

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis  
Bankruptcy Judge  
Sacramento, California

October 8, 2013 at 3:00 p.m.

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1. [09-27600-E-13](#) RAMON/KAREN GARCIA MOTION TO SELL  
WW-5 Mark Wolff 9-5-13 [[70](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 5, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Here, the Debtor proposes to sell the real property commonly known as 9768 White Pine Way, Elk Grove, California. The sales price is \$300,000.00 and the named buyers are Ernest Arvizo and Ashley Arvizo. The terms are set forth in the Purchase Agreement, filed as Exhibit C in support of the Motion. Dckt. 73. Debtor contends that both Nationstar Mortgage, LLC, holder of the first deed of trust, and Schools Financial Credit Union, holder of the second deed of trust, have consented to the sale.

**TRUSTEE'S OPPOSITION**

The Trustee filed an objection to the motion to clarify the treatment of Schools Financial Credit Union and Countrywide Bank. Trustee states the debtors scheduled the second deed of trust, Schools Financial Credit Union, as a Class 2 to be paid through the plan. An order valuing the secured claim was granted on June 26, 2009, allowing the claim as an

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unsecured claim. Debtors have negotiated a lien release with this creditor for \$6,000.00.

The Trustee also states that the modified plan calls for Country Bank to be paid as a Class 1 for \$7,500.00 and Countrywide Home Lending to be paid as a Class 4 with a monthly contract installment of \$0.00. Trustee states that in May of 2013, Countrywide returned the March 2013 disbursement with a note that a Motion for Relief had been granted. The Trustee states he is not aware as to what payments the Debtor has made directly to this creditor since March 2010, so the Trustee is not certain what payments are due for post-petition arrears (or whether the Debtor has retained any payments due but not paid to Countrywide).

**DEBTOR'S REPLY**

Debtors state they provided the Trustee with loan statements from both creditors holding liens on the subject real property. Debtors state that upon the completion of the short sale, the claims secured by the property being sold will be satisfied in full and no deficiency shall be owed or collected. Debtors state they anticipate the claims being satisfied through the short sale will be withdrawn upon the close of escrow.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the property.

**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 sell property 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 Ramon and Karen Garcia, the Debtor ("Debtor"), is authorized to sell to Ernest Arvizo and Ashley Arvizo or nominee ("Buyers"), the residential real property commonly known as 9768 White Pine Way, Elk Grove, California ("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyer for \$300,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit C in support of the Motion. Dckt. 73.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other

customary and contractual costs and expenses incurred in order to effectuate the sale.

3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale.
5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtors. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

2. [10-37605-E-13](#) MITCHELL/BECKI MECKIER MOTION TO VALUE COLLATERAL OF  
SS-2 Scott Shumaker FIRST TENNESSEE BANK, N.A.  
8-22-13 [[49](#)]

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 22, 2013. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

The motion is accompanied by the Debtors' declaration. The Debtors are the owners of the subject real property commonly known as 5421 Shire Ct., Fair Oaks, California. The Debtor seeks to value the property at a fair market value of \$245,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$272,923.00. First Tennessee Bank N.A.'s second deed of trust secures a loan with a balance of approximately \$101,356.26. 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 First Tennessee Bank N.A. secured by a second deed of trust recorded against the real property commonly known as 5421 Shire Ct., Fair Oaks, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$245,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

3. [13-29807-E-13](#) CESAR/ELVIA VALLEJO  
NLE-1 Richard Kwun

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
9-4-13 [[15](#)]

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, 2013. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor Cesar Vallejo, did not appear at the Meeting of Creditors held pursuant to 11 U.S.C. §341. Attendance is mandatory. 11 U.S.C. §343. The Trustee asserts that Debtor is incarcerated at Mule Creek State Prison according to his spouse, with a sentence of 25 to life. The Trustee states that he and the Creditors have not been able to examine the Debtor Cesar Vallejo about his financial affairs, the Power of Attorney form presented was not signed or dated and did not make reference to the bankruptcy filing. The Trustee state he does not have sufficient information to determine whether or not the case is suitable for confirmation.

Counsel for Debtor responds, stating that the Trustee's objection be conditionally granted until the trustee can reexamine the debtors at the continued hearing, and Debtor will provide a new power of attorney for her husband.

In responding to the Motion, the Debtors offer the court no legal authority for the court to waive Cesar Vallejo's appearance at the First Meeting of Creditors or what alternatives which may exist under the circumstances. In light of such issue not being addressed, the court deduces that no basis exists for resolving the issue, thereby necessitating the denial of confirmation.



for September 10, 2013. The court having granted the motion to value collateral, this portion of the objection is overruled.

The Trustee also objects on the basis that the Debtor's plan is not the Debtor's best efforts. Debtor is below median income and proposes a 36 month plan with a guaranteed dividend of 0% to general unsecured claims. Debtor lists a second party's employment information on Schedule I, but fails to show any income. Trustee states that Debtor admitted at her 341 meeting that her boyfriend resides with her and contributes to the household. This information does not appear on Form B22C either. Trustee argues that Form B22C may not accurately show whether Debtor is above or below median income.

Additionally, the Trustee argues Debtor lists payment on the second deed of trust on her mother's residence in the amount of \$455 per month on Schedule J. Debtor lists the claim on Schedule D owed to Chase Manhattan Mortgage secured by real property located at 3669 Reel Circle, Sacramento, California, with a value of \$90,000.00 with a loan balance of \$50,549.00. Debtor indicated that this was incurred solely by herself and her boyfriend. Schedule A indicates that Debtor and her mother are both on title to this property (with liens totaling \$81,061). Trustee argues that Debtor fails to show any contribution of her boyfriend for payment toward the loan, even though listing him as a co-debtor on Schedule H. Trustee states that Debtor is paying the entire loan amount of \$455.00 when a non-filing co-debtor is also obligated and should be making a portion of the payment on the loan.

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

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

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

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

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

5. [11-27009-E-13](#) JASON/JANE HAXTON  
EJS-2 Eric Schwab

MOTION TO APPROVE LOAN  
MODIFICATION  
9-10-13 [[46](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 10, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

Seterus, Inc., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current \$2,578.00 to \$1,724.67 (includes \$357.76 escrow payment). The modification will capitalize the pre-petition arrears and provides for interest rate of 4.000% over the next 40 years.

The motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(A), which requires a copy of the credit agreement. The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreement. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Here, the motion only includes pages 1 and page 3 of the 3 page credit agreement. It appears page 2 of the credit agreement is missing, which appears to state the majority of the terms.

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

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

The Motion to Approve the Loan Modification filed by Debtors having been presented to the court, and upon review

of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

6. [11-34809-E-13](#) **EARNEST/ROLINDA HARVEY** **MOTION TO MODIFY PLAN**  
**JT-4** **John Tosney** **8-22-13 [51]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 22, 2013. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 22, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

7. [13-30712-E-13](#) **MICHAEL/KIMBERLY DAVIS** **MOTION TO VALUE COLLATERAL OF**  
**MET-1** **Mary Ellen Terranella** **ONEWEST BANK, FSB**  
**9-10-13 [16]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 10, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtors' declaration. The Debtors are the owners of the subject real property commonly known as 1100 Almeria Avenue, Winters, California. The Debtor seeks to value the property at a fair market value of \$258,855.00 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).

#### **CREDITOR'S OPPOSITION**

OneWest Bank, FSB filed an "opposition" which does not opposing the Debtor's motion, but asking the Court to include the following "protective" language:

"avoidance of Secured Creditor's lien is contingent upon Debtors' completion of the Chapter 13 Plan and receipt of a chapter 13 Discharge"

in the order granting the Debtor's motion. In the alternative, Creditor asks the Court to require the Debtor to enter a stipulation for protective language on the avoidance of secured creditor's junior lien.

Through a Motion of Value Collateral, the Court is not altering legal rights of the creditors. The Court is bifurcating the debt into secured and unsecured debt. Therefore, it is neither necessary or proper to include the "protective" language requested by the Creditor as this does not alter the Creditor's rights if the plan is not completed. Additionally, to the extent that what the Creditor asks for is not the law, then Creditor is requesting that the court improperly "confirm" Chapter 13 Plan terms outside of the confirmation of a plan.

#### **DISCUSSION**

The first deed of trust secures a loan with a balance of approximately \$352,826.00. OneWest Bank, FSB's second deed of trust secures a loan with a balance of approximately \$100,100.00. 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 OneWest Bank FSB secured by a second deed of trust recorded against the real property commonly known as 1100 Almeria Avenue, Winters 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 \$258,855.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

8. [09-37714-E-13](#) JAY LUCERO  
SS-2 Scott Shumaker

OBJECTION TO CLAIM OF SACCOR  
FINANCIAL/CO CIRCUIT CITY,  
CLAIM NUMBER 8-1  
8-21-13 [[29](#)]

Local Rule 3007-1(c)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 21, 2013. By the court's calculation, 48 days' notice was provided. 44 days' notice is required.

**Final Ruling:** This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(c)(1) and (d). 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 Objection to Proof of Claim number 8-1 of Saccor Financial/co Circuit City is sustained and the claim is disallowed in its entirety.** No appearance required.

The Proof of Claim at issue, listed as claim number 8-1 on the court's official claims registry, asserts \$6,839.85 secured claim. The Debtor objects to the Proof of Claim on the basis that it was not timely filed. See Fed. R. Bankr. P. 3002(c). The Debtor also argues that the Proof of Claim does not have sufficient documentation supporting it, fails to allege a security interest in any of Debtor's assets, and is not signed by the alleged creditor.

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).

The deadline for filing a Proof of Claim in this matter was December 23, 2009. The creditor's claim was filed December 13, 2010.

Based on the evidence before the court, the creditor's claim is disallowed in its entirety as untimely. 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 Saccor Financial/co Circuit City filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the objection to Proof of Claim number 8-1 of Saccor Financial/co Circuit City is sustained and the claim is disallowed in its entirety.

9. [11-20314](#)-E-13 HILARIO/BRIGIDA BONCATO MOTION TO MODIFY PLAN  
NUU-2 Chinonye Ugorji 8-20-13 [[56](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2013. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the basis that Debtor's modified plan proposes to reduce the commitment period from 48 months to 40 months. The Statement of Current Monthly Income and

Calculation of Commitment Period From B22C indicates Debtor is under median income and the commitment period is three years.

The Debtor's Motion and Declaration states that Social Security benefits have increased enabling Debtors to make additional payments. The Trustee states that this may not be sufficient to warrant a reduction in plan terms when there appears to be \$400.00 generated in income and no expenses reflected on Schedule J from a condo in the Philippines. Debtor then amended Schedule I, which no longer lists the income, and listed an expense of \$150.00 as condo fees on Schedule J.

The Trustee is concerned that Debtor could increase the plan payment and the reason for the modified plan appears misleading, meaning the plan may not be proposed in good faith.

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

Debtor's Counsel responds, stating that Debtors no longer have a renter in their Philippines property and hence have lost the \$400.00 rental income, but still have the \$150.00 expense for caretaker/maintenance fees.

#### **DISCUSSION**

The court begins its analysis with the motion to confirm the proposed First Modified Plan. The motion states the following grounds with specificity as the basis for granting the relief requested:

- A. The proposed First Modified Chapter 13 Plan shortens the Plan term from 48 months to 40 months.
- B. The current confirmed Chapter 13 Plan requires monthly plan payments of \$159.00 for 3 months and then \$159.37 for 45 months. The confirmed Chapter 13 Plan provides for a 10% dividend to creditors holding general unsecured claims.
- C. The proposed First Modified Chapter 13 Plan provides for plan payments of (1) \$159.00 for each of the first three months, (2) \$159.37 for each of the next 27 months, and (3) \$300.00 for each of the last 10 months of the plan (40 months plan term). The First Modified Chapter 13 Plan provides for a 10% dividend to creditors holding general unsecured claims.
- D. Debtors are able to increase their monthly plan payment because they have received an increase in their monthly Social Security Benefits.
- E. The proposed First Modified Chapter 13 Plan "complies with all requirements of 11 U.S.C. § 1300 et seq."
- F. The proposed First Modified Chapter 13 Plan "represents Debtors' 'Best Efforts' as is defined under 11 U.S.C. § 1325(6)(b)(1)(B)(2)."
- G. "Debtors have the ability to make the plan payments as required pursuant to 11 U.S.C. § 1325(a)(6)"

- H. "Debtors have filed Amended Schedules 'I' and 'J' to reflect their current budget."

Motion, Dckt. 56.

In support of the Motion the Debtors provide their Declaration, which consists of the following findings of fact and conclusions of law made by the Debtors.

- a. "The First Modified Plan has been proposed in good faith;"
- b. "The value, as of the effective date of the plan, or property to be distributed under the plan to allowed unsecured claims is not less than the amount such claims would receive under a Chapter 7."
- c. "The First Modified plan provides that the holder of a secured claim retains the lien securing such claim until either the underlying debt is paid or a discharge is entered under § 1328 and the value of property to be distributed under the plan is not less than the allowed amount of such secured claim;"
- d. "Payments to secured claimants are proposed to be periodic and of equal monthly amounts sufficient to provide adequate protection to such claimants;"
- e. "We shall be able to make the plan payments and comply with all requirements of the modified plan;"
- f. "We have filed all applicable federal, state and local tax returns required to be tiled for the four year period preceding the filing of my Chapter 13 Petition and all tax returns that have become due post petition;"
- g. "We are seeking to shorten the length of our Chapter 13 Plan as our Social Security benefits have increased thereby enabling us to make more payment. Mr. Bancata's benefit increased from \$1,829.00 to \$2,062.00 while Mrs. Boncata's benefit increased from \$899.00 to \$1,075.00."
- h. "We do not have any domestic support obligations."
- i. "We have filed Amended Schedules "I" and "J" to reflect changes to our budget."

Declaration, Dckt. 58.

While paragraphs F, G, H, and I appear to be testimony as to facts and events which could be on the Debtors' personal knowledge, the court questions whether the Debtors actually have such knowledge or ability to testify given the rest of what is being stated under penalty of perjury in the Declaration. Rather than testimony, it appears that the Debtors or

their counsel merely copied the provisions of the Bankruptcy Code relating to confirmation and had the Debtors parrot the text of the Code.

Even if true, the Debtors are merely stating their personal findings of facts and conclusions of law - fulfilling those responsibilities of the court. The Debtors having made their own findings of fact and conclusions of law, thereby determining that the First Modified Plan should be confirmed, then the next logical step would be for them to sign their own order confirming the First Modified Chapter 13 Plan.

The court does not abdicate its duty to make the necessary findings of fact and conclusions of law to these Debtors. Additionally, the court does not accept this opportunity to be employed by the Debtors to scavenge the file to determine what evidence exists, state that evidence to the court, make findings of fact from the evidence scavenged by the court, and finally draw the necessary conclusions of law based on such findings of fact.

Next, the Debtors have filed amended Schedules I and J. Dckt. 55. These Schedules state the Debtors' income and expenses as of January 2011, when they commenced this bankruptcy case. Such amended Schedules are of little benefit to the court is determining the projected disposable income in October 2013.

It is also very troubling that the status of the rental property in the Philippines was not mentioned by the Debtors until it was raised by the Trustee. When the Trustee noted that the Debtors previously testified that they were receiving \$400.00 a month from that property, the Debtors responded (merely with the arguments of counsel, not supported by a declaration) that they "no longer have a renter in the Phillipines property." Therefore, they do not have the \$400.00 a month income. The Debtors' counsel carefully doesn't present any argument as to when the Debtors lost the renter, whether they are in the process of re-renting the property, or why they continue to retain the property and pay the related expenses if they are not renting the property.

The Debtors have not provided the court with evidence in support of modifying a Chapter 13 Plan pursuant to 11 U.S.C. § 1329. Further, they have not provided the court with a basis to shorten the plan term.

The court's review of the Schedules and the First Modified Plan raises several issues. One is why and how the Phillipines rental property, which is not now generating any rental income, is not being made available for creditors. In the First Modified Plan the Debtors continue making \$1,646.00 a month for their residence in Elk Grove, California. The Phillipines property is listed on Schedule A as having a value of \$65,000.00. Dckt. 1 at 19. This is identified as "This is debtors' Retirement home. Debtor is retired and joint debtor is disabled. They plan to retire to the Phillipines in the very near future." On Schedule C the Debtors claim a \$65,000.00 exemption in the Phillipines property pursuant to California Code of Civil Procedure 704.200, which provides,

(a) As used in this section:

(1) "Cemetery" has the meaning provided by Section 7003 of the Health and Safety Code.

(2) "Family plot" is a plot that satisfies the requirements of Section 8650 of the Health and Safety Code.

(3) "Plot" has the meaning provided by Section 7022 of the Health and Safety Code.

(b) A family plot is exempt without making a claim.

