

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

October 29, 2013 at 2:00 p.m.

1. [12-21603](#)-C-13 DEREK JEWETT MOTION TO APPROVE LOAN
CK-1 Catherine King MODIFICATION
9-26-13 [[25](#)]

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 all creditors, the U.S. Trustee, and Chapter 13 Trustee on September 26, 2013. 28 days' notice is required; that requirement was met.

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

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

Movant Debtor requests that the court approve a trial period plan loan modification of their mortgage with Bank of America concerning real property commonly known as 8577 Patricia Drive, Redding, California. The new loan payments will be in the amount of \$1,738.14. The interest rate is not specified in either Debtor's Motion or attached trial period modification agreement. After successful completion of the trial period, Bank of America will permanently reduce the principal balance of Debtor's loan by an estimated \$57,382.19. Successful completion of the trial period requires submission of three payments of \$1,738.14, starting on October 1, 2013 with two payments to follow on November 1, 2013 and December 1, 2013. After completion of the trial period, Debtor's loan will be permanently modified. A copy of the trial loan modification agreement with Bank of America, containing its precise terms, is attached to the instant motion as Exhibit A (Docket Item No. 28).

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The court will grant Debtor permission to enter into and complete the trial period loan modification with Bank of America. Because the terms of the trial period loan modification are not final and permanent, the court will required Debtor to seek further approval of the final loan modification once the trial period is successfully completed. This will require Debtor to provide more specific information about the modification provided, future monthly payment, and future interest rate.

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

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

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

IT IS ORDERED that the Motion to Approve Loan Modification is granted and Debtor may commence making trial period payments in the amount of \$1,738.14.

IT IS FURTHER ORDERED that upon successful completion of the trial period loan modification, Debtor will return to seek court approval of the terms of the final loan modification agreement.

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

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

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 361(c) extended beyond thirty days in this case. This is Debtor's second bankruptcy case within the last twelve months. Debtor's first bankruptcy case (No. 13-23326) was filed on March 12, 2013 and dismissed on August 21, 2013, for Debtor's not presenting the court with an amended, confirmable plan. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing.

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

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

U.S.C. § 362(c) (3) are:

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

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

Here, Debtor states the instant case was filed in good faith. Debtors filed a confirmable Chapter 13 plan concurrently with the Chapter 13 bankruptcy petition and is confident the plan is likely to succeed given Debtors' income and expenses. The current plan provides for payment of the first deed of trust for rental property an direct payments to lender for the first deed of trust on a primary residence. The payments are set at \$1,300.00 per month for 60 months.

Debtor presented sufficient evidence to the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

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

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

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

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

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

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

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

The court's tentative decision is to grant the Motion to Sell. 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: :

Debtors seek an order approving the sale of real property commonly known as 12341 Overland Way, Wilton, California. The prospective buyer is Jeffrey Macdonald, who made an offer to purchase the property at \$560,000.00. The value of the property is estimated at \$579,000.00. Debtor owns a fifty percent (50%) interest, free and clear from all encumbrances. Debtor anticipates receiving \$260,000.00 from the sale of the property.

Debtors Chapter 13 Plan is a 100% plan and Debtor intends to payoff the plan entirely through sale proceeds from this property. The payoff amount of the plan is \$34,060.39, as of the date of this Motion. Debtor will file a Motion to Modify the plan forthwith.

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

The Chapter 13 Trustee filed a statement of non-opposition to Debtor's motion. However, the Trustee clarifies that the Chapter 13 plan payoff amount is approximately \$36,486.00, pending final audit of the case.

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

Findings of Fact and Conclusions of Law are

stated in the Civil Minutes for the hearing.

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

IT IS ORDERED that the Motion to Sell is granted and Debtor is authorized to sell the property located at 12341 Overland Way, Wilton, California to Jeffrey Macdonald for an amount no less than \$560,000.00.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2013. 42 days' notice is required. That requirement was met.

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

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

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on August 19, 2013. Forty-two (42) days' notice is required. That requirement was met.

