

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

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

September 24, 2013 at 2:00 p.m.

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1. [13-29700](#)-C-13 BRUCE/DEBORAH FELT MOTION TO VALUE COLLATERAL OF  
JDP-1 James D. Pitner NEW YORK COMMUNITY BANK  
9-5-13 [[21](#)]

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

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

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 224 Critter Creek Road, Lincoln, California. The Debtor seeks to value the property at a fair market value of \$375,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$386,440.93. New York Community Bank's second deed of trust secures a loan with a balance of approximately \$84,968.00. 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 New York Community Bank secured by a second deed of trust recorded against the real property commonly known as 224 Critter Creek Road, Lincoln, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$375,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

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

The court will approve a plan that complies with 11 U.S.C. §§ 1322 and 1325(a). In this instance, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick. However, the Trustee withdrew his Objection on September 23, 2013. Therefore, there being no other opposition, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 09, 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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 13, 2013. 42 days' notice is required. That requirement was met.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 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 Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 7, 2013. 42 days' notice is required. That requirement was met.

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

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

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

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

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

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

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

5. [13-29509](#)-C-13 DAVID/PAMELA CRANE  
GG-1 Gerald B. Glazer  
**Thru #6**

MOTION TO VALUE COLLATERAL OF  
GOLDEN 1 CREDIT UNION  
8-10-13 [[14](#)]

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

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

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

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$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 5131 Black Oak Mine Road, Garden Valley, California. The Debtor seeks to value the property at a fair market value of \$160,000.00 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 \$187,499.00. Golden 1 Credit Union's second deed of trust secures a loan with a balance of approximately \$41,966.01. 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 Golden 1 Credit Union secured by a second deed of trust recorded against the real property commonly known as 5131 Black Oak Mine Road, Garden Valley, 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 \$160,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

6. [13-29509](#)-C-13 DAVID/PAMELA CRANE OBJECTION TO CONFIRMATION OF  
NLE-1 Gerald B. Glazer PLAN BY DAVID P. CUSICK TRUSTEE  
8-29-13 [[23](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtors and Debtors' Attorney on August 29, 2013. 14 days' notice is required. This requirement was met.

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

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

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

(1.) Debtors' Certificate of Notice of the First Meeting of Creditors initially did not contain all the creditors listed on the Verification of Master Address List. Since not all parties of interest were noticed, the Meeting of Creditors was continued to October 3, 2013, and an Amended Notice of Chapter 13 was issued. The Amended Notice states that objections are to be filed and served by October 10, 2013. The Trustee will not object if the Court continues the hearing to November 5, 2013.

(2.) Under 11 U.S.C. § 1325(a)(6), Debtor cannot yet afford to make payments or comply with the plan. Debtor's plan relies on the Motion to Value Collateral of Golden 1 Credit Union, set for hearing on the same day this motion is being heard, on September 24, 2013. If the motion is not granted, Debtor plan lacks the monies to pay the claim in full. As it stands, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a).

The court's decision is to continue the hearing on Trustee's Objection to Confirmation to **[date]** at **[time]**, so that the motion can be heard after a decision has been rendered on Debtor's motion to value, and the mandated time for objections to file for the Meeting of Creditors has expired.

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 of the Plan be continued to **[date]** at **[time]**.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2013. 28 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1323 permits a debtor to modify a plan prior to confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1323, and is confirmed. The court shall issue a minute order substantially in the following form holding that:

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

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

**IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on August 20, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

Local Rule 9014-1(f)(1) Motion - 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. 35 days' notice is required. That requirement was met.

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

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

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

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

(1.) It is unclear what the proposed structure of plan payments are for the life of the plan. The modified plan payments are listed at "-May, June, July and August \$7016.69, -September, October, November, December, January, February, March and April \$9806.94."

(2.) The plan is not feasible. If the proposed plan payments are yearly, Trustee calculates there is approximately \$747,973.57 remaining to be paid to secured and priority creditors, and approximately \$30,354.81 remaining to be paid in trustee fees. Debtor proposes to paid secured creditor BBCN Bank \$7,016.69 per month, but this payment is identical to the monthly proposed plan payment for eight months of the year, leaving no room for trustee's fees.

(3.) Creditor Bank of America is not provided with monthly adequate protection payments under the plan.

(4.) Debtor's filed plan is not properly signed in conformity with Local Bankr. R. 9004-1(c).

