirmation of Debtor's Chapter 13 Plan in the following grounds:

(1.) On May 24, 2013, Debtor and non-filing Co-Debtor, Michael Verastro, entered into a written Retail Installment Sale Contract (Security Agreement) with Roseville Toyota which evidenced Debtor and non-filing Co-Debtor's financed purchase of a 2008 Scion xB.

(2.) Upon executing the Security Agreement, Debtor became obligated to pay \$25,044.22, with interest accruing at the contract rate of 5.84%, for the financed purchase price of the property. Debtor has an outstanding balance of \$6,411.33 on the account with Creditor.

(3.) Based upon information from Kelley Blue Book Auto Market Report, the property is currently believed to have a replacement value of \$14,025.00. (Exh. C).

(4.) Creditor objects to the \$4,700.00 valuation allocated to its secured collateral under Debtor's propose plan. The value is substantially below that give by Kelley Blue Book and in the absence of further evidence explaining the valuation discrepancy, Creditor contends Debtor has not satisfied its burden under 11 U.S.C. § 506(a)(2). Therefore, Debtor's plan does not comply with 11 U.S.C. § 1325(a) because it does not pay Creditor the present value of its secured claim. Debtor's plan cannot be confirmed.

(5.) Creditor objects that Debtor's proposed plan is attempting to modify its secured claim. Creditor is the folder of a Retail Installment Contract through which the Debtor and non-filing Co-Debtor maintain a legal and equitable interest in the property. Debtor is not permitted to attempt a "cram down" of Creditor's claim through the use of 11 U.S.C. § 506 because there exists a third party co-debtor. *See In re Rodriguez*, 156 B.R. 659, 660 (Bankr. E.D. Cal. 1993).

(6.) Pursuant to 11 U.S.C. § 506(b), Creditor, an over secured creditor, is entitled to receive the contract rate of interest on its secured claim, as opposed to the 4.00% proposed by Debtor.

(6.) Debtor is operating the property without insurance coverage. Therefore, in order to protect its security interest, Creditor is forced to purchase its own insurance coverage for the property.

(7.) Creditor is over secured and entitled to payment of reasonable attorney's fees and costs pursuant to 11 U.S.C. § 506(b) and the applicable provisions of the Security Agreement.

Creditor's statutory basis for objecting to Debtor's plan is non-compliance with 11 U.S.C. § 506(a)(2) & (b). Under 11 U.S.C. § 506(a)(2), the value of Debtor's personal property, securing an allowed secured claim, is based on the replacement value of the property as of the date of the filing of the petition. Creditor objects to Debtor's replacement value as represented in the plan.

Under 11 U.S.C. § 506(b), if an allowed secured claim is secured by property, the value of which is greater than the amount of the claim, then the holder of the claim is entitled to interest on the claim and reasonable fees, costs, or charges as provided for under the agreement under which the claim arose. Based on Creditor's valuation, it is over secured and should be

entitled to the benefits of 11 U.S.C. § 506(b).

Pursuant to 11 U.S.C. § 1325(a)(1), for the court to confirm a plan, it must comply with applicable provisions of the Bankruptcy Code. Here, Creditors' allegations raise legitimate concerns regarding whether Debtor's plan complies with 11 U.S.C. § 506(a)(2) & (b).

Furthermore, Debtor filed a Motion to Value Collateral/Secured Claim of Creditor which the court heard on September 10, 2013 and dismissed without prejudice. Debtor's plan lacks sufficient funds to pay Creditor's claim in full. 11 U.S.C. § 1325(a)(6).

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 Toyota Motor Credit Corporation 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.

7.	<a href="#">13-29322</a> -C-13 TSB-1	ROSANNA MAGNISI Peter G. Macaluso	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-21-13 [ <a href="#">21</a> ]
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Local Rule 9014-1(f)(2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on August 21, 2013. 14 days' notice is required. That requirement was met.

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

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

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

(1.) Debtor's plan relies on the Motion to Value Collateral of Toyota Financial Services. If the Motion is not granted, Debtor's plan lacks sufficient funds to pay the claim in full. Under 11 U.S.C. § 1325(a)(6), Debtor's plan should be denied confirmation.

(2.) Debtor proposes to value the secured claim of Ocwen Loan Servicing; however, Debtor has not filed a motion to value collateral. Debtor cannot make the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6).

The court heard Debtor's Motion to Value Collateral of Toyota Financial Services on September 10, 2013. The court dismissed the motion without prejudice.

It also appears that Debtor's set for hearing a Motion to Value Collateral of U.S. Bank, N.A. Based on comparing Debtor's Motion with Schedule D, it appears that Ocwen is likely the servicer for U.S. Bank. However, this Motion remains pending and is set for hearing on October 8, 2013.

Therefore, neither of Trustee's concerns are resolved. The Motion to Value Collateral/Secured Claim of Toyota Financial was dismissed and, therefore, Debtor's plan lacks sufficient funds to pay the claim in full. The Plan does not comply with 11 U.S.C. § 1325(a)(6), the objection is sustained, and the plan is not confirmed.

