

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Sacramento, California

September 17, 2013 at 3:00 p.m.

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1. [11-43500](#)-E-13 MICHAEL PANNELL AND LORI MOTION TO MODIFY PLAN  
ACW-2 CHERNEY 8-5-13 [[47](#)]  
Andy C. Warshaw

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 5, 2013. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.  
FN.1.

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FN.1. The court notes that movant timely noticed this motion for September 10, 2013, but the court inadvertently set the hearing for September 17, 2013 by error.  
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**TRUSTEE'S OPPOSITION**

The Trustee opposes confirmation offering evidence that the Debtor is \$2,275.76 delinquent in plan payments, which represents multiple months of the plan payment. This is strong evidence that the Debtor cannot afford the plan

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payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also states the Debtor has provided an insufficient declaration, as it fails to state the reason for changes in expenses, including the following:

<b>Schedule J</b>	<b>9-30-11</b>	<b>8-5-13</b>	<b>Difference</b>
Electricity/Heating	\$ 300.00	\$ 180.00	-\$120.00
Water/Sewer	\$ 110.00	\$ 80.00	-\$ 30.00
Telephone	\$ 75.00	\$ 150.00	+\$ 75.00
Cell Phones	\$ 125.00	\$ 0.00	-\$125.00
Home Maintenance	\$ 100.00	\$ 30.00	-\$ 70.00
Food	\$ 850.00	\$ 600.00	-\$250.00
Clothing	\$ 100.00	\$ 50.00	-\$ 50.00
Medical/Dental	\$ 250.00	\$ 40.00	-\$210.00
Transportation	\$ 400.00	\$ 300.00	-\$100.00
Recreation	\$ 100.00	\$ 0.00	-\$100.00
Charitable Contributions	\$ 10.00	\$ 0.00	-\$ 10.00
Health Insurance	\$ 55.00	\$ 80.00	+\$ 25.00
Auto Insurance	\$ 120.00	\$ 100.00	-\$ 20.00
Personal Care	\$ 100.00	\$ 50.00	-\$ 50.00
DMV Registration	\$ 35.00	\$ 30.00	-\$ 5.00

Additionally, the Trustee argues that Debtor's verification in the Declaration fails to provide the personal knowledge qualification of the witness pursuant to 28 U.S.C. § 1746, but only states that the information is true and correct to the best of their knowledge.

Lastly, the Trustee is uncertain of the plan payment proposed. Debtor's Declaration and modified plan propose a plan payment of \$2,101.00 for 21 months, then \$1,910.00 for 39 months. However, the motion and additional provisions provide that the proposed plan payment is \$2,101.00 for 21 months and then \$1,820.00 for 39 months.

#### **DEBTOR'S RESPONSE**

Debtor responds, stating that the proposed plan payments are \$2,101 for 21 months and then \$1,910 for 39 months and the additional provisions in the proposed plan should be disregarded. Debtor filed an updated modified plan with these plans. Counsel states that Debtors have made two subsequent payments of \$2,100 on August 24, 2013 and \$400 on September 2, 2013, that did not post by the time the Trustee filed his opposition. Counsel states Debtors are current under the terms of the plan.

Debtors also provided a supplemental declaration supporting plan confirmation, including a correct verification pursuant to 28 U.S.C. § 1746. Dckt. 57.

#### **DISCUSSION**

The declaration provided by the Debtors regarding the explanation of expenses is not sufficient. As to the explanation for the change in expenses, Debtors state,

We worked on our budget closely with our attorney to make the plan affordable and decided that we were able to cut various expenses, such as our electricity, water, cell phones, home maintenance, food, clothing, medical, transportation, recreation, charitable contributions, auto insurance, and personal care to be able to afford our plan payments. Some of our expenses slightly increased, such as our telephone bill (non-cellular) and health insurance.

Declaration, Dckt. 57. This vague explanation does not allow the court to determine if these figures are reasonable under the circumstances or if the testimony provided is credible.

It appears that rather than making an original good faith statement as to their expenses when preparing Schedule J and originally filing a plan in this case, the Debtors engaged in "outcome determinative" budgeting. The Debtors computed the amount they needed to fund the minimum creditor payments, and then constructed expenses to consume all of the remaining monies. The Debtors stated under penalty of perjury that their monthly expenses, excluding mortgage payment, taxes, and insurance, was \$2,780.00. This left \$2,101.00 to fund a plan. The Debtors would then use this money through the plan to pay their home mortgage (current payment, taxes, and insurance, and arrearage payment), and a car payment. Plan, Dckt. 7. In addition, the Debtors seek to "lien strip" a deed of trust after providing for payment of \$0.00 on the claim secured by a second deed of trust on their residence. The Plan did also provide for a 23% dividend for the Class 7 general unsecured claims.

The court confirmed the Debtors' plan on February 9, 2012. Order, Dckt. 38. However, the Trustee noticed a default in plan payments in July 2013. Dckt. 41. That led to the modified plan now before the court. The post-petition defaults are to be cured through the Plan, with the Debtors to reduce the monthly plan payments to \$1,820.00 for the final 39 months of the Plan. The cure is to be accomplished without increasing the monthly plan payments by reducing the Class 7 general unsecured claim dividend to 1%.

The Debtors' testimony that they can make the payments is not credible. Glaring is that to make this "work" the Debtors have been able to reduce their expenses. The first is that their electricity/heating expense can be dropped from \$300.00 a month to only \$180.00. No explanation has been given how this standard, routine, well documented family expense could have been overstated by \$120.00 a month when the Debtors confirmed their original plan. No explanation has been given as to how, if possible, the Debtors have reduced their electricity/heating fuel usage.

Medical and Dental expenses of \$250.00 a month, to which the Debtors testified to under penalty of perjury in getting the original plan confirmed have melted to only \$40.00 a month. No testimony has been provided that medical treatment have been terminated, new insurance or benefits have been obtained, or any other reason for \$210.00 of prior bona fide monthly medical expenses no longer exist.

The same questionable reductions exist for food, water/sewer, and transportation, and an increase in telephone expenses. The court weight to statements made under penalty of perjury, so when a witness states something difference later under penalty of perjury, some more than "believe me now" is required for the witness to be credible. Testifying under penalty of perjury is not merely an opportunity to tell whatever will help a party win. The testimony must be truthful and credible.

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 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.

2. [12-38500-E-13](#) DARLENE GRAY  
CFH-4 Curt F. Hennecke

MOTION TO CONFIRM PLAN  
7-30-13 [[91](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 30, 2013. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

**The Motion to Confirm the Amended Plan is granted.** No appearance required.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 30, 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.

3. [13-28203-E-13](#) LANCE/LISA MCKINNEY  
NLE-2 Jason Borg

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
7-25-13 [[17](#)]

CONT. FROM 8-20-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 25, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

**PRIOR HEARING**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan fails the Chapter 7 Liquidation Analysis. Trustee argues that the Debtor's non-exempt equity totals at least \$42,082.45 and the Debtor is proposing a 39% dividend to unsecured creditors, which totals \$22,169.49 based on the estimate in the Debtor's plan. The Trustee states the following are non-exempt assets in this case:

(1) \$7,920.00 child support arrears;

(2) \$36,318.00 remains non-exempt in the real property at 9124 Launa Place Way, Elk Grove, California;

(3) the Debtor has failed to exempt \$1,272.00 in a checking and savings account;

(4) Debtor has claimed \$1,992.45 in exemptions in a Wells Fargo Custom Management Checking Expense Account, Wells Fargo Advantage Business Checking and Wells Fargo Business Market Savings accounts, to which the Trustee has objected; and

(5) \$2,500.00 from a Judgment by Annette Reyes.

The proposed plan having failed the Chapter 7 Liquidation Analysis, the plan cannot be confirmed pursuant to 11 U.S.C. § 1325(a)(4).