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

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

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

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

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

9. [12-40030](#)-C-13 RICHARD/GLORIE JONES MOTION TO CONFIRM PLAN  
DBJ-4 Douglas B. Jacobs 7-30-13 [[82](#)]

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

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

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtors' plan on because it is unclear whether Debtors can make the payments under the plan or comply with the plan. Debtors have not corrected tax defaults under their current proposed plan and no provision is made for the payment of any income and self employment taxes for the \$34,800.00 in private consulting income generated annually from the plan. 11 U.S.C. § 1325(a) (6).

**Debtors' Response**

In reply to Trustee's Objection, Debtors state that while their employment arrangement may increase his tax obligations to the IRS and FTB, they are confident they will be able to pay their taxes. If Debtors do not pay their taxes on time, either the taxing authority or Trustee can bring a Motion to Dismiss the case. Debtors' assert that Trustee's Objection is speculative and should not be the basis for denial of plan confirmation.

While Debtors attempt to persuade the court that potential tax increased taxed obligations are a non-issue, they do not address why their proposed plan does not correct the tax defaults objected to by the Trustee.

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

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

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

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

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

10. [13-29532](#)-C-13 MICHAEL CRONE AND OBJECTION TO CONFIRMATION OF  
NLE-1 CELESTINA YSAIS PLAN BY DAVID P. CUSICK TRUSTEE  
Ronald W. Holland 8-29-13 [[15](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtors and Debtors' Attorney on August 29, 2013. 14 days' notice is required. This requirement was met.

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

this tentative ruling.

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

The Chapter 13 Trustee opposes confirmation of the Plan because the Plan relies on valuing collateral. Debtors cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors' plan relies on Motion for Value Collateral being filed for Green Tree, listed in Class 2C. To date, Debtors have not filed a Motion to Value Collateral. If the motion is filed and not granted, Debtors' plan will not have sufficient monies to pay the claim in full.

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

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

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

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

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

Local Rule 9014-1(f)(1) Motion - 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 5, 2013. 28 days' notice is required. That requirement was met.

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

**The court's tentative decision is to deny the Motion to Incur Debt.** 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 moves the court for an order granting it authority to incur debt. The proposed debt is a reverse mortgage in the amount of \$376,000.00. The collateral securing the debt is Debtor's residence, located at 13624 Autumn Lane, Chico, California. The creditor-mortgagee is Tri Counties Bank. Debtor will use the loan proceeds to pay the priority debt owed to the Internal Revenue Service, Franchise Tax Board, and Butte County Tax Collector.

### **Chapter 13 Trustee's Opposition**

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

(1.) Debtor did not cite the legal authority for her motion, as required under Local Bankr. R. 9014-1(d)(5) and Fed. R. Bankr. P. 9013.

(2.) Trustee believes Debtor should be moving to incur debt pursuant to 11 U.S.C. § 364 and Fed. R. Bankr. P. 4001(c). Fed. R. Bankr. P. 4001(c) required the motion to list or summarize and set out the location within the documents of all the material provisions of the proposed credit agreement and form of order. The exhibits consist of only a letter stating a proposal and the motion does not meet the requirements of FRBP 4001(c).

(3.) The security interests of the taxing creditors are not adequately protected because there is no effective requirement in the motion requiring payment of these claims from the loan proceeds. 11 U.S.C. § 364(d)(1)(B).

(4.) Debtor does not indicate in what priority the claims are to be paid. The secured claims exceed the proceeds from the loan.

(5.) Debtors have no plan pending and a motion to dismiss pending (Note: since the filing of the Motion, Debtor filed and amended plan and Trustee withdrew his motion to dismiss).

### **Debtor's Response**

Debtor responds to Trustee's opposition and asserts the following:

(1.) Debtor filed with the court a document provided by Tri Counties Bank called "Adjustable Rate Home Equity Conversion Deed of Trust." The document is a generic example of the Bank's normal documents for a reverse mortgage. Until escrow is closed, the documents containing the actual information specific to Debtor's situation are unavailable.

(2.) Debtor recognizes that FRBP 4001(c) applies to this matter and states that it is in a "Catch-22" situation because the rule requires a specific summarization of the terms of the proposed credit agreement; however, the Bank cannot provided such information until and escrow is opened and actual pay-off amounts are determined.

