UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

September 30, 2014 at 2:00 p.m.

1.	14-27700-C-13 DPC-1	DANIEL/EMILIA POPA Mohammad M. Mokarram	OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 9-3-14 [22]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 3, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Debtor did not appear at the First Meeting of Creditors held on August 28, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.

2. Debtor is $2,530 delinquent in plan payments to the Trustee to date and the next scheduled payment of $2,530.00 is due on September 25, 2014. Debtor has paid $0.00 into the plan to date.

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

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

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

2. 12-22801-C-13 SUK KIM MOTION TO INCUR DEBT
CAH-6 Aaron C. Koenig 8-29-14 [132]

Final Ruling: No appearance at the September 30, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor and Office of the United States Trustee on August 29, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Suk Ku Kim ("Debtor") seeks court approval for Debtor to incur post-petition credit. Nationstar Mortgage, LLC ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment from the current $1,157 a month to $765.34 a month. The modification will capitalize the pre-petition arrears and provide for a fixed interest rate of 7.125%.

The Motion is supported by the Declaration of Suk Ku Kim. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Amended Chapter 13 Plan in this case and Debtor's ability to fund that Plan. The Amended Chapter 13 Plan is set for a hearing on confirmation on October 28, 2014. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

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

The Motion to Approve the Loan Modification filed by Suk Ku Kim 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 court authorizes Suk Ku Kim ("Debtor") to amend the terms of the loan with Nationstar Mortgage, LLC, which is secured by the real property commonly known as 4700 Careo Drive, Antelope, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 134.

3.	14-21801-C-13 BLG-2 **Thru #5**	ROSE SPAHN Bruce Charles Dwiggins	OBJECTION TO CLAIM OF ASSET ACCEPTANCE LLC, CLAIM NUMBER 1 7-15-14 [27]

Final Ruling: No appearance at the September 30, 2014 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 15, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Claim of Asset Acceptance LLC is sustained.

Rose Spahn, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Asset Acceptance LLC("Creditor"), Proof of Claim No. 1-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $31,606.79. Objector asserts that the last transaction on this account occurred May 2, 2003 and the four-year statute of limitations on the obligation ran on or about May 1, 2007. *Cal. C.C.P.* §§ 312 & 337. Objector asserts there were no tolling periods during this time and Debtor made no charges, payments, or signed any documents in relation to this obligation during this period. Debtor asserts that she has an affirmative defense against collection of this debt under state law and the obligation which this claim is based on cannot be enforced under state law, making the claim stale.

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

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

California Code of Civil Procedure section 312 and 337 create a four year limitation on a creditor's action to recover upon any contract, obligation, or liability founded upon an instrument in writing. The affirmative defense of statute of limitations under state law is a valid basis for objection to allowance of a claim under 11 U.S.C. § 502(b)(1).

Based on the evidence before the court and there being no opposition from the creditor, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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 Claim of Asset Acceptance LLC, Creditor filed in this case by Rose Spahn, Chapter 13 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 objection to Proof of Claim Number 1-1 of Asset Acceptance LLC is sustained and the claim is disallowed in its entirety.

4.	14-21801-C-13 BLG-3	ROSE SPAHN Bruce Charles Dwiggins	OBJECTION TO CLAIM OF JEFFERSON CAPITAL SYSTEMS, LLC, CLAIM NUMBER 3 7-15-14 [33]

Final Ruling: No appearance at the September 30, 2014 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 15, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Claim of Jefferson Capital Systems, LLC is sustained.

Rose Spahn, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Jefferson Capital Systems, LLC("Creditor"), Proof of Claim No. 3-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $9,837.82. Objector asserts that the last transaction on this account occurred March 31, 2008 and the four-year statute of limitations on the obligation ran on or about March 30, 2012. *Cal. C.C.P.* §§ 312 & 337. Objector asserts there were no tolling periods during this time and Debtor made no charges, payments, or signed any documents in relation to this obligation during this period. Debtor asserts that she has an affirmative defense against collection of this debt under state law and the obligation which this claim is based on cannot be enforced under state law, making the claim stale.

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

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

California Code of Civil Procedure section 312 and 337 create a four year limitation on a creditor's action to recover upon any contract, obligation, or liability founded upon an instrument in writing. The affirmative defense of statute of limitations under state law is a valid basis for objection to allowance of a claim under 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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 Claim of Jefferson Capital Systems, LLC, Creditor filed in this case by Rose Spahn, Chapter 13 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 objection to Proof of Claim Number 3-1 of Jefferson Capital Systems, LLC is sustained and the claim is disallowed in its entirety.

5.	14-21801-C-13 BLG-4	ROSE SPAHN Bruce Charles Dwiggins	OBJECTION TO CLAIM OF JEFFERSON CAPITAL SYSTEMS, LLC, CLAIM NUMBER 6 7-15-14 [39]

Final Ruling: No appearance at the September 30, 2014 hearing is required.

Local Rule 3007-1 Objection to Claim - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Objection to Claim and supporting pleadings were served on the Creditor, Chapter 13 Trustee, and Office of the United States Trustee on July 15, 2014. Forty-four days' notice is required. (Fed. R. Bankr. P. 3007(a) 30 day notice and L.B.R. 3007-1(b)(1) 14-day opposition filing requirement.) That requirement was met.

The Objection to Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(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(b)(1)(A) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Claim of Jefferson Capital Systems, LLC is sustained.

Rose Spahn, the Chapter 13 Debtor ("Objector") requests that the court disallow the claim of Jefferson Capital Systems, LLC("Creditor"), Proof of Claim No. 6-1 ("Claim"), Official Registry of Claims in this case. The Claim is asserted to be unsecured in the amount of $9,504.51. Objector asserts that the last transaction on this account occurred February 29, 2004 and the four-year statute of limitations on the obligation ran on or about February 28, 2008. *Cal. C.C.P.* §§ 312 & 337. Objector asserts there were no tolling periods during this time and Debtor made no charges, payments, or signed any documents in relation to this obligation during this period. Debtor asserts that she has an affirmative defense against collection of this debt under state law and the obligation which this claim is based on cannot be enforced under state law, making the claim stale.

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

creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); *see also United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006).

California Code of Civil Procedure section 312 and 337 create a four year limitation on a creditor's action to recover upon any contract, obligation, or liability founded upon an instrument in writing. The affirmative defense of statute of limitations under state law is a valid basis for objection to allowance of a claim under 11 U.S.C. § 502(b)(1).

Based on the evidence before the court, the creditor's claim is disallowed in its entirety. The Objection to the Proof of Claim is sustained.

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 Claim of Jefferson Capital Systems, LLC, Creditor filed in this case by Rose Spahn, Chapter 13 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 objection to Proof of Claim Number 6-1 of Jefferson Capital Systems, LLC is sustained and the claim is disallowed in its entirety.

6.	14-21205-C-13 DBJ-3	JOHN/PATRICIA MELMS Douglas B. Jacobs	MOTION TO VALUE COLLATERAL OF BANK OF AMERICA, N.A. 8-25-14 [66]

Final Ruling: No appearance at the September 30, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 25, 2014. Twenty-eight days' notice is required.

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

The Motion to Value secured claim of Bank of America, N.A., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1280 Virage Lane, Chico, California. The Debtor seeks to value the property at a fair market value of $260,000 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 $345,562. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately $58,815.00. 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 Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 1280 Virage Lane, Chico, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $260,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

7.	14-27505-C-13 DPC-1 **Thru #8**	CHARLES HAGEE AND NORMA BREEDEN-HAGEE James F. Bunnell	OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS 8-27-14 [15]

Final Ruling: No appearance at the September 30, 2014 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

8.	14-27505-C-13 DPC-2	CHARLES HAGEE AND NORMA BREEDEN-HAGEE James F. Bunnell	OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK 8-27-14 [18]

Final Ruling: No appearance at the September 30, 2014 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

9. 14-28308-C-13 JODY/JOY SILVA — MOTION TO VALUE COLLATERAL OF
CA-1 Michael David Croddy — SANTANDER CONSUMER USA
Thru #10 — 9-15-14 [18]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 15, 2014. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Santander Consumer USA Inc., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtors are the owner of 2008 Chrysler Aspen. The Debtors seek to value the property at a replacement value of $16,114.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2010, more than 910 days prior to the filing of the petition, with a balance of approximately $29,056.11. 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 $16,114. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted

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

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

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

> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA Inc. secured by a 2008 Chrysler Aspen, is determined to be a secured claim in the amount of $16,114.00, 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 $16,114 and is encumbered by liens securing claims which exceed the value of the Property.

10. 14-28308-C-13 JODY/JOY SILVA — MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA
CA-2 Michael David Croddy — 9-15-14 [23]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 15, 2014. Fourteen days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Santander Consumer USA Inc., "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtors are the owner of 2010 Ford F150 Super Cab, Short Bed. The Debtors seek to value the property at a replacement value of $17,726.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred in 2010, more than 910 days prior to the filing of the petition, with a balance of approximately $23,981.44. 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 $16,114. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted

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

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

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

> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA Inc. secured by a 2010 Ford F150 Super Cab, Short Bed, is determined to be a secured claim in the amount of $17,726.00, 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 $17,726 and is encumbered by liens securing claims which exceed the value of the Property.

11. 13-36122-C-13 CHARLES/JODI THARP MOTION TO MODIFY PLAN
AEB-3 Andrew E. Bakos 8-19-14 [52]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 19, 2014. Thirty-five days' notice is required. That requirement was met.

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

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

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

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

1. Debtors' plan confirmed on April 8, 2014 stated: "$9,600 from their 2012 Income tax refunds, to be paid to the Trustee within 6 months of confirmation." Trustee objected to this language as it did not include a specific date. Debtor's responded to the Trustee and stated the amount would be paid no later than June 15, 2014. Debtors have not paid the $9,600 to the Trustee and have omitted this amount from the current proposed plan.

2. Debtors' declaration is insufficient as it lacks sufficient evidence to prove all the components of 11 U.S.C. § 1325(a). The Trustee believes Debtor can provide some facts that will allow the court to conclude that the code has been satisfied, such as:

   a. The modified plan is the form plan required by the court.
   b. The total amount the Debtor has paid into the plan as of a date certain
   c. The amount of non exempt equity, where the Debtor valued the properly and claimed the amount of exemptions
   d. The treatment of secured claims, and whether it has changed from the confirmed plan
   e. The Debtor's employment and length of employment, and if the Debtor had become delinquent under the plan, why the Debtor became delinquent and why the Debtor will no longer fall delinquent under the plan.

3. Trustee is uncertain of Debtors' ability to make the plan payments. The most recent Schedules I & J were filed January 8, 2014. The Schedule J reflected the ability to pay $1,462. Section 6.01 states the payments under the plan shall be $1,604 from September 2014 through December 2018.

4. The plan does not comply with LBR 9004-1(c), as names are not typed below the signatures.

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.

12. 11-33923-C-13 LAN QUACH
SDB-2 W. Scott de Bie

MOTION TO VALUE COLLATERAL OF THE BANK OF NEW YORK MELLON TRUST COMPANY
8-26-14 [42]

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

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

Below is the court's tentative ruling.

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on August 26, 2014. Twenty-eight days' notice is required.

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

The Motion to Value is denied without prejudice.

Debtors seek an order valuing the collateral securing the claim of Bank of New York Mellon National Trust Company, N.A. ("Creditor"); however, Debtors did not serve the Creditor pursuant to Federal Rule of Bankruptcy Procedure 7004(h).

Creditor is a federal insured financial institution. Congress created a specific rule to provide for service of pleadings, including this contested matter, on federally insured financial institutions, Federal Rule of Bankruptcy Procedure 7004(h), which provides

> (h) Service of process on an insured depository institution. Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless-
>
> (1) the institution has appeared by its

attorney, in which case the attorney shall be served by first class mail;

(2) the court orders otherwise and after service upon the institution by certified mail or notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or

(3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

Debtor's served Creditor via certified mail at the following address:

One Wall Street
New York, NY 10286

The address for creditor, provided by the FDIC is:

400 South Hope Street
Los Angeles, CA 90071

The court is unwilling to alter the legal rights of a creditor without confirmation that creditor was adequately served pursuant to the Federal Rules of Bankruptcy Procedure. It appears here that Debtor served the address for "The Bank of New York Mellon" and not "The Bank of New York Mellon Trust Company, N.A." As such, the Motion is denied without prejudice.

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

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

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

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

13. 14-27324-C-13 DAVID HENRY
ASW-1 Michael David Croddy
Thru #14

OBJECTION TO CONFIRMATION OF PLAN BY BANK OF AMERICA, N.A.
9-4-14 [26]

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

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

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

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 4, 2014. Twenty-eight notice is required; however, only twenty-seven days' notice was provided.

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

The court's decision is to sustain the Objection.

Bank of America, N.A. opposes confirmation of the Plan on the basis that it does not propose a high enough payment to cure Creditor's pre-petition arrears over a 60 month period. 11 U.S.C. § 1325(a).

Creditor intends on filing a Proof of Claim and estimates pre-petition arrearage on the claim in the sum of $21,033.77. Debtor lists the amount of arrears in Class 1 as $12,000 and proposes an arrearage dividend of $200.00.

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

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

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

14. 14-27324-C-13 DAVID HENRY — OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
DPC-1 Michael David Croddy — 9-3-14 [21]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 3, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

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

1. Debtor is $1,969 delinquent in plan payments to the Trustee to date and the next scheduled payment of $1,969 is due on September 25, 2014. Debtor has paid $0.00 into the plan to date.

2. Debtor did not appear at the First Meeting of Creditors held on August 28, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting.

3. It appears Debtor cannot make the payments under 11 U.S.C. § 1325(a)(6). Debtor lists income on Schedule I as "anticipated

monthly sales bonus. Income from rent above is anticipated." Debtor did not appear at the 341 Meeting and Trustee could not inquire into the nature of the income.

Debtor lists the debt of Stephanie Bambino for child support and alimony in Class 5 in the amount of $3,500, but Santa Clara DCSS has filed a priority claim of $29,780.75. The claim also states that Debtor owes a monthly on-going amount of $914 per month. Debtor has not listed this deduction on Schedule I or J.

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 the Objection to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

15. 14-27525-C-13 **Thru #16** | DEVENDRA SHARMA AND MIRDULA SINGH
Stan E. Riddle | MOTION TO AVOID LIEN OF CACH, LLC
9-2-14 [29]

Final Ruling: No appearance at the September 30, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 2 2014. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Avoid Judicial Lien is granted.

