

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

November 5, 2013 at 2:00 p.m.

1. [13-33301](#)-C-13 GLORIA WELLINGTON MOTION TO IMPOSE AUTOMATIC STAY
PGM-1 Peter G. Macaluso 10-21-13 [[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 all creditors, Chapter 13 Trustee, and Office of the United States Trustee on October 21, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Impose 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 an order from the court causing the automatic stay to take effect in Debtor's case as to all creditors, pursuant to 11 U.S.C. § 361(c)(4)(B). Debtor filed three bankruptcy cases prior to the current case. Debtor's first case was filed on December 4, 2010 (10-46452) and was dismissed on December 12, 2011. Debtor's second case was filed on December 23, 2011 (Case #11-49530) and was dismissed on August 15, 2012. Debtor's third case was filed on September 20, 2012 (Case #12-37004) and dismissed on October 03, 2013 for failure to make plan payments.

The current Chapter 13 case was filed on October 15, 2013.

11 U.S.C. § 362(c)(4)(A) provides that the automatic stay will not

take effect in a case filed under Title 11 if the Debtor had two (2) or more cases pending within the previous year that were dismissed. If, within 30 days of filing the most recent case, a party in interests requests the court to have the stay take effect as to all creditors, the court may enter such an order following a notice and hearing and demonstration by the party in interest that the most recent filing was in good faith. 11 U.S.C. § 362(c)(4)(B). A case is presumptively filed not in good faith as to all creditors if two (2) or more previous cases of the debtor were pending within the one-year period. 11 U.S.C. § 362(c)(4)(D)(i)(I).

Here, Debtor argues under § 362(c)(4)(B), the dismissal of the previous case raises the presumption of bad faith filing for the instant case. However, Debtor only had one (1) case pending in the year prior to the filing of Debtor's most recent case. Debtor's current case was filed on October 15, 2013 and in the year from October 15, 2012 through October 15, 2013, only one case of Debtor was pending, Case #12-37004. Therefore, 11 U.S.C. § 362(c)(4)(A) does not apply to limit the automatic stay taking effect.

However, under 11 U.S.C. § 362(c)(3), if a debtor files a bankruptcy case within one year after a previous case was pending and dismissed, then the automatic stay in that case will terminate 30 days after the 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's previous case was dismissed because Debtor did not perform the terms of a plan confirmed by the court. 11 U.S.C. § 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).

It appears the Debtor should have moved to extend the stay under § 362(c)(3)(B), rather than move to impose it, as Debtor had one case pending and dismissed within the year preceding the current case filed on October 15, 2013. Furthermore, because the prior case was dismissed for failure to make plan payments, the presumptive of bad faith arises under § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence of good faith. *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 because without the automatic stay, Debtor's lender could foreclose on

Debtor's real property, protection of which is a main reason for Debtors' filing. Debtor filed this case to cure pre-petition arrears owed on te primary residence. Debtor's Schedule I and Form B22C shows sufficient income to cover obligations in the proposed Chapter 13 plan. Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case.

The court will grant Debtor extension of the automatic stay beyond the 30 days provided under 11 U.S.C. § 362(c)(3)(A) 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 to Impose the Automatic Stay 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)(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 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 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. 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:

3. The plan will not complete in 60 months as required under 11 U.S.C. § 1322(d). Debtors' plan pays 11.54% to unsecured creditors and Debtors are proposing plan payments of \$540.00 per month. This is approximately \$511.48, after Trustee's fees. According to Trustee's calculations, approximately \$22,603.20 remains to be paid to unsecured creditors. This means the plan will complete in 44 months; however, as Debtors have completed 19 months of the plan, the total term will be 63 months.

Debtor's Reply

To ensure the plan completes in 60 months, Debtor proposes adjusting the plan to incorporate a lump sum payment. Debtor shall continue making plan payments in the amount of \$540.00 through month 59 of the plan, but proposes to make a balloon payment of \$2,160.00 as a final payment, to ensure he finishes at month 60.

The court perceives that Debtor's proposal is made in good faith and will permit Debtor to reflect the changed payment scheme in the Order Confirming the Modified 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 the Motion is granted, Debtors' Chapter 13 Plan filed on September 20, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

IT IS FURTHER ORDERED that in the order confirming the plan, Debtor will reflect that he will continue making plan payments to unsecured creditors in the amount of \$540.00 through month 59 of the plan, and will make a balloon payment of \$2,160.00 as a final payment, to ensure the finishes at month 60.

4. [13-33414](#)-C-13 TINA LESTER
MRL-1 Mikalah R. Liviakis

MOTION TO VALUE COLLATERAL OF
CRHMFA HOMEBUYERS FUND
10-18-13 [8]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 24, 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 2771 Hillcrest Drive, Cameron Park, California. The Debtor seeks to value the property at a fair market value of \$242,000.00 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 \$255,000.00. CRHFMA Homebuyers Fund 's second deed of trust secures a loan with a balance of approximately \$75,000.00. 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 CRHFMA Homebuyers Fund secured by a second deed of trust recorded against the real property commonly known as 2771 Hillcrest Drive, Cameron Park, 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 \$242,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

5. [11-39617](#)-C-13 EDWARD/JENE RANDLE OBJECTION TO CLAIM OF ONEWEST
SDB-3 W. Scott de Bie BANK, FSB, CLAIM NUMBER 7
9-16-13 [[65](#)]

CONTINUED TO NOV. 19, 2013 per Order (Dkt. 77)

6. [13-28817](#)-C-13 ADRIAN ROBERTS
TSB-2 Richard Kwun

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK, TRUSTEE
8-7-13 [[22](#)]

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

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

Tentative Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor 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 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 court first heard Trustee's Objection at the hearing held on September 10, 2013. The court continued the hearing on the Objection to October 8, 2013, to allow Debtor to file supplemental pleadings to support confirmation of the Plan and respond to Trustee's Objection.

At the hearing on October 8, 2013, the court decided to continue the hearing on the Objection to November 5, 2013, to permit Debtor to file additional supplemental pleadings and Trustee to file any responses.

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

(1.) Under 11 U.S.C. § 1322(d), the Debtor's Plan exceeds the maximum amount of time for the Debtor to complete payments. The Debtor lists \$64,000 in mortgage arrears with a monthly dividend of \$608.83. At this rate, the Debtor would have to pay \$1,066.67 per month to pay the entire arrearage claim within 60 months. The Debtor has filed a declaration indicating that the arrearage amount of \$64,000 is a mistake, but has not provided the correct amount of arrearage for evaluation.

(2.) The Trustee argued that the Debtor had not provided for a secured claim against the residential real property at 7726 Quinby Way, Sacramento, California, in violation of 11 U.S.C. § 1325. The Debtor, however, filed a Motion for Valuation of Collateral of the 7726 Quinby Way, Sacramento, California property, and the Motion was granted on August 27, 2013. Thus, this issue with the Plan is resolved.

- (3.) The Plan may fail liquidation, in that it does not pay unsecured creditors what they would receive in the event of a Chapter 7, 11 U.S.C. § 1325(a)(4). The Debtor's non-exempt equity totals \$33,930.00, while the Debtor is proposing a 0% dividend to unsecured creditors. The Debtor is married, but has not included his spouse in the bankruptcy. Additionally, Debtor has not filed a Spousal Waiver for use of the California State Exemptions under the CCCP § 703.140. The Trustee's Objection to Exemptions, TSB-1 is set for hearing today.
- (4.) The Plan does not represent the Debtor's best efforts under 11 U.S.C. § 1325(b), on the basis that Debtor's projected disposable monthly income listed on Schedule J totals \$2,495.00. The Debtor, however, is proposing a plan payment of only \$2,150.00 for the first 12 months.