(3.) Debtor agreed to pay the tax claimants the entire proceeds of the reverse mortgage directly from the escrow account. Debtor will file a motion to approve such payment when the escrow account is opened and the exact amount of the pay-off is determined. The motion will identify how much of the funds will be paid to each taxing authority and how much will reduce secured tax debt and priority tax debt.

The court's decision is to deny Debtor's Motion to Incur Debt. Pursuant to Local Bankr. R. 9014-1(d)(5), each motion, opposition and reply shall cite the legal authority relied upon by the filing party. Here, Debtor did not provide the legal authority for the court to approve a reverse mortgage. This is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l). Additionally, the Motion does not to comply with Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), as it does not include all material provisions of the proposed credit agreement, including interest rate, maturity, borrowing limits and conditions. The court understands Debtor's argument; however, the Rules are very clear on the requirements for obtaining credit and the court perceives no good reason to act in contravention of the Rules.

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 Incur Debt 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 Incur Debt is denied.

12. 13-29634-C-13 JAMES/EVELYN CRAINE OBJECTION TO CONFIRMATION OF  
MRG-1 Peter G. Macaluso PLAN BY CAPITAL ONE AUTO  
FINANCE  
7-30-13 [14]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtors, Debtors' Attorney, Chapter 13 Trustee, and the United States Trustee on July 30, 2013. 14 days' notice is required. That requirement was met.

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

**The court's tentative decision is to overrule the Objection as moot.** 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, Capitol One Auto Finance, objects to confirmation of Debtors' Chapter 13 plan. Debtors filed an Amended Plan on August 29, 2013. A Motion to Confirm the First Amended Plan was filed on August 29, 2013; however, it was subsequently withdrawn on September 9, 2013. Debtors did not withdraw their First Amended Plan. Therefore, it appears Debtors intend to move forward with their first Amended Plan instead of their original plan. Because Creditor's objection is to confirmation of Debtor's original plan, it will be overruled as moot.

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

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

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

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

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

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

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 113 Ebbett Pass Road, Vallejo, California. The Debtor seeks to value the property at a fair market value of \$145,000.00 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 \$350,600.00. Suntrust Mortgage's second deed of trust secures a loan with a balance of approximately \$105,170.00. 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 Suntrust Mortgage secured by a second deed of trust recorded against the real property commonly known as 113 Ebbett Pass Road, Vallejo, 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 \$145,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

14. [13-31739](#)-C-13 RODERICK DEAL MOTION TO EXTEND AUTOMATIC STAY  
SDB-1 W. Scott de Bie 9-6-13 [7]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Chapter 13 Trustee, and Office of the United States Trustee on September 6, 2013. 14 days' notice is required. That requirement was met.

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

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

and conclusions of law:

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case pending within the last twelve months. Debtor's first bankruptcy case was filed on October 12, 2011 and dismissed on May 22, 2013 because Debtor did not may required plan payments after losing his employment. Therefore, pursuant to 11 U.S.C. § 362(c)(2)(B), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if Debtor did not file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c)(3)(C)(i)(II)(aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(c).

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

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

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

Here, Debtor was not able to complete his previous Chapter 13 plan and his case was dismissed because Debtor's income suffered as a result of employment loss. Debtor obtained new employment at a higher rate of income in June 2013. Debtor can not susitain plan payments in a new case.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

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

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

15. [13-28641](#)-C-13 TAEVONA MONTGOMERY CONTINUED OBJECTION TO  
EAT-1 Seth L. Hanson CONFIRMATION OF PLAN BY WELLS  
**Thru #17** FARGO BANK, N.A.  
8-8-13 [[28](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and the Office of the United States Trustee on August 8, 2013. 14 days' notice is required. That requirement was met.

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

**The court's tentative decision is to 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:

This hearing on this Objection was continued from September 10, 2013, so that Creditor's Objection to Confirmation can be heard simultaneously with Debtor's Motion to Value Collateral of Wells Fargo Bank, N.A. The court continued the hearing on the Motion to Value originally set for August 27, 2013, to September 24, 2013 to permit Wells Fargo time to obtain a verified appraisal of the property located at 6106 Camden Street, Oakland, California.