(c) Except as provided in subdivision (d), a cemetery plot for the judgment debtor and the spouse of the judgment debtor is exempt.

(d) Land held for the purpose of sale or disposition as cemetery plots or otherwise is not exempt.

Schedule C, Dckt. 1 at 23.

In response to Question 15 of the Statement of Financial Affairs the Debtors state under penalty of perjury that the only address that they lived prior to the commencement of the bankruptcy case was 5533 Laguna Park Drive, Elk Grove, California. Dckt. 1 at 38.

On April 27, 2011, the Debtors filed an Amended Schedule C which changed the exemption being claimed for the Philippines property, stating,

"This is debtors' Permanent home. Debtor is retired and joint debtor is disabled and undergoing cancer treatment in the United States. Debtors' plan to finally move to the Philippines upon completion of the cancer treatments"

Dckt. 33 at 2. On Amended Schedule C the Debtors asserts an exemption in the Philippines property based on California Code of Civil Procedure 704.730(a)(3), which states the amount of a homestead exemption. However, this section does not state in what property and when an exemption may be claimed. California Code of Civil Procedure § 704.720 provides that an exemption may be claimed in the proceeds from the sale of a homestead. The term "homestead" is defined as follows,

(a) **"Dwelling"** means a place where a person resides and may include but is not limited to the following:...

(c) **"Homestead"** means the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead. Where exempt proceeds from the sale or damage or destruction of a homestead are used toward the acquisition of a dwelling within the six-month period

provided by Section 704.720, "homestead" also means the dwelling so acquired if it is the principal dwelling in which the judgment debtor or the judgment debtor's spouse resided continuously from the date of acquisition until the date of the court determination that the dwelling is a homestead, whether or not an abstract or certified copy of a judgment was recorded to create a judgment lien before the dwelling was acquired.

See *In re Anderson*, 824 F.2d 754 (9th Cir. 1987) ("'automatic' homestead exemption can only be claimed by a debtor who resides (or who is related to one who resides) in the homestead property at the time of a forced judicial sale of the dwelling. Cal. Civ. Proc. Code §§ 704.710(a), (b), (c), 704.720, 704.730, 704.740."

There does not appear to an objection having been filed to the above claimed exemption. (Which is curious, given that the Debtors state under penalty of perjury that they did not reside in the Philippines property prior to the commencement of the bankruptcy case.) However, the Code Section cited on Amended Schedule C only identifies a dollar amount of an exemption, but not the basis for an exemption. The court is unsure whether this is an issue for any party in interest, or whether there is no dispute as to when an exemption has been sufficiently claimed in this case.

The modified Plan does not comply with 11 U.S.C. §§ 1329, the motion is denied without prejudice and the proposed First Modified Chapter 13 Plan is not confirmed.

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

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

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

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

10. [11-37716-E-13](#) MILTON FLOWERS AND MOTION TO MODIFY PLAN  
PGM-4 TANISHA GORDON-FLOWERS 8-30-13 [[85](#)]  
Peter Macaluso

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 30, 2013. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 30, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

11. [13-28816-E-13](#) ROBERT/GENNETTA HOLLINS MOTION TO CONFIRM PLAN  
TGC-1 Tommy Conlon 8-15-13 [[20](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 15, 2013. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 1, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

approved, the Chapter 13 Trustee will submit the proposed order to the court.

12. [13-23918-E-13](#) MICHAEL/ISABELLE KEELING CONTINUED MOTION TO CONFIRM  
DRE-2 D. Randall Ensminger PLAN  
7-18-13 [[47](#)]

**CONT. FROM 9-10-13**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on July 18, 2013. By the court's calculation, 54 days' notice was provided. 42 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

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

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

#### **PRIOR HEARING**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Chapter 13 Trustee objects to the motion on the ground that the proposed plan is not the Debtor's best effort. Trustee states Debtor is above median and has \$264.16 in monthly disposable income on Form 22C, claiming \$105.00 for homeowner's insurance as "special circumstance." The Trustee argues that this is part of the housing and utilities expense and Debtor's disposable income should be at least \$369.16.

The Trustee also states that several expenses have been increased and it is not clear why. Further, the Trustee states that the debtor's duplicated the auto insurance, and can add an additional \$210.00 to their plan payment.

#### **Debtors' Response**

Debtor filed a response, which is supported by the Debtors' declaration. The Debtors state that they have filed an amended Form 22C,

stating they made a mistake on their household size. The original Form 22C stated that the Debtors' household was 3 persons. Dckt. 1 at 44. Schedule I filed at the same time is consistent, list one dependant for the Debtors, a 17 year old foster daughter.

The Debtors filed an amended Form 22C on September 3, 2013. Dckt. 67. On amended Form 22C the Debtors state under penalty of perjury that their household size is 4 persons. Amended Form 22 C, *Id.* at 2. The Debtors' declaration in response fails to identify who this fourth member of the household is and how they materialized at this late date. The reply by counsel, for which there is no evidence, is merely "In a previously filed Form 22C Debtors miscalculated their disposable income by making a mistake on their household size. The Debtors' household size is 4 people." No explanation (or testimony) is provided as to who the mysterious fourth person is. Possibly it could be a 76 year old parent the Debtors are trying to claim as a dependant, ignoring the income of that parent.

Further, while the could understand an error in counsel and his staff typing up the forms and listing only one dependant, it is a bit curious that it is the Debtors who made a "mistake on their household size." Did they miscount the numbers between one and four? Did they forget a dependant child because he or she spends a lot of time in their room? When such fundamental mistakes under penalty of perjury are made and not explained as merely a typographical error by counsel or staff (which is easily understandable), then more of an explanation is required beyond "oops, I forgot we have a son."

In addition, it appears that Debtors are still claiming homeowner's insurance (now stated at \$120.00 in the declaration but included in the Statement of Current Monthly Income as \$105) separate and apart from the housing and utility expense. Furthermore, Debtors have not provided sufficient testimony or evidence to substantiate the various changes in their expenses, such as the reason for why the food and medical expenses have increased and the health insurance has decreased.

#### **CONTINUANCE**

The court continued the hearing to allow the Debtor to file supplemental documents regarding detailed current income and expense statements. Debtors filed supplemental declarations and exhibits on September 25, 2013. The Debtors' declaration providing the court with credible testimony upon which the necessary findings of fact can be made by the court. They also address why they are changing information previously stated under penalty of perjury. The Debtors demonstrate that the prior statements were honestly made, and the changes are not "corrections" because the current statements sound better than what was said before. This works to make the Debtors' testimony even more credible.

Trustee filed a Notice of Withdrawal of his objection, based on the supplemental pleadings.

Based on a review of the supplemental pleadings, the withdrawal of the Trustee's objection, the motion is granted.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on July 17, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

13. [13-30221](#)-E-13 MICHAELA VAN DINE AND  
SW-1 PIOTR REYSNER

OBJECTION TO CONFIRMATION OF  
PLAN BY WELLS FARGO BANK, N.A.  
9-12-13 [[31](#)]

CASE DISMISSED AS TO PIOTR  
REYSNER ONLY

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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on September 12, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

Creditor Wells Fargo Bank, N.A. opposes confirmation of the Plan on the basis that Debtor is not a party to the Note or Deed of Trust and as such, there is no contractual right of payment flowing directly or indirectly between Debtor and Creditor. The subject real property was deeded to Reysner as "a married man as his sole and separate property." Exhibit C, Dckt. 34. Creditor argues that this court lacks jurisdiction to modify their Note or Deed of Trust and therefore, the proposed plan cannot be confirmed with the terms therein. FN.1.

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FN.1. The Creditor does not provide any declarations or certified copies of recorded documents in support of the objection to confirmation. They do provide copies of a declaration and exhibits filed with this court in an earlier bankruptcy case filed by Piotr Reysner, 11-34057. Merely providing copies of declarations filed in another case does not constitute testimony in this case. However, in light of the dismissal of Mr. Reysner from this case and the plan, the court will consider the pleadings from the prior case.

The proposed Chapter 13 Plan in this case requires \$2,950.00 a month payments by the debtor. Of this, \$2,381.26 is to be paid to Wells Fargo Bank, N.A. Schedule I indicates that the remaining Debtor, Micaela Marie Van Dine has gross income of \$6,200.00 a month. This includes a student loan stipend, intern stipend, and roommate rent. It also indicates that by January 2013 [this appears to be a typographical error, and the reference is to January 2014] Micaela Marie Van Dine will be attending the Sacramento Police Academy and will have a gross salary of \$4,250.00. No provision is made of Schedule J for any income or real property taxes to be paid by the remaining debtor.

On Schedule A the Debtors did not identify whether the property at issue was owned by the husband, wife, jointly, or as community property. Dckt. 1 at 12.

Based on a review of the evidence before the court, and the dismissal of Debtor Piotr Gabriel Reysner, the court cannot identify what interest, if any, the Debtor has in the subject real property for which Creditor has a Note and Deed of Trust.

Wells Fargo Bank, N.A. argues that since only Piotr Reysner signed the note, even if the remaining Debtor owns the property there is no obligation to pay, and therefore Wells Fargo Bank, N.A. cannot have a claim to be modified through the Chapter 13 Plan. No relevant legal authority for this proposition is provided or how the court addresses the situation where the debtor, who is not liable for the debt, may own the property but a non-debtor is personally obligated on the debt. The court is unaware of a principle that non-recourse obligations cannot be restructured through a bankruptcy plan or that the owner of property cannot provide for paying a secured claim (as defined in 11 U.S.C. § 506(a)).

If Wells Fargo Bank, N.A. is advancing the argument that it has no right to be paid for any obligation secured by real property unless the borrower has individual, personal liability, the court will allow Wells Fargo Bank, N.A. to brief the issue. Such a contention would raise significant lender issues in California, where the vast majority of residential loans are statutorily non-recourse and the consumer borrower cannot have personal liability.

The objection that the Plan does not properly provide for the Wells Fargo Bank, N.A. claim secured by the Debtors' residence does have merit. Even though no evidence has been presented in support of the Objection, the declaration from the prior case is sufficient for the court to concluded that the Plan as proposed does not sufficiently provide for this Creditor's claim secured only by the Debtor's residence. Additionally, with the dismissal of Piotr Reysner, (which occurred at the same time as the filing of the objection) there are now serious feasibility issues concerning the funding of the plan.

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

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

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

The Objection to the Chapter 13 Plan filed by the 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.

14. [13-30221](#)-E-13 MICHAELA VAN DINE AND OBJECTION TO CONFIRMATION OF  
TSB-1 PIOTR REYSNER PLAN BY DAVID P. CUSICK  
9-12-13 [[24](#)]  
**CASE DISMISSED AS TO PIOTR  
REYSNER ONLY**

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 (*pro se*) on September 12, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor has failed to provide either a tax transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. See 11 U.S.C. §521(e)(2)(A); Fed. R. Bankr. P. 4002(b)(3).

Trustee also argues that Section 2.06 of the plan indicates attorney fees are "N/A," with Section 2.07 listing administrative fees of \$300.00 per month to be paid through the plan.

Additionally, the Trustee argues that the plan unfairly discriminates against unsecured creditors as the additional provisions in the plan propose to pay 100% of Debtor Piotr Reysner's debts and 0% of Debtor Micaela Van Dine's debts. The court notes that Co-Debtor Piotr Reysner has been dismissed in this case.

The Trustee also states that while Debtor Reysner was part of the bankruptcy, he has now been dismissed leaving Debtor Van Dine as sole Debtor. Debtor is married and now the spouse is not included in the bankruptcy. Debtor has failed to file a spousal waiver for the use of the California State Exemptions under the California Code of Civil Procedure.

Lastly, the Trustee argues that Debtor cannot make payments under the plan. Trustee states that since the dismissal of Debtor Reysner the income listed on Schedule I may no longer be accurate. The Trustee is uncertain if the income from Reysner will continue to be contributed to the plan. If not, Trustee states \$3,474.00 should be removed from the budget, leaving \$6,200.00 per month remaining for Debtor Van Dine. The Trustee requests proof of the roommate rent income of \$1,500.00 in the form of a declaration from the renter offering evidence of the ability and willingness to continue to pay this amount for the duration of the plan. The Trustee also requests proof of the income from student stipends.

Co-Debtor Reysner being dismissed from this case has caused several discrepancies in the pending Chapter 13 plan. The current plan is not feasible, as it is still based on the assumption that Reysner is a co-debtor.

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.

15. [11-23822-E-13](#) REGINALD/MELISSA POWELL MOTION TO VALUE COLLATERAL OF  
JT-5 John Tosney HSBC MORTGAGE SERVICES, INC.  
8-30-13 [[69](#)]

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 30, 2013. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 719 Magnolia Court, Fairfield, California. The Debtor seeks to value the property at a fair market value of \$170,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$208,126.09. HSBC Mortgage Services, Inc's second deed of trust secures a loan with a balance of approximately \$70,660.00.

Debtor seeks to value the collateral of "HSBC Mortgage Services, Inc. (a division of HSBC Bank USA, N.A.)" However, the court cannot determine from the evidence presented which legal entity the Debtors wish the court to include in the order. HSBC Mortgage Services, Inc. or HSBC Bank, USA, N.A., with Mortgage Services merely being a division of the Bank. The court will not issue orders on incorrect or partial parties that are ineffective. Debtor may always use Federal Rule of Bankruptcy 2004 to aid themselves in finding the true creditor.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtor provides no evidence for the court to determine that this company is a creditor in this case. FN.1.

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FN.1. The misidentification of creditors for purposes of § 506(a) motions continues to mystify the court. Any order issued by the court would be void as to the actual creditor. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt secured by a second deed of trust (in this case) which has never been valued and for no lien-strip may be possible.  
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The court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect. The Motion is denied without prejudice.

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

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

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

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

16. [13-27223-E-13](#) MIGUEL/SONIA ESCOBAR  
JT-2 John Tosney

MOTION TO VALUE COLLATERAL OF  
JPMORGAN CHASE BANK, N.A.  
8-29-13 [[27](#)]

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, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

Debtor offers the Declaration of James Chaussee, a licensed real estate appraiser with 39 years' experiences. The appraisal is of subject real property commonly known as 2912 Cameron Drive, Rocklin, California. Dckt. 29. The Real Estate Appraiser opines that the fair market value of property is \$400,000.00 as of the inspection date of May 7, 2013. Dckt. 30.

The first deed of trust secures a loan with a balance of approximately \$659,912.00. JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$154,517.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 2912 Cameron Drive, Rocklin, 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 \$400,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

17. [10-32525-E-13](#) KATHERINE MENDOZA MOTION TO MODIFY PLAN  
RAC-7 Richard Chan 8-26-13 [[93](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2013. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 26, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

18. [10-35526](#)-E-13 **MARIA RAMIREZ** **MOTION TO VALUE COLLATERAL OF**  
SS-2 **Scott Shumaker** **BANK OF AMERICA, N.A.**  
9-5-13 [[45](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 5, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 9632 P St., Live Oak, California. The Debtor seeks to value the property at a fair market value of \$92,000.00 as of the petition filing date. As the owner, the

Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$132,064.00. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$39,449.97. 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 9632 P St., Live Oak, 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 \$92,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

19. [10-47726-E-13](#) FRANCES RICE  
PGM-4 Peter Macaluso

MOTION FOR COMPENSATION FOR  
PETER G. MACALUSO, DEBTOR'S  
ATTORNEY(S), FEES: \$630.00,  
EXPENSES: \$0.00  
9-4-13 [[64](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 4, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

**The Motion for Compensation is granted.** No appearance required.

Law Offices of Peter G. Macaluso, Counsel for Debtor, seeks additional attorney fees in the amount of \$630.00. Counsel argues that these additional fees are actual, reasonable, necessary and unanticipated as post-confirmation work required.

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

1. To file a Motion to Modify to provide for IRS claim and subsequent correspondence and meetings with clients to maintain a case. Counsel suggests this motion to modify was unanticipated, as the IRS filed a late claim which needed to be provided for.

The hourly rates for the fees billed in this case are \$200.00/hour for counsel for 3.15 hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$630.00 are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

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

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

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

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

Law Offices of Peter G. Macaluso, Counsel for Debtor  
Applicant's Fees Allowed in the amount of \$ 630.00.

20. [13-25926-E-13](#) **GLENN/JACKIE LOWERY** **MOTION TO CONFIRM PLAN**  
DAO-3 **Dale Orthner** **8-14-13 [47]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2013. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

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

**The court's decision is to continue the hearing on the Motion to Confirm the Amended Plan to 3:00 p.m. on October 29, 2013.** No appearance at the October 8, 2013 hearing is required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Trustee opposes confirmation offering evidence that the Debtor is \$3,058.86 delinquent in plan payments, which represents multiple months of the \$1,494.62.00 plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

Additionally, the Trustee states that the plan relies on a pending motion to value collateral, set for hearing September 24, 2013. Creditor

Pennymac Mortgage Investment Holdings, LLC, filed opposition to the motion and the court continued the hearing to October 22, 2013.