#### **CONTINUANCE**

The court continued the hearing to allow the Debtors to file written opposition to the Objection to Confirmation.

#### **DEBTOR'S OPPOSITION**

Counsel for Debtor filed a written response, arguing that the proposed plan does not fail the liquidation analysis. Counsel argues that the Trustee failed to deduct the cost of sale of the real property. Debtor values the home at \$185,000.00 and there is a first deed of trust on the property for \$48,682.25. Counsel argues the cost of sale is approximately 8% for closing costs and commissions, which totals \$14,800.00. Counsel argues that after the \$100,000 exemption, only \$21,517.00 of non-exempt equity is in the house.

Counsel also argues that the \$7,920.00 in back child support is unlikely to be fully recovered by a Chapter 7 Trustee. Counsel states that the same goes for the \$2,500.00 judgment owed to the Debtor.

Lastly, Counsel argues that the Trustee has not considered the costs for administration, as a Chapter 7 Trustee would receive 25% of the first \$5,000.00 funds plus 10% for anything over \$5,000. Counsel argues \$3,288.14 must be subtracted from the value of non-exempt assets, which equals \$22,093.31. Counsel states the Chapter 7 Trustee would also have to hire an accountant which would cost approximately \$400-500 and would leave approximately \$21,600.00 for general unsecured. Counsel states the plan proposes to pay unsecured non-priority creditors \$22,169.49, which is more than what they would receive in a Chapter 7.

#### **TRUSTEE'S REPLY**

Trustee states that Debtor has the burden of proof as to whether unsecured creditors will receive at least what they would in the event of a Chapter 7. Trustee notes that no additional declaration has been filed with the court in support of their response, so the only evidence before the court consists of Debtor's schedules and any facts the court takes judicial notice.

The Trustee state the child support arrears, the non-exempt equity in the residence, the checking and savings accounts and the judgment lien should all be taken into account as non-exempt equity.

#### **DISCUSSION**

The court agrees with the Trustee that the only evidence before the court are the schedules filed in this case. Debtor has not filed a declaration or other evidence in support of the various contentions in the reply pleading. Counsel's arguments are not evidence.

Based on the schedules, Debtor states on Schedule B \$7,962.00 in child support arrears and the value is unknown. The court will consider this as non-exempt equity.

Listed on Schedule A is also Debtor's real property with a value of \$185,000.00 and a secured claim of \$48,682.25. However, the Creditor's Proof of Claim states a claim of only \$45,470.43. Proof of Claim No. 1. That leaves an equity of \$139,529.57. On Schedule C the Debtors claim a \$100,000.00 exemption, which leaves a liquidation value of \$39,529.57.

While the Trustee is correct and the Debtor has failed to provide evidence in responding to the Trustee's objection to confirmation, the court will take judicial notice that a trustee properly marketing and selling residential real property will engage a real estate broker. Such brokers do not work for free and residential real estate commissions are 5% to 6%. Conservatively an additional 1.5% to 2% can be added for the normal seller costs of sale paid through escrow. This would produce selling costs of \$14,800 (based on 8%), creating net monies of \$24,729.57, which the court rounds up to \$25,000.00 for the liquidation analysis.

The court will also consider the checking and savings account at Wells Fargo Bank have non-exempt equity totaling \$3,264.45.

Lastly, Schedule B lists a value of \$2,500 for a \$5,120.00 judgment (paid \$50.00 per month included as income on Schedule I). The court will consider \$5,120.00 as non-exempt equity. No explanation is given as to why these fiduciaries of the estate should take reduced payments of \$50.00 a month.

With respect to the assets that the Debtors argue may not be collectable, they fail to provide for the good faith administration of them. The Chapter 13 Debtors are fiduciaries of the bankruptcy estate. Their version is that they don't think that they can (or possibly do not want to try) to recover these assets. The fiduciary cannot just waste the assets. (Possibly, the Debtors just do not want to count them in the liquidation analysis, and then intend to recover the monies and not account for them under the plan.)

Based on the foregoing, the court calculates approximately \$41,075.00 in non-exempt equity and the proposed plan provides an estimated dividend of \$22,169.49. Even allowing the Chapter 7 Trustee fees of approximately \$4,850 (11 U.S.C. § 326), there is \$36,225.00 of liquidation value. There could be other costs and expenses (possible contingent fee for collection agency or attorney) or other professionals of the estate, but the court will not speculate. The Debtors could have provided for the administration of these assets, but failed to do so. They cannot try and claim expenses exist for assets they refuse to administer. Based on the evidence, and lack of evidence by the Debtors, the proposed plan fails the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4).

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.

4. [09-31609-E-13](#) PHILIP/KELLY STOLPE MOTION FOR COMPENSATION FOR  
PGM-3 Peter G. Macaluso PETER G. MACALUSO, DEBTORS'  
ATTORNEY(S), FEES: \$870.00,  
EXPENSES: \$0.00  
8-19-13 [[86](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 19, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion for Compensation 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 for Compensation is granted.** No appearance required.

Law Offices of Peter G. Macaluso, Counsel for Debtor, seeks additional attorney fees in the amount of \$870.00. Counsel argues that these additional fees are actual, reasonable, necessary and unanticipated as post-confirmation work required.

#### **Description of Services for Which Fees Are Requested**

1. To resolve a Motion to Dismiss with Motion to Modify Plan. Counsel suggests this motion to modify plan was unanticipated, as the Trustee filed a Motion to Dismiss the case.

The hourly rates for the fees billed in this case are \$200.00/hour for counsel for 4.35 hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$870.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

September 17, 2013 at 3:00 p.m.

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

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

**IT IS ORDERED** that the Motion is granted, and Law Offices of Peter G. Macaluso, Counsel for Debtor, is allowed the following fees and expenses as a professional of the Estate:

Law Offices of Peter G. Macaluso, Counsel for Debtor  
Applicant's Fees Allowed in the amount of \$ 870.00.

5. 09-37209-E-13 JESTINA BRIGHT MOTION FOR COMPENSATION FOR  
PGM-4 Peter G. Macaluso PETER G. MACALUSO, DEBTOR'S  
ATTORNEY(S), FEES: \$740.00,  
EXPENSES: \$0.00  
8-19-13 [[75](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 19, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion for Compensation 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 for Compensation is granted.** No appearance required.

Law Offices of Peter G. Macaluso, Counsel for Debtor, seeks additional attorney fees in the amount of \$740.00. Counsel argues that these additional fees are actual, reasonable, necessary and unanticipated as post-confirmation work required.

**Description of Services for Which Fees Are Requested**

1. To resolve a Motion to Dismiss with Motion to Modify Plan. Counsel suggests this motion to modify plan was unanticipated, as the Trustee filed a Motion to Dismiss the case.

The hourly rates for the fees billed in this case are \$200.00/hour for counsel for 3.7 hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$740.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

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

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

**IT IS ORDERED** that the Motion is granted, and Law Offices of Peter G. Macaluso, Counsel for Debtor, is allowed the following fees and expenses as a professional of the Estate:

Law Offices of Peter G. Macaluso, Counsel for Debtor  
Applicant's Fees Allowed in the amount of \$ 740.00.

6. [12-38821](#)-E-13 FRANCIS VOGEL AND ROXANNA MOTION TO MODIFY PLAN  
EJS-1 SPRAGUE 8-5-13 [[23](#)]  
Eric John Schwab

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 5, 2013. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects to the proposed plan on the grounds that the confirmed plan provided for creditor US Bank, N.A., Claim No. 2, as a class 2 creditor with a monthly dividend of \$235.00 and 6.25% interest and is now not provided for in the proposed plan. Debtor has instead listed Ford Motor, which does not appear in their schedules.