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

Debtor's Schedule A reflects that subject property is a rental, and not Debtor's primary residence. Debtor's Plan at Section C also identifies

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

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

The Motion to Value will be granted despite Creditor's assertions regarding the classification of the property, unless a Creditor conflicting appraisal of the property during the Motion hearing. The Court is not persuaded by Creditor's arguments limiting lien avoidance to a debtor's primary residence. The holdings of *In re Zimmer* and *In re Lam* concern whether a wholly unsecured lien is protected by the antimodification clause of 11 U.S.C. § 1332(b)(2) and not whether 11 U.S.C. § 506(a) is limited to the primary residence of a debtor. The plain language of 11 U.S.C. § 506(a) makes the provision applicable to any "property in which the estate has an interest."

With that in mind, however, Debtor's Plan still does not comport with 11 U.S.C. § 1325(a)(6) in that it does not appear that Debtor will be able to make all payments under the plan according to her own schedules. Even if the Motion to Value were granted, Debtor's income is not able to cover the monthly installments listed to pay for the subject property. To date, Debtor has not filed amended schedules or an updated Plan.

Thus, the plan is not currently confirmable under 11 U.S.C. §§ 1322 and 1325(a).

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

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

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

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

16. [13-28641](#)-C-13 TAEVONA MONTGOMERY  
SLH-2 Seth L. Hanson

CONTINUED MOTION TO VALUE  
COLLATERAL OF WELLS FARGO BANK,  
N.A.  
7-26-13 [[19](#)]

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

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

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

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

This matter was continued from August 27, 2013 to September 24, 2013 at 2:00 p.m.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6106 Camden Street, Oakland, California. The Debtor seeks to value the property at a fair market value of \$299,765 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$309,862. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$54,875. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. However, Wells Fargo Bank filed an opposition to Debtor's Motion.

#### **Creditor's Opposition**

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

#### **Debtor's Response**

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

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

The Court previously continued this motion to permit Creditor time to obtain and file a verified appraisal contesting Debtor's stated value. Creditor has not filed an appraisal with the court and has not presented any other evidence contesting the opinion on value provided by Debtor.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 6106 Camden Street, Oakland, 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 \$299,765 and is encumbered by senior liens securing claims which exceed the value of the Property.

17. [13-28641](#)-C-13 TAEVONA MONTGOMERY  
TSB-1 Seth L. Hanson

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK TRUSTEE  
8-7-13 [[24](#)]

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

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

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that under 11 U.S.C. § 1325(a)(6), the Debtor cannot make all payments under the plan and comply with the plan.

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

The Motion to Value Collateral of Wells Fargo Bank, N.A. was continued to be heard today, September 24, 2013 at the same time that this Objection is being heard. The court tentative decision is to grant Debtor's Motion to Value. Thus, both motions have been heard and granted, and the issue of the Plan's reliance on pending motions has been resolved. The court will overrule Trustee's objection as moot.

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

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

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

**IT IS ORDERED** that the Trustee's Objection to Confirmation is overruled.

18. [12-39946](#)-C-13 VICTORIA GOKEY MOTION TO AVOID LIEN OF KELKRIS  
DJC-2 Anh V. Nguyen ASSOCIATES, INC.  
8-27-13 [[76](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on August 27, 2013. 28 days' notice is required. That requirement was met.

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

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

A judgment was entered against the Debtor in favor of Kelkris Associates, Inc. for the sum of \$4,802.59. The abstract of judgment was recorded with Sacramento County on July 13, 2010. That lien attached to the Debtor's residential real property commonly known as 6831 18<sup>th</sup> Avenue, Sacramento, California.

The motion is granted pursuant to 11 U.S.C. § 522(f) (1) (A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$111,707.00 as of the date of the petition. The unavoidable consensual liens total \$61,000.00 on that same date according to Debtor's Schedule D. The

Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code §704.730 in the amount of \$50,707.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

**ISSUANCE OF A COURT DRAFTED ORDER**

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

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

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

**IT IS ORDERED** that the judgment lien of Kelkris Associates, Inc., Sacramento County Superior Court Case No.34-2009-00056470, Document No. 20100713, recorded on July 13, 2010, with the Sacramento County Recorder, against the real property commonly known 6831 18<sup>th</sup> Avenue, Sacramento, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

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

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

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 9, 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.

20. [13-31548](#)-C-13 ALICIA WHITNEY  
RJ-1 Richard L. Jare  
**Thru #21**

MOTION TO VALUE COLLATERAL OF  
SANTANDER CONSUMER USA, INC.  
9-10-13 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 10, 2013. 14 days' notice is required. That requirement was met.