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

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

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

The Chapter 13 Trustee objects to confirmation of Debtor's plan because Debtor has not proven that the secured claims provided for under the Plan are being treated in a fashion allowed under 11 U.S.C. § 1325(a)(5).

The secured claims at issue are:

1. Internal Revenue Service: Claim #1, \$383,195.70
2. Franchise Tax Board: Claim #2, \$107,278.72
3. Butte County Treasurer: Claim #5, \$63,716.04
4. Green Tree Servicing, LLC: Claim #4, unstated amount

The terms of the plan propose to pay \$3,016.46 per month for 60 months and has three provisions that appear to deal with these secured claims, §§ 2.09(d)(A)(1), 6.01, and 6.02. Section 2.09 refers to an attached spreadsheet that appears to reference the other sections. Section 6.01 calls for the payment of \$25,000.00 to each creditor and their secured claim, which the Trustee does not oppose.

Section 6.02 refers to the sale of two unidentified properties and a reverse mortgage on the Debtors' residence, with no amount or estimate amount given or any. The Trustee does not object to this.

The Trustee needs to verify if the plan will pay the secured claims in full. Sale of one property, 4166 Valley of the Falls Drive, was previously approved for \$98,000.00. Trustee has not been provided with a copy of the final escrow closing statement, verifying the sale and that \$98,000.00 was paid to the Internal Revenue Service directly, as required.

The plan reflects the wrong amounts listed as priority debts owed to the Internal Revenue Service and Franchise Tax Board. Both claims reflect no

tax returns filed for 2012 and may change if some of the secured claims are valued and become priority.

Trustee cannot determine if the plan will work mathematically. Trustee has not received a closing statement on the sale that has been approved, so not proof exists that Debtor has paid the IRS \$98,000.00. The 2012 tax return may not have been filed where the Debtor has substantial unpaid tax claims. No motions to value the secured claims of the IRS and Franchise Tax Board has been brought and § 6.02 of the plan does not give an estimated amount to be paid to secured claims.

Debtor's Response

In response to Trustee's objection, Debtor states that most of the Trustee's issues will be resolved when pending Motions to Incur Debt and Motions to Sell Property are granted and the numbers become more fixed.

Debtors agree the plan was unclear as to the exact amount to be paid to the secured creditors under the plan. Debtor intends to pay secured creditors in full under the plan. Debtor admits the Trustee is without documentation of the property sold. A full statement will be provided as soon as escrow closes.

Debtor asserts that Trustee is correct that the plan lacks clarity regarding funds available to pay the secured debt. Debtor is in the process of securing a reverse mortgage on her home located at 13624 Autumn Lane, Chico, California. Debtor filed a Motion to Incur this Debtor and Tri Counties Bank has approved the arrangement. Debtor will receive approximately \$376,000.00, all of which will go directly to re-pay tax obligations.

Debtor agrees with the Trustee that the payment amounts for priority debts is incorrect and seeks to make correction in the order confirming the plan or in an amended plan.

As to the plan working mathematically, Debtor is certain that upon the granting of the motions, one for the reverse mortgage and the other for sale of property located at 5965 Robin Oak Drive, Angelus Oaks, California, the exact numbers needed to pay the remaining debts of Debtor will be ascertainable. Debtor then intends to file a motion to modify the plan to identify exactly how the obligations will be paid.

Discussion

As highlighted by the Trustee, Debtor's plan relies on many uncertainties and incomplete transactions. Debtor agrees with Trustee's objection, but states that a pending Motion to Incur Debt and Motion to Sell will make available funds that will permit Debtor to move forward with a confirmable plan.

Upon review of the docket, it does not appear Debtor has any pending Motion to Incur Debt or Motion to Sell. A Motion to Incur Debt was set for hearing on September 24, 2013 (Dkt. 75). The court entered an order denying the Motion for fundamental pleading mistakes (Dkt. 111). Furthermore, Debtor voluntarily withdrew a Motion to Sell property located at 5965 Robin Oak Drive, originally set for hearing on October 8, 2013 (Dkt. 112). Debtor has not filed any new motions.