A judgment was entered against the Debtor in favor of Cach, LLC for the sum of $2,956.59. The abstract of judgment was recorded with Sacramento County on April 16, 2014. That lien attached to the Debtor's residential real property commonly known as 4401 Lantana 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 $153,336 as of the date of the petition. The unavoidable consensual liens total $86,601 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.731(a) in the amount of $64,138.41 in Schedule C. *See* Dkt. 10. 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 $2,596.59 in equity to support the judicial lien. Therefore, the fixing of this judicial lien is avoided in excess off $2,596.59 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 IT IS ORDERED that the judgment lien of Cach LLC, California Superior Court for Sacramento County Case No. 34-2013-00144083, recorded on April 16, 2014, Document No. 20140416 with the Sacramento County Recorder, against the real property commonly known as 4401 Lantana Avenue, Sacramento, California, is avoided for all amounts in excess of $2,596.59 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.

16. 14-27525-C-13 DPC-1 | DEVENDRA SHARMA AND MIRDULA SINGH
Stan E. Riddle | OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-27-14 [22]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 27, 2014. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

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

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

2. Debtors cannot make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors propose to avoid the judicial lien of Cach, LLC, but have not filed a Motion to Avoid Lien.

3. Debtors' plan proposes to pay the ongoing mortgage of $631,21

per month as a Class 1 debt and the payment of $100.00 per month is insufficient to fund the plan.

4. The plan is not Debtors' best efforts under 11 U.S.C. § 1325(b). Debtor has an average of $628 per month in additional income but only proposes a plan payment of $100 per month and no less than a 6% dividend to unsecured creditors. Trustee requests that all tax refunds be paid into the plan.

5. In section 2.06, the plan proposes to pay Debtors' counsel $2,475 pursuant to LBR 2016-1(c); however, the Disclosure of Compensation of Attorney for Debtors lists in item 7 that counsel services do not include some services required under LBR 2016-1(c). Trustee believes that counsel is effectively opting out of the LBR and will oppose attorney fees being sought under that section.

DEBTOR'S RESPONSE

Debtor provides the following in response to the Trustee:

1. Join Debtor Mirdula Singh provided the payroll history to the Trustee on September 2, 2014.

2. Debtors filed a Motion to Avoid Lien of Cach, LLC on September 2, 2014.

3. Mortgage lender Wells Fargo Bank, N.A. filed a claim for pre-petition escrow shortage in the amount of $243.57. Before this, Debtors believed they were current on their mortgage payments. Debtors request the court permit the $243.57 arrearage claim to be paid in Class 2 through a Chapter 13 plan.

4. Debtors do not believe that their Earned Income Tax Credit received at the end of the year should be perceived as monthly income for Chapter 13 purposes. Further, given that Debtors' income increased for 2014, they do not anticipated qualifying for the same Credit this year (if they do, it will be a small amount).

5. Counsel for Debtors has filed an amended compensation disclosure removing the incorrect exclusion of services.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). Debtors did propose a Motion to Avoid the Lien of Cach, LLC; however, the court is denying the Motion on the ground that there is sufficient equity to which the lien can attach based on the exemption claimed by Debtors. Debtors did not file a declaration attesting to the truth of the matters asserted in the response and without competent evidence or a statement from the Trustee acknowledging the submissions by Debtors, the court is not prepared to overrule the objection. The objection is sustained and the Plan is not confirmed.

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

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

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

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

17.	14-27529-C-13 PD-1	VICTOR LONSKIY AND DINA LONSKAYA Mark Shmorgon	OBJECTION TO CONFIRMATION OF PLAN BY WELLS FARGO BANK, N.A. 8-27-14 [17]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 27, 2014. Fourteen days' notice is required.

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

The court's decision is to sustain the Objection.

Creditor, Wells Fargo Bank, N.A., opposes confirmation of the Plan on the basis that the plan does not completely provide for its claim. On August 25, 2014, Creditor filed proof of claim No. 4 in the amount of $131,535.60, and a pre-petition arrearage claim of $4,657.48.

Debtors' plan fails to properly cure Creditor's pre-petition arrears. 11 U.S.C. § 1325(a)(5). The proposed plan does not provide for payment of the pre-petition arrearage.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). A review of the proposed original plan demonstrates that no pre-petition arrearage claim is provided for in Class 1 and that Creditor is only provided for in Class 4 of the plan. 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 Wells Fargo Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Objection to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

18. 14-21931-C-13 AMRIK/DALJIT CHEEMA — CONTINUED MOTION TO CONFIRM PLAN
SAC-2 Scott A. CoBen — 6-23-14 [44]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 23, 2014. By the court's calculation, 57 days' notice was provided. 42 days' notice is required.

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

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

AUGUST 19, 2014 HEARING

At the hearing on August 19, 2014, the court entertained Debtors' Motion to Confirm, the Chapter 13 Trustee's opposition to the Motion, and the Debtor's response to the Chapter 13 Trustee.

The Trustee took issue with the plan on the basis that the Debtors' valuation of their license is not supported, and opposition to Debtors' Additional Provision Plan Language. After considering Debtors' response the court was satisfied that Debtors met their burden of proof in supporting their valuation of the Debtors' liquor license and would permit Debtors' to make required changes to the language in the additional provisions through the order confirming the plan.

The court was prepared to grant the Motion when secured creditor,

Surjit Singh, verbally objection to confirmation on the basis that his claim (Claim 4-1) was not provided for in the plan. The court continued the hearing for Debtors to respond to the objection.

CREDITOR'S OBJECTION

On August 27, 2014, Surjit Singh, filed Amended Proof of Claim 4-1, asserting a $84,000 claim secured by "All fixtures and equipment and inventory now owned or herein after acquired for that certain business known as: Fulton Liquor & Deli: 3100 Fulton Ave Unit A, Sacramento, CA 95821-4730."

Creditor's original Claim 4 was not specifically classified as secured, although it does appear the security agreement was attached to the proof of claim. *See* Claim 4, filed April 1, 2014.

Creditor appeared at the hearing on August 19, 2014, arguing that his claim was not properly provided for in Debtors' plan.

DEBTORS' RESPONSE TO CREDITOR'S VERBAL OBJECTION

On August 25, 2014, Debtors responded to the verbal objection of Creditor. Debtors response was filed before Creditor had filed his amended proof of claim, asserting a secured claim for $84,000.

Debtor proposed adding the following language to the order confirming the plan, assuming that Creditor would eventually file an amendment changing his claim from unsecured to secured: "The claim of Surjit Singh shall be provided as a Class 3 claim and by the surrender of all fixtures, equipment and inventory now owned or hereinafter acquired for that certain business known as: Fulton Liquor & deli: 3100 Fulton Ave, Unit A, Sacramento, CA 95821-4730."

CHAPTER 13 TRUSTEE RESPONSE

The Chapter 13 Trustee opposes the Debtors' proposed treatment of Creditor's claim. The Debtor lists on Schedule B the liquor license, and it appears the license was used to operate Fulton Liquor & Deli. The Trustee does not believe the security agreement attached to the Proof of Claim covers the license. California Business & Professions Code § 24076 states:

> No licensee shall enter into any agreement wherein he pledges the transfer of his license as security for a loan or as security for the fulfillment of any agreement. No license shall be transferred if the transfer is to satisfy a loan or to fulfill an agreement entered into more than 90 days preceding the date on which the transfer application is filed, or to gain or establish a preference to or for any creditor of the transferor, except as provided by Section 24074, or to defraud or injure any creditor of the transferor.

Debtor proposes to surrender any remaining collateral to the creditor and treat the creditor in Class 3. The creditor will need to amend the claim to general unsecured if it believes all collateral has been surrendered for it to share in the dividend of unsecured creditors.

CREDITOR'S RESPONSE

On September 12, 2014, Creditor, Surjit Singh, submitted a letter to the court. In the letter, Creditor states that Debtors purchased Fulton Liquor and Deli from Creditor in 2007 and, from that purchase, Debtors owe Creditor approximately $74,498.55.

In 2011, the store closed and Debtors surrendered all inventory to Mr. Baljinder Singh Johal. Creditor states he did receive some inventory worth approximately $1,003.00.

DISCUSSION

The court's decision is to deny the motion to confirm. Debtor proposes to surrender the property securing the creditors claim to the creditor; however, the creditor informs the court that the property securing the lien was already surrendered to a third individual. The court lacks sufficient evidence to determine that Creditor's secured claim is being treated appropriately under 11 U.S.C. § 1325(a)(5). The court does not know whether the proposed treatment is sufficient based on representations made by the Creditor. Moreover, the Chapter 13 Trustee notes the inability of Debtors to transfer the business license and it remains unclear whether that property was intended to be part of the surrender.

Based on the forgoing, the court finds that the plan does not comply with 11 U.S.C. § 1325(a) and denies the motion to confirm.

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 denied without prejudice.

19. 14-27731-C-13 SUSANNA ZAKHARYAN
DL-1 Chinonye Ugorji
Thru #21

OBJECTION TO CONFIRMATION OF PLAN BY SACRAMENTO MUNICIPAL UTILITY DISTRICT
9-4-14 [26]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 4, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to sustain the Objection.

Creditor, Sacramento Municipal Utility District, opposes confirmation of the Plan on the basis that the plan places its claim in Class 4, but the treatment of the claim is inconsistent with the treatment of Class 4 claims. Specifically, the terms incorrectly state the monthly contract installment amount and indicates the payment is to be made by the co-debtor, but there is no co-debotor in the case.

On September 4 2014, Creditor filed an Amended proof of secured claim in the amount of $3,844.23, including $3,709.80 in arrears. The secured claim arises from a purchase-money loan by Creditor to Debtor for goods which became fixtures.

The Claim is proposed to be treated in Class 4, which states "Class 4 claims mature after completion of this plan, are not in default, and are

not modified by this plan." The monthly contract installment is listed in the amount of $86.72; however, the pre-petition monthly payment is $103.05. This treatment is consistent because Class 4 claims are not to be modified.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The court concurs with the Creditor and notes that the treatment provided in Class 4 appears to modify the Creditor's claim and confusingly suggests the payment will be made by a non-existent co-debtor. 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 Sacramento Municipal Utility District 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.

20. 14-27731-C-13 SUSANNA ZAKHARYAN
DPC-1 Chinonye Ugorji

OBJECTION TO CONFIRMATION OF PLAN BY DAVID CUSICK
9-3-14 [22]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 3, 2014. Fourteen days' notice is required. That requirement was met.

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

The court's decision is to overrule the Objection.

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

1. Debtor has not filed a Motion to Value the secured claim of Citimortgage, Inc. provided for in Class 2 of the plan. Debtor cannot make the payments under the plan or comply with the plan. 11 U.S.C. § 1325(a)(6).

At the hearing on September 30, 2014, the court is prepared to grant the Debtor's Motion to Value the secured claim of Citimortgage, Inc. Therefore, the court will overrule the Trustee's Objection as Moot. The plan will not be confirmed; however, because the court is sustaining the Objection to Confirmation filed by the Sacramento Municipal Utility District.

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

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

21.	14-27731-C-13 NUU-1	SUSANNA ZAKHARYAN Chinonye Ugorji	MOTION TO VALUE COLLATERAL OF CITIMORTGAGE, INC. 8-29-14 [17]

Final Ruling: No appearance at the September 30, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 29, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Value secured claim of Citimortgage, Inc., "Creditor," is granted

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1401 Gannon Drive, Sacramento, California. The Debtor seeks to value the property at a fair market value of $108,840 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 $112,294. Citimortgage, Inc.'s second deed of trust secures a loan with a balance of approximately $24,264. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of $0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Citimortgage, Inc. secured by a second deed of trust recorded against the real property commonly known as 1401 Gannon Drive, Sacramento, California, is determined to be a secured claim in the amount of $0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is $108,840 and is encumbered by senior liens securing claims which exceed the value of the Property.

22. 14-25432-C-13 MARIO MARTINEZ
DPC-1 Eamonn Foster

CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P CUSICK
7-15-14 [17]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on July 15, 2014. By the court's calculation, 35 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection.

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

1. The Trustee objects to attorney fees under the "no look" procedure. While the plan proposes to pay attorney $4,000.00 through the plan under Local Bankruptcy Rule 2016-1(c), the Disclosure of Compensation of Attorney for Debtors, Dckt. No. 1, appears to list in Item 6 that the attorney services do not include some services under that rule, such as judicial lien avoidances and relief from stay actions. The attorney appears to be effectively opting out of

2016-1(c), and Trustee has objected to allowance of fees under that section, requiring the attorney to file a separate motion for any attorney fees.

2. It appears that the Plan may not meet the Chapter 7 Liquidation analysis under 11 U.S.C. § 1325(a)(4). Schedule C, Dckt. No. 1, asserts a "100%" exemption in the 2002 Suzuki Gran Vitara JLX asset. The Trustee is not aware of any legal authority authorizing the 100% exemption claimed. Schedule D also asserts liens against 220 Modoc Street of $46,000, $17,928.00, and $13,579, and a lien in the Chevrolet Colorado in the amount of $799.00.

   This would leave equity of $11,216.50, $45,591.50, $2,250.50, and $250.00 in each property--assuming the Debtor concedes that the 100% exemption in the 2002 Suzuki cannot be claimed--totaling $59,308.50. Debtor's non-exempt equity totals at least $59,308.50, and the Debtor proposes to pay the unsecured creditors a 21% dividend, or approximately $12,793.20. Schedule A reflects for each real property, "Value based on recent comparable sales," and the Trustee objects to the valuation as hearsay, where the Debtor is not an expert on recent comparable sales, and the Debtor bases his opinions on those sales and the original writing showing the comparable sales has not been produced.

   Schedules A-C conflict as to the value of the real property and personal property of Debtor, versus the amount being exempted.

   a. Schedule A: Modoc Street property: Value, $50,000. Amount of Secured Claim: $77,567.00. Schedule C lists the value of the property as $100,000.00 Schedule D lists the value of the property as $100,000.00.

   b. Schedule A: 8th Street property. Value: $30,000. No liens. Schedule C lists the value of the property as $60,000.

   c. Schedule B: 2005 Chevrolet Colorado Short Bed valued at $2,650.00 Schedules C and D both list the value of the Chevrolet as $5,300.00 Chapter

3. The Debtor’s Chapter 13 Documents are incomplete. Cap one (Account #1448), Chase (Account #3870), US Bank (Account #0946), Us Dept of Education (Account #9924 and #9824) were listed as amounts unknown on Schedule F. Debtor may be unfairly discriminating against general unsecured claims under 11 U.S.C. § 1322(b)(1).