Debtor filed a response, stating they increased the plan payment from \$1,425.80 to \$1,494.62 in the current amended plan to make up for the two missed plan payments. Debtor states this will make up for the deficiency cited by the Trustee.

Debtor states the motion to value was continued and requests that this hearing be continued out in order for the motion to be resolved before confirmation.

The court continues the hearing on the Motion to Confirm to 3:00 p.m. on October 29, 2013.

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 hearing on the Motion to Confirm the Plan is continued to 3:00 p.m. on October 29, 2013.

21. [08-39529-E-13](#) LEAH GILMORE  
JT-2 John Tosney

MOTION TO VALUE COLLATERAL OF  
PNC BANK, N.A.  
9-6-13 [[93](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 6, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

Debtor offers the Declaration of James Chaussee, a licensed real estate appraiser with 39 years' experiences. The appraisal is of subject real property commonly known as 614 G Street, Marysville, California. Dckt. 95. The Real Estate Appraiser opines that the fair market value of property is \$163,000.00 as of the inspection date of January 5, 2009. Dckt. 96.

The first deed of trust secures a loan with a balance of approximately \$256,238.45. PNC Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$62,623.85. 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 PNC Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 614 G Street, Marysville, 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 \$163,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

22. [13-24029](#)-E-13 KEVIN GIPSON  
SDB-2 Scott de Bie

MOTION TO COMPEL  
9-16-13 [[34](#)]

**Final Ruling:** The Debtor having filed a Withdrawal of the Motion to Compel Response, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Compel Response was dismissed without prejudice, and the matter is removed from the calendar.**

23. [13-27337-E-13](#) ELIAS/ETIENNETTE  
DJC-9 VILLASENOR  
Diana Cavanaugh

MOTION TO CONFIRM PLAN  
8-24-13 [[77](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 24, 2013. By the court's calculation, 45 days' notice was provided. 42 days' notice is required.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 24, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

approved, the Chapter 13 Trustee will submit the proposed order to the court.

24. [13-31140-E-13](#) JOE/MELISSA PORTO MOTION TO VALUE COLLATERAL OF  
CAH-1 C. Anthony Hughes CITIMORTGAGE, INC.  
8-27-13 [8]

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 27, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 8568 Derwood Court, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$225,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$363,427.98. Citimortgage, Inc.'s second deed of trust secures a loan with a balance of approximately \$15,888.00. 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 Citimortgage, Inc. secured by a second deed of trust recorded against the real property commonly known as 8568 Derwood Court, Elk Grove, 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 \$225,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

25. [10-25842-E-13](#) DAVID/CLARA SEMERIA MOTION TO MODIFY PLAN  
CJY-2 Christian Younger 8-21-13 [[30](#)]

**Final Ruling:** The Debtor having filed a "Withdrawal of Motion" for the pending Motion to Modify, in addition to filing a new modified plan on October 1, 2013, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Modify Plan, and good cause appearing, **the court dismisses without prejudice the Debtors' Motion to Modify 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.

A Motion to Modify Plan having been filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Motion to Modify Plan is dismissed without prejudice.

26. [13-24745-E-13](#) LORI SWAIN  
PGM-2 Peter Macaluso

MOTION TO APPROVE LOAN  
MODIFICATION  
8-30-13 [[50](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 30, 2013. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Approve the Loan Modification is granted.** No appearance required.

Bank of America, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will set the Debtor's monthly mortgage payment to \$1,522.38. The modification will capitalize the pre-petition arrears and provides the interest rate of 4.000% over the next 40 years.

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 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 Debtor, Lori Ann Swain, is authorized to amend the terms of their loan with Bank of America, N.A., which is secured by the real property commonly known as 7282 Rush River Drive, Sacramento, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 53, in support of the Motion.

27. [13-25345-E-13](#) JAMES/ANA SPEARS MOTION TO CONFIRM PLAN  
CYB-1 Candace Brooks 8-16-13 [[35](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 16, 2013. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Trustee opposes the motion on the basis that the plan relies on a pending Motion to Value Collateral, set for hearing on October 8, 2013. The court having granted the Motion to Value, the Trustee's objection is overruled and the motion is granted.

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

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

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

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

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

28. [13-25345-E-13](#) JAMES/ANA SPEARS MOTION TO VALUE COLLATERAL OF  
CYB-2 Candice Brooks JPMORGAN CHASE BANK, N.A.  
8-19-13 [[41](#)]

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 19, 2013. By the court's calculation, 50 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

The motion is accompanied by the Debtors' declaration. The Debtors are the owners of the subject real property commonly known as 8135 Sheehan Way, Antelope, California. The Debtor seeks to value the property at a fair market value of \$175,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$248,226.00. JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$66,527.80. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v.*

*Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 8135 Sheehan Way, Antelope, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$175,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

29. [13-27845-E-13](#) **TIMOTHY/MICHELLE ROSEN** **AMENDED MOTION TO CONFIRM PLAN**  
**WMR-3** **William M. Rubendall** **8-16-13 [49]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 16, 2013. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Chapter 13 Trustee objects to confirmation on the grounds that Debtors Motion to Confirm seeks confirmation of the Debtors amended plan filed July 15, 2013, Dckt. 49. However, the most recently filed plan is dated August 13, 2013, Dckt. 53. Trustee notes the certificate of service also references the July 15, 2013 amended plan. The Trustee is not certain that all the interested parties have been served with the most recently filed plan.

The Trustee also objects on the grounds that section 2.06 of the proposed plan indicates that attorney fees of \$2,216 are due through the plan, yet section 2.07 lists \$0 monthly administrative expenses to be paid to Debtor's counsel. The Trustee does not oppose providing for this monthly administrative payment in the order confirming.

#### **DEBTOR'S TARDY REPLY**

Counsel for debtor filed a reply on October 3, 2013, five (5) days before the hearing. The court notes that pursuant to Local Bankruptcy Rule 9014-1(f)(1)(C) requires that at least seven (7) days prior to the date of the hearing for the moving party to file a reply. Therefore, Debtor's reply is late filed. Counsel argues that he was out of town to attend his son's wedding and that Debtors should not be penalized.

Counsel states that the plan was the same plan filed on July 15, 2013 and that it was served again on the parties for his hearing. Counsel does not object to his fees being paid at \$70.00 per month to be amended in the order confirming.

Based on the explanation of counsel in filing a tardy reply, the court authorizes the filing of the late Reply. With the amendment to provide for payment of Counsel's administrative fees in the amount of \$70.00 per month, and the clarification of the pleadings referencing an earlier plan, the court grants the motion.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 16, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order

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

30. [12-20846-E-13](#) SALVADOR/AUDRA ACOSTA MOTION TO MODIFY PLAN  
GFG-55 Guillermo Geisse 8-23-13 [[44](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 23, 2013. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Trustee states that the proposed plan will not pay the claim of Nationstar Mortgage, LLC. The Debtors list creditor as Class 1 ongoing mortgage with monthly contract amount of \$1,432.68, but under the confirmed plan this creditor was classified as Class 4 to be paid outside the plan. The Debtors are proposing plan payments of \$60.00 for 24 months, then \$341.00 for 12 months. This amount will not be sufficient to pay monthly mortgage amount. Furthermore, the Trustee argues that if he is to begin ongoing monthly payments to Nationstar Mortgage, LLC, the proposed plan does not indicate the date to start such payments.

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

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

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

The Motion to Confirm the 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.

31. [13-30347-E-13](#) **ELMA VIRTUCIO** **OBJECTION TO CONFIRMATION OF**  
**TSB-1** **Bert Vega** **PLAN BY DAVID P. CUSICK**  
**9-12-13 [27]**

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 12, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor's Motion to Value Collateral was denied on September 10, 2013.

The Trustee also argues that the property tax has been improperly listed in the proposed plan. Trustee states that Debtor's plan lists a debt for property taxes at \$350.00 per month, but this debt is not listed on Schedule D and Debtor testified at the 341 meeting that this is for ongoing property taxes with no arrears.

Trustee also states that Debtor's Schedule I lists no dependents, but Debtor testified that her 18 year old daughter resides with her and the Statement of Monthly Income discloses a household of two.

Additionally, the Trustee argues this is not the Debtor's best effort. First, Trustee states Schedule I indicates Debtor is employed as a registered nurse at Kaiser. Gross income is listed on line 1 of \$12,693.06, and payroll tax deductions of \$4,238.14 on line 4a. Line 4d lists other deductions of \$1,586.47. The attachment to the Schedule lists medical of \$1,419.09 per month, dental of \$122.85, LTD of \$32.47, Suppl Life of \$11.21, Life Insure of \$0.71, Supp AD&D of \$0.08, and AD&D of \$0.06. According to Debtors paystubs provided to the Trustee, all of these deductions listed on the attachment except for the Supp Life of \$11.21 are paid for by Debtors employer as benefits and Debtor has additional gross income of \$1,575.26 which is not being into the plan.

Second, Debtors Schedule J lists on line 11a life insurance expense of \$503.00 per month. The Trustee requests written proof of this expense such as an insurance premium statement or bill.

Third, Debtors Form 22C, Dckt.1, indicates Debtor is above median income. Several deductions are listed which the Debtor may not be entitled to claim as a reduction against income. The Trustee objects to several deductions absent written proof, including, housing and utilities, taxes, life insurance, health insurance, and debt payment to BAC Home Loans.

According to the Trustee's analysis of the form, Line 59 is positive \$2,849.64 and based on the applicable commitment period of 60 months, Debtor is required to pay \$170,978.40 to unsecured creditors over the life of the plan.

Lastly, the Trustee argues that not all projected disposable income is being paid into the plan. Trustee asserts that Debtor may be withholding an excessive amount from her wages for income taxes. A review of the 2012 federal tax return provided to the Trustee shows that Debtors gross income in 2012 was \$144,505.00. Federal taxes withheld from wages were \$26,353.00, and Debtors total tax due was \$21,401.00. The return shows a refund of \$4,952.00. Debtors Schedule I shows tax withholding in excess of 33%. If the Debtor contributed her tax refunds to the plan on a yearly basis, \$4,952.00 for 12 months, this would equal an additional \$412.67 per month that the Debtor can contribute to her Chapter 13 plan payment.

Based on the above stated issues, 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.

32. [12-31448-E-13](#) VELEVA GOODRUM MOTION TO APPROVE LOAN  
PGM-1 Peter Macaluso MODIFICATION  
9-3-13 [[34](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 3, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Approve the Loan Modification is granted.** No appearance required.

Seterus, Inc., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current \$939.00 to \$522.16 plus \$188.96 escrow payment. The modification will capitalize the pre-petition arrears and provides for interest rate of 4.000% over the next 40 years.

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 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 Debtor, Veleva Goodrum is authorized to amend the terms of their loan with Seterus, Inc., which is secured by the real property commonly known as 4709 Amber Lane Unit 2, Sacramento, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 37, in support of the Motion.

33. 10-50149-E-13 GRACIELA VASQUEZ MOTION TO VALUE COLLATERAL OF  
DNP-2 Daryl Lander DEUTSCHE BANK NATIONAL TRUST  
COMPANY  
8-29-13 [[32](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 29, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 6405 Colette Way, North Highlands, California. The Debtor seeks to value the property at a fair market value of \$127,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$317,398.00. Deutsche Bank National Trust Company, As Indenture Trustee For Terwin Mortgage Trust 2007-3SL, Asset-Backed Securities, Series 2007-3SL (Serviced by Specialized Loan Servicing, LLC) second deed of trust secures a loan with a balance of approximately \$41,457.77. 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 Deutsche Bank National Trust Company, As Indenture Trustee For Terwin Mortgage Trust 2007-3SL, Asset-Backed Securities, Series 2007-3SL secured by a second deed of trust recorded against the real property commonly known as 6405 Colette Way, North Highlands, 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 \$127,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

34. [13-21349-E-13](#) REGINALD/TONE SCARBROUGH MOTION TO VALUE COLLATERAL OF  
ET-7 Matthew Eason CITIBANK, N.A.  
8-22-13 [[115](#)]

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 22, 2013. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2495 Cassandra Drive, Oroville, California. The Debtor seeks to value the property at a fair market value of \$310,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$329,860.00. Citibank N.A.'s second deed of trust secures a loan with a balance of approximately \$99,760.85. 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 Citibank N.A. secured by a second deed of trust recorded against the real property commonly known as 2495 Cassandra Drive, Oroville, 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 \$310,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

35. [10-31350](#)-E-13 CHRISTINE GILMORE MOTION TO VALUE COLLATERAL OF  
JT-7 John Tosney HSBC MORTGAGE SERVICES, INC.  
9-3-13 [[75](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 3, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral is denied without prejudice.** No appearance required.

Debtor offers the Declaration of James Chaussee, a licensed real estate appraiser with 38 years' experiences. The appraisal is of subject real property commonly known as 1940 Hall Street, Marysville, California.

Dckt. 12. The Real Estate Appraiser opines that the fair market value of property is \$124,000.00 as of the inspection date of April 7, 2010. Dckt. 78.

The first deed of trust secures a loan with a balance of approximately \$290,479.56. HSBC Mortgage Services, Inc's second deed of trust secures a loan with a balance of approximately \$50,093.53.

Debtor seeks to value the collateral of "HSBC Mortgage Services, Inc." However, HSBC Mortgage Services, Inc. appears to be a servicing agency for other entities that actually have an interest in the real property. The court will not issue orders on incorrect or partial parties that are ineffective. If Debtor is not aware of the actual entity that has in interest in their real property, Debtor may always use Federal Rule of Bankruptcy 2004 to aid themselves in finding the true creditor.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtor provides no evidence for the court to determine that this company is a creditor in this case. FN.1.

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FN.1. The misidentification of creditors for purposes of § 506(a) motions continues to mystify the court. Any order issued by the court would be void as to the actual creditor. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt secured by a second deed of trust (in this case) which has never been valued and for no lien-strip may be possible.  
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The court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect. The Motion is denied without prejudice.

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

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

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

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

36. [11-49750](#)-E-13 JUDITH ROTH  
MOH-1 Michael O. Hays

CONTINUED OBJECTION TO CLAIM OF  
WELLS FARGO BANK, N.A., CLAIM  
NUMBER 5  
7-23-13 [[31](#)]

CONT. FROM 8-20-13

Local Rule 3007-1(b)(2) Motion - Continued Hearing.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on July 23, 2013. By the court's calculation, 28 days' notice was provided. 30 days' notice is required.

**Tentative Ruling:** This Objection to a Proof of Claim has not been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(2) and (d).

**The Objection to Payment of Proof of Claim number 5 of Wells Fargo Bank, N.A. is overruled without prejudice.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **PRIOR HEARING**

Debtor objects to the claim of Wells Fargo Bank, N.A. filed on February 6, 2012. However, Local Bankruptcy Rule 3007-1(b)(2) requires that the objecting party file and serve an objection to claim at least thirty (30) days prior to the hearing date. If this were a motion to modify a Chapter 13 Plan, 35 days notice would be required. Here, only 28 days' notice was provided.

#### **REVIEW OF OBJECTION TO PAYMENT OF CLAIM OF WELLS FARGO BANK, N.A.**

The Debtor objects to the claim of Wells Fargo Bank, N.A. in the amount of \$22,424.90. Proof of Claim Mo. 5, filed February 6, 2012. As set forth in the proof of claim, this is an unsecured claim relating to a student loan. The Debtor co-signed for a loan obtained by Amy Doman (whom the Debtor identifies as her niece).

The Debtor asserts that she did not list Wells Fargo Bank, N.A. as a creditor since she considered her obligation as a co-signor to pay this claim to arise only when and if her niece (the borrower) failed to make the payments on the loan. The Debtor's confirmed Chapter 13 Plan provides for payment of \$1,150.00 a month for 60 months. Of this, \$705.00 a month is used to pay an eighty-five percent (85%) dividend on general unsecured claims.

The Debtor's niece testifies that she understands that she has an obligation to pay \$34.50 a month to Wells Fargo Bank, N.A. and intends to make that payment. Amy Doman Declaration, Dckt. 35. She states that she has made all payments on this obligation.

The Objection states that the Trustee has been paying monthly dividends to Wells Fargo Bank, N.A. on its unsecured claim, with the amounts totaling \$1,747.78. The Debtor is not seeking a refund of the payments on this claim, but only that no further payments on this unsecured claim be made. If no payments are made, the Debtor computes that the plan can be consummated and the other creditors receive their 85% dividend.