Therefore, none of Trustee's concerns are remedied and the court remains unconvinced that Debtors have proposed a feasible plan. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

6. [13-31548](#)-C-13 ALICIA WHITNEY
RJ-3 Richard L. Jare

MOTION TO VALUE COLLATERAL OF
THE VILLAGES OF THE GALLERIA
HOA
10-3-13 [[32](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 3, 2013. 14 days' notice is required. That requirement was met.

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

The court's tentative decision is that the Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 701 Gibson Drive, #525 Roseville, California. The Debtor seeks to value the property at a fair market value of \$130,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$188,835.00. The Villages of the Galleria Homeowner's Association's junior interest is a lien with a balance of approximately \$9,500.00. Therefore, the respondent creditor's claim secured by a junior lien 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 Villages of the Galleria Homeowner's Association secured by a second deed of trust recorded against the real property commonly known as 701 Gibson Drive, #525 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 \$130,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

7. [11-44750](#)-C-13 JORDAN/ANN GILBERT
SDB-2 W. Scott de Bie

MOTION TO APPROVE LOAN
MODIFICATION
10-11-13 [[32](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, the U.S. Trustee, and Chapter 13 Trustee on October 11, 2013. Fourteen (14) days' notice is required; that requirement was met.

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

The court's tentative decision is to grant the Motion to Approve 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:

Movant Debtor requests that the court approve a modification of their mortgage with Nationstar Mortgage, LLC concerning real property commonly known as 227 Fairmont Avenue, Vallejo, California. The new loan payments will be in the amount of \$993.39 at an interest rate of 4.00% commencing October 2, 2013 through October 1, 2053. The new balance of the loan will be \$229,040.31. A copy of the loan modification agreement with Nationstar Mortgage, LLC, containing its precise terms, is attached to the instant motion as Exhibit A (Docket Item No. 35).

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

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

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

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

8. [13-29954](#)-C-13 DONALD/TAMMY LACHER
NLE-1 Charles L. Hastings

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID P. CUSICK
10-3-13 [[29](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on October 3, 2013. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan because Debtors cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtors' plan relies on the Motion to Value Collateral of HSBC, which is set for hearing on October 22, 2013. If the motion to value is not granted, Debtors' plan lacks sufficient funds to pay the claim in full.

At the hearing on Debtors' Motion to Value the secured claim of HSBC, the court decided to grant the Motion. Therefore, Trustee's Objection is remedied and Debtors are able to pay the claim at issue.

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

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

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

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings,

evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection to Confirmation the Plan is overruled.

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

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

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The first hearing on the Motion to Modify was held September 24, 2013. At that hearing, the court decided to continue the matter to October 29, 2013 to permit Debtors to serve supplemental pleadings on the U.S. Trustee and Chapter 13 Trustee regarding Debtors' employment.

Previously, opposition to the proposed modifications was filed by Chapter 13 Trustee, David Cusick.

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

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

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

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

Debtors' Response

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

Debtors did not resolve Trustee's concerns regarding uncertain income upon which the plan depends. As it stood, the plan could not be confirmed without resolving issue. Therefore, the court ordered supplemental pleadings on Debtors' employment and continued the hearing.

Supplemental Pleadings (Dkts, 53, 54)

On September 27, 2013, the court entered an order requesting Debtors to file and serve on the U.S. Trustee and Chapter 13 Trustee supplemental pleadings concerning Debtors' employment. In response, Debtors filed the Declaration of Fridaleen Lou (Dkt. 53) and supporting Exhibits (Dckt. 54).

In her declaration, Debtor Lou states she recently starting working as an "On Site Sales Coordinator" for Lennar Homes, LLC, a new home builder. Debtor Lou began her employment on September 17, 2013 and attached her offer letter as Exhibit A.

Debtor Lou's base salary is \$30,000.00 per year, or \$2,500.00 per month in gross income. The employment offers the opportunity to earn sales commissions of \$350.00 per purchase contract. Debtor states she needs to make five (5) sales per month in order to earn the \$3,750.00 in monthly income she estimates she would earn in order to make plan payments. Debtor anticipates starting to earn commission in February or March 2014.