4. Debtor seeks to pay a $13,579.00 secured claim of "Discover Fin," which may refer to Discover Financial, based on a judgment lien on 220 Modoc Street, Schedule D, Dckt. No. 1, the amount of $226.32 a month for 60 months of the plan. If there is no equity in the Debtor's interest in that property, which will be the case if the value of the property is $50,000 and the Debtor's interest is encumbered by senior Bank of America liens totaling $46,060.00 and $17,928.00, Debtor should value the secured claim at $0.00 and pay it as general unsecured.

   While Counsel has provided an abstract of Judgment to the Trustee, it is not clear whether the abstract has been sufficiently recorded,

as no recorder's stamp appears on its face and the matter was not disclosed on the Statement of Financial Affairs (where the recording was within 90 days of filing). Where Discover Bank by DB Servicing Corporation has filed a $13,579.61 as UNSECURED, the Trustee objects to the proposed secured treatment as unfair discrimination as to general unsecured claim holders who are to receive no less than 21%.

Debtor's Response

1. Debtor filed an amended Disclosure of Compensation of Attorney for Debtors on July 23, 2014, which purports to correct an inadvertent mistake as a result of software malfunction.

2. With regard to the Chapter 7 Liquidation Analysis, Debtor asserts that Trustee's issues are a result of Trustee's misunderstanding of how Debtor calculated the interest in the properties.

   At the time of the filing, the house was valued at $100,000 with three secured liens: (1.) Bank of America at $46,060; (2.) Bank of America at $17,928; and Discover with a judgment lien at $13,579. These liens leave equity of $22,433. Debtor asserts a fifty (50) percent interest in the home, as he is a Joint Tenant with Maria Martinez. This means only $11,216.50 of value enters the estate. Debtor exempted this amount with CCCP § 704.140(b)(1).

   As for the property located at 421 8th Street, it was valued at $60,000 at filing and it has no liens. At filing Debtor believed he only had a fifty (50) percent interest in the property; however, he has since learned that his interest is only twenty-five (25) percent, leaving him with $15,000 of value entering the estate. Debtor exempted $14,408.50 of his interest in this property in Amended Schedule C.

   The 2005 Chevrolet Colorado is a pick-up truck in fair condition that Debtor valued at $5,300 at the time of filing. Debtor holds a fifty (50) percent interest in the truck, leaving the estate is $2,250 of value. The property has $799 in liens against it, leaving $1,451 in equity and Debtor has exempted $2,250 of his interest in the vehicle.

   The 2002 Suzuki Gran Vitara has a listed value of $250, and the Debtor corrected the exemption to show $250 in Amended Schedule C.

3. Regarding the incomplete documents concerning the five accounts with unknown balances, Debtor states he has no was of knowing how much is owed to those creditors. Debtor discovered the creditors by pulling his credit report. The report did not indicate a "$0.00" balance, in fact, it did not indicate any balance. Debtor has not received statements for these debts in recent memory. As far as Debtor is concerned, the debts do not exceed $322,255.

4. Debtor argues the Trustee's objection to the title issue and

treatment of discover is frivolous as Trustee state he is not sure whether the abstract was properly recorded and later states that the recording of the abstract happened within 90-days of the filing of the petition. Trustee attached a copy of the judgment and referenced it; according to Debtor Trustee knew the Abstract had been recorded properly.

CONTINUANCE

At the previous hearing scheduled on this matter, on August 19, 2014, the court noted that Debtors were making efforts to remedy the Trustee's concerns. The court recognized that many of the points discussed in Debtor's response effectively resolve issues raised by the Trustee. The outstanding issue for the court is the validity of the abstract of judgment for Discover Financial and the outstanding unknown debts.

First, with regard to the abstract of judgment, the court's docket contains no documents included with the Exhibit list cover sheet uploaded by the Trustee at Dkt. 19. Debtor did not file a copy of the abstract with his exhibits. Therefore, the court cannot make a determination on the validity of the document because it has yet to see the document.

Second, the court understands that Debtor may be unable to determine whether any debt is owed to the creditors on Schedule F with "unknown" scheduled debts; however, the court would be interested in reading a declaration from Debtor detailing the steps he took to determine the status of those accounts. Did Debtor call representatives for the respective creditors and inquire about the status of his accounts? Perhaps he wrote a letter seeking guidance as to whether any balances were due on the accounts? Whether Debtor took these steps speaks to his good faith in prosecuting his Chapter 13 case.

The hearing on the Objection to confirmation was continued to this hearing date for the reconciliation of the above issues.

DECLARATION OF DEBTOR

The Debtor, Mario Martinez ("Debtor"), states under the penalty of perjury in his Declaration that he contacted Capital One regarding the Account Number listed on his credit report, ending in 1448. Capital One informed Debtor that they had no record of that account number.

Debtor states that he contacted Chase Bank regarding the Account Number listed on his credit report, ending in 3870. Debtor states that the lender informed him that they had no record of that account number.

Debtor contacted US Bank regarding the Account Number listed on his credit report, ending in 0947. The lender informed Debtor that they had no record of that account number. Debtor states that he contacted US Department of Education regarding the Account Numbers listed on his credit report, ending in 9924 and 9824. The lender informed Debtor that they had no record of those account numbers.

Debtor states that he has no reason to believe that he owed money to these lenders, and that they were falsely listed on his credit report. The creditors being duly notified of Debtor's bankruptcy case, and none of the subject creditors having filed proof of claims asserting a right to receive

a distribution from the bankruptcy estate, the Debtor has resolved the remaining issues raised by the Trustee in the Chapter 13 Trustee's opposition to confirmation of the Plan. The Objection is overruled and the plan is confirmed.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Objection to the Chapter 13 Plan filed by the 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 overruled, Debtor's Chapter 13 Plan filed on May 23, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

23. 11-47937-C-13 KARY/CHODI HOUSTON — MOTION TO APPROVE LOAN MODIFICATION
RAC-3 Richard A. Chan — 8-26-14 [72]

Final Ruling: No appearance at the September 30, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, parties requesting special notice, all creditors, and Office of the United States Trustee on August 26, 2014. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Kary Houston and Chodi Houston ("Debtors") seeks court approval for Debtors to incur post-petition credit. Bank of America, ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment on Debtors' residence, commonly known as 9608 Lakepoint Drive, Elk Grove, California.

As of the Modification Effective Date, the principal balance of the loan that remains due and payable is $480,260.76. The interest rate of the modified loan will be 5.5% and the modified monthly payment of principal and interest will be $2,573.06. The total modified payment including taxes and insurance will be $3,225.59 for the duration of the loan. The only security for the modified loan will be the Debtors' existing residence.

The Motion is supported by the Declaration of Kary and Chodi Houston. The Declaration affirms Debtors' desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Approve the Loan Modification filed by Kary Houston and Chodi Houston 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 court authorizes Kary Houston and Chodi Houston ("Debtors") to amend the terms of the loan with Bank of America, N.A., which is secured by the real property commonly known as 9608 Lakepoint Drive, Elk Grove, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 85.

24. 13-36153-C-13 RICHARD/STACIA RUSAKOWICZ MOTION TO MODIFY PLAN
SG-5 Shareen Golbahar 8-12-14 [54]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 12, 2014. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the proposed plan on the following grounds:

1. The Plan was filed as an exhibit. The docket does not reflect that the Debtors' Second Modified Chapter 13 Plan has been filed. The official record is the electronic record, LBR 5005-1, and the electronic docket does not reflect the plan as filed. The plan was filed as an exhibit listed as Court Docket 57. The Plan was not filed separately, so that the court and any party of interest may be unable to find the Plan without searching for it.

2. Both the Notice and Motion, Dckt. Nos. 54 and 55, reference a Plan dated December 20, 2013. The First Modified Plan was filed as an exhibit on August 12, 2014. This is misleading to all parties.

3. While the Debtor has filed a Declaration in support of the motion to confirm, the Declaration does not provide sufficient evidence to

prove all the components of 11 U.S.C. § 1325. The Trustee believes that the Debtor can provide some facts that will allow the court to conclude that this provision has been satisfied, including whether the modified plan is the form plan required by the court, the total amount that the Debtor has paid into the plan, the amount of non-exempt equity, where the Debtor valued the property and claimed the amount of exemptions, and the treatment of secured claims, and whether it has changed from the confirmed plan.

4. Debtors' payment per Section 6 for the month of September 2014 is $3,550.00. The Class 1 monthly contract installment amount is $3,260.78. Monthly dividends to be paid total $1,141.41. Thus, $4,402.19 plus Trustee fees is remain to be paid.

5. Although the Debtors filed Schedules I and J, they did not use official forms B 6I and B 6J revised on December 2013.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

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

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

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

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

25. 14-28055-C-13 TERRY CONANT
RAB-2 Peter G. Macaluso

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-27-14 [30]

WELLS FARGO BANK, N.A. VS.

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

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

Below is the court's tentative ruling.

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

Correct Notice Not Provided. No Certificate of Service was filed on the docket pursuant to Local Bankruptcy Rule 9014-1(e)(2), which requires that a proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed. This requirement was not met. The court cannot determine whether the Motion was set on notice under the requirements of Local Bankruptcy Rule 9014-1(f)(1) or (f)(2).

The Proof of Service appears to be attached to the Motion rather than having been filed as a separate document on the docket itself. Dckt. No. 30 at 13. This is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." *Revised Guidelines for the Preparation of Documents*, ¶(3)(a). The Movant is reminded of the court's expectation that documents filed with this court comply with the *Revised Guidelines for the Preparation of Documents* in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9014-1(d)(1).

The attached Certificate of Service states that the Motion and supporting pleadings were served on Debtor's Attorney and Chapter 13 Trustee on August 27, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion for Relief From the Automatic Stay is ----------.

Wells Fargo Bank, N.A., as successor by merger to Wachovia Mortgage, FSB, formerly known as World Savings Bank, FSB ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2191 Lindenwood Dr., South Lake Tahoe, California, California (the "Property").

BACKGROUND

According to the Creditor, Debtor, Terry Conant ("Debtor" or "Conant") has filed no less than five bankruptcy petitions since 2012. Each of them was dismissed or discharge denied. Creditor argues that given the fact that Wells Fargo Bank, NA ("Wells Fargo"), his mortgage lender is his only real creditor, each of these filings has been undertaken for the sole purpose of staving off foreclosure, and that Debtor has thus taken advantage of the automatic stay and avoided foreclosure despite not making a mortgage payment since March, 2011.

Creditor argues that Debtor has also interspersed his bankruptcy filings with frivolous lawsuits in venues ranging from El Dorado County Superior Court to the District Court for the District of Columbia. Creditor asserts that each time Wells Fargo gets one of these suits dismissed, Plaintiff files another bankruptcy. The instant bankruptcy is no exception. Creditor accuses of Debtor carefully timing his petitions to avoid having two-petitions pending in a single year by filing his third twelve-and-one-half months after the dismissal of the second-most recent.

The instant petition was filed 14 days after the District Court in D.C. dismissed his action there. Debtor then waited until one-hour before the foreclosure sale to file his petition. Creditor argues that this was a tactic intended to keep the trustee in the dark about this last minute filing, and the foreclosure sale was completed at 2:30 p.m. on August 7, 2014. Wells Fargo was the purchaser at that sale via a credit bid.

Creditor argues that the Debtor's history of repeated filings and abuse of the bankruptcy process warrants an order annulling the automatic stay so as to eliminate any cloud on Wells Fargo's title to the property located at 2191 Lindenwood Dr., South Lake Tahoe, California and to permit Wells Fargo to proceed with an unlawful detainer action.

THE STAY SHOULD BE ANNULLED BECAUSE DEBTOR IS NOT A PROPER DEBTOR AND HIS INSTANT FILING IS IN BAD FAITH

A. Conant Is Not A Proper Debtor Pursuant to 11 U.S.C. 109(g)(2)

Creditor argues that the automatic stay should be annulled because, as a threshold matter, Debtor is not a proper petitioner and is not entitled to bankruptcy protection. Pursuant to 11 U.S.C. §109(g), "no individual . . . may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if— (2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title."

It appears that the Debtor voluntarily dismissed his prior bankruptcy on May 5, 2014, just 94 days before filing the instant petition on August 7, 2014. Debtor did so only after creditor successfully opposed his application to extend the automatic stay pursuant to Section 362. Thus, Section 109(g)(2) controls and Conant is not a proper debtor.

By its opposition, Creditor was seeking relief from imposition of automatic stay beyond the 30-day limit pursuant to Section 362. Creditor argues that the instant petition is facially barred by Section 109(g)(2). Section 109(g) is designed to prevent exactly the tactics used by Debtor. "The purpose behind § 109(g)(2) is to prevent abusive repeat filings: The obvious thrust of § 109(g)(2) is to preclude the debtor from denying the creditor the benefit of termination of the stay by filing another case reimposing the stay." *In re Carty*, 149 B.R. 601, 603 (B.A.P. 9th Cir. 1993)(internal quotation and citation omitted).

Creditor argues that Debtor is dismissing and refiling bankruptcy petitions in an effort to obtain the benefit of an automatic stay that was expressly denied him by the Court's March 11, 2014 order in this last bankruptcy. By opposing Conant's motion, Creditor sought relief from imposition of the automatic stay pursuant to Section 362. He voluntarily dismissed his prior action and, he is therefore not a proper debtor under Section 109(g)(2). The fact that Creditor sought relief from extension of the automatic stay via an opposition to Debtor's motion does not change the result. Wells Fargo's opposition was a request for relief from imposition of the stay pursuant to Section 362.

Specifically, Creditor sought an order denying the extension of the automatic stay pursuant to 11 U.S.C. §362(c). This qualifies under the language of Section 109(g)(2). Creditor asserts that hold otherwise would produce an absurd result. If Section 109(g)(2) only applied if a creditor filed a "motion for relief from stay" it would give greater protection to repeat filers who dismiss their claims than those who only file once. It would also require creditors facing repeat filers such as Mr. Conant to engage in the idle act of filing a motion for relief from stay immediately even though the stay will automatically terminate in 30-days. If a creditor wanted to ensure Section 109(g)(2)'s protection against abusive repeat filers, it would have to file a motion for relief from stay within the first 30 days of the petition, even though it knew the stay would automatically expire. Indeed, the motion would not be heard before the stay would expire and the motion would be moot. The filing of a petition does not operate as a stay under any provision of subsection (a) of section 362 of "any act to enforce any lien against or security interest in real property" "if the debtor is ineligible under section 109(g) to be a debtor" in a bankruptcy case. 11 U.S.C. § 362(b)(21)(A). Applying this exception to the automatic stay means that the foreclosure sale held August 7, 2014 was entirely proper.