Trustee's Objection to Confirmation was heard on September 10, 2013, and continued to allow Debtor to supplement pleadings to support confirmation of the Plan and respond to Trustee's Objection.

Debtor's Response, filed September 11, 2013

Debtor filed two Supplemental Declarations on September 12, 2013 (Dckts. #36-37), which did not include the hearing date and time. It appears, however, that the declarations functioned as a response to Trustee's Objection. Debtor responded to Trustee's arguments as follows:

- (1.) The amount of arrears on the date of Debtor's bankruptcy filing was the equivalent of approximately 2.5 years of missed home loan payments on his 1st Deed of Trust.
- (2.) The amount of \$64,000 in arrears was an error because Debtor contends that he is "not that much behind" on his home loan.
- (3.) Debtor states that he is \$31,800 behind prior to the filing of his Chapter 13 bankruptcy.
- (4.) Debtor states that he is not married.

Trustee's Reply to Debtor's Supplemental Declarations, filed September 20, 2013

- (1.) Debtor's supplemental declaration indicates that his mortgage arrears were erroneously listed as \$64,00 but are actually \$31,800. This resolves #1 of Trustee's objection.
- (2.) The court's granting of Debtor's Motion to Value Collateral, RK-1, on August 27, 2013 resolves #2 of Trustee's objection (which raised the concern that Debtor's 2nd Deed of Trust held by PLM Lender Services was not provided for in the plan). This issue is thus resolved.
- (3.) Debtor had indicated on Schedule I that he was married, but did not file a spousal waiver to allow him to claim the 703 exemptions. Debtor's Supplemental Declaration indicates that he is not married, so this resolves Trustee's concerns regarding liquidation.

(4.) The final cause for objection is whether the Plan represents Debtor's best efforts:

- a. Schedules I and J show that \$2,495.52 is available. Debtor's Plan proposes to pay \$2,150 for 12 months and \$2,495 for 48 months. Debtor's Schedule J shows a net disposable income of \$2,495. Trustee is uncertain why Debtor has not proposed all disposable income into the Plan for the first 12 months. (Form 22C, Dckt. #1, pg. 36 asserts that Debtor is below median income).
- b. Debtor has more than \$600.00 more than on Schedule I. Schedule I shows that Debtor earns \$2,414.53 in net wages, \$500 from business operations, and \$1,200 in rents for a total net income of \$4,114.53. In support of his Schedule I, Debtor has filed declarations by renters Issac Pantega, Anthony James Robert, and Jeff Fellows (Dckt. #'s 27, 28, and 37). Each of these declarations indicate that the party pays Debtor \$600 per month for rent. This would result in combined rents of \$1,800.00.

The projected net disposable income is \$3,095.13, so that the Plan payment can increase by \$945.13, \$600 more than shown on Schedules I and J. The Plan payment can increase to \$3,095.00.

Following the submission of these supplemental pleadings, the court held a hearing on the Objection on October 8, 2013. At the hearing, the court decided to again continue the matter for further supplemental pleadings from the parties.

Debtor's Supplemental Response, filed October 16, 2013

Debtor asserts that the plan shall pay \$2,150.00 from month 1 through month 4 and thereafter plan payment shall be \$2,320 from months 5 through 60. Debtor will incorporate this into the Order Confirming the Plan.

Debtor asserts that, to date, his expenses have increased to a reasonable level, see Declaration of Adrian Roberts. Debtor's Scheduled and actual expenses at the time of filing were unreasonably low in order for his budget to be feasible.

Trustee's Supplemental Response, filed October 21, 2013

Trustee agrees with Debtor's propose plan payments and is amendable to having Debtor make the required changes in the Order Confirming the Plan.

Trustee supplements his Objection by adding objection to allowance of attorney's fees under the "no look" procedure of Local Bankr. R. 2016-1(a). Debtor's Declaration in support of his amended plan (Dkt. 55) admits that Debtor's original Schedule J was not a true picture of Debtor's household and living expenses, but was reported at an unrealistic amount to show ability to make proposed plan payments. Trustee requests that counsel be required to file a motion itemizing his time and efforts as the Trustee has concerns regarding the level and quality of the work put into the case.

Since Debtor will resolve Trustee's concerns regarding plan payments in the Order Confirming the Plan, the court will overrule the Objection and

confirm the plan. The court is further persuaded to require Debtor's counsel to file a separate motion for attorneys' fees, per Trustee's suggestion.

Therefore, the court will overrule the Objection on the condition that the Order Confirming the Plan include that plan payments be \$2,150 for months 1-4 and \$2,320 for months 5-60 and that attorney's fees be denied until counsel files a separate motion for attorneys' fees.

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 and the proposed Chapter 13 Plan is confirmed.

IT IS FURTHER ORDERED that the Order Confirming the Plan include that plan payments be \$2,150 for months 1-4 and \$2,320 for months 5-60 and that attorney's fees be denied until counsel files a separate motion for attorneys' fees.

7. [13-31318](#)-C-13 JEANNIE BROWN
FF-1 Gary Ray Fraley
Thru #7

MOTION TO VALUE COLLATERAL OF
MARK R. FELDMAN
9-19-13 [[16](#)]

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 19, 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 7406 Myrtle Vista, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$223,527.00 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 \$234,017.02. Mark R. Feldman's second deed of trust secures a loan with a balance of approximately \$23,720.00. 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 Mark R. Feldman secured by a second deed of trust recorded against the real property commonly known as 7406 Myrtle Vista, 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 \$223,527.00 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 September 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 continue the Motion to Confirm the Plan to [date] at [time]. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

(1.) Debtor is delinquent \$1,963.31 in plan payments. Debtor has paid \$0.00 into the plan.

(2.) Debtor's plan relies on a pending Motion to Value the secured claim of Mark R. Feldman. If the Motion is not granted, Debtor cannot afford to make payments or comply with the plan. 11 U.S.C. § 1325(a)(6).

(3.) The plan is not Debtor's best effort because Debtor's Schedule J reflects net income of \$2,381.96 and Debtor's amended plan calls for payments of \$1,963.13 per month for 60 months. Not all of Debtor's disposable income is being paid into the plan. 11 U.S.C. § 1325(b).

The court's decision is to continue the Motion to Confirm to permit Debtor to address Trustee's first and third objections outlined above. Trustee's second objection is rendered moot as Debtor's Motion to Value the secured claim of Mark R. Feldman will be granted at the hearing on the Motion on November 5, 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 Motion to Confirm the Plan is continued to **[date]** at **[time]** to permit Debtor to correct plan payment delinquency and ensure the plan is Debtor's best effort pursuant to 11 U.S.C. § 1325(b).

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

Correct Notice Not Provided. The Motion to Confirm was not filed with a Proof of Service. Forty-two days' notice is required. It is unknown whether that requirement was met.

Tentative Ruling: The Motion to Confirm the Plan has not 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 Motion was filed without a Certificate of Service; however, it appears the Trustee was served because he filed an opposition to the Motion. 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 court's decision is to deny the Motion to Confirm pursuant to Local Bankr. R. 9014-1(e)(2), which requires proof of service, in the form of a certificate of service, to be filed with the court concurrently with the pleadings or documents being served. Here, Debtor did not file a Certificate of Service with her Motion to Dismiss. While the Trustee received service, as demonstrated by his opposition, the court is not aware that creditors or the United States Trustee were properly served.

Even if service of Debtor's Motion were proper, the court would find grounds to deny confirmation based on the Chapter 13 Trustee's opposition. Therefore, before re-serving the Plan and resetting it for confirmation, the court suggests Debtor make the changes necessary to remedy the Trustee's concerns.