The Trustee also argues that the plan is not the Debtor's best effort as the declaration filed by the Debtors states their income is the same but changes have been made to their expenses. Debtors state the original budget did not include home owner's insurance in the amount of \$368.00. Trustee states Debtor have not explained how they have been able to make 9 plan payments and pay this additional expense. The Trustee states that debtor claimed the same amount for HOA dues as the homeowner's insurance of \$368.00. The Trustee states that the Debtors have not submitted supporting documents for the expenses claimed.

Trustee also argues that Debtors claim they have increased their tax withholding but received a tax refund in 2011. No explanation is provided for why the Debtors are increasing their withholding - it appears that they are merely trying to improperly divert projected disposable income into their own pocket.

Based on the foregoing, 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 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.

7. [12-39728-E-13](#) MARK/TIFFANY WOLFGRAM CONTINUED MOTION TO CONFIRM  
WSS-6 W. Steven Shumway PLAN  
5-28-13 [[83](#)]

**CONT. FROM 7-16-13**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on May 28, 2013. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. As the Debtor's Motion to Value Collateral of First Federal Leasing (Class 2 claim) was denied without prejudice, the Motion to Confirm the Amended Plan cannot be confirmed. Therefore, the Motion is denied without prejudice.

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

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

The Motion 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 denied without prejudice.

8. [12-39728-E-13](#) MARK/TIFFANY WOLFGRAM MOTION TO VALUE COLLATERAL OF  
WSS-7 W. Steven Shumway FIRST FEDERAL LEASING  
8-6-13 [[96](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 6, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

**The court's tentative decision is to deny without prejudice the Motion to Value Collateral.** 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 1 CHAM2-8-4 Chameleon Manual Press, 8 CHAM-CLAMP side clamps, 1 PRIMUS 11001 workhorse manual flash cure, 1RDCR36-6-3 Radicure Electric 36" dryer (3 phase), 1 Option RDCR36-ARP 4th Radiant Panel, and 6 Option AC-RDCR-36 36" wide belt conveyor (the "Personal Property"). The Debtor seeks to value the property at a replacement value of \$4,500 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).

#### **OPPOSITION FILED BY CREDITOR**

Creditor filed opposition arguing that the Collateral is worth more than stated by the Debtor. In the opposition, the creditor also requested to schedule an appraisal of the personal property.

However, Debtor has not established that underlying debt is not a purchase-money loan acquired within the one year period prior to the filing of the petition. If so, Debtor is statutorily unable to prevail on this motion to value collateral pursuant to 11 U.S.C. §1325(a)(\*). The Debtor has not

stated the prima facie case for the requested relief. See Fed. R. Bankr. P. 9013. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The court notes that denial of this motion will allow the parties the opportunity to appraise the property.

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.

9. [13-29328](#)-E-13 RANA DOMONDON **OBJECTION TO CONFIRMATION OF**  
TSB-1 Robert Hale McConnell **PLAN BY DAVID P. CUSICK**  
8-21-13 [[22](#)]

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 21, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

**Final Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

**The Objection is overruled as moot and confirmation is denied.** No appearance required.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on August 22, 2013. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot 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 Confirmation of 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 is overruled as moot and the proposed Chapter 13 Plan is not confirmed.

10. [13-26330-E-13](#) **BARRY HENNING** **PLAINTIFF'S MOTION TO APPROVE**  
**PGM-2** **Peter G. Macaluso** **MUTUAL RELEASE OF ALL CLAIMS**  
**AND MOTION TO COMPROMISE**  
**8-14-13 [[32](#)]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, Defendants, and Office of the United States Trustee on August 14, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

**The court's tentative decision is to grant the Motion to Approve Mutual Release of All Claims.** 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-Plaintiff seeks approval of a compromise with Lincoln Financial Services and A-1 Adjustment Services, Inc. ("Defendants") resolving all disputes between the parties to adversary proceeding no. 13-02167 as well as all disputes between the parties concerning the terms and conditions of the Debtor-Plaintiff's plan of reorganization.

Plaintiffs state Defendants repossessed Debtor's personal vehicle within ten (10) days prior to the filing of the Chapter 13 bankruptcy case. Plaintiff filed the adversary proceeding seeking a return of this vehicle, Plaintiff's personal property within the vehicle, and damages caused by and in order to obtain compliance with the bankruptcy Code, emotional distress, attorney's fees, and costs in bringing this action to obtain the status quo pursuant to 11 U.S.C. 362(k).

Debtor-Plaintiff states that under the terms of the settlement, each defendant will pay \$2,500.00 to Plaintiff, for a total of \$5,000.00, to be issued to Plaintiff's counsel in a trust account for Plaintiff. Plaintiff will provide a completed W-9 form and any other form required for Defendant to issue the settlement payment. The Agreement also provides that upon Trustee and/or

Court Approval, the parties will file a Stipulation for Dismissal of the Complaint with prejudice.

## **DISCUSSION**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Construction)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-425 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Here, the Debtor-Plaintiff argues that it is in the best interests of the parties and the bankruptcy estate that the court approve the herein referenced Settlement Agreement.

### **Probability of Success**

Debtor-Plaintiff argues that there is a strong basis for success on the merits, but the value of damages would remain an issue to be litigated by the parties. Debtor-Plaintiff states this factor weighs in favor of settlement.

### **Difficulties in Collection**

Debtor-Plaintiff states that this is not an issue.

### **Expense, Inconvenience and Delay of Continued Litigation**

Debtor-Plaintiff argues that litigation would result in significant costs and this settlement resolves the disputes without the time and expense of trial.

### **Paramount Interest of Creditors**

Debtor-Plaintiff argues that settlement does not affect the interest of any creditors to the underlying bankruptcy but would be in the best interest of all parties given the time and expense in pursuing any litigation.

## Consideration of Additional Offers

At the hearing, the court shall announce the proposed settlement and request any other parties interested in making an offer for the claims or interests in the property to state their offers in open court.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate. The motion is granted.

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

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

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

**IT IS ORDERED** that the Motion to Compromise Controversy against Debtor-Plaintiff Barry L. Henning and Defendants Lincoln Financial Services and A-1 Adjustment Services, Inc. is granted and the respective rights and interests of the parties are settled on the Terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the motion on August 14, 2013(Docket Number 34).

11. [13-27337-E-13](#) ELIAS/ETIENNETTE  
DJC-6 VILLASENOR  
Diana J. Cavanaugh

MOTION TO VALUE COLLATERAL OF  
SANTANDER CONSUMER USA, INC.  
8-15-13 [[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, respondent creditor's Agent, and Office of the United States Trustee on August 15, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

**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 \$11,950.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtors have an interest in a 2007 Chrysler Pacifica Limited Minivan 4DR with mileage of 74,429.00. The Debtor seeks to value the property at a replacement value of \$11,950.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred on July 31, 2010, more than 910 days prior to filing of the petition, with a balance of approximately \$23,157.13. 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 \$11,950.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA Inc. secured by an asset described as a 2007 Chrysler Pacifica Limited Minivan 4DR with mileage of 74,429.00 is determined to be a secured claim in the amount of \$11,950.00, 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 \$11,950.00 and is encumbered by liens securing claims which exceed the value of the asset.

12. [13-27337-E-13](#) **ELIAS/ETIENNETTE** **MOTION TO VALUE COLLATERAL OF**  
**DJC-7** **VILLASENOR** **SCHOOLS FINANCIAL CREDIT UNION**  
**Diana J. Cavanaugh** **8-15-13 [57]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 15, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

**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 \$11,090.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2003 Cadillac Escalade sport utility 4DR with mileage of 99,214.00. The Debtor seeks to value the property at a replacement value of \$11,090.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred on September 3, 2007, more than 910 days prior to filing of the petition, with a balance of approximately \$12,553.47. 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 \$11,090.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Schools Financial Credit Union secured by an asset described as a 2003 Cadillac Escalade sport utility 4DR with mileage of 99,214.00 is determined to be a secured claim in the amount of \$11,090.00, 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 \$11,090.00 and is encumbered by liens securing claims which exceed the value of the asset.