Debtor states that plan payments increase to \$585.00 per month on February 25, 2014 and Debtors will be able to make this payment with Debtor Lou's employment.

Discussion

The court remains concerned that Debtors' income lacks the stability necessary to maintain plan payments. Per the Chapter 13 Trustee's original objection, Debtors have monthly expenses totaling \$10,414.00. Without Debtor Lou's income, Debtors' income is \$7,249.10, an amount insufficient to meet Debtors' needs. With Debtor Lou's base salary of \$2,500.00 per month, Debtors income increases to \$9,749.00, an amount still insufficient to meet Debtors' current obligations. Only when accounting for speculative sales and commissions from Debtor Lou's new employment does Debtors' income exceed their expenses. Because the employment is new, Debtor Lou cannot demonstrate a history of receiving commissions that may convince the court of the stability of her commission based income.

Furthermore, the figures proposed in Lou's declaration may be incorrect. Debtor Lou states she receives \$350.00 per purchase contract and that five (5) sales per month would be required for her to earn \$3,750.00 total. If "purchase contracts" are the same as "sales", then five (5) sales per month would result in earning of \$4,250.00 per month. Perhaps Debtor Lou intended to state that she earns \$250.00 per purchase contract. On the other hand, the court may not be clear as to how commissions are calculated.

Debtors may be able to propose a confirmable plan by reviewing their budget and adjusting their expenses to more adequately fit within their income limits. However, until Debtors make such an adjustment, the court remains uncertain of the feasibility of their plan.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 17, 2013. 42 days' notice is required. That requirement was met.

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

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

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

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

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

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

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

11. [13-32364](#)-C-13 GARY RIVAS AND EMMA MOTION TO VALUE COLLATERAL OF
MRL-1 ROBALINO-RIVAS RBS CITIZENS, N.A.
Mikalah R. Liviakis 10-15-13 [[16](#)]

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

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

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

The court's tentative decision is that the Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. 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 8109 Braemore Drive, Sacramento, 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 \$179,482.00. RBS Citizens, N.A.'s second deed of trust secures a loan with a balance of approximately \$51,336.45. 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 RBS Citizens, N.A. secured by a second deed of trust recorded against the real property commonly known as 8109 Braemore Drive, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$175,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 12, 2013. 35 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. The Chapter 13 Trustee originally filed opposition to Debtors' plan but later withdrew his opposition because Debtors filed supplemental materials resolving Trustee's objection (Dkt. 53). Therefore, opposition to the Motion being withdrawn by the Chapter 13 Trustee and no opposition being filed by other creditors, the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on September 12, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

13. [13-32370](#)-C-13 KHADER/ABEER FASHHO
MET-1 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
9-29-13 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 29, 2013. 28 days' notice is required. That requirement was met.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 96 Barlow court, Fairfield, California. The Debtor seeks to value the property at a fair market value of \$189,900.00 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 \$414,616.00. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$49,698.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 96 Barlow court, Fairfield, 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 \$189,900.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

14. [13-32374](#)-C-13 JOSE ACOSTA GOMEZ AND ANA MOTION TO VALUE COLLATERAL OF
MET-1 ACOSTA WELLS FARGO BANK, N.A.
Mary Ellen Terranella 10-3-13 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 3, 2013. 14 days' notice is required. That requirement was met.

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

The court's tentative decision is that the Motion to Value Collateral is granted and creditor's secured claim is determined to be \$0.00. No appearance required. 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 5201 Congress Avenue, Oakland, California. The Debtor seeks to value the property at a fair market value of \$331,600.00 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 \$498,061.00. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$74,615.00. 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 Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 5201 Congress Avenue, Oakland, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$331,600.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice 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 10, 2013. 42 days' notice is required. That requirement was met.

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on September 10, 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.