The Chapter 13 Trustee opposes confirmation of Debtor's plan for the following reasons:

1. The Internal Revenue Service filed a priority claim in the amount of \$18,916.07 on March 20, 2013 (Claim #4); however, Debtor's plan does not provide for this claim. Similarly, the Franchise Tax Board filed a priority claim in the amount of \$43.27 on April 23, 2013 (Claim #6), which the plan also does not provide for.
2. In the additional provisions of the plan, Debtor proposes: "At least \$5,000.00 shall be paid to the Trustee by June 2014, with additional sums of at least \$5,000.00 per year paid each year of the Plan until \$28,000.00 is paid in addition to the monthly plan payments." If the lump sum

payments commence in June 2014, the last lump sum payment will be made June 25, 2018, which is the 63rd month of the plan. The plan must complete in 60 months. 11 U.S.C. § 1322(d).

The Plan does not comply with Local Bankr. R. 9017-1(e), 11 U.S.C. §§ 1322, or 1325(a) and is not confirmed.

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

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

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

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

10. [13-31627](#)-C-13 DAVID/KAREN BORBA
MDE-1 James L. Brunello
Thru #10

OBJECTION TO CONFIRMATION OF
PLAN BY DEUTSCHE BANK NATIONAL
TRUST COMPANY
9-26-13 [[14](#)]

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

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 26, 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:

Creditor, Deutsche Bank National Trust Company, as Trustee of the Indymac INDX Mortgage Loan Trust 2006-AR39, objects to confirmation of Debtors' plan. Creditor's Proof of Claim is in the amount of \$971,848.69, and includes arrears of \$4,561.02. Creditor's claim is secured by real property commonly known as 2158 Huntington Circle, El Dorado Hills, California.

Creditor objects to confirmation on the following grounds:

1. Debtors plan does not provide for the \$4,561.02 due in arrears to Creditor. This violates 11 U.S.C. § 1322(b)(5), which requires the plan to provide for the curing of the default on Creditor's claim.
2. Once the arrears are calculated into Debtors' plan, the suggested plan payments will be insufficient to fund the plan. Pursuant to 11 U.S.C. § 1325(a)(6), Debtors must be able to fund the plan or else it is not feasible.
3. Creditor's claim is provided for in Class 4 of the plan. Since there are pre-petition arrears, the claim should be properly classed in Class 1 of the plan.

Debtors' Response

In reply to Creditor's Objection, Debtors filed the Declaration of Debtor David Borba (Dkt. 28). In his Declaration, Borba states that at the time of filing bankruptcy, Debtors were current on their home loan mortgage with

Indymac Mortgage Services. Declarant attached as Exhibit A to his declaration a statement from Indymac Mortgage Services dated August 2, 2013, showing no past due amount. Delcarant also provides Exhibit B, the Online Payment History from Indymac Mortgage Services, showing that all payments were made on time. Furthermore, Exhibit C demonstrates that Debtors' last e-Payment dated October 3, 2013, was made on September 27, 2013 and that the next payment is not due until November 1, 2013. Finally, Declarant attached Exhibit D, showing loan activity and that all payments were current when Debtors' petition was filed.

In deciding whether Creditor's Objection is valid, the court must weigh the evidence before it. Creditor provided no evidence of its claim to arrears in the amount of \$4,561.02, not even a Declaration attesting to the validity of the claim. Meanwhile, Debtor provided a further declaration attesting to there being no pre-petition arrears and attached documents indicating that Debtors were current on their loan payments at the time of filing, September 2, 2013. Therefore, the court is satisfied that no arrears are due to Creditor and shall overrule the Objection.

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 and the proposed Chapter 13 Plan is not confirmed.

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 10, 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 continue the hearing on the Objection to Confirmation to November 19, 2013 at 2:00 pm. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

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

1. Debtor cannot afford to make payments or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtors' plan relies on a pending Motion to Value the secured claim of Indymac Mortgage Services, which is set for hearing on November 19, 2013. If the Motion is not granted, Debtors' plan lacks sufficient funds to pay the claim in full. Furthermore, Debtors' Schedule I does not list any payroll deduction for medical insurance expenses. A review of the pay advices provided to the Trustee indicate that Debtor has \$420.44 deducted from each paycheck for health and dental.
2. Debtors' plan may not be their best effort. 11 U.S.C. § 1325(b). First, Debtors' pay advices indicated that Debtor David Borba earns more than what is listed on Schedule I. The paystubs provided to Trustee show an average gross income of \$3,839.04 per paycheck, which amounts of \$8,317.92 per month. Schedule I lists gross income as \$7,465.57.

Second, the Declaration of Maria Manuela Rabadon, in support of confirmation (Dkt. 21), states that Declarant, Debtor Karen Borba's motion, lives with Debtors and contributes \$500.00 to \$1,000.00 per month to Debtors. The income is not disclosed on

Schedule I and is not listed in the Statement of Financial Affairs or the Statement of Current Monthly Income.

3. Debtor does not completely provide for the secured claim of Indymac Mortgage Services. Indymac is listed in Class 4 of the plan at a monthly payment of \$3,760.84 on the first deed of trust. Creditor Indymac filed an Objection to Confirmation (Dkt. 14) indicated that mortgage arrears of \$4,561.02 were not provided for in the plan. Not providing for treatment of Indymac's entire claim, may demonstrate that Debtor cannot afford the plan payments because of additional debtors, or that Debtor wishes to conceal the proposed treatment of a Creditor.
4. A review of Debtors' 2012 Federal Tax Return indicates that on Line 16a of the Return, Debtors had pension and annuity income of \$61,000.00 in 2012. This income is not disclosed on Debtors' Statement of Financial Affairs.

Debtors' Response

In reply to Trustee's Objection, Debtors filed the Declaration of David Borba (Dkt. 30). In the Declaration, David Borba declares that Debtors filed a Motion to Value the secured claim of Indymac Mortgage Services, set for hearing on November 19, 2013. Declarant requests a continuance of Trustee's Objection to November 19, 2013.

Declarant states he has filed the following amendments: (1.) Amendment correctly stating his gross income with health insurance deductions; (2.) Amendment of Statement of Financial Affairs, listing annuity income. As for income from Debtors' Mother-in-Law, Declarant states she contributes monthly as needed, when his wife suffers from mental health issues.

Declarant states that Debtors were current on their loan with Indymac Mortgage on the date of filing and has filed a Declaration in Response to their objection to confirmation

Deutsche Bank National Trust Company Reply

Deutsche replies to Debtors' declaration and states that a proof of claim evidencing the arrears claimed in the amount of \$4,561.02 was filed on October 16, 2013 as Claim 2-1.

The court's decision is to continue the hearing on Trustee's Objection to Confirmation to November 19, 2013 at 2:00 pm, where it will be heard concurrently with the Motion to Value the secured claim of Indymac Mortgage Services. This will also grant Trustee time to review the amendments made by Debtor to determine whether they remedy Trustee's concerns regarding plan confirmation. The court shall issue a minute order substantially in the following form holding that:

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

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

appearing,

IT IS ORDERED that the hearing on the
Objection to Confirmation is continued to
November 19, 2013 at 2:00 pm.