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 31, 2013. 35 days' notice is required. That requirement was met.

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

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

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

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

(1.) Trustee is uncertain Debtors can make the payments called for by the plan. Debtors received an \$11,000.00 tax refund. Debtors are proposing to increase plan payments by \$916.00 per month for the period of August 25, 2013 through July 25, 2014. This amount should be paid into the plan immediately as a lump sum as Debtors state they have made adjustments to their wage withholdings to ensure they are not over deducting throughout the year in order to avoid any future large tax refunds. Debtors have not proposed any change in plan payments, other than to increase payments for the tax refund.

#### **Debtors' Response**

Debtors response to Trustee's objection, stating the following:

(1.) Debtors already made the increased proposed payment of \$5,171.00 for the month of August.

(2.) Debtors propose to pay the remaining refund amount of \$10,084.00 in September, along with the original monthly plan payment amount of \$4,255.00.

(3.) Debtors propose to include the following language in the Order Confirming the Modified Plan:

\$14,339.00 (\$4,255.00 plus remaining refund \$10,084.00) on September, 2013

\$4,255.00 per month for October 25, 2013 - July 25, 2013

\$5,131.00 per month for August 25, 2015 - February 25, 2016.

Debtors' proposed adjustment pays the remaining sum of the tax refund into the plan as a lump sum and returns the monthly plan payments to the original confirmed amount. Therefore, Trustee's concerns regarding the ability of Debtors to make payments according to the plan are resolved and the plan may be confirmed.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on July 31, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**IT IS FURTHER ORDERED** that in the Order Confirming the Plan, Debtors will include the relevant language concerning future payments set forth in Debtor's Response.

9. [13-29228](#)-C-13 FELIPE/HENRIETTA HUERTA OBJECTION TO CONFIRMATION OF  
IRS-1 W. Scott de Bie PLAN BY INTERNAL REVENUE  
**Thru #9** SERVICE  
8-22-13 [[25](#)]

**CASE DISMISSED 09/05/13**

**Final Ruling:** The case having previously been dismissed on September 5, 2013, the Objection is overruled as moot.

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

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

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

**IT IS ORDERED** that the Objection is overruled as moot.

10. [13-29228](#)-C-13 FELIPE/HENRIETTA HUERTA OBJECTION TO CONFIRMATION OF  
TSB-1 W. Scott de Bieq PLAN BY DAVID P. CUSICK  
8-21-13 [[21](#)]

**CASE DISMISSED 09/05/13**

**Final Ruling:** The case having previously been dismissed on September 5, 2013, the Objection is overruled as moot.

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

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

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

**IT IS ORDERED** that the Objection is overruled as moot.

11. [13-28930](#)-C-13 STEVEN/ROBERTA OBJECTION TO CONFIRMATION OF  
IRS-1 CHRISTENSON PLAN BY INTERNAL REVENUE  
**Thru #12** Al J. Patrick SERVICE  
8-9-13 [[13](#)]

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

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

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

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

Creditor, Internal Revenue Service, objects to confirmation of Debtors' plan on the following grounds:

(1.) Debtor owes Creditor \$202,857.45 in pre-petition taxes, interest, and penalties. Creditor filed an amended proof of claim on August 5, 2013 (Claim 1-2). Creditor holds a secured claim in the amount of \$32,300, an unsecured priority claim in the amount of \$83,350.13, and an unsecured general claim in the amount of \$87,207.32. On March 23, 2006, Creditor file a lien against Debtors for outstanding income taxes owed for tax years 2002 and 2003. At the time of filing, the lien secured an unpaid balance owed of \$56,813.63.

(2.) Debtors' plan does not provide for Creditor's secured claim. Creditor is not willing to accept Debtor's plan as it does not provide for Creditor's secured plan. 11 U.S.C. § 1325(a)(5).

(3.) Debtors' plan understated Creditor's unsecured priority claim a \$49,575, for tax years 2010, 2011, and 2012. Creditor has an unsecured priority claim in the amount of \$83,350.13. Debtors' plan states that Creditor's unsecured priority claim will be provided for in full, unless the claim holder has agreed to accept less under 11 U.S.C. § 1322(a)(4). Creditor is not willing to accept any amount less than the amount listed on the amended proof of claim.

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

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

12.	<a href="#">13-28930</a> -C-13 TSB-1	STEVEN/ROBERTA CHRISTENSON Al J. Patrick	OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 8-21-13 [ <a href="#">16</a> ]
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Local Rule 9014-1(f) (2) Motion. No Opposition.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on August 21, 2013. 14 days' notice is required. That requirement was met.

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

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

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

(1.) Debtors did not appear at the First Meeting of Creditors held on August 15, 2013. Trustee lacks sufficient information to determine whether or not the cause is suitable for confirmation with respect to 11 U.S.C. § 1235. The Meeting was continued to September 12, 2013 at 10:30 a.m.

(2.) Debtors' plan does not provide for the secured portion of Creditor Internal Revenue Service's claim and does not fully provide for the priority portion of the claim.