16. [11-37083](#)-C-13 ANDREY GINZBURG AND OLENA MOTION TO MODIFY PLAN
MLA-13 KOVBASY 9-13-13 [[144](#)]
Mitchell L. Abdallah

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

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

Tentative Ruling: The Motion to Confirm the Modified 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. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

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

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

(1.) Debtors' proposed plan payments are inaccurate. Debtors' proposed modified plan lists plan payments as \$8,224.75 for months 1-25 and \$229.74 for months 26-30. Under the proposed plan, the plan payments should total \$8,454.49 through September 25, 2013. According to Trustee's records, Debtors' total paid in through month 25 (August 2013, I \$8,025.25. Debtors' have submitted two additional payments of \$199.50, posted on Septemebr 4, 2013 and October 2, 2013, for total paid in of \$8,424.25.

(2.) Debtors' plan, filed September 13, 2013, is not properly signed as the signatures do not comply with Local Bankr. R. 9004-1(c), which provides that "the name of the person signing the document shall be typed underneath the signature."

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

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

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

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

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

17. [13-30688](#)-C-13 PATRICIA BURRITT
FF-1 Gary Ray Fraley

MOTION TO VALUE COLLATERAL OF
HOUSEHOLD FINANCE
9-12-13 [[14](#)]

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

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

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 53 Omaha Court, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$98,448.00 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 \$158,568.44. Household Finance's second deed of trust secures a loan with a balance of approximately \$39,178.47. 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 Household Finance secured by a second deed of trust recorded against the real property commonly known as 53 Omaha Court, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$98,448.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

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

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

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

Debtors filed the current Motion to Confirm on July 30, 2013. Debtors case was dismissed on August 6, 2013 and Debtors filed a Motion to Vacate Dismissal and Reinstate Chapter 13 Case on August 8, 2013. At the original hearing on August 27, 2013, the court continued the hearing on the Motion to be consistent with the court's continuance of Debtors' Motion to Vacate to October 8, 2013 at 2:00 pm. The hearing on the motion was again continued to October 29, 2013, where the court will again address Debtors' Motion to Vacate.

The court is granting Debtors' Motion to Vacate Dismissal and Reinstate Chapter 13 Case (Item #18). Therefore, the court will permit Debtors to the Motion to Confirm to remain on calendar. The Motion to Confirm will be continued to [date] at [time] to permit Debtors time to re-notice the Motion to all relevant 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 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 is continued to [date] at [time] to permit

Debtors the opportunity to re-notice all relevant parties that the Motion to Confirm is reset for hearing.

19. [12-26789](#)-C-13 GERALD/ROBIN TOSTE
CGK-20 Charles G. Kinney

CONTINUED FINAL HEARING RE:
MOTION TO VACATE DISMISSAL AND
REINSTATE CHAPTER 13 CASE
8-8-13 [[219](#)]

CASE DISMISSED 8/6/13

Local Rule 9014-1(f)(3) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2013. As a 9014-1(f)(3) motion, there is no required notice period.

The Motion to Vacate Dismissal has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

The Court's Tentative Ruling is to grant the Motion to Vacate Dismissal and Reinstate the Chapter 13 Case. 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:

Debtors seek an order Vacating the Order to Dismiss the Case entered on August 6, 2013 (Dkt 212). The case was dismissed for unreasonable delay that is prejudicial to creditors. Debtors filed a Notice of Appeal of the court's order dismissing Debtors' Chapter 13 case on August 16, 2013 (Dkt. 223).

At the first hearing on the matter, held August 27, 2013, the court decided to continue the hearing on the Motion to October 8, 2013, to permit Debtor to file and serve supplemental briefs and the Chapter 13 Trustee to file and serve his reply, if any concerning the court's jurisdiction over this matter. At the hearing on October 8, 2013, the court continued the matter to October 29, 2013, to permit Debtor and Trustee to confer over the best course for Debtors' case and to file any supplemental pleadings on the matter. The court's intent was to foster an amicable resolution to this matter that balanced the interests of creditors with efficient administration of Debtors' Chapter 13 case.

On October 22, 2013, the Chapter 13 Trustee filed a supplemental response following the hearing on October 8, 2013. In the response, the Trustee asserts that the court has jurisdiction to hear and decide the current Motion to Vacate. Trustee notes that Debtors filed their Motion to Vacate before their Notice of Dismissal. This is important, Trustee asserts, because while normally the filing of an appeal divests the trial court of jurisdiction, Fed. R. of Bankr. P. 8002(b) provides that a Notice of Appeal filed after judgment but before disposition of a motion to alter or amend the judgment is ineffective until the entry of an order disposing of the last such motion.