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 26, 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 20, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

13. [13-30534](#)-C-13 STELLA DOMINGUEZ
SJS-3 Scott J. Sagaria

MOTION TO VALUE COLLATERAL OF
MORTGAGE ELECTRONIC
REGISTRATION SYSTEM
10-7-13 [[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 October 7, 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 428 Caldarella Circle, Roseville, California. The Debtor seeks to value the property at a fair market value of \$393,821.00 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 \$398,821.00. Mortgage Electronic Registration System's second deed of trust secures a loan with a balance of approximately \$19,264.00. 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 Mortgage Electronic Registration System secured by a second deed of trust recorded against the real property commonly known as 428 Caldarella Circle, 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 \$393,821.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

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 10, 2013. 14 days' notice is required. That requirement was met.

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

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

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

1. The plan is not Debtors' best effort under 11 U.S.C. § 1325(b). Debtors' Statement of Current Monthly Income indicates that Debtors are under median income; however, the form does not list the Debtors' business income. Schedule I lists income of \$800.00 on line 13 from two patients in Sunrise Home Care. Furthermore, Trustee received information from Debtors' counsel that the income from the two care home patients is actually \$1,600.00 per month.

Class 1 of Debtors' plan provides for the ongoing and arrears payment on property located at 8194 Sunrise Blvd., Citrus Heights, California. The monthly mortgage payment is \$1,900.00. The plan lists arrears of \$82,000.00 and proposes an arrears dividend of \$1,667.52 per month. On Line 16 of Schedule J, Debtors lists regular business expenses of \$700.00 per month. The total that Debtors expend each month to maintain the property and cover business expenses is \$4,485.81. Debtors are only receiving business income of \$1,600.00 per month. Debtors' care home is generating negative cash flow of \$2,885.81 per month. This amounts of \$173,148.60 over the life of the plan that could be paid to creditors.

2. Debtors' plan may not be feasible. First, Debtors 2012 Federal Tax Return shows that Aka Family Homes had gross business income in 2012 of \$3,250.00, and generated losses of \$43,246.00. Debtors' Statement of Financial Affairs does not list any care home income for 2012 or year-to-date.

Second, the plan proposes payments of \$4,780.00 for twelve (12) months, then \$7,815.00 for the remainder of the plan. Schedule I, Line 17 indicates this payment increase will stem from starting a daycare business within one (1) year. Schedule J, Line 19 indicates that Debtors intend to obtain more patients in the care home and will be completing licencing requirements to do so. At the First Meeting of Creditors, Debtors stated that the daycare business would be an adult daycare within the care home. No information is provided in Debtors' documents to indicate exactly how much more income will be incoming. Trustee is not certain Debtor can reasonably expect increased income of \$3,035.00 per month within the next year.

Debtors' prior case, 11-41984, contained a similar provision, but Debtors' income did not increase as proposed. Trustee is not certain Debtor can reasonably expect increased income of \$3,035.00 per month within the next year, especially given that Debtor has already unsuccessfully attempted to increase her income in the prior case.

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

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

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

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

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

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 6, 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 Modify Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The first hearing on Debtors' Motion to Modify plan was held on October 22, 2013. At that hearing the court decided to continue the hearing on the Motion to November 5, 2013 to grant Debtor time to confer with the Internal Revenue Service in resolve the Chapter 13 Trustee's objection.

Pursuant to 11 U.S.C. § 1329, the Debtors in this matter are permitted to 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 objected to confirmation of Debtors' Modified Plan because it calls for a 2012 post-petition tax claim of the IRS to be paid without a proof of claim. The Internal Revenue Service had not amended its claim to include the 2012 post-petition taxes and Debtor cannot file the claim on behalf of the creditor pursuant to 11 U.S.C. § 1305.

Debtors' Reply

Upon receiving Trustee's objection, Debtor contacted the IRS to resolve the issue. However, due to the government shutdown, no live operators or agents were available to make the changes. Debtor requests the court continue the hearing on confirmation to grant time for the government to hopefully re-open and resolve this issue.

Seeing no amended claim of the IRS filed on the claims register for Debtors' case, the court must sustain the Trustee's objection and deny confirmation of Debtors' modified plan.

Trustee's Withdrawal

Trustee filed a "Notice of Withdrawal," withdrawing his opposition to Debtor's Motion to Confirm because the IRS filed an amended claim on October 31, 2012 to include post-petition arrears. The Trustee's objection is resolved.

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 the Motion is granted, Debtors' Chapter 13 Plan filed on September 6, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

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

17. [12-41444](#)-C-13 TONI GOMES
DRE-3 D. Randall Ensminger

MOTION TO APPROVE LOAN
MODIFICATION
10-8-13 [[106](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the U.S. Trustee and Chapter 13 Trustee on October 8, 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).

The court's tentative decision is to continue the hearing on the Motion to Approve Loan Modification until [date] at [time]. No appearance required. The court makes the following findings of fact and conclusions of law:

Movant Debtor requests that the court approve a modification of their mortgage with Olympic Mortgage, LLC concerning real property commonly known as 12770 Long Valley Road, Penn Valley, California. Olympic Mortgage, LLC holds a second deed of trust on the property. Debtor and Olympia agreed to this loan modification in exchange for Debtor dismissing a Motion to Value the secured claim of Olympia.

The agreement, set for in the attached Exhibit, provides that modifications to the note shall commence September 17, 2013. The reduced principal will be \$45,000.00. Interest shall accrue at 7% interest only per annum from the date of the executed modification until September 1, 2015, at such time all accrued interest will be added to the amended loan amount and the balance shall be amortized over 30 years, due in 5 ears on September 1, 2020. Monthly payments shall commence on September 1, 2015, in the amount fo \$341.30. One payment will be made on September 1, 2020, in the amount of \$48,571.00.

Olympic Mortgage, LLC filed a statement of non-opposition to the Motion.

Debtor provides her Declaration as well as Exhibit A in support of her Motion. Exhibit A (Dkt. 109) is supposed to be the loan modification agreement supporting the terms outlined in Debtor's Motion; however, the Exhibit is blank and does not contain an agreement. Before the court can approve the terms of this loan modification, it needs an opportunity to review the signed and executed agreement. Therefore, the court will continue this matter to permit Debtor to provide the court with a copy of the loan modification agreement with Olympic Mortgage, LLC .

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 to Approve Loan Modification is continued to **[date]** at **[time]**.

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 24, 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 ~~xxxx~~ 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 opposes confirmation of Debtors' plan on the grounds that the plan will not complete within sixty (60) months as required by 11 U.S.C. § 1322(d). Debtors' amended plan proposes payments of \$700.00 for two months, then \$205.00 for fifty-eight (58) months. Debtors will pay in a total of \$13,290.00 over the term of the plan. The plan proposes to pay Class 2 secured debt to SMUD for \$7,208.44 at 0% interest, and a Class 5 Internal Revenue Service debt for \$6,385.85. The total required to pay these debts, including Trustee's compensation, is \$14,309.78. The plan will take eighty-three (83) months to pay these debts in full.

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.

19. [13-31548](#)-C-13 ALICIA WHITNEY
TSB-1 Richard L. Jare

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
10-10-13 [[38](#)]

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 10, 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 Chapter 13 Trustee opposes confirmation of the Plan because it relies on a pending Motion to Value the secured claim of The Villages of the Galleria HOA, which is set for hearing on October 29, 2013. If the court does not grant the Motion to Value, Debtor's plan does not have sufficient monies to pay the claim in full. 11 U.S.C. § 1325(a) (6).

At the hearing on Debtor's Motion to Value the secured claim of The Villages of the Galleria HOA, the court granted the Motion. As a result of granting the Motion, Trustee's objection is rendered moot and overruled.

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 and the proposed Chapter 13 Plan is not confirmed.