(3.) Debtors' plan is not Debtors' best effort under 11 U.S.C. § 1325(b). Debtors' Form B22C is not complete. Debtors did not properly complete boxes 24A through 59 on Form B22C. Debtor proposed a 46 month plan, contrary to 11 U.S.C. § 1325(b) (1) (B).

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.

13. 13-26731-C-13 SCOTT/JONNA FILIAU MOTION TO AVOID LIEN OF  
RAC-2 Richard A. Chan PERSOLVE, LLC  
8-15-13 [28]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on August 15, 2013. 28 days' notice is required. That requirement was met.

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

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

On January 24, 2013, an Earnings Withholding Order was issued in favor of Persolve, LLC. The Order states that judgment was entered against Debtor J. Filiau in favor of Persolve, LLC, on June 25, 2012 for the sum of \$8,292.40. The Earnings Withholding Order was executed by the Sheriff's Department for Los Angeles County. According to Debtors' declaration, the Los Angeles Sheriff is holding \$1,622.63 of garnished wages. Debtors listed the garnished funds on Schedule B and exempted the entire amount on Schedule C pursuant to Cal. Civ. Pro. Code § 703.140(b)(5).

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The fixing of this judicial lien impairs the Debtor's exemption of the garnished wages and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

A civil minute order substantially in the following form shall be prepared and issued by the court:

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

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

**IT IS ORDERED** that the judgment lien of Persolve, LLC, Los Angeles Superior Court Case No. 34201200120683, Levy Ofcr. File. No: 3221301240129, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

14. [13-27531](#)-C-13            LEONARDO/VALERIE CHAVEZ            MOTION TO VALUE COLLATERAL OF  
RAC-2                            Richard A. Chan                        THE BANK OF NEW YORK MELLON  
8-15-13 [[28](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, respondent creditors, and the Office of the United States Trustee on August 15, 2013. 14 days' notice is required. This requirement was met.

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

**The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$0.00.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 3577 Binghamton Drive, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$165,250.00 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 \$185,384.00. The Bank of New York Mellon's second deed of trust secures a loan with a balance of approximately \$87,990.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the

secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of The Bank of New York Mellon, secured by a second deed of trust recorded against the real property commonly known as 3577 Binghamton Drive, 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 \$165,250.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, Chapter 13 Trustee, and the United States Trustee on August 22, 2013. 14 days' notice is required. That requirement was met.

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

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

Creditor, Toyota Motor Credit Corporation, objects to confirmation of Debtor's plan.

First, Creditor asserts that the value of its secured collateral must be \$11,402.05, which was due and owing on Debtor's account at the time of filing. Creditor has a purchase money security interest securing the debt which is the subject of its claim against Debtor and the debt was incurred within the 910-day period preceding the date of the filing of the petition. The collateral for the debt consists of a motor vehicle acquired for the personal use of Debtor. Therefore, pursuant to 11 U.S.C. § 1325(a)(5), § 506 cannot apply to bifurcate Creditor's claim. Creditor also objects to the \$145.00 adequate protection payment provided under the plan because it is not sufficient to protect against depreciation. Creditor requests that Debtors plan be denied confirmation or, in the alternative, be amended to allow Creditor to receive the fully secured sums due and owing to it. The objection will be sustained because the court will not confirm a plan until the value of all secured claims is determined.

Second, Creditor objects to the Plan's proposed interest rate of 4.50% as less than the *Till* standard. *In re Till*, 541 U.S. 465, 124 (2004). Creditor notes that at the time of filing, the prime rate was 3.25% and the Supreme Court approved adjustments of 1.5% to 3%, as applied by other courts. In *Till*,

a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted Till to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. Of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (Till treated as a decision of the Court). Even before Till, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *Farm Credit Bank of Spokane v. Fowler (In re Fowler)*, 903 F.2d 694 (9th Cir. 1990)). With the prime rate hovering around 3.25%, the court adds an additional 1.25% bankruptcy adjustment, and requires that the interest rate be 4.50% per annum. The plan proposes a 4.50% interest rate and, therefore, this objection is overruled.

Third, Creditor states that Debtors have not kept the vehicle insured. Creditor states Debtors agreed to make the loss payable clause of any insurance coverage payable to Creditor for as long as Debtors are indebted. Creditor states that it has not been provided with valid proof of insurance and that Creditor will be forced to purchase its own insurance. Though asserted, no evidence of this failing to provide proof of insurance has been provided to the court. Confirmation of the Chapter 13 Plan will not prejudice Creditor's rights to seek relief from the automatic stay if such insurance is not maintained or the Debtors refuse to provide such proof upon reasonable request.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained in part 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 Toyota Motor Credit Corporation having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

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

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

**The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$5,150.00.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2000 Toyota Tundra. The Debtor seeks to value the property at a replacement value of \$5,150.00 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 October 1, 2010, more than 910 days prior to filing of the petition, with a balance of approximately \$7,822.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$5,150.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed

**September 17, 2013 at 2:00 p.m.**

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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 OneMain  
Financial secured by an asset described as a 2000  
Toyota Tundra is determined to be a secured claim  
in the amount of \$5,150.00, and the balance of the  
claim is a general unsecured claim to be paid  
through the confirmed bankruptcy plan. The value  
of the asset is \$5,150.00 and is encumbered by  
liens securing claims which exceed the value of the  
asset.