Trustee states he no longer wishes to oppose the motion and asks that if the court vacates the order dismissing, the court address whether notice of the motion to confirm needs to be re-served on creditors who may have not opposed the motion while the case was dismissed.

Applicable Law

Fed. R. Bankr. P. 8002(b)

Fed. R. Bankr. P. 8002(b) provides the following:

If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing on the last such motion outstanding. This provision applies to a timely motion . . . (4) for relief under Rule 9024 if the motion is filed no later than 14 days after the entry of judgement.

A notice of appeal filed after announcement or entry of the judgment, order, or decree but before disposition of any of the above motions is ineffective to appeal from the judgment, order, or decree, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding.

Fed. R. Civil. P. 60(b) & Fed. R. Bankr. P. 9024

Federal Rule of Civil Procedure 60(b), as made applicable by Bankruptcy Rule 9024, governs the reconsideration of a judgment or order. Grounds for relief from a final judgment, order, or other proceeding are limited to:

- (1.) Mistake, inadvertence, surprise, or excusable neglect;
- (2.) Newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b).
- (3.) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4.) The judgment is void;
- (5.) The judgement has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6.) Any other reason that justifies relief.

Fed. R. Civ. P. 60(b). The court uses equitable principals when applying Rule 60(b). See 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE §2857 (3rd ed. 1998). The so-called catch-all provision, Fed. R. Civ. P. 60(b)(6), is "a grand reservoir of equitable power to do justice in a particular case." *Compton v. Alton S.S. Co.*, 608 F.2d 96, 106 (4th Cir. 1979) (citations omitted). While the other enumerated provisions of Rule 60(b) and Rule 60(b)(6) are mutually exclusive, *Liljeberg v. Health Servs. Corp.*, 486 U.S. 847, 863 (1988), relief under Rule 60(b)(6) may be granted

in extraordinary circumstances, *id.* at 863 n.11.

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

Additionally, when reviewing a motion under Civil Rule 60(b), courts consider three factors: "(1) whether the plaintiff will be prejudiced, (2) whether the defendant has a meritorious defense, and (3) whether culpable conduct of the defendant led to the default" *Falk*, 739 F.2d at 463.

Prior Disposition & Procedural History

In dismissing the bankruptcy case, the court's findings of fact and conclusions of law (the Civil Minutes, Dkct. 201) include the following:

- A. "The Trustee seeks dismissal of the case on the basis that the debtors have no pending plan after Debtors Motion to Confirm was heard and denied on May 21, 2013 (Docket #194). No subsequent amended plan or Motion to Confirm has been filed. This is the fourth Motion to Dismiss the Trustee has filed for failure to confirm a plan. The Debtors have filed four amended plans all of which have been denied confirmation by the court. The Trustee does not believe that the debtors are able or will be able to confirm a plan in this case."
- B. "On July 30, 2013, the Debtors filed a Fifth Amended Chapter 13 Plan. No motion to confirm has been filed. In denying confirmation of the Fourth Amended Plan the court stated,

'The courts review of the pleadings and Proof of Claim Number 9 indicate that it is not clear whether Creditor is secured or unsecured. Creditor admits that part of its \$154,767 claim is unsecured, while the Declaration of Gerald Toste states that Creditors claim is unsecured, but also indicates that Creditor may have a lien on Debtors real property. Attached to the Proof of claim is an abstract of judgment, but it does not appear to bear the normal recorder stamp for El Dorado County, California. No motion to value Creditors claim has been filed. The court cannot determine whether the plan is feasible without determining whether Creditor is to be provided for as a secured creditor under the proposed plan.'

As to the Debtors income, this case was filed April 6, 2012. Now, almost a year later, the Debtors offer no testimony as to their current income and expenses. All of the information is a year old. Schedules and Statement of Financial Affairs, Dckt. 1. The Debtors did file Amended Schedules I and J on March 25, 2013, Dckt. 173, but that merely corrects errors in the

original Schedules I and J, stating the income and expenses as of April 2012. (Schedule I states INCOME (estimate of average or projected income at the time case filed), and Schedule J states Complete this schedule by estimating the average or projected monthly expenses of the debtor and debtors family at time case filed.)'