B. Bad Faith Filing

Creditor argues that even if Debtor could be considered a proper Debtor, the Court has the authority and discretion to grant retroactive relief by annulling the automatic stay. "The Ninth Circuit has held that the bankruptcy court has 'wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." *In re Kissinger*, 72 F.3d 107, 109 (9th Cir. 1995). Rejecting a more rigorous standard for granting such relief, the Bankruptcy Appellate Panel has held:

"we conclude that the proper standing for determining 'cause' to annul the stay retroactively is a 'balancing of equities' test." *Fjeldsted v. Lien* (*In re Fjeldsted*), 293 B.R. 12, 24 (BAP 9th Cir. 2003).

A number of factors are involved in this analysis. The two primary factors are "(1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *National Envtl. Waste Corp. v. City of Riverside* (*In re National Envtl. Waste Corp.*), 129 F.3d 1052 (9th Cir. 1997). This involves a case by case balancing of the equities. Id. at 1055. A number of subfactors may be considered in this process, including:

> (1) number of filings; (2) whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors; (3) a weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser; (4) the debtor's overall good faith (totality of the circumstances); (5) whether the creditor knew of the stay but nonetheless took action, thus compounding the problem; (6) whether the debtor has complied and is otherwise complying with the Bankruptcy Code and rules; (7) the relative ease of restoring the parties to the status quo ante; (8) the costs of annulment to the debtor and to the creditor; (9) how quickly the creditor moved for annulment, or how quickly the debtor moved to set aside the sale or violative conduct; (10) whether, after learning of the bankruptcy, the creditor proceeded to take steps in continued violation of the stay, or whether the creditor moved expeditiously to gain relief; (11) whether annulment of the stay will cause irreparable injury to the debtor; and (12) whether stay relief will promote judicial economy or other efficiencies.

Korchinsky v. Skyline Vista Equities, LLC (*In re Manasaryan*), 2014 Bankr. LEXIS 3175 (B.A.P. 9th Cir. July 23, 2014) (quoting *Fjeldsted*, supra, at 25). Creditor asserts that the application of these factors to the instant case compel an order annulling the stay.

Creditor argues that all of the factors enumerated by *Korchinsky* above are existent in this case. For instance, Creditor asserts that the present bankruptcy was filed with the intent to hinder or delay creditors.

Creditor states that the only legitimate creditor identified is Wells Fargo. Debtor has repeatedly filed petitions on the eve of foreclosure in an unabashed attempt to hinder Wells Fargo's legitimate right to foreclose. As Judge Sargis found in denying Debtor's motion to extend the stay in the prior bankruptcy, "this bankruptcy filing has little [to do] with seeking a reorganization or rehabilitation of the Debtor's finances, but is merely an adjunct to asserting substantive claims against Wells Fargo Bank, N.A.". (RJN, Ex. P at p. 110). Creditor states that the same is true now.

Debtor's plan fails to list his arrearage to Wells Fargo, even though his last schedules admitted that it was more than $93,000 as of February, 2014. (RJN, Ex. F at p.39). Creditor states that this plan is a transparent attempt to force a short sale on Wells Fargo – something he is

not entitled to do under the terms of the loan or the bankruptcy code. At the August 26, 2014 hearing on Debtor's motion to extend the stay, his counsel admitted that the sole purpose for his filing the petition was to assist Mr. Conant with obtaining a short sale. This is also facially deficient in that it makes no provision for the payment of Conant's current mortgage payments of $2,846, let alone his arrearage or more than $95,000. (See Dolan Decl., Ex. 1 (listing monthly payment effective 5/1/14) and RJN, Ex. F (confirming arrearage of $93,700 as of Feb. 2014).) Instead, Conant proposes a $1,600 payment for 90-days during which time he plans to short sell the property.

Creditor states that it has not agreed to take less for its loan than is owed and Conant is not entitled to a short sale. Creditor argues that Debtor is improperly using his bankruptcy case in a good faith effort to reorganize his debts, but as a free injunction. His stated intent to use this case in order to orchestrate a short sale also makes little logical sense given the completed foreclosure. A short sale would result in extinguishing his loan to Wells Fargo and Conant losing title and possession of the Property. Allowing the completed foreclosure to stand has the same result. Debtor will lose title and possession of the Property but his mortgage debt is eliminated.

Thus, Creditor argues, there is no legitimate reason for him to seek to unwind the foreclosure based on this bankruptcy petition and the entire petition is a sham to further interfere with Wells Fargo's statutory and contractual right to enforce its security.

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

RESPONSE BY TRUSTEE

The Chapter 13 Trustee responds by stating that the Debtor filed his petition on August 7, 2014, and the first meeting of creditors is scheduled for hearing on September 5, 2014. The proposed plan lists creditor as Class 2 Secured- Purchase Money Security Interest with a monthly dividend of $1,600.00. The Plan calls for monthly payments to the Trustee in the amount of $2,000.00, and the first plan payment is due on September 25, 2014.

REPLY OF DEBTOR

The Debtor responds by stating that the Automatic Stay issue has been resolved directly with the Creditor by stipulation. Debtor states that the stipulation was returned to Creditor's Counsel via e-mail rbailey@rfcrt.com on September 16, 2014. Dckt. No. 44. Thus, the Debtor request that the Motion to Annul the Automatic Stay be denied.

However, the stipulation agreement not having been produced by the Debtor or filed or the docket for the court's review, and the respondent Creditor (not having filed a withdrawal of the motion, a signed agreement, or pleading or testimony stating that the parties have resolved the matter

and have agreed to terminate the Motion), the court presently makes no ruling pending evidence that the Motion has been resolved. This agreement must be submitted to the court.

The court shall issue an 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 Relief From the Automatic Stay filed by Wells Fargo Bank, N.A., as successor by merger to Wachovia Mortgage, FSB, formerly known as World Savings Bank, FSB ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the The Motion for Relief From the Automatic Stay is ---------.

26. 12-39863-C-13 ROBERT/KAMBRIA LOBO MOTION TO MODIFY PLAN
DBJ-5 Douglas B. Jacobs 8-6-14 [82]

Final Ruling: No appearance at the September 30, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 6, 2014. By the court's calculation, 55 days' notice was provided. 35 days' notice is required.

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

The Motion to Confirm the Modified Plan is granted.

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is granted, Debtors' Chapter 13 Plan filed on August 6, 2014 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

27. 14-25165-C-13 MARK ALLEN
GG-2 Gerald B. Glazer

MOTION TO AVOID LIEN OF 21ST CENTURY INVESTMENTS, INC.
8-3-14 [34]

Final Ruling: No appearance at the September 30, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the respondent Creditor, Chapter 13 Trustee, and Office of the United States Trustee on August 3, 2014. By the court's calculation, 58 days' notice was provided. 28 days' notice is required.

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

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of 21st Century Investments, Inc. ("Creditor") against property of Mark Allen ("Debtor") commonly known as 9694 Gavern Lane, Sacramento, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $108,728.89. An abstract of judgment was recorded with Sacramento County on February 16, 2011, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $195,000.00 as of the date of the petition. The unavoidable consensual liens total $164,741.37 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000 on Schedule C.

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 21st Century Investments, Inc., California Superior Court for Sacramento County Case No. 34-2010-00088860, recorded on February 16, 2011, Book No. 20110216 with the Sacramento County Recorder, against the real property commonly known as 9694 Gavern Lane, Sacramento, California ,is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

28. 14-26765-C-13 WILLIAM BARRANTES
RS-1 Richard L. Sturdevant

MOTION TO VALUE COLLATERAL OF PNC BANK, NATIONAL ASSOCIATION AND/OR MOTION TO AVOID LIEN OF PNC BANK, NATIONAL ASSOCIATION
9-4-14 [24]

Final Ruling: No appearance at the September 30, 2014 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion to Dismiss having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.

29. 11-43271-C-13 CORINNE SAUVE
PJR-15 Philip J. Rhodes

CONTINUED MOTION TO CONFIRM PLAN
6-10-14 [277]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 10, 2014. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee objects to confirmation of the proposed plan on the following grounds:

1. Trustee is unable to determine whether Debtor can make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). In the joint declaration of Debtor and her non-filing spouse, the declarants explain their income earned in 2012 and 2013. Dckt. No. 280. However, Debtor provides no information and supplies no evidence of what their current household income is. Debtor does not provide current paystubs or income statements and/or profit and loss statements for Rock Bottom Landscaping for the last 6 months of the operation. Debtor has not demonstrated that she currently has the ability to support the proposed plan.

2. Debtor's case was filed on September 28, 2011 and her initial Schedules and J were filed on November 1, 2011. In support of the proposed amended plan, Debtor supplies income statements from 2013 and provides as Exhibit B an updated Schedule I and Schedule J, but has not used the new official forms B6I and B6J, which became available on December 1, 2013.

3. It does not appear that the plan provides all of the Debtor's projected disposable income for the applicable commitment period under 11 U.S.C. § 1325(b). Debtor has a non-filing spouse, and the Trustee has not received a copy of any tax returns as to the Debtor's spouse. Community property is normally part of the bankruptcy estate under 11 U.S.C. § 541(a)(2).

On the most recent household and income expense report filed, Debtor provides a fresh perspective of what their current household expenses are. Trustee objects to some of the current expenses, as they either appear to be duplicate expenses, or that they may be expenses that may conclude and additional information is necessary to determine when the payment shall increase.

a. On Schedule I, Line #4d, for the non-filing spouse, Debtor deducts $50.00 for a tax levy, but does not indicate what tax year the spouse is being levied or when the levy will end. Debtor provide no evidence of any levy.

b. On Schedule J, Line #11d, Debtor deducts $96.00 for homeowner/renters insurance. According to the terms of the loan modification, insurance is included in the payment each month. $96.00 per month should be added to the plan payment.

c. On Line #12, Debtor deducts a Rock Bottom self-employment income tax of $1200 and past due tax payment for spouse of $650.

Self-Employment Tax: Debtor reports her spouse is earning $3,608.33 per month from Rock Bottom Construction, with a deduction of $1,200 for taxes, approximately 34% tax is proposed to be withheld. This may be excessive, especially considering the Debtor has a household of 8, a considerable amount of deductions. Trustee has not been provided with tax returns so that the Trustee can attempt to determine the Debtor's community share of income and tax refunds.

Past Due Tax Payment: Debtor does not provide any information relating to past due tax debt, if there is debt to be paid off, and when such debt payment will end. Trustee objects to the deduction of $650 per month for past due tax debt, this amount should be added to the plan payment. On Line #13a, Debtor deducts $746 for auto payment. Debtor has not reported any debts to an auto lender inside or outside of her plan. Trustee is unable to determine what this expense is for or when it is to be paid off.

4. All sums required by the plan have not been paid; Debtor is $175.00 delinquent in plan payments to the Trustee to date, and the next scheduled payment of $525.00 is due on July 25, 2014.

5. Debtor has not provided a tax transcript of a copy of her non-filing spouse's tax returns for 2012 or 2013 although the Trustee requested the returns. The non-filing spouse is the primary source of the Debtor's plan payments, so Trustee must have to returns to verify that all household income is being reported and to allow the Trustee to determined what, if any tax liability is owed under 11 U.S.C. § 521(a)(2)(A); FRBP 4002(b)(3).

6. The plan does not acknowledge that the Trustee refunded to the Debtor $2,744.62 on August 13, 2012, due to Debtor's conversion to Chapter 7. This refund does affect the total paid into the plan figure when calculating the plan. Debtor's plan must allow for the payment to Debtor of $2,744.62 in order to make the plan feasible.

RESPONSE BY DEBTOR

Debtor responds by stating that Debtor's spouse still has approximately $50 per month deducted from his paycheck for a levy by the Franchise Tax Board. The tax levy will continue until after the end of the debtor's Chapter 13 plan. The debtor and her spouse pay approximately $96 per month for homeowners' insurance.

Although the loan modification provides that Ocwen may collect escrow funds for insurance, it also permits Ocwen's waiver of this provision. Ocwen has waived the provision, and the debtor currently pays her own homeowners' insurance.

Debtor asserts that her spouse's deduction for taxes is appropriate. First, income from Rock Bottom Construction is self-employment income. The debtor's spouse must pay self-employment income of approximately 15 percent, or $541. The marginal tax rate for a head of household filer for income between $12,951 and $49,400 is 15 per cent, and the marginal tax rate between $49,401 and $127,550 is 25 percent. (www.taxfoundation.org/article/2014-tax-bracktets). Even if half the debtor's spouse's taxable income from Rock Bottom falls in the 15 percent marginal range, the marginal tax rate due on Rock Bottom income will be 20 percent. Withholding of 15 percent for self-employment taxes and 20 percent for income tax is appropriate given that Rock Bottom income is additional income above the debtor's spouse's salary income from Westower.

Debtor additionally states that her spouse owes money for a car loan, which constitutes the household's only car loan. After the debtor converted her case to Chapter 7, the debtor's spouse purchased a car. The car serves as the debtor's primary vehicle for hauling their 6 children. The debtors' spouse pays $746.47 per month for the vehicle. The car loan is the obligation of the debtor's spouse rather than the debtor.

The debtor will account for the refund paid to her by the Chapter 13 trustee after her conversion to Chapter 7 by modifying paragraph 6.01 to deduct the amount of the refund. Debtor also states that she will cure the $175 delinquency by the time of the hearing. The debtor "did not remember" that the plan payment increased from $350 in May to $525 in June. Otherwise, she has made payments on a current basis since January 2014.

Debtor also states that she has the ability to make the plan payments. She and her husband, a non-debtor have testified under oath regarding their income for the six month period prior to the conversion of

the Chapter 13 case. The debtor has also provided six months of paystubs from her employment, from her spouse's employment and six months of bank account statements.

DISCUSSION

Debtor has not accounted for the $650 being paid per month for past due tax debt, which was not added to the plan payment. Debtor has not provided any information relating to the past due tax debt, when it will be paid off, and when the payments will end. The Debtor has not provided tax returns to the Trustee, so that the Trustee can determine the Debtor's community share of income and tax refunds, and investigate Debtor and Debtor's spouse's tax withholdings for self-employment and income taxes.