20. [13-32449](#)-C-13 ARNULFO CHAVEZ AND MARIA MOTION TO VALUE COLLATERAL OF
JMC-1 ALMANZA WELLS FARGO BANK, N.A.
Joseph M. Canning 10-7-13 [[16](#)]

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 October 7, 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 248 Millbrook Way, Vacaville, California. The Debtor seeks to value the property at a fair market value of \$267,000.00 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 \$309,598.00. Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$75,914.00. 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 248 Millbrook Way, 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 \$267,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

21. [13-30458](#)-C-13 BRIAN BOWDEN AND SANDRA MOTION TO CONFIRM PLAN
SJS-1 ROSS 9-24-13 [[22](#)]
Scott J. Sagaria

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 24, 2013. Fort-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 grant the Motion to Confirm the Plan. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The chapter 13 Trustee opposes confirmation of Debtors' plan because plan payments conflict. Debtors' amended plan lists step payments in section 1.01 of \$700.00 for one month, then \$865.00 thereafter. Section 6 of the plan lists the payments as \$700.00 for one month, then \$833.00 for fifty-nine (59) months. Debtors' declaration indicates on page 2, line 17 that Debtors have net disposable income of \$865.00 and line 12 proposes plan payments of \$865.00. Trustee does not oppose language in the Order Confirming the Plan specifying the plan payments at \$865.00 per month.

The court's decision is to overrule the objection and grant Debtors' Motion to Confirm on the condition that the Order Confirming the Plan make the corrections regarding plan payments.

Through the Order Confirming the Plan, the Plan will comply 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 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.

IT IS FURTHER ORDERED that in the Order Confirming the Plan, Debtors will reflect plan payments as \$865.00 per month.

Local Rule 9014-1(f)(2) 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 25, 2013. 14 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)(2), and Federal Rule of Bankruptcy Procedure 3015(g). 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 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. In this instance, oppositions to the proposed modifications were filed by the Chapter 13 Trustee David Cusick and Creditor Bank of America, N.A.

Trustee's Opposition, Dckt. No. 56

Trustee objects to Debtors' motion on the following grounds:

(1.) Debtors incorrectly state in Section 6.01 that \$10,640.00 has been paid to Trustee to date. Debtors have paid a total of \$13,300.00 to Trustee, with the last payment posted on September 26, 2013.

(2.) Debtors' filed Declaration is not executed pursuant to 28 U.S.C. § 1746 because it is not sworn to under penalty of perjury.

(5.) Creditor Bank of America is not provided for in the Plan: the Creditor was included in the Plan confirmed on July 3, 2013, as a Class I creditor with mortgage arrears and a monthly contract installment. Creditor has filed Court Claim #6.

The Motion for Authorization to Enter into Loan Modification, RK-2,

was granted on September 23, 2013 (Dckt. No. 43). Debtor may have meant to place Creditor in Class 4 of the Plan, based on the granting of this motion.

Additionally, Trustee has disbursed to Creditor \$7,539.05 in monthly contract installments and \$700.41 in mortgage arrears under the Plan confirmed on July 3, 2013. These disbursements are not authorized by the Plan.

Trustee's Opposition, Dckt. No. 51

Trustee filed a Notice of Errata on October 23, 2013, stating that the Objection filed as Dckt. No. 51 does not apply to the instant case, and was filed in error. Notice has been filed to make the parties and the court aware of this issue. The correct documents were served and timely lodged with the court.

Creditor's Opposition

As stated by Trustee, Bank of America is not listed in the Amended Plan. Bank of America asserts that it is entitled to receive payments pursuant to a Promissory Note which matures on August 1, 2035 and is secured by a Deed of Trust on the subject property commonly known as 1234 Depot Street, Woodland, CA 95776-4111.

Debtors' Motion to Modify states that, "Debtors move to modify their plan in order to reclassify the class 1 claim of Bank of America, NA to a Class 4 claim consistent with the granted loan modification. See dkt. 41." *Motion to Modify Plan*, page 3, lines 16-19. Debtors do not actually list Bank of America in Class 4 of the Amended Plan filed on September 25, 2013 (Dckt. No. 47). Creditor requests that Debtors file a new plan placing Bank of America in Class 4.

Debtors' Response to Trustee's Objection to Motion to Modify

Debtor responds to Trustee's objection by stating the following:

(1.) The modified plan was filed on September 21, 2013, and that at that date Debtors made 4 plan payments totaling \$10,640.00. The figure was correct as of the date the Plan was filed.

(2.) Debtor Maria T. Lozano-Romero has filed a supplemental declaration stating her understanding that she made her declaration filed on September 21, 2013, under the penalty of perjury.

(3.) Debtors request that Bank of America's classification as a Class 4 creditor and authorization of the amount disbursed to said creditor be authorized within the Order Confirming the Chapter 13 Plan.

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

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

The Motion to Confirm the 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 the Motion to Modify Chapter 13 Plan is granted, and Debtors' Chapter 13 Plan filed on September 25, 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.

IT IS FURTHER ORDERED that in the order confirming the plan, Debtor will reflect that Bank of America is classified as a Class 4 creditor in the Plan, and that Debtors will make payments pursuant to the terms of the Loan Modification agreement entered between Debtors and Bank of America, the holder of the Debtor's 1st Deed of Trust secured by Debtor's real property 1234 Depot Street, Woodland, CA 95776.

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 creditors, and Office of the United States Trustee on August 30, 2013. 28 days' notice is required. That requirement was met.

Tentative Ruling: The Motion to Sell has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Chapter 13 Trustee, having filed an opposition, the court will address the merits of the motion. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

This Motion was continued by the court on October 18, 2013 (Dckt. No 108) to allow Debtors to file supplemental pleadings, supported by competent evidence, disclosing all of the sale transactions payments, accounting of the all proceeds, and documenting the payment of the proceeds to the Chapter 13 Trustee or, if not paid to the Chapter 13 Trustee, where such monies are held and the reason for not transmitting them to the Trustee pursuant to the Chapter 13 Plan.

Debtors seek an order approving the sale of real property commonly known as 33555 Agua Ducle Canton, Agua, California. The property is an undeveloped vacant lot valued at \$21,000.00. As part of Debtors' Chapter 13 Plan, they were to sell their 3 vacant lots with the proceeds of the sale to be paid to the Chapter 13 Trustee in an amount sufficient to complete the Chapter 13 plan.

In compliance with the plan, Debtors placed the properties on the market. Debtors accepted an offer for the subject property of \$21,000.00 in October 2012 (Exh. A) with a deposit of \$5,000.00 to be applied to commission and closing costs. The terms of the sale provide that Debtors will carry a promissory note secured by the real property in the amount of \$18,919.00, with payments of \$250.02 per month at 10% interest for 120 months. (Exh. B).

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.

On August 21, 2013, Debtors informed their attorney, Timothy Stearns, of the sale and informed Mr. Stearns that they were unaware that

sale of the real property required approval by the court. Debtors believe the sale and price terms were reasonable and fair and seek retroactive approval of the sale.

Trustee's Response

Trustee responded to Debtors' Motion to Sell. Trustee stated that Debtor had not revealed whether the buyer had made payments for the months of June, July, and August 2013, and that the sale should not be approved unless those payments were shown to be made. According to the Trustee, the Plan provided that sale proceeds as needed would be paid into the plan and that these payments were not paid to the Trustee, but "were used to pay normal living expenses" (Declaration, Dkt. 96). The Declaration is dated August 30, 2013, which made the non-disclosure of these details important. The note payable to Debtor is part of the purchase price, and where the approval is sought after the transaction, the Court was requested to verify that the payments have been made.

The court continued the hearing to permit Debtors time to provide Trustee with complete disclosure of the payment information.