The Motion is an ambiguous "Objection to Payment" of the Wells Fargo Bank, N.A. claim, which generally sounds in the form of an objection to claim. However, in substance, it appears that the Debtor actually wants to modify the plan to provide for Wells Fargo Bank, N.A. as a Class 6 unsecured claim to be paid by a third-party (the niece) since this is a co-signed debt.

The court cannot grant relief pursuant to the motion, as it is not clear to the court, nor Wells Fargo Bank, N.A., as to what relief is requested. The court cannot, and will not, merely say, "don't pay that claim."

**CONTINUANCE**

Therefore, the court continued the hearing to allow the Debtor to amend the motion and re-notice the hearing clearly stating what she is intending to do - object to the claim based on a substantive ground that establishes the Bank has no right to receive payment through a plan; modify the plan to provide for the claim to be made by third-party payment; or such other relief which the Debtor may properly request. FN.1.

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FN.1. The court makes no comment as to the effect of this bankruptcy filing and the dischargeability of any obligation asserted by Wells Fargo Bank, N.A. relating to this student loan.  
-----

However, no amended motion or notice appears on the docket. The Debtor not complying with the prior order of the court, the objection is overruled 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 Objection to Claim of Wells Fargo Bank, N.A. filed in this case by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled without prejudice.

37. [11-49750-E-13](#) JUDITH ROTH MOTION FOR CONTINUED PAYMENT OF  
MOH-2 Michael O Hays THE CLAIM OF WELLS FARGO  
EDUCATION FINANCE SERVICES  
OUTSIDE OF DEBTOR'S PLAN  
9-10-13 [[46](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 10, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to for Continued Payment of 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 court's tentative decision is to deny the Motion for Continued Payment of Claim of Wells Fargo Education Finance Services Outside of Debtor's Plan.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor requests that the continued payment of the \$22,424.90 claim of Wells Fargo Education Finance Services be outside of the Debtor's Chapter 13 plan and that the Trustee no longer pay the dividend on the claim.

Debtor states she objected to the properly filed proof of claim, as she co-signed the student loan for her niece. The Debtor's niece testifies that she understands that she has an obligation to pay \$34.50 a month to Wells Fargo Bank, N.A. and intends to make that payment. Amy Doman Declaration, Dckt. 35. She states that she has made all payments on this obligation.

However, this Motion appears to be a request to modify the Chapter 13 plan, without going through the proper substantive and procedural requirements (notice, service and hearing). If Debtor actually wants to modify the plan to provide for Wells Fargo Bank, N.A. as a Class 6 unsecured claim to be paid by a third-party (the niece), this being a co-signed debt, a proper Motion to Modify (with proper notice and service) must be filed.

The court cannot grant relief pursuant to the motion, as it is not clear to the court, as to what relief is requested, or if the relief is in fact for a Motion to Modify, proper notice and service has not been provided to the parties.

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 Continued Payment of Claim of Wells Fargo Education Finance Services Outside of Debtor's Plan filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

38. [13-29251](#)-E-13 DAMION BOATMAN **OBJECTION TO CONFIRMATION OF**  
IRS-1 Scott Shumaker **PLAN BY INTERNAL REVENUE**  
**SERVICE**  
**9-4-13 [28]**

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on September 4, 2013. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on September 20, 2013. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot and the plan is not confirmed.

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

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

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

**IT IS ORDERED** that Objection is overruled as moot and the proposed Chapter 13 Plan is not confirmed.

39. 13-29251-E-13 DAMION BOATMAN OBJECTION TO CONFIRMATION OF  
NLE-1 Scott Shumaker PLAN BY DAVID P. CUSICK  
9-4-13 [[24](#)]

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 20, 2013. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

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

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on September 20, 2013. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot and the plan is not confirmed.

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

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

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

**IT IS ORDERED** that Objection is overruled as moot and the proposed Chapter 13 Plan is not confirmed.

40. [13-29351](#)-E-13 SHELBY SCANLAN  
NF-1 Nikki Farris

MOTION TO VALUE COLLATERAL OF  
DOUGLAS T. SHIELDS AND HORTON  
ENTERPRISES, INC.  
8-20-13 [[18](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor Douglas T. Shields and Horton Enterprises, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 20, 2013. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1480 Oak Ridge Drive, Chico, California. The Debtor seeks to value the property at a fair market value of \$216,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). The asserted value is also based on an appraisal completed by Laurie Adams of Adams Appraisal Company.

#### **CREDITOR'S OPPOSITION**

The Creditor Douglas T. Shields opposed the Debtor's Motion to Value Collateral. The Creditor seeks to value the real property commonly known as 1480 Oak Ridge Dr., Chico, California, at \$245,000 to \$270,000 based on the Creditor's independent appraisal from a licensed California realtor familiar with the residential real estate market in Chico, California.

There being disputed material factual issues, the matter will be set for an evidentiary hearing.

The court shall issue an Evidentiary Confirmation Hearing Order setting the following dates and deadlines:

(1) Testimony and exhibits shall be presented to the court pursuant to Local Rule 9017-1. Presentation of witnesses at the hearing is required.

(2) Debtors shall lodge with the court and serve their direct testimony statements and exhibits on or before -----  
-----.

(3) Creditor Douglas T. Shields shall lodge with the court and serve their direct testimony statement on or before -----.

(4) Evidentiary objections and confirmation hearing briefs shall be filed and served on or before -----  
-----.

(5) Oppositions to evidentiary objections shall be filed and served on or before -----.

(6) The Evidentiary Confirmation Hearing shall be conducted at -----.

41. [13-29852-E-13](#) JOHN GLENN  
KE-1 Karen Ehler

MOTION TO VALUE COLLATERAL OF  
YOLO FEDERAL CREDIT UNION  
8-28-13 [[15](#)]

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

Incorrect Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 28, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Value Collateral has not been correctly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Debtor seeks to value the secured claim of Yolo Federal Credit Union. However, the address provided for the creditor is not at an address

the court recognizes as sufficient to the named creditor. The address registered with the National Credit Union Administration is 266 W Main Street, Woodland, California. Here, the Debtor served a P.O. Box in Woodland, California.

Furthermore, the only address served for Creditor was a post office box. Service upon a post office box is plainly deficient. *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 92-93 (B.A.P. 9th Cir. 2004) (holding that service upon a post office box does not comply with the requirement to serve a pleading to the attention of an officer or other agent authorized as provided in Federal Rule of Bankruptcy Procedure 7004(b)(3)); see also *Addison v. Gibson Equipment Co., Inc., (In re Pittman Mechanical Contractors, Inc.)*, 180 B.R. 453, 457 (Bankr. E.D. Va. 1995) ("Strict compliance with this notice provision in turn serves to protect due process rights as well as assure that bankruptcy matters proceed expeditiously.").

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

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

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

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

42. [10-41154-E-13](#) J.C./JUDY SKINNER  
MWB-3 Mark Briden

MOTION TO INCUR DEBT  
9-10-13 [[57](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 10, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The motion seeks permission to purchase an unspecified vehicle, for a sum not exceeding \$20,000.00 with an interest rate not exceeding 18.25%.

#### **TRUSTEE'S OPPOSITION**

The Chapter 13 Trustee opposes the motion on the basis that the motion does not meet the requirements of Federal Rule of Bankruptcy Procedure 4001(c). The motion does not propose the purchase of any specific vehicle and merely states the planned vehicle to purchase is no longer available. The Motion fails to state forth all material provisions of the proposed credit agreement or provide a copy of the proposed credit agreement.

The Trustee states while the Debtor has testified that they checked with their local dealerships in Redding and the lowest interest rates was 18.25, they have not provided what dealerships were contacted, what rates were offered or whether the Debtor attempted to negotiate a lower interest rate without limiting other factors.

#### **DISCUSSION**

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In re Gonzales, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at

4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The Debtor does not address the reasonableness of incurring debt to purchase an unspecified vehicle with an substantial interest rate. First and foremost, the court will not issue a blanket order permitting the Debtor to enter into any agreement with such broad terms. Second, the debtor has not provided the court with evidence of what was done to attempt a lower interest rate. The court finds it hard to believe that the Debtors are unable to obtain a lower interest rate.

The motion is denied without prejudice.

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

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

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

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

43. [13-29354-E-13](#) MARY DAO MOTION TO SELL  
PGM-1 Peter Macaluso 9-3-13 [[21](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 3, 2013. By the court's calculation, 35 days' notice was provided. 21 days' notice is required.

**Tentative Ruling:** The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's tentative decision is to deny the Motion to Permit Debtor to Sell Property.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling

becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Here, the Debtor proposes to sell the real property commonly known as 10191 Wildhawk Drive, Sacramento, California. The sales price is \$630,000.00 and the named buyers are Bittay Giran and Ramnjit Kaur. The terms are set forth in the Purchase Agreement, filed as Exhibit B in support of the Motion. Dckt. 24. Debtor states she will receive \$3,000 in relocation expenses.

#### **TRUSTEE'S OBJECTION**

The Chapter 13 Trustee objects to the proposed sale of the real property on the grounds that the sale violates the proposed Chapter 13 plan in that the additional provisions of the plan filed July 13, 2013 state that the Debtor will sell her property within 6 months and will pay lump-sum payment to the Chapter 13 Trustee to pay all allowed claims in full. The HUD-1 Settlement Statement indicates that no funds are to come to the Trustee from the sale of the real property.

The Trustee also states that the Debtor's previous address was the subject real property being sold and that it is unclear if the \$3,000 HAFA relocation assistance is necessary.

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

Debtor responds stating that she requests the \$3,000 relocation expense as she must perform various cleaning services in order to earn these funds.

Debtor does not address the Trustee's contention that the proposed sale violates the proposed Chapter 13 plan as no proceeds go to the Chapter 13 Trustee in order to pay allowed claims in full.

There is not a Motion to Amend Plan altering the terms of the proposed plan filed with the court. The court is uncertain the intention of the Debtor with the short sale and her current pending plan.

Based on the evidence before the court, the court cannot determine that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is denied without prejudice.

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

IT IS ORDERED that the Motion is denied without prejudice.

44. [13-24756-E-13](#) JEFFREY/TINA SOOTER MOTION TO CONFIRM PLAN  
RPH-5 Robert Huckaby 8-16-13 [[79](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 16, 2013. By the court's calculation, 53 days' notice was provided. 42 days' notice is required.

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on August 16, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order

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

45. [13-29759](#)-E-13 JEFFREY/NANCY CARDINAL CONTINUED MOTION TO VALUE  
RJB-1 Robert J. Busch COLLATERAL OF PATELCO CREDIT  
UNION  
7-25-13 [8]

**Final Ruling:** The Debtor having filed a "Withdrawal of Motion" for the pending Motion to Value Collateral, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion to Value Collateral, and good cause appearing, **the court dismisses without prejudice the Debtors' Motion to Value Collateral.**

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

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

A Motion to Value Collateral having been filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

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

46. [08-34960-E-13](#) THELMA/EDWARD RHEA  
PGM-8 Peter Macaluso

CONTINUED MOTION TO MODIFY PLAN  
6-18-13 [[161](#)]

**CONT. FROM 7-23-13**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 18, 2013. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

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

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

#### **PRIOR HEARING**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee objects on the grounds that the plan fails the Chapter 7 liquidation analysis as Debtor's non-exempt equity totals \$29,050.00 and the Debtor proposes to pay the unsecured creditors a 9.8% dividend.

The Trustee also argues that the Debtors' plan was not proposed in good faith as debtor reports monthly gross income of \$10,078.56 but filed a paystub indicating the hourly rate is \$69.99. The Trustee argues that this equates to gross wage of approximately \$12,131.00, which is \$2,052.44 more than reported.

Lastly, the Trustee states that the declaration provided by the Debtor does not address changes in income or expenses.

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

Debtors respond, stating they have amended their exemption to the amount reasonably necessary for the surviving spouse in the amount of \$29,113.01. Debtors state the wild card exemption has also been amended.

Debtor contends that now the payment to unsecured creditors is sufficient for confirmation and above the liquidation amount required under the Code.

Debtor states that trustee's analysis is incorrect and based on the assumption of straight hours, not differential payments for different hours. Debtors assert that they would be agreeable to an increase for the three remaining months, but not the \$2,052.44. Debtor agrees to increase the last three monthly payments by \$500.00 each month, which would come from the insurance proceeds.

Lastly, the Debtor states that the changes in income were addressed in the Motion Substituting Party and are based on the death of the co-debtor.

#### **CONTINUANCE**

The court continued the hearing to allow Debtors to submit evidence addressing the Trustee's objections.

#### **SUPPLEMENTAL DECLARATION**

The Debtor filed a supplemental declaration on August 16, 2013, explaining how Debtor has disbursed the life insurance proceeds of \$50,000.00. Dckt. 117.

#### **FURTHER CONTINUANCE**

The court continued the hearing to allow Debtor to further address the Trustee's and the Court's concerns. No additional evidence has been filed to date with respect to this motion.

#### **DISCUSSION**

While Debtor has provided evidence regarding how she disbursed the life insurance proceeds, these explanations raise significant questions concerning the conduct of this above median income Debtor during the almost five years of the Chapter 13 case. First, she states that she had to pay \$11,000.00 in post-petition past due taxes. The Debtor altered her exemptions to increase her net paycheck, and underpay her taxes. This change was not consistent with (1) the financial information upon which the Chapter 13 plan was confirmed and (2) the Chapter 13 Debtor, as the fiduciary of the estate, appears to have intentionally under funded taxes to divert the monies to other uses not provided for by the Chapter 13 Plan.

Next, the Debtor says that she gifted \$10,000.00 to her children because her late husband "requested it in his will." The Debtor in this case reported on Schedule I having \$11,748.75 in gross income, plus her husband's \$987.00 in Social Security. After deductions for payroll taxes, Social Security taxes, retirement, and insurance, the Debtors reported \$8,968.33 a month in Average Monthly Income. Schedule I, Dckt. 1 at 32.

These Debtors were, and the current Debtor is, well over median-income debtors. Though being over-median income Debtors, under their bankruptcy plan, they have "struggled" to eek out a 9.8% dividend to creditors holding general unsecured claims. Along the way the Debtors

retained their BMW 530i, seek to lien strip a lien from their home, cure both a pre- and post-petition arrearage on their home, and maintain a \$3,079.16 monthly mortgage payment. Notwithstanding obtaining these significant benefits under the Bankruptcy Code and freeing themselves from substantially all of their debt, the Debtor and her late spouse also sought to under pay taxes, divert those monies to other purposes, and then divert insurance money to family members rather than properly applying it to the little payment they were making to creditors.

The Debtor states that she paid \$7,000.00 for funeral expenses. No breakdown of the expenses has been provided. FN.1.

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FN.1. The court appreciates that the death of a family member, and especially a spouse, is a traumatic event. Looking into the actual funeral expenses is not a callous attempt by the court to "pick at the wound," but arises from actual judicial experience. This court has and is addressing a case in which the surviving debtor has "funeral expenses" which included substantial expenses for travel of various family members, without regard as to whether they were necessary or reasonable.

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The Debtor also spent \$2,000.00 for a "trip back home" to deal with family issues. No explanation is provided for this expense.

The Debtor then spent \$2,000.00 to repair her vehicle and \$1,000.00 to replace carpeting in her house. No testimony is provided as to the necessity or reasonableness of these expenses.

Finally, the Debtor reports that she has invested the remaining \$19,953.35 with Metlife. No explanation is provided as to the nature of this investment, why the money has been invested, and how this investment is reasonable and necessary.

The Debtor, in light of this asset disclosure, has amended her Schedule C to claim a \$29,113.01 exemption in the insurance proceeds pursuant to California Code of Civil Procedure § 703.140(b)(11)(c) and an additional \$20,950.00 pursuant to California Code of Civil Procedure § 703.140(b)(5). Dckt. 173. This has caught the objection of the Chapter 13 Trustee, who challenges the exemption claimed under California Code of Civil Procedure § 704(b)(11)(c) because there is no showing that the insurance proceeds are necessary for the support of this over-median income Debtor, with a retirement plan and Social Security benefits, or any dependant of the Debtor. FN.2.

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FN.2. When this case was filed in 2008 the Debtors listed not only this Debtor's pension with her employer, but also a 401K with a balance of \$90,000. Schedule B, Dckt. 1 at 22.

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Debtor offers no evidence in response to the other issues raised in the Trustee's Objection to Confirmation. The Trustee raises significant issues as to the Debtor's true income and whether the financial information provided is accurate. It would have been quite simple for the Debtor to provide copies of actual paystubs to document the alleged "confusion" between "straight hours" and "differential payments for different hours."

The surviving Debtor has gross income of \$11,934.34 a month. In addition to having this income, the Debtor contends that making voluntary 401K contributions is reasonable. The Fourth Modified Plan does provide for substantial payments over the life of the plan, but the annualized income for the two Debtors was \$166,677. Form B22C, Dckt. 1 at 10. Though proposing to make approximately \$313,000.00 in plan payments, creditors holding general unsecured claims (\$297,170) are to receive only a 9.8% dividend. The Debtors' Plan has been to paid secured claims to retain real and personal property assets.