17. [13-30534](#)-C-13                      STELLA DOMINGUEZ                      MOTION TO VALUE COLLATERAL OF  
SJS-2                                      Scott J. Sagaria                      NATIONSTAR MORTGAGE, LLC  
8-14-13 [[16](#)]

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

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

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

**The court's tentative decision is to deny the Motion to Value Collateral without prejudice.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The court cannot determine the actual value of the creditor Nationstar Mortgage, LLC's secured claim, because Debtor has not met the burden of proof. Debtor has produced contradictory evidence that the court cannot consider with respect to this motion. The figures cited in Debtor's declaration and motion pleadings are inconsistent with Debtor's filed schedules.

First, Debtor's declaration, signed under the penalty of perjury, states that Debtor believes and asserts that the fair market value of the subject real property commonly known as 428 Caldarella Circle, Roseville, California, is \$167,605.00. However, Debtor reported the value of the subject property to be \$389,503.00 on Schedule A, at the time of the petition filing date. Debtor has not alleged any facts or circumstances that would lead the court to believe that the value of the property would so precipitously decline.

Second, in her supporting declaration, Debtor characterizes the security interest of Nationstar Mortgage as holder of the Second Deed of Trust. (Dec. Of Stella E. Dominguez at 2, ¶ 7.) Similarly, Debtor's motion indicates that Nationstar Mortgage's claim is secured by a junior deed of trust, and that Green Tree Servicing, LLC holds a "superior security interest in the Property." (Mtn. to Value at 2, ¶ 8.) Debtor's Schedule D shows, however, that Nationstar Mortgage holds the first mortgage on the subject property, opened on 10/1/06. Green Tree Servicing, on the other hand, is reported as the junior creditor having opened a second mortgage on property on 11/1/06. Schedule D makes it abundantly clear that it is Nationstar Mortgage, and not Green Tree Servicing, that has priority in its secured claims to the property.

Third, in the Motion to Value, Debtor claims Green Tree Servicing to hold a superior claim totaling \$396,680.00 on the property. Debtor's Schedule D, again reveals otherwise. Nationstar Mortgage, not Green Tree Servicing, is listed as having a claim of \$396,680.00. Rather, Green Tree Servicing appears to have a junior lien of \$134,330 on the same property.

Contrary to Debtor's statements, Nationstar Mortgage does not appear to be the less superior lien. As a senior creditor with a claim of \$396,680.00 on the subject property from its First Deed of Trust, which is still valued at 3889,503.00, Nationstar Mortgage would not have a secured claim of \$0.00.

Debtor, then, has not properly demonstrated to the court that Nationstar Mortgage's secured claim should be valued at \$0.00. Even if the motion were taken under submission using just Debtor's schedules as controlling evidence, the record would not support the finding that Creditor's claim should be valued at \$0.00, and the motion would fail. Thus, the motion 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 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 denied without prejudice.

18. [13-27745](#)-C-13                    MICHAEL/SUSAN FOURNIER                    MOTION TO VALUE COLLATERAL OF  
SJS-4                                        Scott J. Sagaria                                    KEYBANK, N.A.  
8-16-13 [[59](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on August 16, 2013. 14 days' notice is required.

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

**The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$0.00.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 9423 Torchy Court, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$148,945.00 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 \$186,736.91. KeyBank N.A.'s second deed of trust secures a loan with a balance of approximately \$90,768.34. 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 KeyBank, NA, secured by a second deed of trust recorded against the real property commonly known as 9423 Torchy Court, Sacramento, California 95826, 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 \$148,945.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

19. [13-30950](#)-C-13                      JUAN/EVITA MORENO                      MOTION TO EXTEND AUTOMATIC STAY  
DBJ-1    Douglas B. Jacobs                              8-22-13 [[8](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on August 22, 2013. 14 days' notice is required. That requirement was met.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 361(c) extended beyond thirty days in this case. Debtors previously filed a Chapter 13 Bankruptcy case on February 3, 2011 (11-22773). The case was dismissed on July 19, 2013 because Debtors did not make the required payments under the plan. Therefore, pursuant to 11 U.S.C. § 362(c)(3), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed not in good faith if a previous case under any of chapters 7, 11 or 13 in which the individual was a debtor was dismissed within the past year, after the debtor did not perform the terms of a plan confirmed by the court. 11 U.S.C. § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors - including those used to determine good faith under §§ 1307(c) and 1325(a) - but the two basic issues to determine good faith under 11 U.S.C. § 362(c)(3) are:

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

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

Here, Debtor states the instant case was filed in good faith, to save their home. Debtors argue their monthly income has substantially changed and Debtors are now able to make the necessary plan payments. Debtors have fully prepared the Schedules and Statement of Financial Affairs.