13. [13-27337](#)-E-13 ELIAS/ETIENNETTE MOTION TO VALUE COLLATERAL OF  
DJC-8 VILLASENOR BANK OF AMERICA, N.A.  
Diana J. Cavanaugh 8-15-13 [[67](#)]

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 15, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

**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.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2008 Chrysler Sebring LX sedan 4DR with mileage of 96,010.00. The Debtor seeks to value the property at a replacement value of \$6,335.00 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 August 14, 2009, more than 910 days prior to filing of the petition, with a balance of approximately \$7,518.94. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$6,335.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by an asset described as a 2008 Chrysler Sebring LX is determined to be a secured claim in the amount of \$6,335.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$6,335.00 and is encumbered by liens securing claims which exceed the value of the asset.

14. [08-35843-E-13](#) PATRICK NUNEZ MOTION TO MODIFY PLAN  
WW-7 Mark A. Wolff 8-9-13 [[142](#)]

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 August 9, 2013. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee opposes confirmation offering evidence that the Debtor is \$505.00 delinquent in plan payments, which represents approximately one plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also argues that the additional provisions indicate an estimated \$5,000.00 in anticipated attorney's fees. The Trustee states he contacted Debtor's attorney inquiring whether a motion for fees would be filed, but none has been filed to date. The Trustee states he has no opposition to additional attorney fees, as long as the proper motion for approval with the court.

Counsel for Debtor responded, stating that he is informed and believes that Debtor will be making a payment to the Trustee to bring the account current.

Counsel also states that he will be filing a motion to approve additional attorney fees.

However, the court does not have sufficient evidence before it that Debtor is in fact current with plan payments. Therefore, the motion is denied without prejudice.

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

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

15. [09-46050-E-13](#) SANOVA/ANDROMAQUE ETIENNE MOTION TO APPROVE LOAN  
RHM-4 Robert Hale McConnell MODIFICATION  
8-7-13 [[46](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Wells Fargo Home Mortgage, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtors' monthly mortgage payment from the current \$3992.42 to \$2,068.66. The modification will capitalize the pre-petition arrears and provides for interest rate of 5.230% over the next 23 years.

The motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(A), which requires a copy of the credit agreement. The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreement. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007). Here, the motion only includes pages 1 and 3 of the 6 page credit agreement. The court cannot determine the details of the financing agreement when the document only provides two of the six pages of the document.

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

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

16. [10-29750-E-13](#) ANTONIO/MARIA RAMIREZ MOTION FOR COMPENSATION FOR  
PGM-5 Peter G. Macaluso PETER G. MACALUSO, DEBTORS'  
ATTORNEY(S), FEES: \$1,400.00,  
EXPENSES: \$0.00  
8-14-13 [[78](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 14, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion for Compensation 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 for Compensation is granted.** No appearance required.

Law Offices of Peter G. Macaluso, Counsel for Debtor, seeks additional attorney fees in the amount of \$1,400.00. Counsel argues that these additional fees are actual, reasonable, necessary and unanticipated as post-confirmation work required.

#### **Description of Services for Which Fees Are Requested**

1. Motion to Approve Loan Modification. Counsel suggests this motion to approve loan modification was unanticipated, as the Debtor obtained a permanent loan modification.

2. Motion to Modify plan to provide for loan modification. Counsel suggests this motion to modify plan was unanticipated, as the plan required modification to provide for loan modification.

The hourly rates for the fees billed in this case are \$200.00/hour for counsel for 7.00 hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$1,400.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.



plan lists their claim as \$600,270.00. Creditor also states that Debtor proposes to sell the subject property but provides no sale date, sales price, protection for the creditor, or alternative plan if the Debtor fails to sell the property within the 6 months.

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FN.1. The moving party filed the motion and exhibits in this matter as one document. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). Counsel is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1). This failure is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

What is very disturbing about this basic defect in the pleadings is that counsel and her law firm regularly appear in this court and know that this court evenly and fairly enforces the Federal Rules of Civil Procedure, Federal Rule of Bankruptcy Procedure, and Local Bankruptcy Rules. Attorneys and parties are not left to guess when the court is going to enforce the Rules and when they can ignore the Rules. The failure, or refusal, to comply with the Local Bankruptcy Rules cannot be ignored.

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The Objecting creditor, represented by experienced bankruptcy counsel who regularly appears in this court has failed to comply with the basic requirements for pleadings in this District. The Creditor has filed an objection, consisting of 4 pages, to which 28 pages of documents are attached as exhibits. The objection, each declaration, and a pleading consisting of the exhibits are filed as separate electronic documents. The court working in a near paperless environment cannot be wading through an extensive electronic documents trying to "electronically flip" from page two of the opposition to find exhibit 12, and then "flip" to the declaration addressing the exhibit.

It is not for each attorney or law firm to establish the rules that he or she is willing to follow because they don't interfere with how that attorney wants to practice law.

No declaration is filed with the Objection to confirmation. No witness attempts to authenticate the exhibits which the Movant has filed. It is a basic requirement under the Federal Rules of Evidence that documentary evidence must be properly authenticated. Fed. R. Evid. 901.

A review of the claim register shows Creditor filed a proof of claim in the amount of \$608,015.41 on August 14, 2013. However, Movant does not make reference to the Proof of Claim or provide evidence of the claim. Rather, Movant mere throws out allegations, assigning to the court the responsibility to canvas the docket, pleadings, proofs of claim, and records in this case to put together the evidence to support what the Creditor alleges. The court declines the opportunity to provide court resources to provide paralegal and associate attorney services to the Creditor and its counsel.

At best, the objection is that the plan provides for the sale of the Creditor's collateral within six months and the plan fails to provide for what

happens then. While there could be merit to such objection, it is overshadowed by the defective objection pleadings and lack of evidence.

With respect to Creditor's claim, it has filed a proof of claim. The Proof of Claim is prima facie evidence of the obligation owed by the Debtor. Federal Rule of Bankruptcy Procedure 3001(d). Section 2. Claims and Expenses of the Plan, Paragraph 2.04 provides,

2.04. The proof of claim, not this plan or the schedules, shall determine the amount and classification of a claim unless the court's disposition of a claim objection, valuation motion, or lien avoidance motion affects the amount or classification of the claim.

Therefore, the rejection of this objection may be but a Pyrrhic victory for the Debtors. If this asserted creditor is correct and the plan provides for an incorrect amount, the court can envision shortly seeing a motion for relief from the stay. At that point, the Debtors and counsel would have to prepare a modified plan, motion to confirm modified plan, evidence to support the modified plan, notice a hearing, and conduct a hearing on the proposed modified plan. Any such proceedings because of the unprovided for cure of the arrearage would be clearly anticipated work to be covered by the no-look fee and likely not be reasonable additional costs and expenses if counsel has chosen to opt out of the no-look fee.

Therefore, the court overrules the objection to confirmation.

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

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is overruled.

18. [13-29354-E-13](#) MARY DAO  
TSB-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
8-21-13 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 21, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor does not provide adequate protection to Creditor BSI Financial. Trustee states the additional provisions provide for the sale of the real property. Debtor lists the debt to be paid in Class 2, but does not propose to pay this creditor an adequate protection payment prior to the sale occurring in 6 months.

The Trustee offers no evidence or argument as to how the Creditor's interests are not adequately protected. Further, the Trustee offers no evidence of or argument for what adequate protection payment is required for the six months in which the property is reasonably marketed.

It is true that grounds exist to object to confirmation with respect to the proposed sale of the property. No objective benchmarks are provided to gauge if the Debtor is prosecuting the plan in good faith. These could include the requirement that a real estate broker be engaged and employment approved by a date certain, a reasonable initial listing price disclosed and required under the plan, a marketing plan provided by the real estate broker as part of the plan, and a periodic report to be provided by the real estate broker to the Trustee and other parties requesting the information.