It appears that Debtor has also not yet provided to the Trustee a tax transcript or copy of her non-filing husband's tax return for 2012 or 2013, even though the Trustee has requested these returns. These forms are necessary for the Trustee to confirm that all household income is being reported, and to permit the Trustee to determine what if any tax liabilities are owed. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). Debtor has also not filed her Schedules I and J on the updated Official Forms B6I and B6J.

TRUSTEE'S REPLY

The Debtor obtained a continuance of the hearing to from September 16, 2014 to this hearing date, based on his inability to appear at the original hearing date. The Trustee did not oppose the Debtor's Motion for continuance, which was granted on August 31, 2014, Dckt. No. 295. However, included in the Trustee's reply to Debtor's Motion to Continue was the below update on Debtor's failure to supply to Trustee with further information regarding Debtor's tax returns.

The Trustee states that Debtor has not supplied further information or documentation regarding her spouse's tax debt and copies of her tax returns. The court not having sufficient information to determine whether the Debtor's plan represents her best efforts, and the court being unable to determine if any tax liabilities are owed pursuant to permit the Trustee to determine what if any tax liabilities are owed. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3), the amended 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.

30. 14-27671-C-13 RAUL/ALMA ANGEL — OBJECTION TO CONFIRMATION OF
DPC-1 Julius M. Engel — PLAN BY DAVID CUSICK
Thru #31 — 9-3-14 [21]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtors' Attorney on September 3, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtors afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6) because the Debtors propose to value the secured claim of Ocwen Loan Servicing in Class 2, but have not filed a motion to value to date.

2. The Plan does not provide all of Debtors' projected disposable income for the applicable commitment period under 11 U.S.C. § 1325(b).

   Trustee is not certain that the deduction on Schedule I for "Required repayment of retirement fund loans" in the amount of

$327.58 is reasonably necessary for the maintenance and support of the debtor or a dependent. Debtors have not disclosed the amount of the loan and when it will be repaid. The plan payments do not increase after the retirement loan is repaid, and Debtors have not furnished evidence to show why the repayment of this loan is reasonably necessary. Debtors must disclose this as the plan payment may need to increase after the loan is repaid. In re Egebjerg, 574 F.3d 1045 (9th Cir. 2009).

3. It appears that the plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtors are over median income and proposes plan payments of $353.00 for 60 months with 0% dividend to the unsecured claim holders. Debtors list the Class 4 on-going mortgage on Schedule J in the amount of $1,598.00. Debtors admitted at the First Meeting of Creditors held on August 28, 2014, that the correct amount of the mortgage payment is $1,224.00; therefore, the Debtors have an additional $374.00 per month to pay into the plan.

Debtors' 2013 tax return shows that the Debtors received a tax refund of $6,2380.00; however, Debtors' Plan does not propose to pay into the Plan tax refunds or adjust the tax withholdings so that the Debtors do not receive such a large tax refund.

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.

31. 14-27671-C-13 RAUL/ALMA ANGEL — MOTION TO VALUE COLLATERAL OF
JME-1 Julius M. Engel — OCWEN LOAN SERVICING
8-30-14 [17]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 2, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The Motion to Value filed by Raul Angel and Alma Elizeth Angel "Debtors" to value the secured claim of "Creditor" is accompanied by Debtors' declaration. Debtors are the owner of the subject real property commonly known as 4553 Bomann Drive, Olivehurst, California, "Property." Debtors seek to value the Property at a fair market value of $111,964.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

INCORRECTLY IDENTIFIED CREDITOR

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

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtor provides no evidence for the court to determine who the proper creditor is on this loan. The Debtors do not testify that they borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred from a certain creditor to Ocwen Loan Servicing. The Debtor does not provide the court with any discovery conducted to identify the creditor holding the claim secured by the second deed of trust.

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

In these situations, all orders issued by the court would be void as to the actual creditor. These circumstances would prove highly inconvenient

to the moving debtors as well. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt secured by a third deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

Debtor provide no exhibits showing that Ocwen Loan Servicing is the actual owner of the underlying obligation. Debtor's Schedule D lists the Creditor holding a deed of trust in the 4553 Bomann Drive, Olivehurst, California property as "Ocwen Loan Servicing," which holds a claim valued at $111,964.00 without deducting the value of the collateral, but no other references to this supposed "creditor" appear on the court docket. Dckt. No. 1 at 19.

No assignment or transfer of claim appears on the docket transferring any interest to Ocwen Loan Servicing. The court is not certain how Debtors can name Ocwen Loan Servicing as the actual lender for an obligation that appears to be owed to another originating entity. The court will not approve an loan modification that will not be effective against the actual owner of the obligation. The court will not issue an order valuing the secured claim that will not be effective against the actual owner of the obligation.

Additionally, no Proof of Claim has been filed on the claims registrar by Ocwen Loan Servicing, which may assert that it is the holder of the Note secured by the deed of trust, or any other party claiming that it is the actual owner of the subject claim. The real creditor of interest in possession of the Note may not have received notice of the Debtors' bankruptcy, and may not have been served notice and the pleadings in this Motion that fundamentally affects its right as a Creditor in this case.

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

FN.1. This court has previously addressed this issue with multiple servicing agents the requirement that it accurately identify its status in a bankruptcy case - whether creditor, loan servicer for the creditor, agent of the creditor, or holder of a power of attorney authorized to act for the creditor in legal proceedings or in executing documents in the name of the creditor. In the *Edwin L. and Cynthia Crane* bankruptcy case, Bankr. E.D. Cal. 11-27005, Dckt. 124, the court entered an order requiring Green Tree Servicing, LLC to correctly identify the creditor in cases, and for Green Tree Servicing, LLC not to identify itself as the creditor,

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

> the assignment, power of attorney, and general agent for service of process for any claims for which Green Tree Servicing, LLC asserts it is a creditor."

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

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

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

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

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The Motion for Valuation of Collateral filed by Raul Angel and Alma Elizeth Angel, "Debtors," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion to Value filed pursuant to 11 U.S.C. § 506(a) is denied without prejudice.

32. 14-28173-C-13 ANGELA SLAUGHTER
CA-1 Michael David Croddy

MOTION TO VALUE COLLATERAL OF CITIMORTGAGE, INC.
9-15-14 [17]

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

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

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

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

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

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

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

The Motion to Value filed by Angela Slaughter, "Debtor" to value the secured claim of "Creditor" is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 4463 Malana Court, Rancho Cordova, California, "Property." Debtor seeks to value the Property at a fair market value of $546,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

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

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

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

DISCUSSION

The senior in priority first deed of trust secures a claim with a balance of approximately $581,168.59. Creditor's second deed of trust secures a claim with a balance of approximately $92,323.00. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of $0.00, and therefore no pyaments 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 Angela Slaughter, "Debtor," having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of CitiMortgage, Inc.

secured by a second in priority deed of trust recorded against the real property commonly known as 4463 Malana Court, Rancho Cordova, 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 $546,000.00 and is encumbered by senior liens securing claims in the amount of $581,168.59, which exceed the value of the Property which is subject to Creditor's lien.

33. 14-25080-C-13 DELMAR/KAREN REYNOLDS MOTION TO CONFIRM PLAN
CDN-3 Clark D. Nicholas 8-11-14 [55]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 11, 2014. By the court's calculation, 50 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee opposes confirmation of the proposed plan on the following grounds:

1. All sums required by the plan have not been paid under 11 U.S.C. § 1325(a)(2). Debtors are $679.40 delinquent in plan payments to the Trustee to date, and the next scheduled payment of $824.00 is due on September 25, 2014. Debtors have paid $1,792.60 into the plan to date.

2. Trustee is uncertain if Debtors' plan has been proposed in good faith or is the Debtors' best effort under 11 U.S.C. § 1325(a)(3) and (b). Debtors are over median income and propose a 60 month plan paying $824.00 per month with a 0% dividend to general unsecured claim holders.

Good faith, under 11 U.S.C. § 1325(a)(3), is determined based on an examination of the totality of the circumstances. *In re Warren,* 89 B.R. 87, 92 (B.A.P. 9th Cir. 1988) (citing *In re Goeb*, 675 F.2d 1386, 1389-1390 (9th Cir. 1982)). Factors to consider include:

1) The amount of the proposed payments and the amounts of the debtor's surplus;

2) The debtor's employment history, ability to earn, and likelihood of future increases in income;

3) The probable or expected duration of the plan;

4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;

5) The extent of preferential treatment between classes of creditors;

6) The extent to which secured claims are modified;

7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;

8) The existence of special circumstances such as inordinate medical expenses;

9) The frequency with which the debtor has sought relief under the Bankruptcy Reform Act;

10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and

11) The burden which the plan's administration would place upon the trustee.

Warren, 89 B.R. at 93 (citing *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (quoting *In re Estus*, 695 F.2d 311, 317 (8th Cir. 1982))).

Debtors remove U & I Trading and Southern Oregon Pawn Shop from Class 2 in the proposed plan. Debtors do not indicate in their declaration why these creditors have been removed or how they are to be treated in the future.

3. On August 8, 2014, Debtor Karen Reynolds filed a Declaration, Dckt. No. 53, in response to Trustee's Objection to Exemptions. On page 2, Debtor explains that she has made a deal with her "acquaintance" guaranteeing her right to repurchase the guns that belonged to her father and grandfather within one year. Debtors show no money to do a repurchase, and have not shown to the Trustee their intent to repurchase these guns, and do not disclose this information in their declaration in support of the amended plan. The good faith factors Trustee is asking the court to consider factors 4 and 5.

4. The Plan does not meet the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals $5,200.00, and the Debtors are proposing a 0% dividend to unsecured claim holders. On August 7, 2014, Debtors filed Amended Schedule B and C, Dckt. No. 51, which reduce the value of their property listed in #7 jewelry and #8 guns, add interest in tax refunds to #21, reduce the value of horses listed in #31, and added interest in pawn tickets to #35, resulting in the $5,200 in non-exempt equity in the guns being held at the pawn shop.

5. Debtors' Declaration in support of the Motion provides insufficient evidence in support of confirmation and merely states the components of 11 U.S.C. § 1325(a). Debtors have not met their burden of proof that they have filed the plan in good faith. *See Amfac Distribution Corp. v. Wolff* (*In re Wolff*), 22 B.R. 510, 512 (9th Cir. B.A.P. 1982) (holding that the proponent of a Chapter 13 plan has the burden of proof as to confirmation). For example, Debtors should provide factual evidence on their ability to make plan payments, what is being provided to the creditors in this case, what assets they have, compute a Chapter 8 liquidation analysis, and the distribution to be made under the plan. *In re Wolff*, 22 B.R. 510, 512 (9th Cir. B.A.P. 1982)).

   Debtors have made significant changes to both Schedules I and J and the treatment of creditors in their plan which are not supported by the Debtors' testimony in their Declaration.

RESPONSE BY DEBTORS

Debtors respond by stating that the Declaration of the paralegal for the attorney for the Trustee, Dckt. No. 74, states there are a number of items "that are not correct about the following statements" on page 2, lines 4 to 9:

1. The paralegal states that Schedule B items 7 and 8 were reduced in value; however on the original Schedules these items totaled $12,000 and on the amended Schedules these items totaled $15,850; the paralegal states that the value of the horses listed in item 31 were reduced; however on the original Schedules the three horses were totaled as $1,500 and on the amended Schedules as $2,400;

2. The paralegal states that there was "non-exempt equity in $5,200 in non-exempt equity in guns in pawn shop," however the Court ruled on August 26, 2014: "A debtor does not have the ability to claim exemptions which did not exist as of the commencement of the case or post-petition increases in the value of the property in excess of the amount claimed as exempt. *In re Hyman*, 967 F.3d 1316, 1319, n. 2 (9th Cir. 1992). To be claimed as exempt the property must exist and become part of the bankruptcy estate. *Owen v. Owen*, 500 U.S. 305, 314, 111 S. Ct. 1833, 1838." Since the guns were pawned and not redeemed by either the Trustee or the Debtor(s), then pursuant to 11 U.S.C. 541(b)(8) the guns never became "part of the bankruptcy estate." Since the "property of the estate does not include" pawned guns that were not redeemed by the debtor nor the trustee, it cannot be true that the guns represented anything that a Chapter 7 trustee could sell for the benefit of creditors; thus there was no "non-exempt equity in guns in pawn shop." (In Re Martin, 418 B.R.

710 (Bankr. S.D. Ohio 2009).) The paralegal was mistaken to state that there was "non-exempt equity in $5,200 in non-exempt equity in guns in pawn shop."

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include "all legal or equitable interests of the debtor in property as of the commencement of the case." A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *In re Hernandez*, 483 B.R. 713 (B.A.P. 9th Cir. 2012). *See also* 11 U.S.C.A. §§ 541(a), 542(a). Pursuant to 11 U.S.C. § 542, a Trustee is entitled to turnover of all property of estate from Debtors. 11 U.S.C. § 542 and FRBP 7001(1) also justify a motion to obtain an order for turnover of property of the estate if a debtor fails and refuses to turnover an asset voluntarily. 11 U.S.C. § 542 and FRBP 7001(1) also justify a motion to obtain an order for turnover of property of the estate if Debtor fails and refuses to turnover an asset voluntarily.

Debtors state that they filed their May 14, 2014; on that date, they did not have possession of the items they had pawned. Debtors assert that neither they nor the Trustee redeemed those items so the estate did not include those items pursuant to 11 U.S.C. 541(b)(8). Therefore Debtors state that cannot be that they had non-exempt equity in the 23 guns or the jewelry; their only interests were in the pawn tickets and the rights to redeem the items (which would take large amounts of money that they didn't have). Debtors state that they did possess the pawn tickets (which included the rights to redeem) on the filing date, but did not know they were assets that should be listed in their initial Schedules, so they listed the guns and jewelry instead.

However, Debtors have not addressed whether they plan on repurchasing the guns, which apparently hold sentimental value for the debtors, within the year. This information is not included in the instant Response.

The Response also reports that the Debtors have reached a stipulated agreement with Americredit Financial Services, Inc., dba GM Financial, to value their 2011 Jeep Patriot at $10,000 and pay them at 4.25% interest. This will raise the Plan payments by $28.40, but it is unclear whether this increase has been factored into the currently filed plan. Debtors filed another amended Schedule J which reduced their expenses for Recreation from $50 to $21.60 a month so the Plan payments can be increased by $28.40 to $852.40 a month.