According to newly filed Schedule I, Debtors' monthly income is \$5,714.00 and monthly net income is \$2,708.00. In Debtors' previous case, Schedule I reflected a monthly income of \$5,441.69 and monthly net income of \$2,700.00. In Debtors' first case, a plan was initially confirmed on April 13 2011. On September 28, 2012, filed a Motion to Dismiss the case because Debtors were not making plan payments. On January 18, 2013, Debtors filed a Motion to Modify their plan, because Mr. Moreno was out of work with medical and dental issues, substantially increasing Debtors' medical costs. The Motion to Modify was denied on March 15, 2013. On May 30, 2013, the Trustee filed a second Motion to Dismiss for not making plan payments, Debtors were delinquent in the amount of \$12,434.18. An order was entered granting dismissal on July 22, 2013.

From the record, it appears that Debtors encountered unexpected medical and dental expenses that greatly affected their ability to maintain plan payments. When Debtors state that their income has "substantially changed," the court takes it to mean that Debtors are no longer plagued with

excessive medical and dental expenses and not to mean Debtors Scheduled income has greatly increased. The court is persuaded the Debtors are moving in good faith and will craft a confirmable plan.

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

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

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

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

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

20. [12-39551](#)-C-13                    LAMAR MANNING AND BRONWYN                    MOTION TO CONFIRM PLAN  
SAC-5                                    BRADLEY-MANNING                                    8-2-13 [[92](#)]  
   Scott A. CoBen

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 2, 2013. 42 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. 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 2, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

21. [11-35352](#)-C-13 DEANNA BURCH MOTION TO MODIFY PLAN  
MWB-2 Mark W. Briden 7-30-13 [[40](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2013. 35 days' notice is required. That requirement was met.

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

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

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

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

(1.) Debtors are delinquent \$1,921.39 under the proposed plan. The case was filed on June 21, 2011, and 26 payments have come due under the



Second, the plan does not sufficiently demonstrate that Debtors will be able to make all payments in compliance with the plan. 11 U.S.C. § 1325(a)(6). Debtors plan on making monthly payments of \$190.00 for 36 months; however, according to Debtors' Schedule, Debtors have a monthly net income of only \$190.00. This amount will be insufficient to fund the plan once arrears on Creditors' claim are fully provided for.

### **Debtors' Response**

Debtors respond to Creditors Objection, stating that Debtors' plan provides for the moving Creditor's secured claim and arrearage in Class 2 of Debtors' plan, as a lien strip.

Since the filing of this Motion and Debtors' response, Debtor filed a Motion to Value the secured claim of Creditor on July 26, 2013. That Motion was continued to September 10, 2013, where the court entered an order approving a stipulation between Debtors and Creditor, valuing Creditor's secured claim at \$210,000.00 and avoiding the second deed of trust in its entirety. Therefore, Creditor's objections are remedied and the Objection is overruled.

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

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

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

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

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

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

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

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

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

The Internal Revenue Service (IRS) objects to confirmation of Debtor's plan.

Debtor's plan lists the IRS as a creditor holding an unsecured claim entitled to priority. Debtor's plan states the IRS's claim will be provided for in full, unless the claim holder agrees to accept less under 11 U.S.C. § 1322(a)(4). However, Debtor's plan does not provide any amounts towards the IRS's unsecured priority claim. The IRS is not willing to accept Debtor's plan because it does not provide for the unsecured priority claim.

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 Internal Revenue Service 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. [13-20957](#)-C-13 NOAH KOCINA AND JENNIFER OBJECTION TO CONFIRMATION OF  
RCO-1 HIBBITT-KOCINA PLAN BY BANK OF AMERICA, N.A.  
**Thru #25** Scott D. Shumaker 8-5-13 [[39](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, Chapter 13 Trustee and United States Trustee on August 5, 2013. 14 days' notice is required. That requirement was met.

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

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

Creditor, Bank of America, N.A., objects to confirmation of Debtor's plan.

Debtors' plan does not list any prepetition arrearage owed to Creditor. The total arrears as of the filing date are \$81,796.00. The plan is not feasible because it will not satisfy the total obligations due to Creditor. Debtors cannot cure the feasibility issue because Debtors' Schedules I & J reflect a net monthly income of -\$378.00. Creditor has not submitted a proof of claim, but basis its arrearage estimate on preliminary accounting. The plan does not provide for Creditor and Creditor does not accept the 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 Bank of America, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

25. [13-20957](#)-C-13      NOAH KOCINA AND JENNIFER      OBJECTION TO CONFIRMATION OF  
TSB-1      HIBBITT-KOCINA      PLAN BY DAVID P. CUSICK  
Scott D. Shumaker      8-21-13 [[43](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on August 21, 2013. 14 days' notice is required. That requirement was met.

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

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

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

(1.) Debtors' plan improperly classified Bank of America, N.A. in Class 4 of the plan. Class 1 includes all delinquent secured claims that mature after completion of the plan. Based on Bank of America, N.A.'s Objection to Confirmation, filed August 5, 2013, Debtors' plan should provide for Bank of America, N.A.'s ongoing mortgage in Class 1 and propose to cure the mortgage arrears over the life of the plan.