However, no party in interest believed that any of the above were sufficient grounds for objection and the court will not take on the responsibility for stating the objections for the parties. The objection

stated, that there should be adequate protection payments, is not supported by any law or evidence.

The Objection is overruled. FN.1.

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FN.1. Counsel for the Debtor and other consumer attorneys should not read too much into overruling the Trustee's and the Creditor's objections in this case. The court believes that at least the Trustee will provide not only sufficient objections and supporting evidence as appropriate in the future. As with drafting other contracts, Debtors drafting ambiguous plans should not expect to have the ambiguities determined in their favor when and if disputes arise (if they get such a plan confirmed). A debtor can carefully and properly craft the plan. Counsel for such debtors should also not assume that addressing such ambiguities and the problems arising therefrom are reasonably unanticipated legal services beyond the flat fee granted under the Local Rules. The problems and all legal work flowing therefrom are clearly anticipated and could be avoided by the debtor properly drafting the plan.  
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The court shall issue a minute order substantially in the following form holding that:

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

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

**IT IS ORDERED** that Objection to confirmation the Plan is overruled.

19. [13-29155-E-13](#) JERRY DESCHLER AND SALLY OBJECTION TO CONFIRMATION OF  
TSB-1 HUI-DESCHLER PLAN BY DAVID P. CUSICK  
Lucas B. Garcia 8-21-13 [[20](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 21, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

**Final 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. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The court's decision is to continue the hearing to 3:00 p.m. on September 24, 2013.** No appearance at the September 17, 2013 hearing is required.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending motion to Value Collateral, which is set on September 24, 2013. If the motion is not granted, Debtor's plan does not have sufficient monies to pay the claim in full.

The court continues the hearing on this Motion so that the hearing can be conducted in conjunction with the hearing on the Motion to Value the Claim of PMAC Lending Services.

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 hearing on the Objection to Confirmation the Plan is continued to 3:00 p.m. on September 24, 2013.

20. [13-27260-E-13](#) DIANA REAGAN  
TSB-1 Kristen Bargmeyer

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
7-10-13 [[15](#)]

CONT. FROM 8-6-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 10, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

**Final 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. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The court's decision is to continue the hearing on the Objection to 3:00 p.m. on October 22, 2013.** No appearance at the September 17, 2013 hearing is required.

#### PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. §341. Attendance is mandatory. 11 U.S.C. §343. The meeting has been continued to August 1, 2013.

The Trustee also objects on the grounds that the plan relies on a Motion to Value Collateral, but the Debtor has failed to file the appropriate motion.

Additionally, the Trustee states the Debtor has provided conflicting attorneys' fee amounts. The plan proposes to pay \$2,575.00 and indicates Debtor paid her attorney \$1,425.00 prior to filing. The 2016(b) form agrees with the plan. However, Debtor's Rights and Responsibilities fails to indicate what amount was charged and how much was paid prior to filing. Dckt. 7. The Trustee states he is unable to determine the amount of attorney fees in this case.

Lastly, the Trustee argues that the plan may fail liquidation. Debtor lists a self-titled trust with no value. The Trustee states he has been requesting a copy of the Trust along with other required documents, but has not received anything. The Trustee states he is unable to verify the assets held in the trust.

Debtor responded, stating that they would attend the 341 meeting continued to August 1, 2013. Debtor stated the Motion to Value has been filed and set for hearing on August 27, 2013. Counsel states that a recent death in the family has upset her work schedule. The court confirms that a Motion to Value was filed July 31, 2013.

A review of the Motion to Value Collateral reveals several defects. First, the moving party failed to use a Docket Control Number. The Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

Second, the Local Rules require that movant's notice of the hearing disclose whether or not written opposition to the motion is required. See Local Bankr. R. 9014-1(d)(3). The notice provided here did not so specify. This is improper.

Lastly, the pleading title motion is a combined motion and points and authorities in which the grounds upon which the motion is based are buried in detailed citations, quotations, legal arguments, and factual arguments (the pleading being a "Mothorities") in which the court and Plaintiff are put to the challenge of de-constructing the Mothorities, divining what are the actual grounds upon which the relief is requested (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007), restate those grounds, evaluate those grounds, consider those grounds in light of Fed. R. Bankr. P. 9011, and then rule on those grounds for the Defendant. The court has declined the opportunity to provide those services to a movant in other cases and adversary proceedings, and has required debtors, plaintiffs, defendants, and creditors to provide those services for the moving party.

In such situations, the court routinely denies the motion without prejudice and without hearing. Law and motion practice in federal court, and especially in bankruptcy court, is not a treasure hunt process by which a moving party makes it unnecessarily difficult for the court and other parties to see and understand the particular grounds (the basic allegations) upon which the relief is based. The court does not provide a differential application of the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules as between creditors and debtors, plaintiff and defendants, or case and adversary proceedings. The rules are simple and uniformly applied.

#### **CONTINUANCE**

The court continued the hearing to allow the debtor to file and serve an amended Motion to Value. Debtor filed and served an amended motion and it was heard September 10, 2013. The court continued the hearing, as Creditor Wells Fargo Bank, N.A. filed opposition and requested time for an appraisal.

The court continues the hearing on the Objection to 3:00 p.m. on October 22, 2013 in order to be heard with the Motion to Value Collateral.

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

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

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

IT IS ORDERED that hearing on the Objection to confirmation is continued to 3:00 p.m. on October 22, 2013.

21. [13-27960-E-13](#) DARRELL/JOYCE WOLTKAMP CONTINUED OBJECTION TO  
TSB-1 Len ReidReynoso CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
7-18-13 [[14](#)]

CONT. FROM 8-13-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 18, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

**Final 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. Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The court's decision is to sustain the Objection to Confirmation.** No appearance at the September 17, 2013 hearing is required.

#### PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. §341. Attendance is mandatory. 11 U.S.C. §343. The continued meeting is set for August 22, 2013.

Also, the Trustee argues that the Debtor has failed to provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. §521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3).

Debtors responds, providing a copy of their 2012 Federal Income Tax Return. Debtors do not address the failure to appear at the prior 341 or any indication that they will appear at the continued meeting. However, in light of the Debtors filing an opposition which states that they believe a Plan is viable in their case and they desire to prosecute the case, the court infers that they intend to attend the continued First Meeting of Creditors.

#### CONTINUANCE

The court continued the hearing in order for the continued date of the Meeting of Creditors to pass.

#### TRUSTEE'S SUPPLEMENTAL OPPOSITION

Trustee filed an amended objection to confirmation on the grounds that the Debtor has failed to provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required, specifically, the 2012 federal tax return. See 11 U.S.C. §521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). Trustee states that the Debtors testified at the continued meeting of creditors that they filed the 2012 tax return one month ago but the Trustee has not received a copy.

The Trustee also states that the plan is not the Debtor's best effort, as Debtors are above median income according to their Statement of Current Monthly Income and propose a commitment period of 36 months. This does not meet the standard set forth in the recent Ninth Circuit case *Danielson v. Flores (In re Flores)*, 2013 U.S. App. LEXIS 18413 (9th Cir. Cal., August 29, 2013).

**MODIFIED PLAN FILED**

On September 9, 2013, the Debtors filed their 1<sup>st</sup> Modified Chapter 13 Plan. Dckt. 34. A motion to confirm the 1<sup>st</sup> Modified Chapter 13 Plan is set for October 29, 2013. The Debtors, by filing a new plan, effectively state they have no opposition to the Trustee's objection to confirmation of the prior plan.