The Debtor also does not address the strict computation of projected disposable income as mandated by the Ninth Circuit Court of Appeals in *Drummond v. Welsh*, 711 F.3d 1120, 1128-1130, 1133-1135 (9th Cir. 2012). For over-median income debtors, the expenses which may be deducted from income are those permitted by the Internal Revenue Service Guidelines pursuant to 11 U.S.C. § 707(b). (The lower of the Guidelines or actual expense.)

### **Good Faith of Debtor**

The Debtor's conduct in this case raises substantial good faith issues. For the confirmation of any plan, a debtor must show not only that the case was filed in good faith, but that the plan was proposed in good faith. 11 U.S.C. § 1325(b)(a)(3), (a)(7). Pursuant to 11 U.S.C. § 1325(a)(3) a plan must be proposed in good faith. Courts apply the totality of the circumstances test in making a good faith determination and consider several factors in determining whether a plan was proposed in good faith, including:

1. Whether the proposed plan accurately states debtor's secured and unsecured debts;
2. Whether the proposed plan accurately states debtor's expenses;
3. Whether the proposed plan accurately states the percentage repayment of unsecured claims;
4. Whether the proposed plan has deficiencies and whether the inaccuracies amount to an attempt to mislead the bankruptcy court;
5. Whether the proposed payments indicate a fundamental fairness in dealing with one's creditors.

*In re Powers*, 135 B.R. 980, 994 (Bankr. C.D. Cal. 1991)(citing *In re Smith*, 848 F.2d 813, 818 (7th Cir. 1984). Although good faith in a Chapter 13 proceeding is determined on a case by case basis, a debtor must at minimum show that he or she has an honest intention. *In re Powers* at 992. One factor courts consider is whether the debtor acted equitably in proposing the Chapter 13 plan and whether a debtor has misrepresented facts in the plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed a plan in an inequitable manner. *Id.* at 992.

Under the totality of the circumstances, this Debtor has operated her finances under the cloak of bankruptcy protection other than as she and the co-debtor testified to under penalty of perjury. Tax payments were changed and significant post-petition taxes were incurred. The bankruptcy

case appears to be one filed solely to preserve a residence for this over-median income debtor, with little, if any, other debt restructure - other than discharging the debts for a small dividend.

Not being satisfied with that result, when she received a \$50,000.00 windfall (which the court recognizes arise from the very unfortunate circumstances of the death of her spouse), rather than properly addressing the \$50,000.00 asset under the Bankruptcy Code, the Debtor chose to spend first and then justify the expenses later. Rather than properly providing for her post-petition income tax arrearage through a modified plan, she tried to secretly pay them with a portion of the \$50,000.00 and hide the tax arrearage (and that she had a greater net income) from the court, creditors, and Chapter 13 Trustee.

The Debtor then decided that it was proper for her, as the fiduciary of the bankruptcy estate, to gift \$10,000.00 to her children because that is what her late husband wanted to happen. The Debtor believes that this "desire" trumped the Bankruptcy Code.

The Debtor reports having \$7,000.00 in funeral expenses, for which no documentation is provided. As this court has addressed in another, unrelated case, a debtor believed that reasonable and necessary funeral expenses included flying family members in for the funeral so that the family members did not have to incur the expenses (adopting a "its free money, so let's use it instead of paying creditors" attitude).

The Debtor also reports that she spent \$2,000.00 for a "trip back home." The court has no idea where is "back home," or why the trip was a necessary expense for this over-median income Debtor (one person household with more than \$11,000 income) to be paid from these monies.

Finally, the Debtor attempts to retain the money she was unable to expend, contending that it is "necessary for her support." This over-median income debtor provides no explanation why her more than \$11,000 a month income, retirement plan, Social Security benefits, and 401K (which was \$90,000.00 five years ago) do not reasonably provide for her support.

The court finds that this bankruptcy plan has not been proposed in good faith or that the case has been prosecuted in good faith in connection with the present motion and proposed plan. The conduct of the Debtor goes beyond merely this plan, and may so taint the case that she does not and cannot be found to have good faith for any plan in this case.

Many of the issues arising in connection with this contested matter may well be relevant under 11 U.S.C. § 1307(b) relating to the dismissal of the bankruptcy case. The Bankruptcy Code provides that the court, on request of a party in interest (including the U.S. Trustee) dismiss or convert the case "for cause." Examples of cause stated in § 1307(b) include (a) unreasonable delay which is prejudicial to creditors and (b) material default by the debtor with respect to terms of a confirmed plan. In addition, the issue of whether the Debtor has breached her fiduciary duties by diverting the monies of the estate to make gifts to her children, pay heretofore undisclosed post-petition tax arrearage (because the Debtor increased her exemptions to increase her monthly income beyond that testified to under penalty of perjury to the court and creditors to confirm

prior plans in this case), remodel expenses (new carpet) for her home, and personal travel is before the court. If such a motion is filed, the Debtor will have the full and fair opportunity to address these concerns.

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

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

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

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

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

47. [13-31261](#)-E-13 TUESDIA JOHNSON  
MMM-1 Mohammad M. Mokarram

MOTION TO APPROVE LOAN  
MODIFICATION  
9-23-13 [[14](#)]

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

Correct Notice Was Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, and Office of the United States Trustee on September 23, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required. The creditor was not served the Motion and supporting pleadings.

**Tentative Ruling:** The Motion to Approve a Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

**The court's tentative decision is to continue the hearing on the Motion to Approve the Loan Modification to 3:00 p.m. on October 29, 2013, and order that Wells Fargo Bank, N.A. is authorized to file with the court a copy of the Loan Modification Agreement which it intends to have the Debtor signed and wants authorized by the court.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

#### **NOTICE**

The Notice of Hearing was filed by the Debtor pursuant to Local Bankruptcy Rule 9014-1(f)(2). The Proof of Service Certificate indicates that only the Chapter 13 Trustee and the Office of the U.S. Trustee were served the Motion and relevant documents. Pursuant to Federal Rule of Bankruptcy Procedure 4001(c)(3), a notice of hearing is required to all parties in interest. Debtor failed to serve the motion and relevant pleadings to the Creditor or any other parties in interest. This is insufficient notice and service and cause to deny the Motion.

#### **MOTION**

Furthermore, the Motion does not comply with the requirements of Federal Rule of Bankruptcy Procedure 4001(c)(1)(B), as it fails to state all

material provisions of the proposed credit agreement, including interest rate, maturity, borrowing limits and conditions.

**EVIDENCE**

Lastly, Debtor failed to provide a copy of the Loan Modification Agreement as required by Federal Rule of Bankruptcy Procedure 4001(c)(1)(A). The Exhibits appear to be a series of letters from Wells Fargo Bank, N.A. to Debtor. This does not appear to be the finalized loan modification being sought by the Debtor.

Based on the several deficiencies noted above, the court denies the motion without prejudice.

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

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

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

**IT IS ORDERED** that the hearing on the Motion is continued to 3:00 p.m. on October 29, 2013.

**IT IS FURTHER ORDERED** that Wells Fargo Bank, N.A. is authorized and shall provide to counsel for the Debtor on or before October 15, 2013, a copy of the Loan Modification Agreement for which court approval is sought by this Motion. Counsel for the Debtor shall file and serve on the Chapter 13 Trustee the copy of the Loan Modification Agreement on or before October 17, 2013.

48. [13-29462-E-13](#) JOHN LONG  
NLE-1 David P. Ritzinger

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
9-4-13 [[21](#)]

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, 2013. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

**The court's decision is to continue the hearing on the Objection to 3:00 p.m. on October 29, 2013.** No appearance at the October 8, 2013 hearing is required.

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

The Trustee opposes confirmation offering evidence that the Debtor is \$840.00 delinquent in plan payments, which represents one month of the plan payment. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

Additionally, the Trustee argues that Debtor's plan may not be his best effort because Debtor did not report all his income. Trustee states Debtor provided him with business documents, including a profit and loss statement for July 2013. This shows Debtor's income of \$25,787.17 with only \$14,043.55 in expenses and \$11,743.62 in profit for the month. Trustee states Debtor has not provided any other statements or a breakdown of the expenses. Debtor reported income from his business of \$21,631 and expenses of \$19,313.

The Trustee also argues that he is unable to determine the feasibility of the plan, as Debtor failed to provide a business budget detailing the business income and expenses.

Lastly, the Trustee states the Debtor has failed to file a motion to value collateral of Franklin Credit Union, as proposed in the pending plan.

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

Counsel for Debtor states that while he failed to attend the first 341 meeting, he did attend the continued hearing on September 26, 2013. Counsel also states that Debtor has brought all plan payments current.

Counsel also contends that Debtor provided the Trustee with other monthly profit and loss statements, showing that the income varies widely from month to month. Counsel also states that Debtor filed a Business Income and Expense form with the Trustee.

Counsel also states that a Motion to Value Collateral has been filed and is set to be heard on October 29, 2013. The court will continue this hearing to be heard with the Motion to Value, allowing the Trustee additional time to review the documents allegedly forwarded to them by the Debtor.

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

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

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

**IT IS ORDERED** that the hearing on the Objection to confirmation the Plan is continued to 3:00 p.m. on October 29, 2013

49. [09-25463](#)-E-13 CRAIG/CAROLYN MCCONNELL  
JT-5 John Tosney

MOTION TO VALUE COLLATERAL OF  
THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A.  
9-3-13 [[73](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor Craig and Carolyn McConnell Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 3, 2013. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 515 Oakborough Avenue, Roseville, California. The Debtor seeks to value the property at a fair market value of \$190,000.00 as of the petition filing date. The value of the property is based on a appraisal conducted on or about March 10, 2009.

The first deed of trust secures a loan with a balance of approximately \$219,186.06. The Bank of New York Company, N.A.'s second deed of trust secures a loan with a balance of approximately \$93,020.80. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of The Bank of New York Company, N.A. secured by a second deed of trust recorded against the real property commonly known as 515 Oakborough Avenue, Roseville, 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 \$190,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

50. [12-26563](#)-E-13 YASWANT/KAMINI SINGH MOTION TO MODIFY PLAN  
PGM-6 Peter Macaluso 8-15-13 [[192](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 15, 2013. By the court's calculation, 54 days' notice was provided. 35 days' notice is required.

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

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

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

Creditors Rudolph and Evelyn Satterfield oppose the Motion to Confirm the Modified Plan on the grounds that the Debtors are not current

with the plan payments. Mrs. Satterfield testifies that she has not received the July 2013 or September 2013 payments. Creditors also state that the plan calls for direct payments to the Satterfields, but they want all the payments to be processed by the Trustee's office.

Creditors also argue that they filed a supplement to their claim for Post Petition Mortgage related Fees, Expenses and charges, which are not part of the proposed plan.

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

Debtor's Counsel states several procedural defects with the opposition. First, Counsel states that the opposition lacks any evidence. Mrs. Satterfield belatedly filed a declaration in support of the opposition on September 28, 2013, stating that she had not received payments. Dckt. 204.

Counsel also states that a signature is lacking on the Opposition. However, a review of the opposition shows that Counsel for the Satterfields, Andrew D. Smith, has a signature on the last page. Dckt. 200.

Counsel also states that the opposition lacks any personal knowledge. However, the opposition is a pleading in which counsel argues the merits of the relief, not a declaration in which he or she needs personal knowledge.

Additionally, Counsel argues that Debtors are current with the payments under the loan modification and are now being paid directly to the creditor. However, now Counsel has not provided any evidence that these payments have in fact been made.

Counsel argues that Creditor has now allegedly paid pre-petition property taxes post-petition, prior to the approved loan modification. This has caused confusion because Creditor has paid this pre-petition claim, for which a proof of claim has already been filed, completed and granted a loan modification to the Debtors.

Counsel also states the continued collection efforts of these claims is inappropriate and the payment of the pre-petition claims is an attempt to gain an advantage over the debtors. Counsel states Creditor has not provided proof of any payment of claims, when they were paid, to whom they were paid, what period they satisfied and any balance of the funds. Counsel argues that Creditors have disrupted the plan feasibility and payment disbursement which has resulted in their own lack of payment.

#### **DISCUSSION**

There appears to be several factual issues between the parties arising in this Motion to Confirm. First, the court must determine if Debtors made the payments to Creditors as purported in the loan modification and the proposed plan. Here, Creditors provide the Declaration of Mrs. Satterfield stating that she has not received several payments. Counsel for Debtor argues that they are current with the payments, without providing any evidence.

Second, the loan modification was approved by the court on July 16, 2013, Dckt. 185, allegedly resolving the dispute between the parties. However, it appears the parties are still disputing the mortgage related fees related to a tax payment made by Creditors.

The parties shall clearly and expressly state the payments which they assert are to be made under the settlement agreement, any additional amounts to be added thereto, and the defaults (or payments made for the alleged defaults) which exist. The fact that the court approved a settlement in July 2013 and by September 2013 the parties are squabbling about it may well be an indication that one or more of the parties are not proceeding in good faith. Further, the fact that neither party timely provided any evidence in support of their contentions may well indicate that they are not proceeding in good faith and significant correction sanctions may be warranted.

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  
xxxx.

51. [13-28764-E-13](#) GORDON/ELIZABETH HARRISON MOTION TO AVOID LIEN OF  
RAC-2 Richard A. Chan DISCOVER BANK  
9-9-13 [[29](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, respondent creditor, parties in interest, and Office of the United States Trustee on September 9, 2013. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

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

**The Motion to Avoid a Judicial Lien is granted.** No appearance required.

Debtor asserts that a judgment was entered against the Debtor in favor of Discover Bank for the sum of \$13,018.20. A Writ of Execution was issued by the Superior Court for the Los Angeles County Sheriff's Office and on June 19, 2013, a Notice of Levy was served on Debtor. Debtor asserts the Sheriff's Office mailed a letter to his attorney informing that funds levied were being held and it was discovered that they were holding \$1,444.09.

Debtors state they have listed the funds on Schedule B and have properly exempted them on Schedule C pursuant to California Code of Civil Procedure § 703.140(b)(5). Debtors assert that this lien was recorded as a result of a pre-petition judgment rendered in the amount of \$13,018.26.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule B, the subject property has an approximate value of \$1,444.09 as of the date of the petition. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1,444.09 in 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 property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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 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 judgment lien of Discover Bank, against the money levied by the Los Angeles County Sheriff's Office in the amount of \$1,444.09, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

52. 13-29064-E-13 TERRY/REBECA BRISTER MOTION TO VALUE COLLATERAL OF  
MET-2 Mary Ellen Terranella PNC BANK, N.A.  
9-7-13 [25]

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

Incorrect 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 7, 2013. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Value Collateral has not been correctly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Debtor seeks to value the collateral of PNC Bank, N.A. However, the motion and supporting pleadings were not properly served on PNC Bank, N.A. The address provided on the FDIC website is 222 Delaware Avenue, Wilmington, Delaware. The only address served directly to this creditor was 222 Delaware Avenue, Charlotte, North Carolina. The Motion to Value Collateral is denied as the court has not evidence that the creditor was properly served.

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

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

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

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

53. 11-21466-E-13 TERESA TRENT MOTION FOR COMPENSATION FOR  
MWB-3 Mark Briden MARK W. BRIDEN, DEBTOR'S  
ATTORNEY(S), FEES: \$565.50,  
EXPENSES: \$21.78  
8-28-13 [[52](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 28, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

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

**The Motion for Compensation is granted.** No appearance required.

Law Offices of Mark Briden, Counsel for Debtor, seeks additional attorney fees in the amount of \$587.28. Counsel demonstrates that these additional fees are actual, reasonable, necessary and unanticipated as post-confirmation work required through the Debtor's declaration and the Motion.

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

1. To review and respond to a Motion to Dismiss, and prepare and confirm First Modified Chapter 13 Plan. Counsel suggests this motion to modify the Chapter 13 plan was unanticipated, as the Trustee filed a Motion to Dismiss the case.

The hourly rates for the fees billed in this case are \$195.00/hour for counsel for 2.9 hours of unanticipated and substantial work. The court finds that the hourly rates reasonable and that counsel effectively used appropriate counsel and rates for the services provided. The total attorneys' fees in the amount of \$587.28 (includes \$21.78 in costs) are approved and authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 13 case.

The Chapter 13 Trustee filed a statement of non-opposition to the Motion for Compensation.

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

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

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

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

Law Offices of Mark Briden, Counsel for Debtor  
Applicant's Fees Allowed in the amount of \$587.28.