(2.) Debtors are \$181.00 delinquent in plan payments to the Trustee. Debtors have paid \$0.00 into the plan to date and are not in compliance with 11 U.S.C. § 1325(a)(2).

(3.) Debtors cannot make the payments under the plan or comply with the plan because Debtors propose to value the secured claim of Specialized Loan Servicing, but have not filed a motion to value collateral. 11 U.S.C. § 1325(a)(6).

(4.) Debtors' plan does not provide for Sacramento County's secured utility lien against real property commonly known as 2310 Tamarack Way, Sacramento, California. Not providing treatment indicates that Debtors either cannot afford the payments called for under the plan because they have additional debts, or that Debtors want to cancel the proposed treatment of creditor. 11 U.S.C. § 1325(a)(5).

In Section 6.03 of the plan, Debtors state that the Sacramento County lien is not provided for because a recent loan modification satisfied the line. Debtors have not presented evidence of a loan modification or filed a motion with the court to approve a loan modification.

(5.) Debtors' Schedule J shows that Debtors are paying an ongoing student loan payments. Debtors did not disclose this treatment to Creditors in their Chapter 13 plan as either a Class or general unsecured debt to be paid directly by Debtor. This may be causing unfair discrimination to unsecured creditors in favor of the student loan. 11 U.S.C. §§ 1325(a)(3), 1322(b)(1).

(6.) Debtors' Schedule B reports an anticipated tax refund of \$7,000.00. This is income Debtors are not reporting on Schedule I. Therefore, it does not appear that the plan provides all of Debtors' projected disposable income. 11 U.S.C. § 1325(b).

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors, the U.S. Trustee, and Chapter 13 Trustee on August 5, 2013. 28 days' notice is required; that requirement was met.

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

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

Movant Debtor requests that the court approve a modification of their mortgage with Bank of America, N.A. concerning real property commonly known as 1234 Depot Street, Woodland, California. The new loan payments will be in the amount of \$1,047.25 at an interest rate of 4.00% for a duration of 480 months. The modified principal balance of the note will include all amounts and arrearages that will be past due as of the effective date of the loan mod. The new principal balance of the loan will be \$247,543.49. A copy of the loan modification agreement with Bank of America, N.A., containing its precise terms, is attached to the instant motion as Exhibit A (Docket Item No. 39).

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

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

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

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

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

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

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

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

A judgment was entered against the Debtor in favor of Citibank (South Dakota), N.A. for the sum of \$27,364.00. The abstract of judgment was recorded with Solano County on May 30, 2013. That lien attached to the Debtor's residential real property commonly known as 191 Avalon Circle, Vallejo, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$225,443.00 as of the date of the petition. The unavoidable consensual liens total \$428,000.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

A civil minute order substantially in the following form shall be prepared and issued by the court:

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

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

**IT IS ORDERED** that the judgment lien of Citibank (South Dakota) N.A., Solano County Superior Court Case No. FCS040025, Document No. 201300059103, recorded on June 12, 2013, with the Solano County Recorder, against the real property commonly known 191 Avalon Circle, Vallejo, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

28. [13-26065](#)-C-13 MARCO VAZQUEZ BAUTISTA CONTINUED OBJECTION TO  
TSB-1 C. Anthony Hughes CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
6-20-13 [[41](#)]

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

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

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the debtor's plan may not be the debtor's best effort under 11 U.S.C § 1325(b). Debtor listed in Schedule J a rent expense of \$1,400; however, at the Meeting of Creditors he testified that he is still living in the property he intended to surrender and is not yet paying rent. Thus, Debtor has more disposable income which may be paid into the plan for the benefit of unsecured creditors. Debtor has filed a Motion to Sell Real Property set for hearing on July 16, 2013, the same day as this motion. If the sale

occurs, the Trustee does not oppose the Debtor's rent expense.

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

The Motion to Sell Real Property was granted and an order was entered on July 16, 2013. However, on August 12, 2013, Debtor filed an Ex Parte Application requesting the court enter an Amended Order Granting Motion for an Order Allowing Debtor to Sell Real Property because the original buyer backed out and did not fulfill the agreement. Debtor entered a new purchase agreement with Jerry Garza, for the purchase price of \$200,000.00. On August 26, 2013, the court entered an Order authorizing the sale to Jerry Garza for \$200,000.

On August 27, 2013, the court continued the hearing on the Motion to September 17, 2013 to permit time to resolve Trustee's concerns.

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

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

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

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

29.	<a href="#">12-21767</a> -C-13	JOHN/TAMMIE FLETCHER	MOTION TO VALUE COLLATERAL OF
	SAC-2	Scott A. CoBen	CITIFINANCIAL SERVICES, INC.
			8-20-13 [45]

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 20, 2013. 28 days' notice is required. That requirement was met.