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

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

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

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

22. [10-25566-E-13](#) LEOLA BLACK  
SDB-2 W. Scott de Bie

MOTION TO DETERMINE FINAL CURE  
AND MORTGAGE PAYMENT RULE  
3002.1  
8-14-13 [[44](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 14, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Determine Final Cure and Mortgage Payment 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 Determine Final Cure and Mortgage Payment is granted.** No appearance required.

Debtor seeks an order confirming that Debtor has cured her mortgage default and made all post petition mortgage payments required under the plan, pursuant to Federal Rule of Bankruptcy Procedure 3002.1. Debtor does not provide which section of Rule 3002.1 she is seeking relief.

Federal Rule of Bankruptcy Procedure 3002.1(h) provides,

Determination of final cure and payment. On motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

Subdivision (h) provides a procedure for the judicial resolution, if the debtor of the chapter 13 disputes the responses filed by the creditor. 9 COLLIER ON BANKRUPTCY ¶ 3002.1.04[3] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

Here, Debtor states that she has made all payments required by her plan on June 24, 2013. The Trustee filed and served a Notice of Final Cure on July 19, 2013, confirming that Debtor had made all payments necessary to cure the pre-petition delinquency and maintain the ongoing payments. Debtor states Wells Fargo Bank, N.A. filed a statement on August 5, 2013, agreeing that Debtor has paid in full the amount required to cure the default and that Debtor is current with respect to all payments.

Therefore, the motion is granted as debtor is entitled to an order stating that the pre-petition default has been cured.

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 Determine Final Cure and Mortgage Payment 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 is granted and Debtor Leola Black, has cured the pre-petition mortgage default of Wells Fargo Bank, N.A. on the real property commonly known as 445 Idora Avenue, Vallejo, California, by making all post-petition payments required by the confirmed Chapter 13 plan, Dckt. 5.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 1, 2013. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

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

**The Motion to Confirm the Amended Plan is granted.** No appearance required.

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

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

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

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

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

24. [13-29072-E-13](#) GARY/JUDY DUERNER  
SW-1 Pro Se

MOTION TO DISMISS CASE AND/OR  
MOTION TO CONFIRM TERMINATION  
OR ABSENCE OF STAY  
8-13-13 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Chapter 13 Trustee on August 13, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

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

Creditor Wells Fargo Bank, N.A., as servicer for U.S. Bank National Association, as trustee for Banc of America Funding Corporation 2007-C ("Movant") moves to dismiss the bankruptcy case or in the alternative, an order confirming that no automatic stay is in effect.

Movant argues that this is Debtors' second bankruptcy proceeding since November 20, 2012. Debtors' first bankruptcy case, Case No. 12-40283 was filed as a Chapter 13 proceeding on November 20, 2012. This case was converted to a Chapter 11 on May 16, 2013. On May 17, 2013, Movant filed a Motion for Relief from Stay as to the Buckskin property due to Debtors having failed to tender 60 pre-petition and 6 post-petition payments. Dckt. 133, 136. The Court granted Movant's Motion on June 17, 2013. Dckt. 168, 175. After Relief from Stay was granted to Movant, Debtors sought and were granted a voluntary dismissal of the case on July 8, 2013. Dckt. 186, 188.

Movant argues that cause exists for dismissal of the case pursuant to 11 U.S.C. § 109(g), as Debtor requested and obtained a voluntary dismissal of the case following the filing of a request for relief from the automatic stay within 180 days of the filing.

Movant also argues that no stay is in effect pursuant to 11 U.S.C. § 362(c)(3)(A), as Debtors had one pending bankruptcy dismissed in a 1-year period and did not extend the automatic stay within 30 days.

#### **DEBTORS' OPPOSITION**

Debtors oppose the motion in a 77-page filing. Debtors provide several pages of legal citations and very little facts for the court to consider after sifting through 77 full pages of text. From what the court can discern, the

Debtors argue that they are not engaging in abusive conduct by filing this case after the Movant obtained relief from the stay, but that the Chapter 11 process was too difficult for *pro se* filers. Debtors state there is no pattern of serial filings and no basis for bad faith. Debtors then argue the merits of litigation against Movant regarding current ownership of the note and filing of a Notice of Default, and illegal foreclosure.

Debtors also argue that the an order confirming no stay is in effect should be denied as the stay is only terminated as to the Debtors, and not the bankruptcy estate. Debtor includes several pages of legal contentions that do not appear to be relevant in the instant case.

Lastly, Debtors argue over 55 pages that Movant is not the owner of the note, never indorsed or assigned the note and proceeded with an illegal wrongful foreclosure.

#### **MOVANT'S REPLY**

Movant replies, stating that the opposition is patterned after their longstanding challenge to this Movant's right to foreclose as to the two properties upon which Debtors have failed to make a payment since 2007. Movant argues that sufficient factual basis exists for relief under 11 U.S.C. § 109(g) and the case should be dismissed. Movant also argues that pursuant to *In re Reswick*, 446 B.R. 362 (9<sup>th</sup> Cir. BAP 2011), the stay terminates as to the Debtor and the debtors estate after the expiration of 30 days when Debtors had a case pending within the preceding 1-year period and was dismissed.

#### **DISCUSSION**

Pursuant to 11 U.S.C. § 109(g),

(g) Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if-

- (1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or
- (2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

A debtor who obtains voluntary dismissal of the case after faced with a motion for relief from the automatic stay, or after such relief has been granted, cannot immediately refile and thereby frustrate creditors' attempts at having their rights adjudicated within a reasonable time. 2 COLLIER ON BANKRUPTCY ¶ 109.08 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). However, because the goal of section 109(g) is to curb abuses of the bankruptcy system, it has been held that dismissal of the second case under 109(g)(2) is not warranted if the debtor requested dismissal of the prior case before a motion for relief from the automatic stay was filed, even if the first case was actually dismissed after the filing of the motion. *Id.* Additionally, this section should not be applicable if the debtor successfully defended against or resolved the motion for relief from the stay or paid in full the creditor who moved for relief. *Id.*

Here, Movant has shown sufficient grounds to warrant dismissal of this bankruptcy case. First, Debtor obtained voluntary dismissal after relief from the stay was granted to movant in the prior bankruptcy case. On May 17, 2013, Movant filed a Motion for Relief from Stay as to the Buckskin property due to Debtors having failed to tender 60 pre-petition and 6 post-petition payments. Dckt. 133, 136. The Court granted Movant's Motion on June 17, 2013. Dckt. 168, 175. After Relief from Stay was granted to Movant, Debtors sought and were granted a voluntary dismissal of the case on July 8, 2013. Dckt. 186, 188.

Debtors contend that their sole motivation for requesting voluntary dismissal was their meeting with the U.S. Trustee's office in which they realized that a chapter 11 case would be unsuccessful without counsel. However, this meeting occurred on June 19, 2013, after the Motion for Relief from stay was granted. Debtors do not mention that the case was earlier converted from a Chapter 13 case. Debtors now file a Chapter 13 case, again in pro per, one day after the dismissal of the prior case (and after Movant obtained relief from the stay). Debtors did not file a motion to extend the automatic stay.

Movant has shown proper grounds under 11 U.S.C. § 109(g) for dismissal of this case as Debtors obtained voluntary dismissal after relief from the stay was granted to movant in the Debtor's prior bankruptcy case.

As the court is granting dismissal of the case, the alternative relief for confirmation of the absence of the automatic stay will not be addressed.

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

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

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

**IT IS ORDERED** that the Motion to Dismiss is granted and the case is dismissed.

The dismissal of this case does not deprive or limit the authority of this court to address any issues concerning the conduct of parties or the issuance of sanctions thereon. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 13, 2013. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 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 13, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 25, 2013. By the court's calculation, 54 days' notice was provided. 35 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2013. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee opposes confirmation offering evidence that the Debtor is \$2,796.00 delinquent in plan payments, which represents multiple months of the plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

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 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.