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

**The court's tentative decision is that the Motion to Value Collateral is granted and creditor's secured claim is determined to be \$11,000.00.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject personal property commonly known as 2008 Honda Accord LX-P. The Debtor seeks to value the property at a fair market value of \$11,000.00 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 lien on the vehicle's title secures a loan incurred in June 2011, more than 910 days prior to filing of the petition, with a balance of approximately \$19,082.00. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$11,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of  
Collateral filed by Debtor(s) having been

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA against personal property known as a 2008 Honda Accord LX-P, is determined to be a secured claim in the amount of \$11,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$11,000.00 and is encumbered by liens securing claims which exceed the value of the Property.

21. [13-31548](#)-C-13 ALICIA WHITNEY MOTION TO VALUE COLLATERAL OF  
RJ-2 Richard L. Jare THE VILLAGES OF THE GALLERIA  
HOA  
9-10-13 [[17](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 10, 2013. 14 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 701 Gibson Drive, #525 Roseville, California. The Debtor seeks to value the property

at a fair market value of \$130,000.00 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 \$188,835.00. The Villages of the Galleria Homeowner's Association lien against the property is approximately \$9,500.00. However, Debtor does not present any authenticated evidence demonstrating that The Villages of the Galleria Homeowner's Association lien is subordinate to the first deed of trust. Debtor merely states that "CC&R's, subdivision covenants conditions and restrictions, normally define that the home owner's association's lien is subordinated to the 1<sup>st</sup> Deed of Trust." Without evidence of the specific lien at issue being subordinate to the deed of trust, the court does not have sufficient information to value the secured claim at \$0.00.

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

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

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

**IT IS ORDERED** that the Motion to Value is denied without prejudice.

22. [13-26653](#)-C-13 BARBARA COCKERHAM OBJECTION TO CONFIRMATION OF  
NLE-1 Mohammad M. Mokarram PLAN BY DAVID P. CUSICK TRUSTEE  
8-29-13 [[56](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on August 29, 2013. 14 days' notice is required. That requirement was met.

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

this tentative ruling.

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

The Chapter 13 Trustee objects to confirmation of Debtor's Plan because the Plan does not meet the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). 11 U.S.C. § 1325(a)(4) requires that the value of a confirmable plan of property that will be distributed on account of each allowed unsecured claim, be more than the amount that would be paid on such claim if Debtor's estate were liquidated under Chapter 7.

Trustee argues that Debtor bare opinion on a rental property listed on Schedule A, 1014 54<sup>th</sup> Street, Oakland, should not convince the Court as to the value of the property. Debtor's opinion is not accompanied by any additional evidence and site reports that shed light on the property's actual value, which Debtor now values at \$210,000.

Debtor had originally valued the property at \$322,000. Additionally, Debtor's opinion as to her actual interest in the property has changed. Debtor initially claimed a 1/6th interest in the property, at a value of \$46,000, and later changed the figure to a ½ interest at a value of \$57,684. Trustee contends that according to Zillow.com, the value of the rental property could be as much as \$432,808, resulting in \$149,220.50 non-exempt equity for the Debtor, while Debtor proposes to pay the unsecured creditors a 30% dividend (approximately \$42,166.76).

It does not appear to the court that Debtor's current plan complies with 11 U.S.C. § 1325(a)(4). Therefore, the court shall issue a minute order substantially in the following form holding that:

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on September 4, 2013. 14 days' notice is required. That requirement was met.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case pending within the last twelve months. Debtor's first bankruptcy case was filed on November 15, 2012 and dismissed because Debtor did not file the required documents. Therefore, pursuant to 11 U.S.C. § 362(c) (2) (B), the provisions of the automatic stay end as to Debtor thirty days after filing.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c) (3) (B). The subsequently filed case is presumed to be filed in bad faith if Debtor failed to file documents as required by the court without substantial excuse. 11 U.S.C. § 362(c) (3) (C) (i) (II) (aa). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c) (3) (c).

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

1. Why was the previous plan filed?

2. What has changed so that the present plan is likely to succeed?

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

Here, explains that her first case was in a pro se capacity and she was unable to adequately prosecute her case through to completion. Now, Debtor is represented by competent counsel who will assist her in seeing through her case to completion. The court is persuaded Debtor is moving in good faith and will craft a confirmable plan.