Supplemental Declaration in Support of Motion to Approve Sale of Real Property *Nunc Pro Tunc*

Debtors filed this declaration on October 23, 2013, testifying that on or November 30, 2012, Debtors closed escrow on the sale of the subject real property and received \$3,390.58 on that date. The \$3,390.58 was deposited into Debtors' joint checking account, as shown by the stub from that check that was filed as Exhibit "E" on Dckt. 112. Debtors state that because Debtor husband was not working, that money was used for the couple's living expenses.

Debtors have also been receiving the monthly @250.02 payments that are provided for in the Installment note that was previously filed as Exhibit "B" with their Motion to Approve Sale (Dckt. No. 97). Debtors state that they have been receiving payments through October 2013, and have deposited each of these payments into their joint checking account. Photocopies of all the checks received on the Installment Note, with the exception of the September 2013 check that Debtors did not make a photocopy of, have been filed as Exhibit "F" on Dckt. No. 112. Debtors have also filed, as Exhibit "G," a true copy of the deed conveying the real property to buyers Brian and Lisa Warr.

Trustee's Statement of Non-Opposition

Trustee filed this statement of non-opposition on October 29, 2013. Trustee acknowledges that Debtor has furnished a declaration and receipts showing monthly payments from December 2012 to October 2013, totaling \$2,750.02 and a one-time escrow payment of \$3,390.58 for total payments of \$6,140.80. Debtor has made plan payments of \$46,708.00 to date with the case filed May 21, 2012, and last payment received on October 23, 2013. Trustee is further satisfied by Debtors' explanations that these sums went toward Debtors' living expenses.

Trustee states that although Debtors explain that Debtor husband was not working at the time of the escrow payment, the Schedules filed reflect that he has been self-employed in a lawn service (Dckt. No. 23, Page 4),

which presumably may be seasonal, and that now Debtor is employed in additional work (Dckt. No. 73, Page 3). Debtors declare that they had "not anticipated a late start to this season's lawn service and fell behind (Dckt. No. 74, Page 1, Lines 24-25); the lawn service income was reflected on the original Schedule I as \$3,069.00.

Additionally, Debtors' Plan treatment remains consistent. Debtor's confirmed first Amended Plan was a 100% plan paying \$2,677.00 per month, plus the sale proceeds of various lots, including the lot in the instant motion. Debtor's Third Modified Plan, Dckt. No 90, calls for payments of \$26,870.00 through May 2013, then \$5,103.50 from June through September 2013, then \$3,625.00 until the end of the Plan with 100% to the unsecured.

Trustee's original concerns have been remedied and Debtors have supplied the requested documentation. Thus, the court sees fit to approve Debtors' sale of the real property, commonly known as 33555 Agua Dulce Canyon, Agua, California.

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 Approve Sale of Real Property is granted. The court hereby approves the sale of the real property commonly known as 33555 Agua Dulce Canyon, located in Agua, California, which was sold in pursuant to a land purchase agreement dated October 18, 2012, for the price of \$21,00.000.

24. [13-31563](#)-C-13 SHARON NEWSOME
Marianne E. Malveaux

MOTION TO VACATE DISMISSAL OF
CASE
10-5-13 [[45](#)]

CASE DISMISSED 9/24/13

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

Correct Notice Not Provided. No Proof of Service was filed. Trustee claims that the Motion was not served on any parties. The requirements for noticing this motion were not met.

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

The Court's Tentative Ruling is to deny the Motion to Vacate Dismissal. 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 that vacates the Order to Dismiss the Case entered on September 24, 2013 (Dkt. 36). The case was dismissed for Debtor's failure to timely file documents, after Debtor did not respond to a notice of incomplete filing issued by the clerk's office.

Debtor filed for Chapter 13 Bankruptcy on September 3, 2013. The court ordered a dismissal on September 24, 2013 because Debtor did not file her Chapter 13 Means Test, Statement of Financial Affairs, and Summary of Schedules. The reason for this, Debtor's attorney states, is because Debtor's attorney experienced major computer problems on the week the documents were due. Debtor's attorney's difficulties with her computer adversely affected her ability to manage the majority of her cases, and compromised her ability to submit timely, complete schedules in the instant case. Debtor's attorney claims that due to this mistake, Debtor's attorney submitted only the most recent version of the forms recoverable on her system to the bankruptcy court on September 19, 2013. Debtor's attorney was unable to retrieve the other files.

Debtor's attorney did not, however, file a declaration to support the facts alleged in the motion. Debtor also claims to attach the "omitted schedules which debtor is prepared to file when the court grants debtor's motion to vacate the order of dismissal," but nothing is attached to the motion or filed on the docket.

Trustee's Opposition

Trustee objects to the Motion to Vacate Dismissal of the Case on multiple grounds, and ask that the motion be denied on the basis that Debtor and her counsel do not appear to be prepared to prosecute this case.

Trustee characterizes Debtor's initial bankruptcy filing, made on September 3, 2013, as skeletal. The court allowed Debtor until September 17,

2013 to file the remaining missing documents. On the day of the deadline, Debtor filed her Schedule J, but did not file a motion to extend the deadline, explain the computer problems, or ask for additional time to file the remaining documents. Debtor waited until a day later on September 18, 2013, to file the request for additional time.

On September 19, Debtor filed partially completed Schedules A and C, in addition to the following documents, which were left blank; Debtor's Schedules B, and D-H, as well as her Schedule I, Means Test, and Chapter 13 Plan. On September 20, 2013, the court granted Debtor's Motion to Extend Time, allowing Debtor until September 23, 2013 to file the remaining documents. Debtor did not file anything further, however, prompting the court to dismiss the case.

Debtor now asks the court to vacate the dismissal and indicates that the omitted schedules are attached (Dckt. No. 45, page 2, line 5), but no attachments were filed with the court. Additionally, the Motion was not served and no proof of service was filed. To date, Debtor has still not filed a Summary of Schedules or the Statement of Financial Affairs. Of the documents filed, the plan is blank, and there are no creditors listed on Schedules D, E, and F. The Chapter 7 Means Test is blank, although Debtor's Schedule I shows that she has been a self-employed daycare provider who earns \$6,000 per month for the last 15 years.

Trustee additionally wishes to point out that, based on a quick search performed on PACER, it appears that Debtor's attorney, Marianne Malveaux, has had an extensive history of being involved with Chapter 13 cases with Notices of Incomplete filings issued, motions to extend time to file documents, late filed documents, and not filed documents.

Most notably, there was another Chapter 13 case, filed on October 2, 2011, Case No. 11-43788 on behalf of the Debtor Linda Beno, in which computer issues were cited as Marianne Malveaux' reason for failure to timely prosecute her client's case. In that case, Marianne Malveaux testified that the crashing of her computer hindered her from filing Debtor's Amended Chapter 13 Plan in a timely manner. She states in her declaration that she was not able to access Debtor Beno's documents through another system, as she did not have the filings backed up. Thus, Malveaux filed the Plan after it had already been argued that the delay in filing the Plan had unduly prejudiced Debtor's creditors (see Dckt. No. 86 in Case No. 11-43788). Malveaux asserts that she had not delayed in making the filings to purposefully inconvenience the court or other interested parties.

Applicable Law

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.

Here, the procedural and evidentiary deficiencies of Debtor's motion are too great to overcome. Debtor did not file a Proof of Service, showing that the motion was actually served to Trustee, creditors, or any other interested parties. Debtor does supply a declaration of Marianne Malveaux, attesting to the fact that it was indeed, Debtor's attorney's computer failures that prevented Debtor from filing the Amended schedules and remaining missing documents by the extended deadline of September 23, 2013. There is simply not enough evidence for the court to determine that Debtor is entitled to an order vacating the September 24, 2013 Order to Dismiss Case issued by the clerk's office.