28. [11-25277-E-13](#) RICHARD/PAULA CUMMINGS  
JB-1 C. Anthony Hughes

MOTION TO DISMISS PAULA RAE  
CUMMINGS DBA SEA SPLENDOR  
AND/OR MOTION TO CONVERT CASE  
FROM CHAPTER 13 TO CHAPTER 7  
8-20-13 [[77](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 20, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Dismiss 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 Dismiss is granted.** No appearance required.

Creditor California State Board of Equalization ("Creditor") moves the court for an order dismissing the chapter 13 bankruptcy case or converting the case to a case under chapter 7, due to Debtor failing to timely pay all post-petition tax liabilities.

However, Debtor filed an *Ex Parte* Motion to Dismiss, as her financial situation has changed. Dckt. 82. Pursuant to 11 U.S.C. § 1307(b), a debtor may request the court to dismiss a case, if the case has not been previously converted. The case not being previously converted, the Debtor has a right to voluntary dismissal.

The Creditor does not assert grounds for converting the case, just dismissal - failure to make post-petition tax payments. The Debtors do not dispute the post-petition tax defaults, and indicate that changes in finances now make the Chapter 13 case not feasible. Neither the Chapter 13 Trustee nor creditors have voiced a belief that the case should be converted rather than dismissed.

With the non-opposition of the Debtors, the motion is granted and the case is dismissed.

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



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

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

**IT IS ORDERED** that the hearing on the Objection to confirmation is continued to 3:00 p.m. on September 24, 2013.

30. [13-29882-E-13](#) VASILIIY ORMANZHI MOTION TO VALUE COLLATERAL OF  
CAH-1 C. Anthony Hughes JPMORGAN CHASE BANK, N.A.  
8-14-13 [[15](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 14, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

**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 motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 5526 20th Avenue, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$150,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$173,496.52. JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$82,487.00. 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 JPMorgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 5526 20th Avenue, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$150,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

31. [10-36385-E-13](#) JANE LITTLEJOHN  
JT-8 John A. Tosney

MOTION TO MODIFY PLAN  
8-7-13 [[104](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2013. By the court's calculation, 41 days' notice was provided. 35 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 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 7, 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.

32. [10-34487-E-13](#) WADE/JAIME STANLEY

MOTION TO MODIFY PLAN

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 August 8, 2013. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects to the plan on the basis that Debtor failed to state a interest rate for class 2 creditor GMAC for a 2005 Chevrolet, so it will be paid 10% interest. The Trustee notes the creditor is being paid 5% interest per the confirmed plan.

Debtor responds, stating that this was a typing error and Debtors had no intention of changing the interest rate of 5%, as stated in the confirmed plan. Debtor states that this will be specified in the order confirming this modified plan. The Debtor having addressed the Trustee's concerns, the objection is overruled and the motion is granted.

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 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 8, 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.

33. [13-27790](#)-E-13 WILLIAM/LYNN SHOUSE CONTINUED OBJECTION TO  
TSB-1 Scott D. Hughes CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
7-18-13 [[29](#)]

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

34. [10-44993](#)-E-13 SHARI LANNING MOTION TO MODIFY PLAN  
PGM-1 Peter G. Macaluso 8-13-13 [[31](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 13, 2013. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects to the plan on the ground that Debtor's modified plan proposes to reduce the commitment period from 60 months to 40 months. Debtor's Statement of Monthly Income indicates Debtors are under median income and the commitment period is three years. Trustee argues that Debtor's motion and declaration provide no reason for the reduction in plan term.

Trustee also states that Debtor's modified plan proposes payments of \$6,465.00 total paid in through July 2013, a lump sum payment of \$4,700.00 for

August 2013 and then \$215 for five months. The Trustee's records reflect that a total of \$3,908.67 remains to be paid on the Class 2 claim of Travis Credit Union and that \$791.33 would remain of funds. The Trustee states this should be disposable income to be disbursed to unsecured creditors and not returned to the Debtor.

Debtor responds, agreeing to a plan term of 60 months. Debtor states she will begin remitting payments of \$215.00 for 25 months to complete the plan. Debtor requests that the remaining funds of the \$791.33 be returned to her, as she needs to make repairs to the damaged vehicle in order to drive the vehicle.

The Debtor has addressed the Trustee's concerns and agreed to amend the plan. Further, the request to use \$791.33 to repair a vehicle the "savage title" vehicle is not unreasonable, with the debtor using the money received for the damage done to her vehicle to put in place a replacement vehicle. This does not deprive creditors of property that was or would otherwise be available for distribution.

However, the Debtor offers no evidence in support of this request or explanation of the repairs. It is as if the Debtor, or her attorney, are testing the court to see when a debtor can get away with not providing the court with information. Such "probing" of the court is improper. While the court will allow the Debtor to use the money in this case, counsel is on notice that future unsupported requests (both by evidence and specificity for the use of the money) will be denied with prejudice. In addition to the sanctions which counsel may be required to pay to the court for filing unsupported requests for relief, counsel will also have to answer to the client why he or she could not get the money or relief which appears obvious (if the evidence was provided). The court is confident that the Chapter 13 Trustee will remind the court of this admonition if the court should happen to forget.

The Plan, as amended at the hearing complies with 11 U.S.C. § 1322, 1325, and 1329, and is confirmed.

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

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

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

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

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

Correct Notice Not Provided. The Proof of Service does not include the list of parties served. The court cannot determine whether the appropriate parties were served properly.

**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). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The court's decision is to deny the Motion to Value Collateral.** No appearance at the September 14, 2013 hearing is required.

No service list was attached to the proof of service supporting the motion. Furthermore, Movant names "CitiFinancial" as the creditor. A search of the California Secretary of State's website reveals five (5) different active entities with "CitiFinancial" in the name and two (2) active limited liability companies. The court cannot determine from the evidence presented which legal entity the Debtors wish the court to include in the order. The court will not issue orders on incorrect or partially identified parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid themselves in finding the true creditor.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. FN.1.

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FN.1. The misidentification of creditors for purposes of § 506(a) motions continues to mystify the court. Obtaining an order valuing the "claim" of a loan servicing company does not value the claim of the creditor. No motion has been filed seeking to value the claim of the actual creditor, no service has been attempted on the actual creditor, and no effort made to afford the actual creditor any due process rights. Any order issued by the court would be void as to the actual creditor. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt secured by a third deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

In this case the court recently denied a motion to value the secured claim of "GM Financial." Again, this was an ambiguously identified entity for which the court could not identify the creditor whose claim was being valued pursuant to 11 U.S.C. § 506(a). Though that motion was denied on August 20, 2013, no action was taken to either dismiss or amend this motion to name a person the court could identify.

The court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect. The Motion is denied without prejudice.

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

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

The Motion for Valuation of Collateral filed by 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 is denied without prejudice.

36. [11-23098](#)-E-13 NORBERTO/MONICA BALINADO MOTION TO MODIFY PLAN  
JT-3 John A. Tosney 8-5-13 [[83](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 5, 2013. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g).

**The 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.

At the August 27, 2013 hearing on the Motion for Relief from Automatic Stay by Creditor The Bay Club Vacation Owners Association, Inc., the court stated the following:

The Debtors did not list this timeshare interest on either Schedule A or B filed in this case. Dckt. 1. Though the Debtors had gross income of \$12,125.24 a month when this case was filed (Schedule I, *Id.*), after necessary expenses (which did not include a the timeshare maintenance and assessments), the Debtors had only \$2,021.00 in Monthly Net Income. Schedule J, *Id.*

The Debtors confirmed a First Amended Chapter 13 Plan in this case, which provided for a monthly plan payment of \$2,021.00. Dckt. 36. This allowed for a 32% dividend to creditors holding general unsecured claims and "lien stripping" the Travis Credit Union deed of trust from the Debtors' home. No provision is made in the Plan for the payment of any amounts relating to the timeshare interest.