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

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

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

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

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

24. [12-36555](#)-C-13 MANUEL DIZON AND  
WW-1 FRIDALEEN LOU  
Mark A. Wolff

MOTION TO MODIFY PLAN  
8-12-13 [[37](#)]

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 20, 2013. 35 days' notice is required. That requirement was met.

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

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

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

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

(1.) The proposed attorney's to be paid through the plan (\$4,000.00) differ from the figure (\$5,000.00) in the order confirming the original plan (Dkt. 25).

(2.) Trustee's records reflect a balance of \$2,200.00 remaining to be paid to the attorney, but Debtor's proposed plan lists \$0.00 owed in section 2.07.

(3.) Debtors are proposing plan payments with anticipated income from co-debtor. The statement of income lists co debtor "anticipated full time job" income of \$3,750.00. Without this anticipated income, Debtors' income will reflect \$7,249.10, while Debtors' expenses are expected to be \$10,414.00.

#### **Debtors' Response**

Debtors respond to Trustee's Opposition. Debtors states that \$5,000.00 is the appropriate figure to be paid through the plan for attorney's fees. Debtor will amend this section in the order confirming the plan. Furthermore, Debtors request to amend section 2.07 to provide for payment of \$300.00 per month to pay administrative expenses.

Debtors do not resolve Trustee's concerns regarding uncertain income upon which the plan depends. The plan cannot be confirmed if Debtors' income is speculative and the speculation demonstrates the potential for Debtors not to meet their monthly expenses and plan payments.

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

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

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

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

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

25. [13-27160](#)-C-13 REMEDIOS COPELAND CONTINUED OBJECTION TO  
TSB-1 Ronald W. Holland CONFIRMATION OF PLAN BY DAVID  
P. CUSICK TRUSTEE  
7-3-13 [[17](#)]

**CASE DISMISSED 9/4/13**

**Final Ruling:** On September 4, 2013, the court granted Trustee's Motion to Dismiss Debtor's case for non appearance at the Meeting of Creditors. (Dkt. 33). The case having previously been dismissed, the Objection is overruled as moot.

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

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

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

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

26. [13-29464](#)-C-13 ELEUTERIO/NOIDA CAPAPAS OBJECTION TO CONFIRMATION OF  
NLE-1 Gary Ray Fraley PLAN BY DAVID P. CUSICK  
8-29-13 [[22](#)]

**Final Ruling:** The Chapter 13 Trustee having filed a Notice of Withdrawal on September 19, 2013. The Trustee has the right to voluntarily dismiss its action without a court order pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i) and Fed. R. Bankr. P. 9014 and 7041. There are no issues for the court with respect to this Objection, therefore, the court removes this Objection from the calendar.

27. [13-30972](#)-C-13 ARNOLD/EPIFANIA VALDEZ MOTION TO VALUE COLLATERAL OF  
SAC-1 Scott A. CoBen GOLDEN 1 CREDIT UNION  
8-26-13 [[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 Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 26, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8722 Western Sun Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$173,000.00 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

\$197,400.00. Golden 1 Credit Union's second deed of trust secures a loan with a balance of approximately \$43,000.00. 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 Golden 1 Credit Union secured by a second deed of trust recorded against the real property commonly known as 8722 Western Sun Way, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$173,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

28. [13-29881](#)-C-13 PERRY/BETSY FERRUCCI  
CAH-1 C. Anthony Hughes  
**Thru #29**

MOTION TO VALUE COLLATERAL OF  
BANK OF AMERICA, N.A.  
8-14-13 [[14](#)]

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

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

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 7249 Mariposa Avenue, Citrus Heights, California. The Debtor seeks to value the property at a fair market value of \$256,115.00 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 \$304,423.00. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$40,754.00. 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

**September 24, 2013 at 2:00 p.m.**  
**Page 38 of 44**

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.'s secured by a second deed of trust recorded against the real property commonly known as 7249 Mariposa Avenue, Citrus Heights, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$256,115.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

29. [13-29881](#)-C-13 PERRY/BETSY FERRUCCI MOTION TO AVOID LIEN OF  
CAH-2 C. Anthony Hughes AMERICAN EXPRESS CENTURION BANK  
8-14-13 [[18](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on August 14, 2013. 28 days' notice is required. That requirement was met.