The Response additionally states that the Plan needs to be modified to add $28.40 per month and will propose to pay $852.40 per month beginning on June 25, 2014 and continuing through May 25, 2019; for a total plan length of 60 months. Non-priority unsecured creditors will receive not less than 0 % of their timely filed claims. Secured creditors will receive the interest rates set forth in the Plan. In acknowledging that the Plan needs to be modified to conform with the terms of Debtors' stipulation with Americredit Financial Services, Inc., however, the Debtors have not stated whether they intend to propose a new modified plan, or if certain changes will be incorporated into the order confirming the plan.

Furthermore Debtors have not addressed whether they have cured their delinquency; the Trustee reports that Debtors are $679.40 delinquent in plan payments to the Trustee to date, and the next scheduled payment of $824.00 is due on September 25, 2014. Debtors have not provided receipts, invoices, or account statements showing that Debtors are current on their plan payments.

The amended Plan therefore 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.

34. 12-28784-C-13 OFELIA THOMPSON
MET-1 Mary Ellen Terranella

MOTION TO APPROVE LOAN MODIFICATION
8-27-14 [33]

Final Ruling: No appearance at the September 30, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on August 27, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion to Approve Loan Modification is granted.

The Motion to Approve Loan Modification filed by Ofelia Thompson ("Debtor") seeks court approval for Debtor to incur post-petition credit. JPMorgan Chase Bank, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to $1,271.62 a month, with an interest rate of 5.625%. Debtor has been informed that an impound for taxes and insurance will result in a total monthly mortgage payment of $1,717.88.

The Motion is supported by the Declaration of Ofelia Thompson. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

This post-petition financing is consistent with the Chapter 13 Plan in this case and Debtor's ability to fund that Plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.

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

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

The Motion to Approve the Loan Modification filed by Ofelia Thompson, 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 court authorizes Ofelia Thompson ("Debtor") to amend the terms of the loan with JPMorgan Chase Bank, N.A., which is secured by the real property commonly known as 161 Newcastle Drive, Vallejo California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 37.

35.	11-42286-C-13 BLG-4	FERNANDO/GABRIELA CASTELLANOS Pauldeep Bains	CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF BANKRUPTCY LAW GROUP, PC FOR CHAD M. JOHNSON, DEBTOR'S ATTORNEY(S) 8-5-14 [63]

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

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

Below is the court's tentative ruling.

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

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

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

The Motion for Allowance of Professional Fees is continued to [date] ate [time].

FEES REQUESTED

Chad M. Johnson, the Attorney ("Applicant") for Debtors ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. The period for which the fees are requested is for the period March 12, 2014 through September 2, 2014.

Applicant provides the following pleading concerning the substantial and unanticipated post-confirmation work that justifies the fees sought:

- Communicated with Debtors regarding rights and responsibilities vis-avis creditors, the US Trustee, and the Chapter 13 Trustee

- Motion to Incur debt for a refinance. Prepared motion, communicated with Trustee's office, and attended hearing. 5.3 hours.

- Motion to Modify as a result of a modified mortgage and change in household income. 5.1 hours.

- Motion for Compensation. 1 hour.

Movant argues that all the abovementioned work was necessary and beneficial to the success of Debtors' ability to complete the Chapter 13 plan. Movant asserts that the Motion to Incur was necessary for Debtors to refinance and the resulting Motion to Modify was required to reflect changes in household income and expenses. The court is satisfied that the post-confirmation work was not foreseeable and was substantial in nature as Debtors did not anticipate a refinance in the confirmation process of their previous plan and did not anticipate co-Debtor changing employment and adjusting household income.

CHAPTER 13 TRUSTEE RESPONSE

The Chapter 13 Trustee filed the following in response to the fee request:

1. The Motion to Incur was hearing on April 29, 2014 and not May 1, 2014, as indicated in the invoice (Exhibit 1, Dkt. 66).
2. Page 5, lines #3-4 is for 07/30/14 and states work performed as "Prepare for, travel to and attend 341." The Trustee notes that Debtors' Motion to Modify was the actual matter at issue around that date, but was specifically heard on July 29, 2014.
3. Counsel listed the date for "preparation of Motion for Attorney Fees and Expenses" as 12/30/13. This date is incorrect.

Trustee requests the court grant the Motion so long as the above concerns are addressed.

Statutory Basis For Professional Fees

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including–
>
> (A) the time spent on such services;
>
> (B) the rates charged for such services;
>
> (C) whether the services were necessary to the administration of, or beneficial at the time at which the

service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or
(ii) services that were not--
(I) reasonably likely to benefit the debtor's estate;
(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

Benefit to the Estate

Even if the court finds that the services billed by professional are "actual," meaning that the fee application reflects time entries properly charged for services, the professional must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A professional must exercise good billing judgment with regard to the services provided as the court's authorization to employ a professional to work in a bankruptcy case does not give that professional "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

Id. at 959.

FEES ALLOWED

The fees request are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

Names of Professionals and Experience	Time	Hourly Rate	Total Fees Computed Based on Time and Hourly Rate
PB	6	$300.00	$1,800.00
LS	.2	$85.00	$17.00
TP	2.3	$185.00	$425.50
JW	1	$185.00	$185.00
Total Fees For Period of Application			$2,427.50

Applicant also seeks the allowance and recovery of costs and expenses in the amount of $29.01 pursuant to this applicant.

Here, the court cannot make a full and complete determination that the amount of requested compensation is reasonable. First, the court reiterates the issues pointed out by the Trustee. The evidentiary record submitted to support the reasonableness of the services rendered contains mistakes that cause the court to question the authenticity of the record. Second, the invoice provides the initials of the individuals who performed different services, but no where in the pleadings does it state the full names of these individuals or their positions at the firm. The court is left to generically assume the positions based on the hourly rates provided in the final paragraphs of the motion. Further, the court is statutorily required to review the professional qualifications of the individuals providing services; however, no resumes or declarations concerning qualifications were provided. As such, the court cannot determine whether the services were beneficial to the Client and bankruptcy estate and reasonable.

The court’s decision is to continues the hearing to permit counsel to submit a corrected invoice and the professional qualifications of individuals who rendered services for which compensation is sought under this Motion.

TRUSTEE’S RESPONSE

The Applicant’s Supplemental Declaration filed on September 17, 2014, Dckt. No. 74, states in part that an updated invoice was filed that states each employee's name, initials, and positions at the firm. The Trustee notes that the updated invoice does not resolve the Trustee's original concerns listed in his Response filed August 26, 2014 (Dckt. No. 70):

The debtors' Exhibits in Support of Chad M. Johnson's Application for Additional Attorney Fees and Expenses filed August 5, 2014, Dckt. No. 66, lists certain dates or details which appear to be incorrect.

A. Page 4, lines 15-16 of the Exhibit is listed as:
Dates : 5/1/14
WORK PERFORMED: Prepare for, travel to, and attend the Motion to Incur; Email clien results. The Trustee notes that the Motion to Incur was granted by the Court at the hearing held April 29, 2014, not 5/1/14 as listed on the Exhibit.

B. Page 5, line #3-4 of the Exhibit is listed as:
DATES: 7/30/14
WORK PERFORMED: Prepare for, travel to, and attend 341 The Trustee notes that the Debtors' Motion to Modify, BLG-3, was confirmed by the court at the hearing held at July 29, 2014, not 7/30/14 nor a 341 appearance as listed on the Exhibit.

C. Page 5, line 7-8 of the Exhibit is listed as:
DATES: 12/30/13
WORK PERFORMED: Preparation of Motion for Attorney Fees and Expenses. It does not appear 12/30/13 is the proper date for the preparation of BLG-4.

Trustee notes that the Debtor's first Reply to the Trustee's Response, filed September 3, 2014, Dckt. No. 72, appears to resolve the Trustee's concerns, but the debtor failed to update the invoice filed September 17, 2014.

The Applicant in this matter appearing to have filed a responsive reply, that adequately resolves the Trustee's concerns regarding the fee application, but neglecting to update the invoice filed September 17, 2014, the court will grant Applicant and Debtors' Attorney a brief continuance to update the invoice submitted to the court.

The court shall issue an 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 Allowance of Fees and Expenses filed by Chad M. Johnson (“Applicant”), Attorney, 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 continued to **[date]** at **[time]** .

36. 13-35188-C-13 MARIA ESPINOZA
DJD-1 Julius M. Engel
Thru #37
SETERUS, INC. VS.

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
2-13-14 [34]

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

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

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

PROCEDURAL HISTORY

On March 25, 2014, the court heard and granted this Motion to Relief from the Automatic Stay, filed by Creditor Seterus, Inc. No opposition was presented at the hearing, prompting the court to enter the defaults of the Debtor and the non-responding parties in this matter.

On April 30, 2014, Debtor filed a Motion to stay a foreclosure sale and reinstate the automatic stay. Debtor argued that she was current on her plan and that a motion to confirm was set for June 3, 2014. The court granted the Motion on the grounds represented by Debtor and vacated the Order granting the Motion for Relief from Stay.

The Motion was reset for hearing on June 3, 2014 to be heard in conjunction with Debtor's Motion to Confirm. Both motions were continued to June 10, 2014. Disposition of the Motion for Relief from Stay is contingent on the court's determination on the Motion to Confirm. At the June 3, 2014 hearing, the court permitted a one-week continuance to see if Debtor could cure the delinquency holding her back from plan confirmation.

At the June 10, 2014 hearing, the court decided to continue the hearing on this matter for a final time to permit the Debtor to present

competent, credible evidence of her payments in this case, and to further demonstrate that she is prosecuting her case in good faith. The court ordered the Chapter 13 Trustee to disburse $4,035.00 to the movant by June 20, 2014, as an adequate protection payment. Civil Minutes, Dckt. No. 85.

REVIEW OF THE MOTION

Seterus Inc. seeks relief from the automatic stay with respect to the real property commonly known as 4321 Greenholme Drive, Sacramento, California. The Motion states with particularity (Fed. R. Bank. P. 9013) the following grounds and relief:

A. The beneficial interest in a Deed of Trust which secures a Note, which are the subject of the Motion, has been assigned to Movant. Movant does not assert that it has been assigned the Note. FN.1.

FN.1. It is well established that a purported assignment of security, without an assignment of the underlying obligation which is secured, is a nullity. *Cervantes v. Countrywide Home Loans, Inc. et. al.*, 656 F.3d 1034, 9th Cir. 2011); *Carpenter v. Longan*, 83 U.S. 271, 274 (1872); accord *Henley v. Hotaling*, 41 Cal. 22, 28 (1871); *Seidell v. Tuxedo Land Co.*, 216 Cal. 165, 170 (1932); Cal. Civ. Code § 2936. From the totality of the pleadings, the court understands Seterus, Inc., to be a servicing agent for Federal National Mortgage Association, and not that Seterus, Inc. asserts to have an interest in the Note itself, which note is secured by the Deed of Trust. The court accepts the loan servicing company as being a real party in interest for a motion for relief from the automatic stay.

B. The Debtor defaulted on the Note, and a loan modification agreement was entered into on or about September 8, 2012.

C. On February 1, 2013, Debtor defaulted on the obligation, and has failed to make any payments on the note since February and after February 2013.

D. The arrearage in payments on the Note for the period December 1, 2013 through February 1, 2014 total $2,400.93.

E. No post-petition payments have been made to Movant.

F. The principal amount due and owning on the Note is $129,274.36 and there is also an additional deferred principal of $56,479.13 owed under the modification Agreement.

G. It is asserted that, based on the Debtor's schedules, the fair market value of the real property securing Movant's claim has a value of $141,611.00.

H. After deducting costs of sale, the "sum securing the lien of creditor" and the homestead exemption, there is "little or no equity in the Property." (The Motion does not allege how the Debtor's exemption amounts are not "equity in the property").

Motion, Dckt. 34.

The moving party has provided the Declaration of Kerry Robinson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Robinson Declaration states that the Debtor has not made three (3) post-petition payments, with a total of $2,400.93 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be $185,753.46, as stated in the Robinson Declaration and drawn from the Loan Modification Agreement (Exh. D, Dckt. 38), while the value of the property is determined to be $141,611, as stated in Schedules A and D filed by Debtor.

Chapter 13 Trustee Response, filed 02/18/14 (Dckt. 40)

Chapter 13 Trustee notes that Debtor is delinquent $1,105.00 and the plan is not confirmed. Debtor has paid a total of $1,105.00 to date. The Trustee will disburse $807.00 to Seterus on February 28, 2014.

Supplement to Motion for Relief From Automatic Stay, filed 3/6/14 (Dckt. 48)

On March 6, 2014, Movant filed a supplement to its Motion for Relief from Automatic Stay, clarifying that it is seeking relief from the stay under 11 U.S.C. §§ 362(d)(1) & (2).

DISCUSSION

Federal Rule of Bankruptcy Procedure 9013 requires Movant to state with particularity the grounds for relief or order sought. FRBP 9013. Here, Movant provides the court with information concerning the subject property and related debt and, through the supplement, provided the court the grounds upon which it is seeking relief.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court vacated its previous order based on Debtor's representations that she was no longer delinquent and planned on presenting the court a confirmable plan on June 3, 2014. A review of the plan and the Trustee's objection to the plan illustrates that Debtor is not current on plan payments and may not be able to afford the plan payments.

Although the Motion for Relief proceeding has been reopened, Debtor has not filed any further documents or evidence showing that she is attempting to become current on her plans on the Creditor's note, or have upheld her payment obligations on the loan modification agreement that she entered with Creditor in 2012, or has tried curing the arrearage on the Creditor's claim.

Debtor has not followed through on the "changed circumstances" that she argued existed in the Motion to Stay Foreclosure sale and the court's decision is to grant the Motion for Relief from Stay.

CONTINUANCE

The hearing on this matter was continued from July 1, 2014 to this hearing date, to allow Debtor to file and set for confirmation a proposed plan on or before September 10, 2014. On August 19, 2014, the Debtor filed a Second Amended Plan, Dckt. No. 107. However, the Motion to Confirm the proposed plan, JME-2, is being denied on this hearing date.

Nothing further has been filed on the docket reflecting that Debtor has made the necessary payments to cure her delinquency on the subject note. At this time, the court is not aware that the delinquency is cured and the tentative decision to grant the Motion for Relief From Stay remains unchanged.

The court shall issue a minute order terminating and vacating the automatic stay to allow Seterus, Inc., and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

No other or additional relief is granted by the 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 for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Seterus Inc., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 4321 Greenholme Drive, Sacramento, California.