In seeking confirmation of the First Amended Chapter 13 Plan, the Debtors reaffirmed under penalty of perjury that the income and expense information on Schedules I and J were correct (which were necessary to properly compute their projected disposable income in this case). Joint Declaration, Dckt. 39.

On December 7, 2011 (10 months after the bankruptcy case was filed), the Debtor filed Amended Schedules I and J. Dckt. 65. These corrected error in the original schedules and restated the Debtors' income and expenses as of the commence of the case. The correction to Schedule A was to state that the Debtors' plan payment would be \$1,521.00 for the first month, due to a \$500.00 initial payment for their son's braces. Schedule J is amended to provide for an additional monthly expense of \$125.00 for their son's braces. This reduced the Average Monthly Income on Schedule J to \$1,896.00. No expenses are show for a timeshare.

On December 7, 2011 the Debtors Filed a Modified Plan to provide for a series of tiered plan payments which took into account the monthly payment for the Debtors' son's braces. The monthly payments range from \$2,021.00 to \$1,521.00 a month. Modified Plan, Dckt. 69. The plan makes no provision for the timeshare property or any obligation relating to the timeshare property. In seeking confirmation of the Modified Plan, the Debtors again testified under penalty of perjury that the income and expense information stated in Schedules I and J (though they do not designate which Schedule they are referring to) are accurate. Joint Declaration, Dckt. 68. The Modified Plan was confirmed by order filed on February 9, 2012. Dckt. 73.

After the filing of the present Motion for relief from the automatic stay, the Debtors have filed a Second Modified Plan which provides for the abandonment of unidentified timeshare property to Movant by providing for Movant's Claim under Class 3 of the Second Modified Plan. Dckt. 85. No amended Schedules A or B have been filed and no corrected Schedule J was filed disclosing the ongoing maintenance costs and assessments for such timeshare property. The Second Modified Plan provides for a 33.25% dividend to creditors holding general unsecured claims.

On its face, the non-disclosure of the existence of this asset and the expenses for this asset raises significant issues for these Debtors. It does not appear that the testimony previously provided disclosed that the Debtors were retaining and paying for a vacation timeshare.

The court leaves it to creditors, the Chapter 13 Trustee, and the U.S. Trustee to determine what, if any action, is appropriate with respect to this undisclosed asset and expenses. It may be that no action is appropriate, and that this was an "honest error" which occurred multiple times. At the other extreme, this conduct may warrant the dismissal of the present bankruptcy case, quite possibly a dismissal with prejudice.

Additionally, in connection with the September 17, 2013 scheduled hearing on the motion for confirmation of the Second Modified Plan, the Debtors are expected to file supplemental pleadings disclosing all of expenses paid (including travel expenses) relating to the timeshare in Hawaii and how, who, and when it was used during this Chapter 13 Case.

Further, the creditors, Chapter 13 Trustee, and U.S. Trustee can determine if this timeshare has or had a value in excess of the \$4,187.50 owed to Movant. If so, then the Chapter 13 Debtors will have to address the additional issue of squandering a valuable asset of the estate by now surrendering it. The court could also envision this as a situation where the property is being "surrendered" so that a friend, family member, or straw buyer acquires it from Movant. Such may be a contrived "surrender" by the Debtors, Movant and the third-party to defraud the court and creditors. In such a situation, that would be relevant to any action taken by the Chapter 13 Trustee, and the U.S. Trustee with respect to the Debtors, and may result in action against Movant and the third-party.

Civil Minutes FN.1., Dckt. 89.

In response, the Debtor filed a supplemental declaration addressing the court's concerns. Debtor states that the timeshare was purchased seven (7) years ago in 2006 from a secondary market at an online discount website. Debtors state they purchased the right to use it for one week, every other year but never used it, even one time. Debtor states they did not list any expenses because they did not pay any pertaining to the timeshare. Debtor states because they did not pay the maintenance fee, they did not have a right to use the property. Debtor states that it was not listed as an asset because it really was not an asset because they had no ability to use it. Debtor states they have no intention of having a straw buyer or a family member purchase the timeshare.

#### **Default Under Confirmed Plan**

The Trustee filed a notice of default on July 12, 2013, asserting that the Debtors were \$4,284.00 in default, with an additional payment of \$2,021.00 coming due on July 25, 2013. This Notice of Default (after two missed payments) prompted the Debtors to file a modified plan.

Under the Second Modified Plan the total plan payments as of July 2013 is \$49,804.00 (average of \$1,717 per month for the first 29 months). Then the Debtors are to pay \$2,096.00 per month for months 30 through 60 under the plan.

The Debtors confirmed their first plan, with the order being filed on May 25, 2011. Order, Dckt. 53. Under that confirmed plan the Debtors were obligated to make monthly plan payments of \$2,021.00. Plan, Dckt. 36.

On December 7, 2011, (seven months later) the Debtors filed their first modified Plan. Dckt. 69. This plan provided for the Debtors to pay \$2,021.00 per month for months 1 through 9; \$1,521.00 for month 10; \$1,896.00 per month for months 11 through 26; and \$2,021.00 per month for months 27 through 60. It was explained that the stepped payments were necessary because of certain medical expenses. The court confirmed the first modified plan. Order, Dckt. 73.

In the Motion to confirm the Second Modified Plan the Debtors state that they have defaulted and cannot cure the existing plan. The court is then instructed to read other pleadings to find the reason for the defaults. The reasons for the defaults, whether such events will continue in the future, and what the Debtors will do in the future to perform under a further modified plan are some of the grounds which must be stated with particularity in the motion seeking the relief. Fed. R. Bankr. P. 9013.

In the Declaration filed by Debtors in support of the motion, they state that the defaults were caused by Mrs. Balinado's employer placing her on "temporary furloughs," which significantly reduced the Debtors' income. Declaration, Dckt. 86. The employer is not identified, nor is what was "temporary," how long they lasted, and what action the Debtors took when their income was reduced to address the looming defaults under the confirmed Chapter 13 Plan.

The Declaration continues to state that Mrs. Balinado is now back working full time without furloughs, and now the Debtors will again start making payments, with a slight increase to cure the defaults. The Debtors will increase their plan payments by reducing their recreation budget line item from \$100.00 to \$25.00 for the remainder of the plan.

This declaration is insufficient. The court is not provided with testimony as to how long the furloughs lasted and the amount of income that the Debtors were actually reduced. Merely saying that there was a "significant" reduction is not sufficient. If the court were to accept the Debtors' finding that the reduction was significant would reduce the court to nothing more than the Debtors' parrot, mindlessly repeating what the Debtors stated.

The Debtors failed make at least \$4,284.00 in plan payments over two months. No evidence has been provided that Mrs. Balinado's income was reduced by \$4,284.00 for those two months. The most recent financial information in connection with the prior confirmed Plan is the amended Schedule I filed by the Debtors on December 7, 2011. Mrs. Balinado's take home income was stated to be \$3,036.87. Over two months that would be \$6,074.74. For there to be \$4,284.00 in defaults because of Mrs. Balinado's "furlough days," she would have been furloughed 71% of the work days for those two months. (This approximation is made by dividing the \$4,284.00 default by the \$6,074.74 net payments for the two month period.)

The current income information provided by the Debtors is consistent with the amended Schedule I. Current Income Statement, Exhibit A, Dckt. 87. What has happened in this case is that at least \$4,284.00 was not paid to the Trustee and has not been sufficiently accounted for by the Debtors. The "Mrs. Balinado was furlough so we stopped making plan payments" is not reasonable. The Debtors do not clearly account for the months in which they made plan

payments and the months in which the plan payments were not transmitted to the Trustee.

The court cannot find that the Modified Plan is in good faith and otherwise complies with 11 U.S.C. §§ 1322, 1325, and 1329, 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 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.