54. [13-29966](#)-E-13 GARY BROWN  
NLE-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
9-4-13 [[18](#)]

CASE DISMISSED 10-2-13

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

**IT IS ORDERED** that the Objection is dismissed as moot, the case having been dismissed.

55. [13-29769-E-13](#) JOHN JAMES  
NLE-1 Peter G. Macaluso

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
9-5-13 [[29](#)]

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 5, 2013. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtors have failed to provide copies of the employer payment advices as required under 11 U.S.C. §521(a)(1)(B)(iv).

The Trustee also states that Debtor proposes to pay Wells Fargo Bank's first deed of trust as a Class 4 debt, the creditor filed an objection to confirmation indicating the Debtor is in arrears on the mortgage. Therefore it appears this creditor should not be in class 4.

The Trustee also argues that the plan is not the Debtors best effort. Debtor is above median income and proposes a 60 month plan paying \$900.00 per month with a dividend of 0% to unsecured claims. Trustee argues that the Debtor has more disposable income than reported on Schedule J.

First, the Trustee states that Schedule I shows \$1,500 per month gross receipts from operation of business and only \$1,000 on Form 22C. Debtor also claims unspecified "paycheck deductions" of \$2,896.26 on line 19, which appears to match Schedule I and includes a \$300.00 deduction for a 403B loan which will be paid off within 60 months and should only be claimed at \$65.00.

Second, the pension of \$1,492.44 which reflects the net income from Debtor's PERS retirement. The gross amount of the pension is \$2,037.92, the net income is \$1,525.84 after deductions for \$150 federal tax, \$40 state tax, \$35.12 delta premier (dental), \$133.56 PERS Choice-Basic (healthcare), \$15.73 DPANSP (vision) and \$137.67 PERS Long Term Care insurance. Income is \$33.40 greater than reported on Schedule I.

Third, business expenses of \$640 are claimed on Scheduled J, as well as business income of \$1,500.00 on Schedule I, but the Debtor's business income on Schedule I is approximately 1/3 of the income reported in 2012 which was \$126,573. The Trustee is not certain whether the business expenses are still incurred at the amounts claimed.

Fourth, Debtors list on Schedule I gross income for debtor's non-filing spouse of \$6,828.01 and a net income of \$3,931.75. However, according to the paystubs provided by Debtor's counsel, the non-filing spouse's gross income is \$7,781.63 and the net income is \$4,461.72, of the deductions, Federal Taxes of \$1,326.55 are withheld from her payroll which is approximately 17% of her income, which appears to be more than adequate amount. The income appears to be \$529.97 less than reported on Schedule I. Also the spouse's most recent paystub provided is dated January 1, 2013, the Trustee has requested updated paystubs be provided but has not yet received them.

Fifth, on Schedule J, Debtor deducts \$500 per month for tax offset for IRS. However, Debtor has listed and proposes to pay all tax liabilities in Class 6 of the plan. The Trustee is uncertain why Debtor would need to withhold an additional \$500 per month toward taxes.

Sixth, on Debtor's 2012 tax return, he reports income of \$3,568 from 20 ordinary dividends. Debtor does not report any such income on his Schedule I, the Trustee is unable to determine whether all assets and income are reported. Debtor does not show any sale or transfer of property in the last 2 years on his Statement of Financial Affairs.

Seventh, on Debtor's 2012 tax return, he reports income from farm income of \$944. Debtor does not report any such income on his Schedule I, the Trustee is unable to determine whether all assets and income are reported. Debtor does not show any sale or transfer of property in the last 2 years on his Statement of Financial Affairs.

Eighth, Debtor deducts \$120.00 per month on Schedule J for life insurance, however, no life insurance policies are reported on Schedule B. It appears this is not an expense and \$120.00 per month should be added to the plan payment.

Ninth, on Schedule I, Debtor deducts \$300 per month for payment on a 403B loan. Debtor fails to indicate when the loan will pay off, but indicated at their 341 that the original loan amount was \$4,200.00. The Trustee requests the Debtors provide accurate balance of the 403B loan and when the loan will be paid off. The plan payments should increase by \$300 at that time.



resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Creditor PNC, Bank, N.A., objects to confirmation of the proposed Chapter 13 plan on the basis that Debtor improperly attempts to bifurcate their claim pursuant to 11 U.S.C. § 506(a) as the value of the subject real property is greater than asserted by the Debtor.

Based on the disputed, the Court was prepared to set the Motion to Value Collateral of PNC Bank, N.A. for an evidentiary hearing. However, on October 4, 2013, PNC Bank, N.A. and the Debtor filed a stipulation for the dismissal of the motion to value without prejudice. Stipulation to Withdraw, Dckt. 38. The court interprets the "Stipulation to Withdraw" to be a stipulation to dismiss that Contested Matter without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rule of Bankruptcy Procedure 7041, 9014.

The Motion to Value having been dismissed without prejudice, the Objection is sustained and the Chapter 13 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 the Plan is sustained and the Chapter 13 Plan is not confirmed.

57. [13-29770-E-13](#) CHERRI BURTON  
NLE-1 Richard D. Steffan

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
9-4-13 [[28](#)]

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, 2013. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending Motion to Value Collateral of PNC Bank, which the court set for an evidentiary hearing. However, the parties to that Contested Matter have dismissed the motion without prejudice.

The Trustee also states that Debtor's plan may fail the Chapter 7 liquidation analysis. Trustee argues that the Debtor lists on Schedule A, real property described as 5.958 acres undeveloped 2320 Sweetwater Trail, Auburn Lake Trails, Cool, California at a value of \$30,000.00. Schedule D shows a debt to El Dorado County Tax Collector for \$1,485.09 for 2009 and assuming a 1% property tax rate, the property would appear to be assessed at \$148,500.90 - with Debtor's half being worth \$74,250.45. This is a difference of \$44,250.45 than the value stated in Schedule A.

Based on the foregoing, 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.

58. 13-29770-E-13 CHERRI BURTON CONTINUED MOTION TO VALUE  
RDS-1 Richard D. Steffan COLLATERAL OF PNC BANK N.A.  
7-30-13 [[10](#)]

**CONT. FROM 9-10-13**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor Cherri D. Burton, Debtor's Attorney, Chapter 13 Trustee, and the United States Trustee on August 26, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Value Collateral of the Creditor PNC National Association has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Respondent-creditor PNC Bank, N.A. filed opposition. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set.

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

**PRIOR HEARING**

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 167 Channing Way, Auburn, California. The Debtor seeks to value the property at a fair market value of \$175,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of \$182,609.88. PNC Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$94,868.00.

**CREDITOR'S OPPOSITION**

Creditor PNC Bank, N.A. filed a opposition claiming that the property is valued at \$253,000.00. The Creditor provided evidence of Broker's Price Opinion to support this value estimate.

PNC Bank, N.A. requests time to have an appraisal prepared for the property. Because the court does not find Creditor's contention that it "[o]pposes Debtor's Motion in that the Debtor is attempting to treat Secured Creditor as an unsecured claim, which it is not!" not determinative, the court was prepared to set a discovery schedule in this contested matter.

The court granted a continuance to allow the parties time to have the real property appraised. On October 4, 2013, PNC Bank, N.A. and the Debtor filed a stipulation for the dismissal of the motion to value without prejudice. Stipulation to Withdraw, Dckt. 38. The court interprets the "Stipulation to Withdraw" to be a stipulation to dismiss that Contested Matter without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rule of Bankruptcy Procedure 7041, 9014.

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

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

The Motion to Value the secured claim of PNC Bank, N.A. filed by Cherri Dee Burton, the Debtor, having been presented to the court, the parties having filed a stipulation to dismiss the Motion without prejudice, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Value the secured claim of PNC Bank, N.A. is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) and Federal Rule of Bankruptcy Procedure 7041, 9014.

**CASE DISMISSED 9-24-13**

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, the attorneys for U.S. Bank, N.A., and Office of the United States Trustee on September 11, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion for Sanctions 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 deny the Motion for Sanctions.** 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:

Gary and Judy Duerner ("Movant") seek sanctions pursuant to Federal Rule of Civil Procedure 11 and the court's inherent power against Bernard J. Kornbery and/or Adam N. Barasch and/or Severson & Werson, A Professional Corporation ("Creditor's Counsel") for submitting false or misleading information on the record in this proceeding. FN.1.

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FN.1. This case was dismissed on September 24, 2013 by order of the court. Dckt. 73. However, bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).  
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Movant alleges that Creditor's Counsel submitted or signed false or misleading statements as to material facts onto the record with prior knowledge that these facts were false.

First, Movant states that Creditor's Counsel filed an Objection of US Bank to Confirmation of Plan in case no. 13-29072, which states: "Creditor qualifies as the Note holder with standing to prosecute the instant objection as Lender indorsed the Note in blank, thereby converting the Note to a bearer instrument and Creditor is currently in rightful possession of the indorsed in blank Note."

Second, Movant states Creditor's Counsel filed an Memorandum of Points and Authorities in Support of Motion to Dismiss Adversary Proceeding for Failure to State a Claim, case no. 13-29072, adv. no. 13-02238, which states: "Subsequently, the Note was specifically indorsed by Wells Fargo to US Bank."

Movant alleges that these two statements were submitted to the court by the same people at the same firm six days apart and are completely opposite of each other.

### **OPPOSITION**

Although no opposition is required in a pleading noticed pursuant to Local Bankruptcy Rule 9014-1(f)(2), Creditor's Counsel submitted opposition stating that Debtors did not comply with the safe harbor provisions of Rule 11 and that they have filed Notices of Errata to the Objection to Confirmation making the language consistent.

Creditor's Counsel argues that Federal Rule of Bankruptcy Procedure 9011(c)(1)(A) provides a safe harbor provision that requires Movant to provide an opportunity for Creditor's Counsel to correct the error before a motion for sanctions is filed and additional costs are incurred.

Creditor's Counsel also argues that they have already made the necessary corrections sought by Debtors, as they filed Notices of Errata on September 13, 2013, and September 19, 2013.

Lastly, Creditor's Counsel states that the correction to objection to plan confirmation was material to the grounds sought for relief. Creditor's Counsel asserts that whether the Note was specifically indorsed in blank or indorsed to US Bank, US Bank still has possession of the Note and can enforce it. Secondly, Creditor's Counsel states that whether the Assignment to US Bank included the Note and Deed of Trust or just the Deed of Trust can be determined by reviewing the recorded Assignment

### **DISCUSSION**

Bankruptcy Courts have the jurisdiction to impose sanctions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-49 (9th Cir. 2004). The court also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see also 11 U.S.C. § 105(a).

A Bankruptcy Court is also empowered to regulate the practice of law before it. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right to discipline attorneys who appear before the court.

*Chambers v. NASCO, Inc.* 501 U.S. 32,43 (1991); see also *Lehtinen*, 564 F.3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience to a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Lehtinen*, 564 F.3d at 1058. However, the court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

Federal Rule of Bankruptcy Procedure 9011(c)(1)(A) provides (emphasis added),

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How initiated.

(A) By motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. **The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b).** If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

The Ninth Circuit Court of Appeals has held that "the procedural requirements of Rule 11(c)(1)(A)'s 'safe harbor' are mandatory. *Radcliffe v. Rainbow Constr. Co.*, 254 F.3d 772, 789 (9th Cir. Cal. 2001)(citing *Barber v. Miller*, 146 F.3d 707, 710 (9th Cir. 1998)). Here, Movant failed to adhere to the 21 day safe harbor provision of Federal Rule of Bankruptcy Procedure 9011, as Movant has failed to provide any evidence of compliance.

Notwithstanding the safe harbor provision, this court may issue corrective sanctions pursuant to the inherent power of the court to address conduct of the parties on counsel. The court considers the Motion on its merits.

The court also notes that Creditor's Counsel filed two Notices of Errata, correcting the error made in the pleadings within a few days after the notice of this Motion was sent out. Dckts. 60, 69. This appears to correct the language that the Movant cited as incorrect.

Furthermore, the court does not have sufficient proof of misconduct to impose sanctions in this instance. While the rules does not list other factors that a court should consider in deciding whether to impose a sanction, the Advisory Committee Note suggest the following factors for consideration:

- whether the improper conduct was willful or negligent;
- whether it was part of a pattern of activity or an isolated event;
- whether it infected the entire pleading or only one particular count or defense;
- whether the person has engaged in similar conduct in other litigation;
- whether it was intended to injure;
- the effect it had on the litigation process in time or expense;
- whether the responsible person is trained in the law;
- that amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case;
- the amount needed to deter similar activity by other litigants.

10 COLLIER ON BANKRUPTCY ¶ 9011.06 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). Here, none of the factors weigh in favor of sanctions as Movant has not shown that this conduct was willful, that there was a pattern on the part of Creditor's Counsel, that it affected the pleadings in any way, or that there was any intent to injure Movant.

Additionally, this motion is filed in the backdrop of the ongoing dispute between the Debtors and creditor over the ownership of the Note and who has the right to enforce the note. The Debtors commenced their first bankruptcy in 2009. Through the September 2013 dismissal of the most recent case, the Debtors have filed the following bankruptcy cases and adversary proceeding in this court.

08-23618 Chapter 7	Filed: March 25, 2008 Discharge Entered: November 10, 2008
09-24467 Chapter 13 Case	Filed: March 16, 2009 Dismissed: February 26, 2010

09-2664 Adversary Proceeding, <i>Duerner v. Bank of America, N.A.</i>	Filed: October 13, 2009 Dismissed: December 18, 2009
09-48497 Chapter 13 Case	Filed: December 30, 2009 Dismissed: January 30, 2012
10-2056 Adversary Proceeding <i>Duerner v. Bank of America, N.A.</i>	Filed: February 2, 2010 Dismissed September 16, 2011
12-40283 Chapter 11 Case	Filed: November 20, 2012 Dismissed: August 9, 2013
13-2012 Adversary Proceeding <i>Duerner v. Barasch</i>	Filed: January 9, 2013 Dismissed: April 8, 2013
13-2191 Adversary Proceeding <i>Duerner v. U.S. Bank, N.A.</i>	Filed: June 13, 2013 Dismissed: July 26, 2013
13-29072 Chapter 13 Case	Filed: July 8, 2013 Dismissed: September 24, 2013
13-2238 Adversary Proceeding <i>Duerner v. U.S. Bank, N.A.</i>	Filed: July 22, 2013 Dismissed: September 18, 2013 (Fed. R. Civ. P. 41(a)(1)(A)(I))

The bankruptcy cases and adversary proceedings center around the Debtors fight that U.S. Bank, N.A., and previously Bank of America, N.A., is not and cannot be a creditor entitled to enforce notes and deeds of trust. The Debtors complaints focus on the residential loan industry of the mid-2000's and the asserted inability of anyone to come forward and "prove" that they own the notes and have the right to enforce the deeds of trust against property owned by the Debtors.

As opposed to many debtors who believe that all notes and deed of trust from loans made in the mid-2000's be declared void and the consumers own their house without having to repay the money they borrowed to buy the house, these Debtor acknowledge an obligation to pay, but question who is entitled to payment.

As shown by the amended complaint in Adv. 13-2238 these disputes have nothing to do with the Bankruptcy Code or bankruptcy case, but the Debtors are seeking to have U.S. Bank N.A. efforts at enforcing the note and conducting non-judicial foreclosure sales invalid. It is from this fight that ancillary allegations of misconduct, based on the Bank and its attorneys asserting that the Bank owned and had the right to enforce the notes, flow.

Instead of prosecuting a law suit on the merits and getting a determination as to whether U.S. Bank, N.A. owns or has the right to enforce the notes, multiple bankruptcy cases and adversary proceedings have been filed and dismissed. The present motion is just another "side-show

proceeding" in which the fight is over what someone said, rather than going to the merits of the respective rights.

The court is not going to be dragged into side-show fights and indirect litigation of issues which must be the subject to a state court or district court law suit (if proper grounds exist for a federal court to exercise jurisdiction over that action). The Debtors can, or have had, their day(s) in court on that issue, and the court is not going to piecemeal start punishing the opposing party or its attorney over how a position was stated.

The Debtors' contentions that conduct of the Creditor and counsel has led to the Debtors' bankruptcy demise because the Creditor is not meritorious. Relief from stay proceedings are summary proceedings in which the court looks to see if the moving party is asserting at least a colorable claim as to an interest or right that it seeks to enforce. The court makes no determination as to what interests the parties have and who is actually entitled to enforce those rights. Such determination must be made in the state court action, district court action, or bankruptcy court adversary proceeding. FN. 2.

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FN.2. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at \*8-\*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief.  
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These Debtors, while well intentioned and frustrated, are not alone in flaying and floundering through the legal system. It is not only *pro se* debtors, but attorneys who are licensed by the State of California and take on the representations of consumers who fail to conduct straightforward discovery and productively prosecute an action to judgment for a determination as to whether the defendant creditor has or does not have ownership or the right to enforce a note and deed of trust. In a bankruptcy case that failure is even worse when the attorneys fail to pick up the righteous sword of a Chapter 13 debtor or Chapter 11 debtor in possession to strike through the enhanced discovery rights in the bankruptcy case itself (Rule 2004 exam) and make the asserted creditor "put-up or shut-up" with respect to being a creditor in the case. Rather, too many just exhaust their time and energy poking, prodding, jabbing and complaining, ignoring the real fight in which they should be engaged.