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

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

A judgment was entered against the Debtor in favor of American Express Centurion Bank for the sum of \$17,390.00. The abstract of judgment was recorded with Sacramento County on June 11, 2012. That lien attached to the Debtor's residential real property commonly known as 7249 Mariposa Avenue, Citrus Heights, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$256,115.00 as of the date of the petition. The unavoidable consensual liens total \$345,117.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

#### **ISSUANCE OF A COURT DRAFTED ORDER**

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

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

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

**IT IS ORDERED** that the judgment lien of American Express Centurion Bank, Sacramento County Superior Court Case No. 34-2010-00089278, Document No. 20120611, recorded on June 11, 2012, with the Sacramento County Recorder, against the real property commonly known 7249 Mariposa Avenue, Citrus Heights, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**CASE DISMISSED 8/6/13**

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

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

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

**The Motion to Confirm the Plan continued to October 8, 2013 at 2:00 p.m.** No appearance required. The court makes the following findings of fact and conclusions of law:

Debtors case was dismissed on August 6, 2013. Debtors filed a Motion to Vacate Dismissal and Reinstate Chapter 13 Case on August 8, 2013. At the hearing on August 27, 2013, the court continued the hearing on Debtors' Motion to Vacate to October 8, 2013 at 2:00 p.m. Therefore, the current Motion to Confirm will be continued to October 8, 2013 at 2:00 p.m.

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

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

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

**IT IS ORDERED** that the hearing on the Motion is continued to October 8, 2013 at 2:00 p.m.

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

Correct Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor (*Pro Se*) on August 20, 2013. 28 days' notice is required; that requirement was met.

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

The Chapter 13 Trustee objects to the following claimed exemptions:

(1.) Debtor claimed exemptions under C.C.P. § 703.140(b), and appears married, but has not filed the required Spousal Waiver. C.C.P. § 703.140(a)(2).

(2.) Debtor claimed an exemption of \$9,800.00 under C.C.P. § 703.140(b)(2) for Automobiles; however, the maximum amount allowed under this exemption is \$5,100.00.

On September 13, 2013, Debtor filed the Spousal Waiver mandated under C.C.P. § 703.140(a)(2). Debtor filed an amended petition on September 13, 2013 but did not file an updated Schedule C reflecting an appropriate exemption under C.C.P. § 703.140(b)(2). Therefore, Trustee's Objection will be sustained as to Debtor's § 703.140(b)(2) exemption.

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 Debtor's Claim of Exemptions filed by 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 is sustained in part and Debtor's exemption claimed under 11 U.S.C. § 703.140(b)(2) is disallowed.

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 14, 2013. 35 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, opposition to the proposed modifications was filed by Creditor, U.S. National Bank Association. Creditor opposes confirmation of Debtors' plan on the following grounds:

(1.) Creditor holds a senior lien on real property known as 407 Brunswick Drive, Vallejo, California.

(2.) The amount to cure post-petition arrears in Debtors' plan is incorrect. Debtors plan states that payment of \$3,487.00 to Creditor by the Chapter 13 Trustee in August would cure the post-petition delinquency of \$6,396.44.

(3.) Debtor's plan does not provide for interest on Creditor's arrears as required under 11 U.S.C. § 1322(e). The contract rate on Creditor's loan is currently 3.00% and should be accruing on pre-petition arrears, rather than the 0% provided in Debtors' plan.

#### **Debtors' Response**

Debtor provides the following response to Creditor's opposition:

(1.) Debtors' post-petition delinquency is only \$676.10 and not \$6,396.44, as alleged in the opposition. The total ongoing payments due to U.S. Bank, post petition, was \$16,056.53. Trustee's records show disbursement to U.S. Bank National Association since the filing of the petition total \$15,380.46. Leaving \$676.10 remaining.

(2.) The original plan did not propose interest payments to U.S. Bank National Association and the plan was confirmed without objection.

Debtors' original plan was confirmed without the court addressing the 11 U.S.C. § 1322(e) issue raised by Creditor. Creditor did raise its objection to the interest rate; however, the objection was untimely. Here, Debtor submitted a modified plan and Creditor raised the objection in timely response to Debtors' Motion to Modify. Debtor did not resolve the 11 U.S.C. § 1322(e) issue after it was raised in Creditor's opposition. The modified Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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