Civil Minutes, Dckt. 194."

- C. "The basic defects continue with this Fifth Amended Plan filed twenty-four hours prior to this hearing, after the Debtors having sixty-four days since the order denying confirmation was entered by the court. The Debtors, while initially commencing this case on April 6, 2012 in *pro se*, they have been represented by counsel since May 2012, essentially the entire life of this case. Although the defects in the plan may be easily cured, they have not been. Accordingly, the Trustees concerns remain valid."

The following chart illustrates the filing patterns of Debtors during the court of their bankruptcy case.

April 1, 2012 First Amended Plan Filed. No Motion to Confirm Filed, No Hearing Set for Confirmation of Plan	
June 12, 2012 motion to dismiss, Dckt. 24	June 18, 2012 Filing of Second Amended Plan, Dckt. 31 Motion to Confirm Filed July 10, 2012, Dckt. 52. (78 days from filing of prior plan which was not prosecuted.)
	September 11, 2012, the Debtors Dismissed their Motion to Confirm Plan Without Prejudice, Dckts. 81, 85
December 12, 2012 Motion to Dismiss, Dckt. 97	December 26, 2012 Filing of Third Amended Plan, Dckt. 101 Motion to Confirm Filed December 26, 2012, Dckt. 103. (106 days from dismissal of motion to confirm prior plan.)
January 9, 2013, Dismissal Without Prejudice Motion to Dismiss, Dckts. 111, 123.	
	Motion to Confirm Plan Denied, February 12, 2013, Order filed March 1, 2013; Dckts. 156, 166.
February 27, 2013 Motion to Dismiss, Dckt. 158.	

March 27, 2013 Hearing on Motion to Dismiss. Hearing Continued to May 8, 2013. Dckts. 182, 184.	Fourth Amended Plan and Motion to Confirm Filed March 25, 2013. (42 days from denial of confirmation of prior plan.)
Motion to Dismiss Denied Without Prejudice on May 8, 2013, Dckt. 193	
	May 29, 2013, Motion to Confirm Fourth Amended Plan is Denied, Dckts. 194, 196.
July 17, 2013 Motion to Dismiss Filed, Dckt. 197, July 31, 2013 Hearing.	July 30, 2013, Fifth Amended Plan Filed, Dckt. 203. (63 days from denial of prior plan).

Discussion

Jurisdiction

The court maintains that pursuant to Fed. R. Bankr. P. 8002(b) it has jurisdiction to hear this matter and alter the order forming the basis for Debtors' Motion to Vacate, if necessary.

As argued by Trustee, Fed. R. of Bankr. P. 8002(b) provides that a Notice of Appeal filed after judgment but before disposition of a motion to alter or amend the judgment is ineffective until the entry of an order disposing of the last such motion. The Notice of Appeal concerning the order dismissing Debtors' case was filed August 16, 2013, eight (8) days after Debtors filed their Motion to Vacate on August 8, 2013. Therefore, the appeal remains ineffective until the court issues a final judgment on the Motion to Vacate.

Disposition

As the above chart and civil minutes demonstrate, at the time of dismissal, the court was certain that Debtors, by not proposing and then and then confirming a plan, were causing prejudice to creditors, by the very nature of a Chapter 13 case. Until a plan is confirmed and the debtor is "locked-in" to the terms, the creditors are in limbo and the debtor is operating in an environment in which he or she may have obligations to perform, or may not have obligations, switching as multiple amended plans are filed.

However, the court is in possession of Trustee's recent response, through which he removes all opposition to Debtors' Motion to Vacate and discusses the court granting the Motion to Vacate and requiring Debtors to re-notice their pending Motion to Confirm (Dkt. 205). If the court grants the Motion to Vacate, Debtors may move forward with their Motion to Confirm and hopefully commence payments under the terms of a confirmed Chapter 13 plan. If the court denies the Motion to Vacate, the Debtors may take one of two paths. Either continue with their appeal, seeking to overturn the order of this court dismissing Debtors' Chapter 13 case. Alternatively, Debtors may withdraw their appeal and refile a Chapter 13 case. The most clearly efficient option, that involves the least continued delay to creditors, is the option whereby the court grants Debtors' Motion to Vacate.