The banks have been little better, equally frustrating the reasonable and prompt adjudication of cases and adversary proceedings before this court. Too often it is not until the trial or evidentiary hearing to which the court has herded the parties does someone from the bank show up with a note endorsed in blank or specifically endorsed, saying "yes, this the note and we can enforce it." The banks seem more than content in wasting time and money stumbling around and not articulating a clear basis for ownership of or the right to enforce a note secured by a deed of trust. Unfortunately, the *pro se* debtors and many consumer attorneys are more than

accommodating of this bank action, failing to force the issue through effective (or often any) discovery.

No proper grounds exist for this court issuing sanctions in this case.

Therefore, the motion is denied.

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

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

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

**IT IS ORDERED** that the Motion is denied.

60. [13-29072](#)-E-13 GARY/JUDY DUERNER  
GDD-3

MOTION FOR SANCTIONS  
9-16-13 [[62](#)]

**CASE DISMISSED 9-24-13**

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, the attorneys for U.S. Bank, N.A., and Office of the United States Trustee on September 16, 2013. By the court's calculation, 22 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion for Sanctions 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 deny the Motion for Sanctions.** 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:

Gary and Judy Duerner ("Movant") seek sanctions pursuant to Federal Rule of Civil Procedure 11 and the court's inherent power against Bernard J. Kornberg and/or Adam N. Barasch and/or Severson & Werson, A Professional Corporation ("Creditor's Counsel") for submitting false or misleading information on the record in this proceeding. Movant filed this pleading after the first Notice of Errata was filed by Creditor's Counsel. FN.1.

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FN.1. This case was dismissed on September 24, 2013 by order of the court. Dckt. 73. However, bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).  
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Movant alleges the same basis for this Motion for Sanctions as the prior Motion for Sanctions (DCN GDD-2) that Creditor's Counsel submitted or signed false or misleading statements as to material facts onto the record with prior knowledge that these facts were false. The same argument brought forward:

First, Movant states that Creditor's Counsel filed an Objection of US Bank to Confirmation of Plan in case no. 13-29072, which states: "Creditor qualifies as the Note holder with standing to prosecute the instant objection as Lender indorsed the Note in blank, thereby converting the Note to a bearer instrument and Creditor is currently in rightful possession of the indorsed in blank Note."

Second, Movant states Creditor's Counsel filed an Memorandum of Points and Authorities in Support of Motion to Dismiss Adversary Proceeding for Failure to State a Claim, case no. 13-29072, adv. no. 13-02238, which states: "Subsequently, the Note was specifically indorsed by Wells Fargo to US Bank."

Movant alleges that these two statements were submitted to the court by the same people at the same firm six days apart and are completely opposite of each other.

The only difference in this Motion for Sanctions is that there is reference to the first Notice of Errata that "only corrected one sentence."

#### **OPPOSITION**

Although no opposition is required in a pleading noticed pursuant to Local Bankruptcy Rule 9014-1(f)(2), Creditor's Counsel submitted opposition stating that Debtors did not comply with the safe harbor provisions of Rule 11 and that they have filed Notices of Errata to the Objection to Confirmation making the language consistent.

Creditor's Counsel argues that Federal Rule of Bankruptcy Procedure 9011(c)(1)(A) provides a safe harbor provision that requires Movant to

provide an opportunity for Creditor's Counsel to correct the error before a motion for sanctions is filed and additional costs are incurred.

Creditor's Counsel also argues that they have already made the necessary corrections sought by Debtors, as they filed Notices of Errata on September 13, 2013, and September 19, 2013.

Lastly, Creditor's Counsel states that the correction to objection to plan confirmation was material to the grounds sought for relief. Creditor's Counsel asserts that whether the Note was specifically indorsed in blank or indorsed to US Bank, US Bank still has possession of the Note and can enforce it. Secondly, Creditor's Counsel states that whether the Assignment to US Bank included the Note and Deed of Trust or just the Deed of Trust can be determined by reviewing the recorded Assignment

## DISCUSSION

Bankruptcy Courts have the jurisdiction to impose sanctions. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-49 (9th Cir. 2004). The court also has the inherent civil contempt power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (In re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see also 11 U.S.C. § 105(a).

A Bankruptcy Court is also empowered to regulate the practice of law before it. *Peugeot v. U.S. Trustee (In re Crayton)*, 192 B.R. 970, 976 (B.A.P. 9th Cir. 1996). The authority to regulate the practice of law includes the right to discipline attorneys who appear before the court. *Chambers v. NASCO, Inc.* 501 U.S. 32,43 (1991); see also *Lehtinen*, 564 F.3d at 1058.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience to a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contemtor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Lehtinen*, 564 F.3d at 1058. However, the court cannot issue punitive sanctions pursuant to its power to regulate the attorneys or parties appearing before it. *Id.* at 1059.

Federal Rule of Bankruptcy Procedure 9011(c)(1)(A) provides (emphasis added),

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How initiated.

(A) By motion. A motion for sanctions under this rule shall be made separately from other motions or requests and

shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 7004. **The motion for sanctions may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected, except that this limitation shall not apply if the conduct alleged is the filing of a petition in violation of subdivision (b).** If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

The Ninth Circuit Court of Appeals has held that "the procedural requirements of Rule 11(c)(1)(A)'s 'safe harbor' are mandatory. *Radcliffe v. Rainbow Constr. Co.*, 254 F.3d 772, 789 (9th Cir. Cal. 2001)(citing *Barber v. Miller*, 146 F.3d 707, 710 (9th Cir. 1998)). Here, Movant failed to adhere to the 21 day safe harbor provision of Federal Rule of Bankruptcy Procedure 9011, as Movant has failed to provide any evidence of compliance.

The court also notes that even if this provision was overlooked, Creditor's Counsel filed two Notices of Errata, correcting the error made in the pleadings within a few days after the notice of this Motion was sent out. Dckts. 60, 69. This appears to correct the language that the Movant cited as incorrect.

Furthermore, the court does not have sufficient proof of misconduct to impose sanctions in this instance. While the rules does not list other factors that a court should consider in deciding whether to impose a sanction, the Advisory Committee Note suggest the following factors for consideration:

- whether the improper conduct was willful or negligent;
- whether it was part of a pattern of activity or an isolated event;
- whether it infected the entire pleading or only one particular count or defense;
- whether the person has engaged in similar conduct in other litigation;
- whether it was intended to injure;
- the effect it had on the litigation process in time or expense;
- whether the responsible person is trained in the law;

-- that amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case;

-- the amount needed to deter similar activity by other litigants.

10 COLLIER ON BANKRUPTCY ¶ 9011.06 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). Here, none of the factors weigh in favor of sanctions as Movant has not shown that this conduct was willful, that there was a pattern on the part of Creditor's Counsel, that it affected the pleadings in any way, or that there was any intent to injure Movant.

The court has addressed in detail the history of these Debtors and the target (and its client) of the motion in connection with the Motion for Sanctions, DCN: GDD-2. Those findings and conclusions are equally applicable here and the court incorporates them herein and makes them part hereof by this reference.

Therefore, the motion is denied.

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

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

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

**IT IS ORDERED** that the Motion is denied.

61. [11-40375-E-13](#) WILLIAM/ERIN EHLER MOTION TO VALUE COLLATERAL OF  
RDS-4 Richard D. Steffan JP MORGAN CHASE BANK N.A.  
9-20-13 [[67](#)]

Local Rule 9014-1(f)(2) Motion - Stipulation 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 20, 2013. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Value Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The parties having filed a Stipulation which

resolves this Motion, the court has determined that oral argument will not be of assistance in ruling on this Contested Matter.

**The court's tentative decision is to grant the Motion to Value Collateral and determine creditor's secured claim to be \$0.00, pursuant to the Stipulation of the Parties.** No appearance at the October 8, 2013 hearing is required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 11475 Madrone Court, Auburn, California. The Debtor seeks to value the property at a fair market value of \$260,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). The debtor's estimate of the value is referencing the Declaration of Appraiser filed concurrently.

The first deed of trust secures a loan with a balance of approximately \$366,745.69. JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$67,844.14. 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 parties filed a Stipulation agreeing that the replacement value of the subject real property as defined by 11 U.S.C. § 506(a)(2), being no more than \$260,000.00 and such value being subject to a first deed of trust senior to this Creditor, the parties agree that amount of JPMorgan Chase Bank, N.A.'s secured claim is zero and is unsecured in the amount of \$68,617.37.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 11475 Madrone Court, Auburn, 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 \$260,000.00 and is

encumbered by senior liens securing claims which exceed the value of the Property.

62. [08-32076-E-13](#) **GEORGE/PATRICIA FEATHER** **MOTION TO MODIFY PLAN**  
**WSS-6** **Steven Shumway** **8-29-13 [111]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 29, 2013. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee states the Debtors are proposing to reduce dividend to unsecured creditors from 28% to 0%, but does not authorize the payments under the confirmed plan.

Further, the Trustee objects that the Debtor's plan is not properly signed, as the name of the person signing the document shall be typed underneath the signature, pursuant to Local Bankruptcy Rule 9004-1(c). This too is cause to deny confirmation.

Lastly, the Trustee states the Debtor has filed two plans and has not explained why. The Debtor filed plans on August 29, 2013 and on September 3, 2013. The only difference appears to be the dividend and estimate were left blank on the first version.

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

Debtor responds, stating that they will stipulate to the modification of their proposed plan to allow the payments to unsecured creditors that have already been distributed to the Trustee. The Debtor also submits the plan with their original signatures. The Debtor also states that when they discovered the dividend and amount of unsecured debt

was blank, they filed a corrected plan. First Modified Plan filed September 3, 2013, Dckt. 116.

The Debtor having addressed the Trustee's concerns, the Motion is granted.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on September 3, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

63. [13-32277](#)-E-13 BROOKE O'ROURKE MOTION TO EXTEND AUTOMATIC STAY  
LC-1 Lorraine W. Crozier 9-20-13 [8]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 20, 2013. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

**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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtors' second bankruptcy petition pending in the past year. The Debtors' prior bankruptcy case (No. 11-42221-C-13) was dismissed on July 24, 2013, after Debtors defaulted on their plan payments. See Order, Bankr. E.D. Cal. No. 11-42221-C-13C, Dckt. 49, July 24, 2013. 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, as her spouse, co-Debtor in the prior case, became ill, was unable to work, and died on June 17, 2013. The Debtor states she was unable to pay burial expenses, maintain the Chapter 13 payments, and pay for 2012 income taxes. Debtor now wants to short sell her condominium and has computed her current expenses, concluded that she can now fund a chapter 13 plan.

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.

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.

64. [12-36378-E-13](#) MARILYN/JOSHUA JOHNSON  
PGM-5 Peter Macaluso

CONTINUED MOTION TO APPROVE  
LOAN MODIFICATION  
8-9-13 [[134](#)]

CONT. FROM 9-10-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 9, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

**The court's tentative decision is to set the Motion to Approve Loan Modification for further hearing at 3:00 p.m. on October 29, 2013, and order Wells Fargo Bank, N.A. to present to the court a copy of the heretofore undisclosed loan modification agreement which they want the court to approve.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

**PRIOR HEARING**

Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current \$2,511.28 to \$2,320.66. The modification will capitalize the pre-petition arrears and provides for stepped increases in the interest rate from 4.500% to 4.500% over the next 22.16 years.

However, the Motion failed to comply with Federal Rule of Bankruptcy Procedure 4001(c)(1)(A), as it failed to provide a copy of the credit agreement. The Exhibit A attached to the Motion is a copy of the letter with a summary of the proposed terms of the modification agreement. This is insufficient. FN.1.

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FN.1 This is not merely a trial loan modification for which a future loan modification motion will be required. Here the court, Chapter 13 Trustee, U.S. Trustee, and creditors are deprived of seeing the actual Loan Modification Agreement and terms which are to be approved. While the court

does not have a reason to believe that Wells Fargo Bank, N.A. is trying to hide something from the court, the Rules are equally and fairly applied to all parties. It does not require one to have much of an imagination as to how less scrupulous parties could attempt to mislead the court and consumer by hiding the actual agreement and what that less scrupulous creditor would describe as "mere standard, boilerplate terms that really should mean nothing to the consumer or court."

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**CONTINUANCE**

The court continued the hearing to allow the Debtor to provide the Loan Modification.

Debtor filed a supplemental declaration stating that they have only been provided the two pages from Wells Fargo describing the terms of the modification. Debtor asserts that Wells Fargo will not send out the full loan modification until the court grants permission.

Wells Fargo Bank, N.A. may chose to engage in it businesses practices as it determines is consistent with good faith dealings with its clients and shareholders, and complies with applicable law. The Debtors' declaration indicates that the choice of business practices includes not providing the court with copies of the actual credit agreements which the Bank seeks to have debtors enter into and the court approve. The court, blinded by the non-disclosure of the credit agreement, cannot grant the motion and approve the loan modification.

From the information letter issued by Wells Fargo Bank, N.A., Exhibit A, the Bank states,

- A. Certain identified term changes,
- B. The Debtor is instructed to "file a petition with the bankruptcy court to gain their consent to modify the first mortgage."
- C. "Your client [the Debtor] will need to continue to make their trial period payments if applicable while we are waiting for consent from the court."
- D. Once received [written consent], we will send the loan documents to you and your attorney for original signatures."

The court previously approved the trial loan modification, authorizing . Order, Dckt. 116. Trial modification payments are in the amount of \$2,320.66. Exhibit A, Dckt. 98.

The court will issue an order providing the "court's consent" and order for Wells Facto Bank, N.A. to file (1) a Response to the motion explaining why the actual credit agreement cannot be produced for the court, and (2) to file a copy of the credit agreement which Wells Fargo Bank, N.A. wants the court to approve for the loan modification.

The hearing is continued to 3:00 p.m. on October 29, 2013. On or before October 17, 2013, Wells Fargo Bank, N.A. shall file and serve (1) a Response to the motion explaining why the actual credit agreement cannot be produced for the court, and (2) to file a copy of the credit agreement which Wells Fargo Bank, N.A. wants the court to approve for the loan modification.

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 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 hearing on the Motion for the Court to Approve Loan Modification is continued to 3:00 p.m. on October 29, 2013.

**IT IS FURTHER ORDERED** that Wells Fargo Bank, N.A. shall file and serve, on or before October 17, 2013, (1) a Response to the motion explaining why the actual credit agreement cannot be produced by Wells Fargo Bank, N.A. (see Debtors' Supplemental Declaration, Dckt. 153) for the court to review and consider as part of the determination of this motion through which the Debtors and Wells Fargo Bank, N.A. request the court approve the terms of such credit agreement, and (2) a copy of the credit agreement which Wells Fargo Bank, N.A. wants the court to approve for the loan modification by this Motion.

65. [13-27878-E-13](#) STEVEN/ALISSA REYNOLDS MOTION TO CONFIRM PLAN  
SNM-1 Stephen Murphy 8-26-13 [[28](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 26, 2013. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 26, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

66. [13-29882-E-13](#) VASILIIY ORMANZHI OBJECTION TO CONFIRMATION OF  
NLE-1 C. Anthony Hughes PLAN BY DAVID P. CUSICK  
9-4-13 [[21](#)]

**Final Ruling:** The Chapter 13 Trustee having filed a "Withdrawal of Objection" for the pending Objection to Confirmation, the "Withdrawal" being consistent with the opposition filed to the Objection, the court interpreting the "Withdrawal of Objection" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to Confirmation, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Objection to Confirmation.**

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

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

A Objection to Confirmation having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Objection without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Objection being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation is dismissed without prejudice.

67. [13-30382-E-13](#) STACY JOHNSON OBJECTION TO CONFIRMATION OF  
TSB-1 Pro Se PLAN BY DAVID P. CUSICK  
9-12-13 [[17](#)]

**CASE DISMISSED 10-2-13**

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

IT IS ORDERED that the Objection is dismissed as moot, the case having been dismissed.