Furthermore, Debtor does not cite to any of the grounds provided by Federal Rule of Civil Procedure 60(b), as made applicable by Bankruptcy Rule 9024, for relief from a final judgment and order. Because of the lack of evidentiary support for Debtor's factual contentions, as well Debtor's conclusory statements of law that were unsupported by specific allegations as to how Debtor's case fits into any of the grounds for reconsideration of a judgment or order (set out in Federal Rule 60(b) as incorporated by Federal Rule of Bankruptcy Procedure Rule 9023) in Debtor's motion, the court cannot grant relief at this time. The court cannot exercise its equitable discretion in considering the vacating of the dismissal order, because Movant Debtor does not allege enough facts to show that its claim could be meritorious or is true.

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 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 Vacate Dismissal is denied.

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 October 1, 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 personal property commonly known as a 2005 Chevrolet Silverado 1500 Regular Cab 6.5ft. The Debtor seeks to value the property at a fair market value of \$2,600.00 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).

Debtor provides no evidence of Western Federal Credit Union's security interest in the vehicle. Debtor does not state in her declaration the debt due to Western Federal nor request the court to reduce the amount of Western Federal's secured claim to the value of the vehicle. Debtor merely requests the court to value her vehicle.

A review of the claims register reveals three separate proofs of claim filed by Western Federal Credit Union. Claims #2 and #3 are for "money loaned" and are for unsecured amounts of credit. Claim #4 is for "auto loan" and is supported by a Retail Installment Sale Contract for a 2007 Pontiac G6; the amount due is listed as unsecured.

The court lacks sufficient evidence of a secured claim upon which it can grant this Motion to Value; therefore, the court's decision is to deny the Motion to Value 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 pursuant to 11 U.S.C. § 506(a) is denied without prejudice.

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 24, 2013. Forty-two (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. 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 opposes confirmation of Debtor's plan on the following grounds:

1. Debtor may not be current on post-petition taxes. The Trustee received a letter from the State Board of Equalization (Exh. A, Dkt. 56), advising Trustee that Debtor has not paid post-petition tax liabilities.
2. Debtor's plan may not be her best efforts as required by 11 U.S.C. § 1325(b). Debtor claims a household size of 2, including her 39 year-old boyfriend as a dependent. Trustee lacks sufficient information relating to the dependent listed to determine whether all household income is being reported. Form 2C shows a positive \$876.85 per month in disposable income and the plan pays zero; however, Trustee is not certain as to the Debtor's projected disposable income—Debtor no longer shows business income and does not disclose whether the 39 year-old dependent has income.

Debtor has not disclosed income for the dependent on Schedule I, but appears to be listing their combined household expenses. On Schedule J, Debtor deducts \$1,795.00 per month for rents, \$300 per month for cable and internet, \$875 for food, \$200 per month for clothing, \$75 for laundry expenses, \$265 for medical expenses, \$170 for personal care, and \$480 for transportation costs. Debtor also lists \$140 per month for pet food and expenses, but not pets are reported on Debtor's Schedule B. Debtor deducts \$216 per month for charity, but reports no cash donations to charity on her Statement of Financial Affairs.

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.

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 16, 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. Trustee is uncertain of the proposed plan payments. States state an amount in Section 1.01 and then files as page 7 of 8 and 8 of 8 additional provisions which are two different plan payment provisions. It appears Debtors are attempting to propose the following:
 - a. \$9,682.50 total paid in as of September 16, 2013.
 - b. \$1,835.00 commencing 09/25/2013 for months 9 - 23.
 - c. \$2,007.00 commencing 11/25/2014 for months 24 - 32
 - d. \$2,687.00 commencing 08/25/2015 for months 33 - 60
2. While Debtors filed a Declaration in support of their Motion to Confirm, the Declaration does not provide sufficient evidence to prove all the components of 11 U.S.C. § 1325(a). Debtors should provide the following facts in support of their Motion:
 - a. The modified plan is the form plan required by the court.
 - b. The amount of non-exempt equity, where the Debtor valued the property and claimed the amount of exemptions
 - c. The treatment of secured claims, and whether it has

changed from the confirmed plan.

3. Debtors did not state an arrearage dividend for the Class 1 creditor. Section 2.08 states "See Section 6 for dividend to begin month 24 of the plan." A dividend is not stated in section 6.

Debtors' Response

In response to the first objection, Debtors confirm that the Trustee's interpretation of the plan payments is accurate. In response to the second objection, Debtors filed an Amended Declaration in support of the Motion to Confirm, providing sufficient evidence to prove the components of 11 U.S.C. § 1325(a). As to the Trustee's third concern, Debtors state that the increased plan payments commencing in month 24 will serve as the arrearage dividend for the Class 1 creditor. Debtor requests to include the arrearage dividend in the Order Confirming the Plan.

Upon review of Trustee's objections and Debtors' response, the court is satisfied that the Trustee's concerns are resolved. The modified Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed on the condition that Debtor include in the Order Confirming the information concerning the arrearage dividend.

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 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.

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 23, 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 because of a discrepancy in attorneys' fees. Section 2.06 of Debtors' modified plan proposes attorneys' fees of \$1,350.00 paid prior to the filing of the case, then \$2,150.00 to be paid through the plan. Under the confirmed plan, \$1,350.00 was paid prior to filing with \$2,650.00 to be paid through the plan. The Trustee has disbursed \$2,650.00 in attorneys' fees in this case and would have no objection if this were corrected in the Order Confirming the Plan.

Debtors' Response

Debtors state that current counsel substituted into their case after the previous attorney was paid his remaining attorney fees in the plan. Debtors' previous attorney was paid \$1,350.00 from Debtors' pre-paid legal plan prior to the filing of their case. Debtors state that their previous attorney would not agree to modify their plan, which is why they sought out Ms. Brooks to represent them for the remaining duration of their case. Ms. Brooks estimates an additional amount of \$2,150 toward attorneys' fees is required to prosecute Debtors' case through completion.

The court notes that a Disclosure of Compensation of Attorney for Debtors was filed for Candace Brooks on October 30, 2013 (Dkt. 66).

The court's decision to grant the Motion to Confirm the Modified

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

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

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

The Motion to Confirm the 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 the Motion is granted, Debtor's Amended Chapter 13 Plan filed on September 23, 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.

29. [13-31583](#)-C-13 WILFREDO/FE ONA
MRG-1 W. Scott de Bie
Thru #29

OBJECTION TO CONFIRMATION OF
PLAN BY CAPITAL ONE AUTO
FINANCE
9-17-13 [[14](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Debtors, Debtor's Attorney, the Chapter 13 Trustee, and the Office of the U.S. Trustee 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 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, Capitol One Auto Finance, having filed its Proof of Claim in the amount of \$18,564.40, including arrearage in the amount of \$1,669.28 secured by the personal property commonly described as a 2009 Honda Civic, with a VIN # ending in 4168, opposes confirmation of the Plan for the following reasons:

(1.) Under 11 U.S.C. 1325(a)(5)(b), the Plan does not provide sufficient payments to Creditor for adequate protection. According to the Plan, Debtor has provided an interest rate of 4.00% on Creditor's claim; the original interest rate on the claim was 13.91%. Creditor requests that the court look to the current national prime rate and adjust the interest rate upwards to 10.00% to reflect specific factors including the nature of the loan, the quality of the Creditor's security, and the risk of default; or such other rate of interest as determined by the court.