37. 13-35188-C-13 MARIA ESPINOZA MOTION TO CONFIRM PLAN
JME-2 Julius M. Engel 8-19-14 [104]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 19, 2014. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee and Creditor Seterus, Inc., have filed opposition to the plan.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee opposes the Motion to confirm on the following grounds:

1. Debtor is $1,294.13 delinquent in plan payments to the Trustee to date, and the next scheduled payment of $1,346.57 is due on September 25, 2014. The case was filed on November 27, 2013, and the Plan in § 1.01 calls for payments to be received by the Trustee no later than the 25th day of each month, beginning the month after

the order for relief under Chapter 13. Debtor has paid $10,825.00 into the Plan to date. Debtor's Second Amended Plan, filed August 19, 2014, Dckt. No. 107, calls for payments of $1,35.57 for 51 months.

2. The Plan proposes to pay the monthly dividend of Patelco's 2004 Lincoln Town Car in the amount of $224.06 in month 53 of the Plan. Debtor lists the debt in Class 2A of the Plan as a purchase money security interest creditor, who is to receive adequate protection payments each month through the Plan.

3. It appears that the plan may not be Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is over median income and proposes plan payments of $1,346.57 for 51 months with a 0% dividend to unsecured creditors. Debtor's Declaration states that her average monthly expenses are $985.80; however, based on the Amended Schedule J, the total expenses are $1,007.27. Dckt. No. 81.

   Debtor's projected net income listed on Schedule J reflects $1,325.00, a difference of $21,57 from the proposed plan payment of $1,346.57. Debtor's budget does not appear sufficient to support Debtor. Debtor lists the following expenses on amended Schedule J:

   $100.00 electricity/heat
   $200.00 food for 1
   $40.00 clothing
   $250.00 transportation
   $0.00 auto insurance

4. Creditor Seterus, Inc. has a pending motion for relief, DJD-1, which has been continued for hearing to September 30, 2014. According to the Court's Civil Minutes, Dckt. No. 96, filed on July 1, 2014, the court continued the motion for relief pending the filing of a motion to confirm plan. The Debtor filed this motion on August 19, 2014, and set the hearing on September 30, 2014.

OBJECTION BY SETERUS

Secured Creditor Seterus, Inc., as the authorized subservicer for Federal National Mortgage Association ("Fannie Mae"), creditor, c/o Seterus, Inc ("Creditor"), files its Objection to Confirmation of Chapter 13 Plan ("Plan").

On or about October 18, 2007, Debtor executed and delivered to Bank of America, N.A., a written Note ("Note"), for value received. Pursuant to the terms of the Note, Debtor promised to pay the principal sum of $187,000.00 at an interest rate of 5.875%, commencing on or about December 1, 2007, and continuing until November 1, 2037. To secure repayment of the Note, on or about October 18, 2007, Debtor granted to Bofa a beneficial interest under a first priority Deed of Trust. This Deed of Trust encumbers residential real property commonly known as 4321 Greenholme Drive, Sacramento, CA 95842 ("Property"). The Beneficial interest under the Deed of Trust has been assigned to Creditor ("Assignment").

The Creditor states that on February 1, 2013, the Debtor defaulted under the terms of the Note by failing to make the monthly payment due on that date. Pre-petition arrearages now exist in the amount of $11,684.65,

representing ten (10) payments, late charges, incurred fees and costs. The Arrearages are as follows:

2/1/13 – 11/1/13 payments of $603.09 each $6,030.90

Late charges $ 45.79

Property inspection fees $ 225.00

Attorneys' fees and costs $2,103.92

Escrow deficiency/shortage $3,279.04

Total Arrearages $11,684.65

On or about August 19, 2014, Debtor filed her 2nd Amended Chapter 13 Plan. Pursuant to Debtor's proposed Chapter 13 Plan, Debtor proposes to repay pre-petition arrearages of only $7,275.98 to Creditor, reduced from arrears of $11,649.23 provided in Debtor's 1st Amended Chapter 13 Plan. The total principal amount due and owing to Creditor on the Note as of November 27, 2013 is $129,274.36, excluding accrued interest, attorneys' fees, and costs. II. Understatement of Arrears.

The Debtor, hyowever, has provided for repayment of arrears of only $7,275.98 to Creditor, reduced from $11,649.23 as provided in Debtor's prior plan. Creditor has filed its Proof of Claim providing for arrears of $11,684.65. Debtor should be required to provide for repayment of all of Creditor's pre-petition arrears as a term of any confirmed Chapter 13 plan.

Based on the foregoing, the amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 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.

38. 12-26789-C-13 GERALD/ROBIN TOSTE MOTION FOR BILL OF COSTS
12-2333 CGK-22 8-27-14 [66]
SMEDBERG ET AL V. TOSTE ET AL

Final Ruling: No appearance at the September 30, 2014 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, Plaintiff's Counsel, and Office of the United States Trustee on August 27, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The Motion for Bill of Costs is granted.

Defendants and Debtors Gerald Toste and Robin Toste move the Court for an order for their bill of costs against Plaintiffs Kenneth Smedberg, Individually and as trustee of the Kenneth P. Smedberg and Bonnie L. Smed berg Revocable Living Trust, Dated September 23, 1993; Bonnie Smedberg, Individually and as trustee of the Kenneth P. Smedberg and Bonnie L. Smedberg Revocable Living Trust 1Dated September 23 1993 and DARIN SMEDBERG. The Defendants state that they "were the prevailing party in the "recent appeal to BAP as shown by the Aug. 12, 2014 decision." Fed. R. Bankr. P. 7054.

Defendants do not include the subject decision as a part of their pleadings of exhibits to substantiate their claims--that they prevailed on their appeal of the judgment rendered in the Adversary Case--in seeking costs under Federal Rule of Civil Procedure 7054 through this Motion. Rather, Defendants and Defendants' Counsel expect the court to perform the legwork for them by sifting through the pleadings and notices filed and entered on the docket by the Office of the Clerk of this Court, and read through the Receipt of Pleadings and Documents issued by the Deputy Clerk to determine why costs are warranted under this MOtion.

DISCUSSION

Pursuant to Federal Rule of Bankruptcy Procedure 7054, the court may allow costs to the prevailing party except when a statute of the United States or other Bankruptcy Code rules otherwise provides and are taxed by the clerk on fourteen (14) day's notice. As Collier on Bankruptcy explains,

> 28 U.S.C. § 1920 enumerates costs that are taxable by a "judge or clerk of any court of the United States." Although the bankruptcy court is not a "court of the United States" as defined in 28 U.S.C. § 451, bankruptcy judges are, by virtue of 28 U.S.C. § 151, a unit of the district court in each judicial district and by virtue of the reference provided for by 28 U.S.C. § 157(a), act as an adjunct of the district court in bankruptcy cases. Since the district court is a "court of the United States," bankruptcy judges and clerks of the bankruptcy court may tax costs pursuant to 28 U.S.C. § 1920.

10 COLLIER ON BANKRUPTCY ¶ 7054.05 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). Section 1920 of title 28 lists six (6) categories of items taxable as costs: (1) fees of the clerk and marshal; (2) fees for court reporter's stenographic transcript necessarily obtained for use in the case; (3) fees and disbursements for printing and witnesses; (4) fees for copies of papers necessarily obtained; (5) docket fees under 28 U.S.C. § 1923; and (6) compensation of court-appointed experts and interpreters. *Id.*

Attorneys' fees are generally not taxable as costs or recoverable as an element of damages. This rule is subject to four (4) general exceptions: (1) a contractual provision for the allowance of reasonable attorney's fees; (2) the power of the court to make awards where equitable, such as attorney's fees awarded out of the fund created as part of a judgment or settlement of a class action; (3) a statute or rule providing for the award of attorney's fees, and (4) as sanctions for aggravated conduct such as willful disobedience to a court order, bad faith or oppressive behavior. *Id;* see also *Renfrow v. Draper*, 232 F.3d 688 (9th Cir. 2000).

Filing fees for a complaint, removal, or habeas corpus petition filed in federal court, as well as any administrative fee assessed at the time of filing and required pursuant to 28 U.S.C. § 1914(b) are recoverable as fees of the Clerk pursuant to 28 § U.S.C. 1920.

Here, the Clerk of the Court issued a Receipt of Pleadings and Documents from the United States Bankruptcy Appellate Panel of the Ninth Circuit, Dckt. No. 69, comprised of a Judgment in favor of the Appellants (Defendants and Debtors Gerald Toste and Robin Toste) reversing the judgment of the Eastern District Bankruptcy Court, and a Memorandum Decision in this case.

The Bill of Costs attached to Defendants' Motion shows a Filing Fee of $298 for the Defendant's Appeal. The Defendants being the prevailing party on appeal, and permitted recovery of filing fees under Federal Rule of Bankruptcy Procedure 7054 (as 28 U.S.C. §§ 1914(b) and 1920 allows the court to tax filing costs), the Motion is granted.

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

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

The Motion for Bill of Costs filed by Plaintiffs 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 "costs" stated by Defendants' bill of costs filed on August 26, 2014, (Dckt. 66) are allowed in their entirety.

39. 14-27492-C-13 RONALD NEALY-SWIFT — OBJECTION TO CONFIRMATION OF PLAN BY BUDGET FINANCE COMPANY
ASW-1 — James L. Keenan — 8-28-14 [27]
Thru #40

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, the Debtor's Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on August 28, 2014. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

Creditor, Budget Funding I, LLC, ("Creditor"), files an Amended Objection to Confirmation of Chapter 13 Plan (the initial Objection to Plan Confirmation filed on August 28, 2014 was filed with the incorrect Creditor name).

The Creditor holds a Promissory Note (the "Note") in the original principal sum of $100,000.00 to be paid at a yearly interest rate of 10.200%. The Note was made, executed, and delivered by Debtor to Budget Finance Company ("Lender") on January 17, 2007 to Creditor. The Note is secured by a Deed of Trust dated January 17, 2007 made, executed, and delivered to Creditor by Debtor and encumbering the real property commonly known as 4919 15th Ave., Sacramento, CA 95820 ("Property"). The Deed of

Trust was recorded on February 21, 2007, in the official records of the Sacramento County Recorder's office.

The Lender's interest in the Deed of Trust was subsequently assigned to Creditor. The Creditor currently holds the Note and is entitled to enforce the provisions of the Note and Deed of Trust. The Objection states that the Creditor intends to file a Proof of Claim in this matter by the deadline for filing claims on November 19, 2014. The estimated pre-petition arrearage on Creditor's secured claim is in the sum of $54,414.17. The pre-petition arrears currently due and owing are comprised of missed mortgage payments, late charges, and advances for property taxes and insurance.

Full Arrearage Amount Not Provided for in Debtor's Plan

Debtor's Chapter 13 Plan understates the pre-petition arrearages. While Debtor's Plan proposes to cure arrearage in the amount of $53,888.00, the actual arrearages total $54,414.17. The Debtor will have to increase the arrearage dividend under Class 1 of the Plan order to cure Creditor's pre-petition arrears over the life of a 60 month Plan.

Plan Needs to Provide for Interest for Arrears

The Deed of Trust contains a provision in Section 9 on page 7 that states any amounts disbursed by the Creditor will become additional debt of the borrower and shall bear interest at the Note rate. Creditor has advanced the amount of $45,580.17 for property taxes and insurance for the subject Property, and is therefore entitled to collect interest for the pre-petition arrears in the amount of 10.2% per year. Accordingly, the Debtor needs to amend his Plan to provide for the interest rate of 10.2% per year and increase the arrearage dividend under Class 1 to correspond with the yearly interest rate.

The proposed Chapter 13 Plan not providing for the full arrearage and interest on the Creditor's claim, The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

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

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

40. 14-27492-C-13 RONALD NEALY-SWIFT
DPC-1 James L. Keenan

OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK
8-27-14 [16]

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on August 27, 2014. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

The court's decision is to sustain the Objection.

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

1. Debtor did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. § 341 on August 21, 2014 at 10:30 am. Trustee does not have sufficient information to determine whether or not the cause is suitable for confirmation with respect to 11 U.S.C. § 1325. The Meeting has been continued to September 18, 2014 at 10:30 am.

2. Debtor has not provided Trustee with a tax transcript or copy of her Federal Income Tax Return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such documentation exists under 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). This is required seven days before

the date first set for the meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(1).

3. The Debtor has not provided the Trustee with employer payment advices for the 60-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv). *See* 11 U.S.C. § 521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3). This is unreasonable delay which is prejudicial to creditors. 11 U.S.C. § 1307(c)(1). On or about August 18, 2014, the Trustee received by email three paystubs dated from May 3, 2014, through May 17, 2014. The stubs indicate weekly pay periods. Trustee has not received the full 60 days of paystubs prior to the filing date as required.

4. Section 1.02 of Debtors' plan, Dckt. No. 5, has handwritten provisions added. This is not the proper form and the provisions should be added as additional provision in Section 6 of the plan. Furthermore, Section 6 of the form plan indicates in part that, "...the preprinted text of this form has been altered. In the event that there is an alteration, it will be given no effect."

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.

41. 14-25796-C-13 ROBERT/JILL VOSBERG MOTION TO CONFIRM PLAN
ALF-2 Ashley R. Amerio 8-18-14 [41]

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

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

Below is the court's tentative ruling.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 18, 2014. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

The court's decision is to continue the Motion to Confirm the Amended Plan to XXXXX at XXXX.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. In this instance, the Chapter 13 Trustee opposes confirmation on the following grounds:

1. The Plan may not be Debtors' best effort under 11 U.S.C. § 1325(b), or Debtor cannot afford to make the payments or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors are under the median income and propose plan payments of $3,136.00 for 4 months, $3,250.00 for 56 months, with a 37% dividend to unsecured claim holders, which totals $13,320.72. Debtors filed an Amended Schedule I, and changed Robert Vosberg's business income from $4,440.00 gross and $3,765.00 net to $3,880.00. Debtor is now an Independent Contractor. Debtors do not provide an attachment to Schedule I, which shows the Debtors' gross income, expenses, and net business income.

Trustee is uncertain if the business income listed on Line 8a is gross or net income. Trustee's prior Objection, Dckt. No. 26, has not been resolved.

Debtor's' 2013 tax return reflects a refund of $5,287.00; however, Debtors do not propose to pay any future refunds into the Plan or change their income tax withholdings so that they will not receive such a large tax refund. Debtors' Motion states that the Debtors' income tax refund was solely due to tax credits which may or may not be available on a year to year basis, and therefore accounting for a speculative refund would not provide for best efforts in the plan by Debtors.