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

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 4832 Arbadee Drive, Fair Oaks, California. The Debtor seeks to value the property at a fair market value of \$175,731.00 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 \$194,147.85. Citifinancial Services, Inc. second deed of trust secures a loan with a balance of approximately \$80,469.21. 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 Citifinancial Services, Inc. secured by a second deed of trust recorded against the real property commonly known as 4832 Arbadee Drive, Fair Oaks, 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 \$175,731.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 3, 2013. By the court's count, 15 days' notice was provided. 28 days' notice is required under Local Bankr. R. 9014-(f)(1).

**Tentative Ruling:** The Motion to Value Collateral has not been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Motion to Value Collateral was served with 15 days' notice. Therefore, the court will treat the motion as a LBR 9014-1(f)(2) motion, which requires 14 days' notice. Consequently, the respondent creditor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to grant the Motion to Value Collateral and value the creditor's secured claim at \$0.00.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 618 Stoneman Court, Benicia, California. The Debtor seeks to value the property at a fair market value of \$541,585.00 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 \$742,306.58. Chase Home Finance, LLC's second deed of trust secures a loan with a balance of approximately \$131,465.35. 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 Chase Home Finance, LLC secured by a second deed of trust recorded against the real property commonly known as 618 Stoneman Court, Benicia, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$541,585.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

31.	<a href="#">13-29276</a> -C-13	LISA FREDERIKSEN	OBJECTION TO CONFIRMATION OF
	RCO-1	Pro Se	PLAN BY THE BANK OF NEW YORK
			MELLON
			8-20-13 [ <a href="#">24</a> ]

**CASE DISMISSED 09/09/13**

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

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

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

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

**IT IS ORDERED** that the Objection is overruled as moot.

32. [13-29276](#)-C-13 LISA FREDERIKSEN OBJECTION TO CONFIRMATION OF  
TSB-2 Pro Se PLAN BY DAVID P. CUSICK  
8-21-13 [[28](#)]

**CASE DISMISSED 09/09/13**

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

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

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

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

**IT IS ORDERED** that the Objection is overruled as moot.

33. [13-22890](#)-C-13 ROLAND MAYO MOTION TO CONFIRM PLAN  
CAH-3 C. Anthony Hughes 8-1-13 [[62](#)]

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 1, 2013. 42 days' notice is required. That requirement was met.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). Debtors have filed evidence in support of confirmation. No

opposition to the Motion was filed by the Chapter 13 Trustee or creditors. 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 1, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

34.	<a href="#">13-29293</a> -C-13	SAAD SAMANI	OBJECTION TO CONFIRMATION OF
	SHJ-1	Brandon Scott Johnston	PLAN BY RIVER CITY BANK
	<b><u>Thru #35</u></b>		8-19-13 [ <a href="#">20</a> ]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor, Debtor's Attorney, and Chapter 13 Trustee on August 19, 2013. 14 days' notice is required. That requirement was met.

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

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

Creditor, River City Bank, objects to confirmation of Debtor's plan because Debtor's plan depends on successful prosecution of a motion to value the secured claim of Creditor. Debtor has not filed such a Motion and, therefore, Debtor cannot establish that the plan will pay secured claims in full, as required by 11 U.S.C. § 1325(a)(5)(B). The plan is not feasible, 11 U.S.C. § 1325(a)(6). 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 River City Bank having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

35. [13-29293](#)-C-13 SAAD SAMANI OBJECTION TO CONFIRMATION OF  
TSB-1 Brandon Scott Johnston PLAN BY DAVID P. CUSICK  
8-21-13 [25]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on August 21, 2013. 14 days' notice is required. That requirement was met.

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

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

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

(1.) Debtor cannot make the payments under the plan or comply with the plan because Debtor proposes to value the secured claim of River City Bank, but has not filed a motion to value collateral. 11 U.S.C. § 1325(a)(6). To date, no motion to value the secured claim of River City Bank has been filed.

(2.) Debtor has not provided for all income in the proposed plan and Debtor's plan is not his best effort under 11 U.S.C. § 1325(b):

(A.) The plan payment should reflect and increase of \$301.00 per month upon payoff of an auto loan for Debtor's 2011 Kia Forte listed on Schedule B in non-filing spouse's name.

(B.) Debtor received tax refunds of \$3,265.00 from the IRS in 2013, including \$2,000.00 in child tax credit. Since Debtor's children are young and Debtor is retaining the property, the tax deductions are likely to remain consistent and the large tax refunds should be considered income.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on August 21, 2013. 14 days' notice is required. That requirement was met.

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

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

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

(1.) Debtor is under the median income and proposes plan payments of \$100.00 per month for 60 months with a 0% dividend to unsecured creditors. Debtor's projected disposable income is \$2,675.00. The plan does not reflect Debtor's best efforts. 11 U.S.C. § 1325(b).

(2.) Debtor did not provide Trustee with a tax transcript or copy of Debtor's Federal Income Tax Return for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (1).

(3.) Debtor's plan does not provide for U.S. Bank Home Mortgage's First Deed of Trust, listed on Schedule D. Not including treatment for U.S. Bank Home Mortgage's secured claim indicates that Debtor either cannot afford payments called for under the plan because he has additional debts, or that Debtor wants to conceal the proposed treatment of creditor.