(2.) Under 11 U.S.C. §1325(a), Debtors cannot lienstrip a debt incurred within 910 days prior to the filing of the petition. According to the Debtors' Schedules, the Property was acquired for personal use on August 15, 2012. Because less than 910 days have passed prior to the filing of the petition on September 3, 2013, Debtors cannot lienstrip Creditor's claim.

Debtors' Response

Debtors filed this response on October 21, 2013 (Dckt. No. 36).

Debtors agree that the proposed Plan is not confirmable at this time, and state their intention to file an Amended Plan and set a hearing for the same. Debtors request that the court sustain this instant objection without prejudice to Debtors' filing of an amended 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 Creditor Capitol One Auto Finance 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.

30. [13-31583](#)-C-13 WILFREDO/FE ONA
TSB-1 W. Scott de Bie

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
10-10-13 [[22](#)]

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

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 10, 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). 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 sustain 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 on the following grounds:

(1.) The Plan is not feasible under 11 U.S.C. § 1322(d), as the Plan will not complete within 60 months. The Plan will take 67 months to complete due to the claim filed by the Internal Revenue Service (Court Claim #1). That debt was scheduled as priority debt for \$40,562.83, and the creditor filed a priority Proof of Claim for \$55,192.72 instead.

(2.) Debtor cannot afford to make payments or comply with the plan under 11 U.S.C. § 1325(a)(6), as Debtors' Plan relies on the Motion to Avoid Lien of Capitol One Bank on a judgment lien, and the Motion to Value Collateral of Best Buy. Debtor has not filed either motion to date.

Additionally, the Plan also relies on a Motion to Value Collateral of Capitol One Auto Finance. In regard to that debt, however, the debt of Capitol One Auto Finance was incurred on August 15, 2012, which was less than 910 days prior to the filing of this bankruptcy case. See Proof of Claim #2, This debt is not eligible for treatment under 11 U.S.C. § 506(a), as the debt cannot be valued according to 11 U.S.C. § 1325(a)(5)'s "hanging paragraph."

Debtors' Response

On October 21, 2013, Debtors filed a statement of non-opposition, agreeing with Trustee's assertions that the Plan as proposed is not confirmable at this time. Debtors state their intent to file an amended Plan.

The current Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection 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 the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

31. 13-30286-C-13 RAYMOND YOUNG
SJS-1 Scott J. Sagaria

OBJECTION TO CLAIM OF INTERNAL
REVENUE SERVICE, CLAIM NUMBER
3-1
10-7-13 [21]

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, Office of the United States Trustee, and other parties in interest on October 7, 2013. By the court's calculation, however, 29 days' notice was provided. 44 days' notice is required. That requirement was not met.

Tentative Ruling: This Objection to a Proof of Claim has been set for hearing on the notice required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to sustain the Objection to Proof of Claim number 3 of the Internal Revenue Service and disallow the claim in its entirety. 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 objects to Claim No. 3 of the Internal Revenue Service in the amount of \$5,094.62. Debtor disputes owing the claimed amount and seeks an order from the court providing that the claim is disallowed in its entirety.

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).

Debtor disputes owing any amount to the Internal Revenue Service based on unassessed tax returns. The amounts due to the IRS are listed on an attachment to the IRS Proof of Claim. The first amount is \$4,640.40 for the tax period of 12/31/2010 and categorized as "Unassessed-No Return." The second amount is \$100.00 for the tax period 12/31/2012, and categorized as "Unassessed-No Return." Both amounts appear to be punitive fines related to not filing a return.

In support of the objection, Debtor states that he has submitted copies of his 2010 and 2012 Federal Income Tax Returns, lodged with the court as Exhibits "B" and "C" on Dckt. No. 24.

Contrary to Debtor's assertions, however, the Exhibits filed are not what they purport to be. Exhibit "C" filed in support of the objection to claim, is listed as "Debtor's 2012 federal income tax returns," but instead, appears to be an unsigned computer printout of a "Tax Return Transcript" presumably extracted from a website, with the banner of the "Internal Revenue Service" placed as a graphic above. This document is not signed, certified, or notarized, and it is unclear where the court's attention should be directed to in order to determine that the Internal Revenue Service's calculations of the amount owed on Debtor's unassessed tax payments are incorrect. But the document does suggest Debtor filed his 2012 tax return.

Exhibit "B" is a copy of Debtor's Form 1040 of his 2010 U.S. Individual Income Tax Return. Debtor's 2010 Form 1040 demonstrates that when filing, he anticipated receiving a refund of \$2,635.00 upon filing his return.

The IRS was served properly at the address provided on its proof of service and has not filed a response to Debtor's objection. Therefore, based on the evidence and the non-response of the IRS, the court is inclined to sustain the objection and disallow the \$5,094.62 IRS claim in its entirety.

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 the Internal Revenue Service filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim number 3 of the Internal Revenue Service is sustained, and that the claim is disallowed in its entirety.

32. [13-26187](#)-C-13 LUALHATI/GEORGE MAGPUSAO MOTION TO CONFIRM PLAN
NUK-1 Najeeb U. Kudiya 9-17-13 [[58](#)]

CASE DISMISSED 10/5/13

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

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

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

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

IT IS ORDERED that the Motion is denied as moot.

33. [13-30387](#)-C-13 SURENDRA JANAM
TSB-1 Thomas O. Gillis

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
9-12-13 [[25](#)]

Final Ruling: The Chapter 13 Trustee having filed a "Notice of Withdrawal" for the pending Objection to Confirmation, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Notice of Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014 for the court to overrule without prejudice the Objection to Confirmation, and good cause appearing, **the court overrules 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.

An Objection to Confirmation having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to overrule the Objection without prejudice pursuant to Federal Rules of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7014, overruling of the Objection being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Objection to Confirmation is overruled.

34. [13-31599](#)-C-13 TONY MILO
JHW-1 Eamonn Foster

OBJECTION TO CONFIRMATION OF
PLAN BY FORD MOTOR CREDIT
COMPANY, LLC
9-20-13 [[25](#)]

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 20, 2013. 14 days' notice is required. That requirement was met.

Tentative Ruling: The Objection to Confirmation of 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:

Creditor, Ford Motor Credit Company, LLC, opposes confirmation of Debtor's plan for the following reasons:

(1.) Debtor's plan does not provide for the present value of Creditor's secured claim because it does not provide the proper "formula" discount rate in conformance with 11 U.S.C. § 1325(a) (5) (B) (ii) and *Till v. SCS Creditor Corp.*, 124 S.Ct. 1951 (2004). Creditor asserts it opposes any proposed plan that does not pay it's secured claim with a 5.25% interest rate.

(2.) Debtor asserts a limited opposition based on its filed Opposition to Debtor's Motion to Value creditor's secured claim.

Debtor filed an Amended Plan and Motion to Confirm the Plan on October 14, 2013. The confirmation hearing for the Plan is set for December 10, 2013.

In regards to Creditor's interest rate objection, Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. Of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference

for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *Farm Credit Bank of Spokane v. Fowler (In re Fowler)*, 903 F.2d 694 (9th Cir. 1990)). With the prime rate hovering around 3.25%, the court adds an additional 1.25% bankruptcy adjustment, and requires that the interest rate be 4.50% per annum. A review of Debtor's plan shows that the interest rate for Creditor's secured claim is set at 5.5%. This is sufficient.

The court's decision is to overrule Creditor's objection. If creditor is not satisfied with the result of its Objection to the pending Motion to Value or if the Motion is still pending when the hearing for plan confirmation draws near, Creditor has standing to file an opposition to Debtor's Motion to Confirm his amended plan.

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

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

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

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