2. It appears that the Plan does not meet the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtors' non-exempt equity totals $11,279.92 and possibly more. Debtor is proposing a 37% dividend to unsecured claim holders, which totals $13,320.72. Debtors filed amended schedules A, B, C, and D on August 15, 2014, Dckt. No. 39, with no declaration explaining why the amendments were made.

The motion claims that the real property was incorrectly valued, but does not explain why the court should accept the current valuations over the earlier valuations and why these errors occurred. Amended Schedule A changes the value of the real property located at 5000 Lena Way, Fair Oaks, California from $479,896.00 to $435,000.00, a decrease of $44,896.00. Debtor also changed the amoutn of the secured claim from $317,420.00 to $354,795.10, an increase of $47,375.00. Debtor has filed a "Broker Price Opinion for value of real property," Exhibit D, Dckt. No. 44; however, this document does not appear to be a Broker Price opinion as it does not specifically state the value of the real property. The document is titled CMA REPORT and appears to list the properties in the area.

Based on the original Schedule A, filed on May 30, 2014, the non-exempt equity in the real property totaled $136,901.00. Value of the real property listed on the original Schedule A: $479,896.00 Amount of the secured claim listed on the original Schedule A: $317,420.00. The total equity in the real property: $162,476.00. The original schedule C exempted $25,575.00 of equity in the property, which provides $136,901.00 in non-exempt equity. The Amended Schedule C changes the exemptions from California Civil Code of Procedure § 703.140(b) 703.140 et. seq to Section 704 et. seq. Debtors' Amended Schedule C changes the exemption of equity in the property to California Civil Code of Procedure § 704.730 and exempts all equity in the property after Debtors decrease the value and increase the amount of the secured claim.

Trustee has filed an Objection to Confirmation, DPC-1, which raised the liquidation issue, Dckt. No. 26. Debtors do not indicate why the value of the property decreased after the date of filing on May 30, 2014, approximately 3 months later on August 15, 2014.

The Debtor filed Amended Schedule B and deleted the following assets originally listed:

Cash $155.00;

Chase Checking $179.30;

Chase Savings $.60 cents;

Optimum Bank $1,200.00;

3 Firearms, 12 gauge shotgun, .30-06 rifle, .40 caliber pistol all valued at $700.00;

Kayak $150.00;

34 shares of stock in American Airlines $1,291.66;

Penny Stocks $.28 cents 2 great Pyreness, not AKC registered;

1 domestic cat valued at $500.00.

Debtors have not indicated why these assets were deleted.

RESPONSE BY DEBTORS

As set forth in the Declaration in Support of the Motion to Confirm Amended Plan, Debtors state that Mr. Vosberg lost his employment post-petition but became employed as an "independent contractor" shortly afterward. As a result, his income change and a new estimate of his income was filed with the court. Mr. Vosberg began his position shortly prior to the filing of the 2nd Amended Plan and he did not have a history of the new income and his independent contractor expenses to provide to the court. Debtors state that the income at issue is not true "business income" but he is employed by one company, full time but is paid as a "1099 employee". Mr. Vosberg pays some, but not all of his expenses. Primarily, Mr. Vosberg is responsible for his own taxes and related expenses.

Debtors state that they will be able to provide a more complete "Profit & Loss" or "Income & Expense" report for the new employment as the data accumulates. Since income is based on miles traveled and other factors (he is a truck driver), the income, while steady, has not been established over time. Debtors argue that this is the essence of "best efforts" by the debtors: despite losing his income, Mr. Vosberg "took immediate steps to replace the income so that the Plan could be funded."

Best Efforts

The trustee objects that the prior Objection regarding the tax refunds has not been resolved. Debtors state that this was discussed with the trustee and, at his suggestion, the debtors have agreed to pay the tax refund to the trustee on an annual basis.

The debtors have further agreed to place the following language in the Order Confirming Plan, subject to the approval of the court:

A. At the same time the Debtors file state and federal tax returns with the respective agencies, copies of said returns

shall be served on the Chapter 13 Trustee. The Debtors shall file a certificate of service attesting to such timely service on the Chapter 13 Trustee.

B. All federal and state tax refund checks during the term of the Plan shall immediately upon receipt be endorsed over to the Chapter 13 Trustee for deposit in the Trustee's Chapter 13 account. The Debtors shall not receive electronic payment of any tax refunds during the term of the Plan. The Trustee shall hold such funds for a period of 60 days from receipt for Debtor to file motion for disbursement of the tax refund monies to Debtors instead of to creditors through the Chapter Plan. If such motion is timely filed, the Trustee shall than hold such tax refund monies until otherwise ordered by the court.

Liquidation Analysis

The Trustee also objects that the Plan fails the "liquidation analysis". In response, the Debtors state that the Declaration and supporting documents provide sufficient evidence that the valuation of the real property, now based on a Comparative Market Analysis instead of an online resource, is accurate.

Debtors state that their Declaration is Support of Confirmation of the Amended Plan may not adequately describe on what information they relied on to determine the market value of the real property, and it may not adequately describe the personal information of the debtors upon which that opinion was based. A Supplemental Declaration is filed that sets forth the process by which the debtors formed their opinion of the value of the subject real property and why that amount was amended.

Additionally, the trustee notes that the amount of the claim of the secured creditor was increased. That is based on a recalculation of the principal amount the creditor had stated was owed, plus the arrears as calculated up the date of filing. It does appear, now that the Proof of Claim was filed, that the actual amount of this claim is $340,893.47, an amount slightly lower than that calculated by the debtors.

Debtors also state that the Amended Schedule B was filed in error and is concurrently being corrected, and that no assets should have been omitted from the originally filed Schedule. Debtors state that, based on all of the information available at this time, the distribution to the unsecured, Class 7 creditors should be slighter higher than set out in the current plan. Debtors propose that this can be dealt with as an Additional Provision in the Order Confirming Plan. If there are tax refunds, much of this additional amount will be paid due to the trustee receiving those refunds. Debtor requests additional time to discuss this matter with the trustee.

REVIEW OF DEBTORS' DECLARATION

In Debtors' Supplemental Declaration, the Debtors attempt to account for the previously unexplained increased valuation of Debtors' real property. Dckt. No. 54. Debtors state under the penalty of perjury that, prior to when this case was filed, Debotrs reviewed the Schedules and Statements filed in this case, including Schedule A – Real Property. At that

time, Debtors had reviewed online information about the value of the real property located at 5000 Lena Way, Fair Oaks CA 95628.

Debtors state that, although Debtors believed at that time that the market value was higher than the amount the property would actually sell for, Debtors relied on that valuation. After this case was filed, Debtors contacted a real estate broker, Karene G. Schneider. Ms. Schneider allegedly gave Debtors a Comparable Market Analysis for reviews; Debtors state that some of the information that given to Debtors is shown in Exhibit D filed with this Motion. Debtors state that they reviewed the information provided by Ms. Schneider, considered the properties noted in those documents and, based upon that information and their own personal knowledge of our neighborhood, including condition of Debtors' property, Debtors believe that the market value of othe real property is $435,000, not the previously stated amount of $479,896 that was "based solely on the online resource."

Additionally, in their Declaration, Debtors address Mr. Vosberg's new position as an "independent contractor," and Debtors' inability to provide an accurate statement of new income, expenses, and taxes associated with Mr. Vosberg's position.

The Debtors have acknowledged that there are remaining issues regarding the proposal of a new dividend to the unsecured claim holders, a provision of which has not been proposed by Debtors to be incorporated in the order confirming the plan. Debtors have also not provided clarification on Debtors' 2013 tax return refund of $5,287.00, and whether those funds would be contributed into the plan. Additionally, no Amended Schedule B listing including the allegedly erroneously omitted assets (Cash $155.00; Chase Checking $179.30; Chase Savings $.60 cents; Optimum Bank $1,200.00; 3 Firearms, 12 gauge shotgun, .30-06 rifle, .40 caliber pistol all valued at $700.00; Kayak $150.00; 34 shares of stock in American Airlines $1,291.66; Penny Stocks $.28 cents 2 great Pyreness, not AKC registered; 1 domestic cat valued at $500.00) has been filed.

The Debtors appearing to request additional time to resolve some of these issues, the court continues the hearing on the matter to permit Debtors to consult with the Trustee on the outstanding issues in Debtors' Chapter 13 Plan.

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

> Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.
>
> The 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 continued to XXXX at XXXXX.

42. 14-28898-C-13 ERNESTINE OUTLIN
SDH-1 Scott D. Hughes

MOTION TO EXTEND AUTOMATIC STAY AND/OR MOTION FOR EXEMPTION FROM CREDIT COUNSELING , MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE
9-3-14 [9]

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 Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on September 3, 2014. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

The Motion to Extend the Automatic Stay is granted, and the Motion to Waive the Credit Counseling Requirement is denied without prejudice.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 14- 25902-A-13J) was dismissed on August 28, 2014, after Debtors based on Debtor's lack of eligibility because the documents were not signed properly and because the debtor did not provide the testimony of two doctors as required by the power of attorney. *See* Order, Bankr. E.D. Cal. No. 14-25902, Dckt. 46, September 10, 2014.

Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

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 the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

1. Why was the previous plan filed?

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. In the prior case, the debtor was trying to stop a trustee's sale on her home. The case was dismissed because the documents were not signed properly and because there was no proof from doctors that the debtor lacked the capacity to file her own bankruptcy case. Debtor states that the documents were signed properly in this case and the attorneys in fact will obtain the testimony of two doctors. Exhibit "A," Dckt. No. 12. Debtor asserts that now that the documents have been signed properly and the co-attorneys in fact are working together to prosecute this case, this case has a better chance of success. As such, the attorneys in fact are informed and believe that the circumstances have changed since the filing of the previous bankruptcy sufficient to justify the granting of this motion.

Debtor presents the following facts as supporting a finding of a good faith filing in the commencement in this new case:

1. The debtor filed her second petition in this 2014 case less than a week after the dismissal of the prior case. The second case was filed to stop a trustee's sale. The debtor did not want to wait until a trustee's sale had passed to file another case. As such, the timing of the second petition does not reflect any bad faith.

2. The debts listed in the first case are identical to the debts listed in the second case. The arrearages on the mortgage loan have probably increased a little. The debtor has not incurred any new debts since the dismissal of the old case and the filing of the new case.

3. The debtor's prior case was dismissed because the documents were not signed properly and there was no evidence of incapacity. The debtor's family contacted counsel and rather than filing a motion to vacate the dismissal, promptly filed another case and are now seeking extension of the stay. The debtor's conduct in the last case showed an intent to make plan payments.

4. The only creditor who will be stayed is the home lender. There are no unsecured debts. It is a 100 percent plan. She refiled because she wants to keep from losing her former residence in foreclosure.

5. The debtor filed the first case to stop a trustee's sale on her home. The debtor filed a plan that provided for the mortgage and a cure of the arrears. She made the first and only plan payment, (though her attorneys in fact) due in that case before that case was dismissed.

6. As stated above, the debtor's circumstances have changed. The debtor now has a bankruptcy with properly signed documents. The debtor will provide evidence of incapacity. This debtor does have sufficient income to fund the plan payments. The debtor has the same income that she had in the first case because her family is helping her. Although the payments are about the same, the debtor should be able to make the payments.

The 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 and parties, unless terminated by operation of law or further order of this court.

Improper Joinder of Claims

In addition to requesting that the court extend the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B), the Debtor seeks an order from the court waiving the credit counseling requirements for Debtor, on the basis that she lacks the capacity to take the credit counseling courses required by the bankruptcy code, under 11 U.S.C. § 109(g)(4).

In reviewing the present Motion, the court notes that the Debtor seeks two different types of relief:

> 1) The court extend the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B) on the basis that Debtor's second bankruptcy case was filed in good faith, and that the case is "merely an attempt by the debtor's co attorneys-in fact to stop a trustee's sale on her home for the debtor's benefit," and not an abusive filing; and
>
> 2) The court allows an exception to the credit counseling requirements for lack of capacity pursuant to 11 U.S.C. § 109(g)(4).
>
> The Motion directs the court's attention to the joint declaration filed with this motion, which states that the

debtor has been in a nursing home since 2010. The debtor's sisters, Beatrice Hill and Sara Taylor were appointed as co-attorneys in fact to make financial decisions for the debtor. One of the decisions they made together was to file this bankruptcy for their sister because she is incapable of doing it for herself. The Motion argues that the named Debtor is clearly incapable of taking the credit counseling courses required by the Bankruptcy Code for herself.

The combination of two types of relief in one pleading is procedurally incorrect. Federal Rule of Bankruptcy Procedure 7018 makes Federal Rule of Civil Procedure 18 applicable in adversary proceedings. While Federal Rule of Civil Procedure 18 and Federal Rule of Bankruptcy Procedure 7018 allow for a plaintiff to join multiple claims against a defendant in one complaint in an adversary proceeding, however, those rules are not applicable to contested matter in the bankruptcy case. Federal Rule of Bankruptcy Procedure 9014 does not incorporate Rule 7018 for contested matters, which includes motions. Debtor has improperly attempted to join two separate requests for relief in one motion.

As with the present Motion, the reason for not incorporating Rule 7018 into contested matters is in part based on the short notice period for motions and the substantive matters addressed by the bankruptcy court in motions.

These include sales of property, disallowing claims, avoiding interests in real and personal property, confirming plans, and compromising rights of the estate– proceedings which in state court could consume years. In the bankruptcy court, such matters may well be determined on 28 days notice. The Supreme Court and Rules Committee excluded the provision of Fed. R. Bankr. P. Rule 7018 and Fed. R. Civ. P. Rule 18 from the rapid law and motion practice in the bankruptcy court. Allowing parties to combine claims and create potentially confusing pleadings would not only be a prejudice to the parties, but put an unreasonable burden on the court in the compressed time frame of bankruptcy case law and motion practice.

The Debtors have improperly attempted to join a motion to extend the automatic stay pursuant to 11 U.S.C. § 362(c)(3)(B), with a motion to waive the credit counseling requirements under 11 U.S.C. § 109(g)(4). This is improper. Each motion must assert one claim against the other party. The Motion to Waive the Credit Counseling Requirements is denied without prejudice on this independent ground.

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 and parties, unless

terminated by operation of law or further order of this court.

IT IS FURTHER ORDERED that the Motion to Waive the Counseling Credit Requirement is denied without prejudice.