(4.) Debtor's plan does not pass the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a) (4). Debtor's non-exempt equity totals \$4,700.00 and Debtor proposes a 0% dividend to unsecured creditors. Debtor's Schedule C proposes an exemption of \$9,800.00 under CCCP § 703.140(b) (2). The maximum

allowed under this exemption is \$5,100.00, therefore, \$4,700.00 is non-exempt. Debtor listed automobiles on Schedule B, valued at \$9,800.00. Debtor did not provide a description of the automobiles or separate values for each vehicle. Debtor admitted at the 341(a) meeting that he owns a 2000 Toyota Camry, 2004 Infiniti G35, and a 2008 Dodge Sprinter Van.

(5.) Debtor claimed exemptions under CCCP § 703.140(b) and appears to be married, based on Schedule I. The spouse has not joined the petition and Debtor did not file a spousal waiver, as required by CCCP § 703.140(a)(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 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.

37. [12-30946](#)-C-13            JEFFREY/SUZANNE JONES            CONTINUED MOTION TO CONFIRM  
SS-6                            Scott Shumaker                        PLAN  
7-26-13 [[101](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 26, 2013. 42 days' notice is required. That requirement was met.

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

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

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

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

(1.) Debtors' amended plan proposes to surrender J.P Morgan Chase Bank, N.A.'s Second Deed of Trust and Hanford Ready Mix's mechanic's lien in Class 3 of the plan; however, Debtor previously obtained orders valuing these secured claims at \$0.00. It is not clear whether Debtors seek to disallow the claim of J.P. Morgan Chase Bank, N.A. with the plan, in which case the plan may not comply with 11 U.S.C. § 1325(a)(1) & (3), as no objection to claim has been filed and the plan does not address the prior order in the additional provisions.

(2.) Debtors propose the following additional provision:

Debtors have funds in their savings account in the amount of \$18,272.09. Trustee shall seize these funds and hold them in an escrow account. In the event that Debtors suffer an unanticipated, extraordinary expense, Debtors may petition the Court Ex Parte for release of a reasonable sum to cover such expenses. Upon completion of Debtors' Chapter 13 Plan, any amount left over in the escrow account shall be distributed to unsecured creditors.

Section 6.03. While Trustee is not opposed to the procedure, where the court has not explicitly authorized it, Trustee objects that it may not comply applicable law, based on Local Bankr. R. 9014-1(k)(1), unless the court authorizes it. Trustee further objects to "seizing" the funds and would prefer Debtors to turnover the property to the Trustee.

### **Debtors' Response**

Debtors respond to Trustee's objection. Debtor states that the amended plan lists the second deed of trust and mechanic's lien as Class 2 debts pursuant to previous orders valuing the secured claims. For the past few months, pursuant to a court order, Debtors have been executing a short sale on their property. At the time of filing the instant motion to confirm, escrow had still not closed on the short sale. Debtors chose to keep the junior liens as Class 2 claims concerned that a reclassification might jeopardize the short sale.

Since the time of filing this Motion, escrow has closed on the short sale and any debt owed to the junior lienholders have been satisfied. Debtor asserts that classification of the junior liens as Class 2 debts is appropriate; however, in the event the court disagrees, the Debtors ask the court to confirm the plan and permit counsel to fix the issue in the Order Confirming the plan.

Debtors respond to Trustee's second concern regarding seizing of funds and the Ex Parte procedure. Debtors concede that "turnover" is a more appropriate word than "seize" and asks the court to modify the working in the order confirming the plan to reflect a voluntary turnover of the funds. As for the Ex Parte procedure, Debtors further asset that under Local Bankr. R. 9014-1(f)(1), the court may order a different amount of time for a motion and under Local Bankr. R. 9014(f)(3), the court has the authority to shorten time for noticed motions. These two rules together, Debtors argue, authorize

the court to set the amount of time necessary for a hearing. In the event the court disagrees, Debtors request the court modify the proposed provision accordingly in the Order Confirming the plan.

Contrary to Debtors' assertion, the Third Amended Plan does not list J.P. Morgan Chase, N.A.'s second deed of trust or the mechanic's lien as Class 2 debts. The debts are listed in Class 3, with the qualification that a short sale is pending. The additional provisions state that Debtors are surrendering their personal residence and will file a motion to approve the short sale upon consummation of the sale. No motion to approve short sale is pending with the court. Debtors's reply contradicts Debtors' plan and does not resolve Trustee's concerns. If the second deed of trust and mechanic's lien are intended to be listed as Class 2, Debtor should submit a modified plan reflecting such intention. This will also allow Debtor time to submit and seek approval for the short sale and resolve the contingencies listed in the pending plan.

The court is willing to consider approving Debtors's proposed Ex Parte procedure. Debtors proposed placing \$18,272.09 into an escrow account for unexpected expenses, to be released by the Trustee upon approval by the court. The remainder will be distributed to unsecured creditors upon completion of the plan. However, Debtors' Schedule C does not list an exemption for the \$18,272.09 and the court questions whether the entire amount should be rightfully distributed to creditors through the plan instead of reserved for Debtors' unexpected expenses.

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

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

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

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

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