68. [13-26784-E-13](#) ROBERT/CYNTHIA BOHN MOTION TO VALUE COLLATERAL OF  
MG-2 Matthew J. Gilbert THE MORGAN STANLEY MORTGAGE  
LOAN TRUST 2006-14SL  
8-14-13 [[34](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 14, 2013. By the court's calculation, 55 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$198,000.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 185 Bel Air Drive, Vacaville, California. The Debtor seeks to value the property at a fair market value of \$198,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$207,425.17. Morgan Stanley Mortgage Loan Trust 2006-14SL's second deed of trust secures a loan with a balance of approximately \$90,720.84. 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 Morgan Stanley Mortgage Loan Trust 2006-14SL secured by a second deed of trust recorded against the real property commonly known as 185 Bel Air Drive, Vacaville, 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 \$198,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

69. [13-26784-E-13](#) ROBERT/CYNTHIA BOHN MOTION TO CONFIRM PLAN  
MG-3 Matthew Gilbert 8-14-13 [[39](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 14, 2013. By the court's calculation, 55 days' notice was provided. 42 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee opposes the Motion on the basis that the plan relies on a pending motion to value collateral, set for hearing October 8, 2013. The court having granted the motion, the Trustee's objection is overruled.

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 14, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

70. [10-51689](#)-E-13 ANGELO/ROSEMARIE FERRER MOTION TO SELL  
WW-3 Mark Wolff 9-10-13 [[35](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 10, 2013. By the court's calculation, 28 days' notice was provided. 21 days' notice is required.

**Tentative Ruling:** The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(a)(2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303.

Here, the Debtor proposes to sell the real property commonly known as 614 Sutter Lane, Ione, California. The sales price is \$165,000.00 and

the named buyer is Aaron Cocjin. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 38.

**TRUSTEE'S RESPONSE**

The Chapter 13 Trustee states he has no objection to the proposed motion for authorization to sell real property of the estate, but debtor scheduled the second deed of trust to be paid through the plan as a general unsecured claim and the Trustee is not clear if the intention of the debtors is to pay this debt through the plan or through escrow.

**DEBTOR'S REPLY**

Debtors state that at the completion of a short sale the claims secured by the property being sold will be satisfied in full and Debtors anticipate the claims being satisfied through the short sale.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The Motion to Permit Debtor to Sell Property is granted, subject to the court considering any additional offers from other potential purchasers at the time set for the hearing for the sale of the property.

**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 sell property 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 Angelo and Rosemarie Ferrer, the Debtors ("Debtor"), is authorized to sell to Aaron Cocjin or nominee ("Buyer"), the residential real property commonly known as 614 Sutter Lane, Ione, California("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyer for \$165,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 38.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale.
5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtors. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

71. [10-26792-E-13](#) ROBERT/ALICIA SHEEDERS MOTION TO REFINANCE  
RDS-1 Richard D. Steffan 9-17-13 [[27](#)]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2013. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Refinance was properly set for hearing on the notice required by Local Bankruptcy Rule 3015-1(i)(5) and 9014-1(f)(2). Consequently, the creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

The motion seeks permission to refinance real property commonly known as 5711 Summit Drive, Rocklin, California. Debtors claim that if the refinance is approved, they can better maintain their current plan payment and fulfill their Chapter 13 obligations.

The principle of the refinance loan will be in the amount of \$256,343.00 and the interest rate will be 4.5%. The monthly payment amount for principal, interest, any mortgage insurance, and property taxes will be \$1,794.66 per month. The only security for the loan will be the Debtors' existing residence. Debtors have included a copy of the Refinance Agreement on the loan as Exhibit "A." Dckt. 30.

The Trustee filed a statement of non-opposition.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions. Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Here, the proposed loan is sufficiently described in the motion and supporting pleadings and an agreement has been provided to the court. Dckt. 30. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

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

The Motion to Refinance 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 Debtors Patrick and Alicia Sheeders are authorized to refinance real property commonly known as 5711 Summit Drive, Rocklin, California according to the terms stated in the Refinance Agreement filed as Exhibit "A," Docket Entry No. 30, in support of the Motion.

72. [13-26192-E-13](#) RICHARD/RHONDA SAMPOGNARO MOTION TO CONFIRM PLAN  
SJS-4 Scott Johnson 8-27-13 [[50](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 27, 2013. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

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

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

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

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

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

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

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on August 27, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

73. [13-29892-E-7](#) RAFAEL/LEAH ROBLES  
NLE-1 Thomas O. Gillis

MOTION TO DISMISS CASE FOR  
FAILURE TO MAKE PLAN PAYMENTS  
9-4-13 [[28](#)]

CASE CONVERTED TO CH. 7 ON  
9/3/13

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

Proper Notice Provided. The Proof of Service filed on September 4, 2013, states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney. By the court's calculation, 34 days' notice was provided.

**Final Ruling:** The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

**The Motion to Dismiss is denied as moot.** No appearance required.

The Trustee seeks the dismissal of this case. However, on September 3, 2013, the Debtors filed a Notice of Conversion, converting the case to a proceeding under Chapter 7. The Debtor may convert a Chapter 13 case to a Chapter 7 case at any time. 11 U.S.C. § 1307(a). The right is nearly absolute and the conversion is automatic and immediate. Fed. R. Bankr. P. 1017(f)(3); *In re Bullock*, 41 B.R. 637, 638 (Bankr. E.D. Penn. 1984); *In re McFadden*, 37 B.R. 520, 521 (Bankr. M.D. Penn. 1984). Debtor's case was converted to a proceeding under Chapter 7 by operation of law once the Notice of Conversion was filed on September 3, 2013. *McFadden*, 37 B.R. at 521.

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 the Chapter 13 case 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 Motion to Dismiss is denied as moot.

74. [13-31392-E-13](#) MANUEL HERNANDEZ  
TJW-1 Timothy Walsh

MOTION TO EXTEND AUTOMATIC STAY  
9-17-13 [[17](#)]

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, all creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2013. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

**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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended. However, this is the Debtors' *third* bankruptcy petition pending and dismissed in the past year. The first bankruptcy case (No. 12-39613) was dismissed on November 26, 2012, after Debtors failed to timely file documents. See Order, Bankr. E.D. Cal. 12-39613-A-13J, Dckt. 13, November 26, 2013. The second bankruptcy case (No. 12-41340) was dismissed on August 9, 2013, after Debtors defaulted on their plan payments. See Order, Bankr. E.D. Cal. No. 12-41340-C-13C, Dckt. 72, August 9, 2013. Therefore, pursuant to 11 U.S.C. § 362(c)(4)(A), the provisions of the automatic stay did not go into effect upon the filing of this case.

Congress has provided in 11 U.S.C. § 362(c)(4)(A) that if a debtor has had two or more cases which were pending and dismissed within one year of the commencement of a subsequent case, then the automatic stay does not go into effect upon the filing of the subsequent case.

(4) (A) (i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were

pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case;

11 U.S.C. § 362(c)(4)(A).

Here, Debtor has had pending and dismissed two prior cases within the one-year period prior to the August 30, 2013 commencement of the present case.

If, within 30 days after filing the case, a party in interest can request the court to order the stay to take effect in the case as to any or all creditors after notice and hearing. The subsequently filed case is presumed to be filed in bad faith and the party must demonstrate that the filing of the case is in good faith as to the creditors to be stayed. 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 first skeleton case was dismissed, having been in an accident. Debtor also states that the second bankruptcy case, where he obtained an extension of the stay, he lost his job and made payments to creditors outside of the plan. The Debtor states he was unable to make the plan payments with the loss of his job and making payments to creditors outside the plan. Debtor states he now has a job at Napa Chrysler, for over two months, making more than he did in his last chapter 13 bankruptcy case.

The proposed Chapter 13 Plan provides for substantial monthly payments by the Debtor of \$3,599.00 for 60 months. Plan, Dckt. 12. Of this, \$2,872.38 is earmarked to cure the arrearage and make the currently monthly payment to Wells Fargo Bank, N.A. for its claim secured by the Debtor's residence. The Debtor is also making a \$349.12 monthly plan payment on the claim secured by his 2008 Porsche 911. The dividend to creditors holding general unsecured claims is 0.00%.

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

The motion is granted and the automatic stay is imposed for all purposes and parties, unless terminated by operation of law or further order of this court.

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

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

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

**IT IS ORDERED** that the Motion is granted and the automatic stay is in effect from the date of this order pursuant to 11 U.S.C. § 362(c)(4)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

75. [13-21194-E-13](#) RICHARD/LINDA STROM MOTION TO MODIFY PLAN  
NUU-1 Chinonye Ugorji 8-19-13 [[27](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 19, 2013. By the court's calculation, 50 days' notice was provided. 35 days' notice is required.

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

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

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

The Chapter 13 Trustee opposes confirmation offering evidence that the Debtor is \$1,627.74.00 delinquent in plan payments under the proposed plan. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also states he is uncertain the plan filed as Dckt. 26 is complete because Debtor checked the box indicating additional provisions are appended.

Lastly, the Trustee states the correct property tax expense may be missing on Schedule J. A creditor has filed a proof of claim no. 1, indicating that the installment payment does not include escrow deposit.

#### **DEBTOR'S REPONSE**

Counsel for Debtor responds, stating that Debtors will walk in a cashiers check on October 1, 2013 of \$3,255.48 to the Trustee's office. Counsel states Debtors are having problems setting up electronic fee payment using the Trustee's system.

Debtor also states that the plan is complete and that the checked box in Section 6 was made in error.

Lastly, Counsel states that Debtors have now filed an Amended Schedule J, reflecting the correct amount of Home Owner's Insurance and Real Property Taxes. The prior Schedule J lumped both expenses as Home Owner's Insurance and the Debtors have now split the expense apart.

#### **DISCUSSION**

Unfortunately, the court does not have sufficient evidence that the plan payments have in fact been made to the Trustee. Though the Debtors states that they had arranged for electronic payments to be made using the TSF Bill pay system used by the Trustee (demonstrating how they can have "extra" money available to make multiple payments), the no transfer of funds occurred.

No further evidence documenting the payment to the Trustee had been filed as of the final review of this Motion on October 7, 2013.

Therefore, the motion is denied without prejudice.

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

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

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

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

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

76. [13-30194-E-13](#) SUSAN ZAVALA **OBJECTION TO CONFIRMATION OF**  
TSB-1 Eric John Schwab **PLAN BY DAVID P. CUSICK**  
**9-12-13 [[29](#)]**

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 12, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending motion to value collateral, set for September 24, 2013. The court granted the motion, which resolves this portion of the Trustee's objection.

The Trustee also argues that Debtor may not be able to make the plan payments. Debtors Schedule I lists a household of 11 people, including the Debtor. Eight grandchildren are listed, as well as two adults, ages 30 and 38. No financial contribution is listed from the two adults, and the Declaration does not provide if these adults are employed, or if there is any government assistance for their children.

The Declaration also states that Debtor used retirement funds to purchase a vehicle. The Statement of Financial Affairs item #2 lists an IRA distribution of \$151,000 in 2012. Debtors Schedule B lists cash of \$20.00, and bank accounts containing \$900.00. Trustee states that Debtor testified at the First Meeting of Creditors that some of the retirement funds were used to purchase a vehicle.

Trustee notes that in Debtors prior case, 10-31190, Schedule B lists three retirement accounts, a 401k account with Lincoln valued at \$41,264.78, a 403b account with Fidelity valued at \$19,888.87 and a Sutter Health Retirement account valued at \$186,601.48. None of these accounts are listed in the Debtors current case.

Lastly, the Trustee states that the Statement of Financial Affairs is incomplete. Trustee states that Debtor failed to complete item #2 and Debtor has not accounted for \$96,755.13 in funds since filing the prior bankruptcy case. Debtor also does not state whether she received any unemployment benefits during the three months she was unemployed. FN.1.

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FN.1. In the prior Chapter 13 case the Debtor did not provide for using any of the retirement monies through the confirmed plan. The Debtor's gross monthly income was stated to be \$16,374.37, and after \$5,903.51 in deductions, the Debtor had \$10,470.86 in Average Monthly Income. Schedule I, 10-31190 Dckt. 1 at 32. The Debtor stated she had \$9,015.86 in monthly expenses, yielding Monthly Net Income of \$1,455.00. Schedule I, *Id.* at 34. The projected disposable income used for the Chapter 13 Plan in the first case was \$1,455.00.

The prior bankruptcy case being dismissed on July 14, 2013, there appears to be little likelihood that the \$96,755.13 would have been disbursed during the 17 calendar from dismissal of the prior case to the August 1, 2013 filing of this case.

On the Statement of Current Monthly Income and Calculation of Commitment Period (Form 22C) filed in this case, the Debtor states that she had wages of \$13,579.00 a month during the six month period prior to the commencement of this case on August 1, 2013. Dckt. 1 at 39. Form 22C states that the Debtor received no pension or retirement income during that period.

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Trustee states Debtor did not list any payments to creditor Regional Acceptance Corp for the 2007 Toyota Yaris listed on Schedule D. The Trustee states that while he sympathizes with Debtors attempts to look after her family, he is concerned that supporting them may result in her inability to fund a plan. Debtor has incurred a significant tax liability as a result of withdrawing retirement funds, and where the Debtor also lists an additional expense of \$300.00 for support of dependants not living in her home, the Trustee does not believe the Debtor will be able to make the plan payments.

The current plan now seeks to make a monthly payment of \$1,700.00 to the Trustee, which will be used to (1) pay \$3,000.00 to counsel for the Debtor, (2) \$6,535.00 to "RAC" for a claim secured by a 2007 Toyota, (3) \$59,012.00 to the Internal Revenue Service, (4) \$20,800.00 to the Franchise Tax Board, and (5) \$6,200.00 to creditors holding general unsecured claims (20% dividend).

The Debtor lists 2 adult children and 8 children as dependants on Amended Schedule I. Dckt. 23 at 4. No income is disclosed for the two adult children, any benefits or other monies being received by or for the 8 children. The Debtor has three cars. Schedule B, Dckt. 1 at 12.

The Internal Revenue Service Claim is \$52,709.80 for a 2012 priority claim (assessed July 2013) and a general unsecured claim for a \$6,679.07 penalty for 2012 income taxes. The Franchise Tax Board has not yet filed its proof of claim, but it is reasonable to infer that it is for the State 2012 income taxes.

On the Statement of Financial Affairs the Debtor states that in 2012 she took a \$151,000.00 IRA distribution. The court's review of the file does not disclose that the use of the IRA assets for additional 2012 income was authorized under the plan, allowed by the court, or disclosed as additional income the Debtor was receiving in 2012. This \$151,000.00 IRA distribution was in addition to the Debtors' \$152,898.00 income from employment in 2012 (which is consistent with the Debtor's 2011 income in 2011). Statement of Financial Affairs Questions 1 and 2, Dckt. 1 at 27. In reality, the Debtor had income of \$303,898.00 in 2012, which averages \$25,324.83 a month, almost double what was stated to the court under penalty and relied upon by the court, Chapter 13 Trustee, and creditors in confirming the plan in the prior case.

This Debtor has more than serious consumer financial problems. Her conduct in the prior Chapter 13 case, withdrawing large sums of monies from "retirement accounts" to use in 2012 while subject to a confirmed plan, claiming multi-generation "dependants," not disclosing any income or benefits for the "dependants" being disclosed, and having a month income of \$13,579.00 for one person (which is well over the median income) is indicative of a debtor not proceeding in good faith under the Bankruptcy Code. While the "dependants" may "want" to be supported and the adult children may not want to provide for themselves and their children, the Debtor's creditors are not drafted into becoming responsible for those "dependants." FN. 2.

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FN.2. The facts relating to the case appear to be rising to the status of the Debtor possibly being the subject of adult abuse. Quite possibly she is not sufficiently competent to handle her finances and assets, and be a party before this court.  
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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.

77. [10-27995-E-13](#) ROBERT JIMENEZ AND LYNNE MOTION TO MODIFY PLAN  
SAC-3 ROSE-JIMENEZ 8-22-13 [[68](#)]  
Scott Coben

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 22, 2013. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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



\$5,000.00. Trustee states if the Debtor contributed this amount into the plan on a yearly basis, this would equal an additional \$566.64 per month the Debtor can contribute to a Chapter 13 plan payment.

The Trustee states that he would have no opposition if the order confirming the plan were to state that all tax refunds in excess of \$2,000.00 will be paid into the plan. However, the Trustee does not state a basis for why the Debtor should be allowed to have his income over-withheld so as to generate a tax refund, and then divert \$2,000.00 a year of projected disposable income to himself.

Lastly, the Trustee argues that the Motion to Value Collateral set for hearing on September 10, 2013, was denied. This affects the feasibility of the plan.

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

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

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

The Objection to the Chapter 13 Plan filed by the 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.

79. [13-30998-E-13](#) RALPH SETTEMBRINO  
MET-2 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF  
JPMORGAN CHASE BANK, N.A.  
9-7-13 [[19](#)]

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 7, 2013. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

**The Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 1002 Neptune Court, Suisun, California. The Debtor seeks to value the property at a fair market value of \$216,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$237,210.00. JPMorgan Chase Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$70,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JP Morgan Chase Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 1002 Neptune Court, Suisun, 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 \$216,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.