Considering the Trustee's position, interests of creditors, and desire for efficient prosecution of Debtors' Chapter 13 case, the court will grant the Motion to Vacate and permit Debtors to move forward with their Motion to Confirm the Fifth Amended Plan. As a result of the court's decision, the Debtors are required to make a timely withdrawal of their Notice of Appeal pending with the Bankruptcy Appellate panel.

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

IT IS ORDERED that Motion to Vacate Dismissal is granted and the Debtors Chapter 13 case is reinstated.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 16, 2013. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

21. [13-28894](#)-C-13 VASILIIY LAZARES KU
TSB-2 Pro Se

CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
8-20-13 [[26](#)]

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

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

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

The Objection to Debtor's Claim of Exemptions having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 20, 2013. 42 days' notice is required. That requirement was met.

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

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

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

At the hearing on the Motion, held October 8, 2013, the court decided to continue the matter to permit Debtor to serve Supplemental Pleadings on the Chapter 13 Trustee. The supplemental pleadings were due on or before October 16, 2013.

At the first hearing, the Chapter 13 Trustee opposed confirmation of Debtor's plan for the following reasons:

(1.) Debtor filed amended Schedules I and J, which reflect an increase in income by \$567.33 and increase in expenses by \$567.33 without any explanation. Trustee is unable to determine Debtor's ability to make payments and the feasibility of the plan.

(2.) Debtor's amended Schedule I adds \$567.33 in monthly income derived from tax refunds. Debtor has not proven he should receive a tax refund. Debtor does not list any tax refund on Schedule B. 11 U.S.C. § 1325(a)(1).

(3.) Schedule I shows net monthly income from an unidentified second job of \$712.06, income assistance from mother of \$200.00, and income assistance from brother of \$400.00. Debtor previously filed declarations explaining the income assistance, but has not referenced them in the present motion. 11 U.S.C. § 1325(b).

(4.) Debtor's food expenses increased from \$350.00 to \$584.00 without sufficient explanation.

Debtor has not filed supplemental pleadings and Trustee has not

filed any documents indicating withdrawal of his objection to confirmation. Therefore, the Plan continues to 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.

23. [13-30688](#)-C-13 PATRICIA BURRITT
NLE-1 Gary Fraley

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
CUSICK
9-17-13 [[19](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtor and Debtor's Attorney on September 17, 2013. 14 days' notice is required. That requirement was met.

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

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

The hearing on the Trustee's Objection to Confirmation was continued from October 22, 2013 to October 29, 2013, to permit the Objection to be heard concurrently with Debtor's pending Motion to Value the secured claim of Household Finance.

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

(1.) Under 11 U.S.C. § 1325(a)(6), Debtor cannot afford to make the payments or comply with the plan. Debtor's Plan relies on the Motion to Value Collateral of Household Finance, which is set for hearing on October 29, 2013. If the motion is not granted, the Plan will not have sufficient monies to pay the claim in full.

(2.) Debtor has listed the arrears of Southgate Garden HOA dues to be paid in Class 1 of the Plan. It does not appear that this is a long term debt and does not complete after the 60 month duration period of the Plan. Trustee is not certain that this debt is properly listed in Class 1.

The court is set to grant Debtor's Motion to Value the secured claim of Household Finance, Item # 17 (Dkt. 14) as of the date of the hearing on Trustee's Objection, October 29, 2013. This resolves Trustee's first objection. At the original hearing on Trustee's Objection, Counsel for Debtor indicated he would speak with Trustee about the correct treatment of the HOA dues and make the required adjustments. Assuming Counsel for Debtor remedies Trustee's

concerns about treatment of the HOA dues by the time of this hearing, set for October 29, 2013 at 2:00 pm, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a) and the objection is overruled..

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

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

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

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