

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Christopher M. Klein**

Chief Bankruptcy Judge

Sacramento, California

November 6, 2012 at 2:00 P.M.

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1. [11-48913](#)-C-13 FELIPE BECERRA AND MOTION TO MODIFY PLAN  
LR-5 SHANNON BECERRA JOHNSON 9-21-12 [[79](#)]  
Stephen Reynolds

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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 21, 2012. 35 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)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The Trustee having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee notes several objections to this Plan: First, additional provision 6.01 states that payments are hereby ratified in the amount of \$33,803.13 through June 25, 2012, whereas according to the Trustee's records the Debtors have made payments of \$38,837.13 through June 25, 2012, and the debtors are paid ahead a total of \$5,472. The proposed modified plan would change Aurora Bank/Nationstar Mortgage from Class 1 ongoing to Class 3 surrender, but he proposed modified Plan does not authorize the \$19,885/12 that the Trustee has already disbursed to this creditor.

Debtors replied to Trustee's concerns by stating only that the "Trustee's objection may be resolved with an artfully drafted Order

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Confirming Second Modified Plan." No specific detail as to the proposed contours of this "artful" drafting is provided. Accordingly, the court is not convinced that the Trustee's objections have been adequately considered and addressed.

The modified Plan complies 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.

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2. [12-36114](#)-C-13 RICHARD WITHROW  
NLE-1 Matthew Ritchie

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID CUSICK  
10-10-12 [[15](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 10, 2012. 14 days' notice is required. That requirement was met.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds: First, the Trustee avers that the Plan is not the Debtor's "best effort" as required by 11 U.S.C. § 1325(b); Debtor is above median income and proposes a 60-month Plan at \$900 per month with a dividend of 40% to unsecured claims. According to the Trustee's calculations, the Debtor's monthly disposable income is \$1,848.23. Further, the Trustee notes that the Debtor deducts, on Line #13, \$333/month for his daughter's education. Since the daughter is 19 years old, the proper place for this deduction would be Line #57, and it should include an explanation for why the deduction is required. Debtor has also deducted \$182/month for his public transportation expenses, however Debtor owns two vehicles and has provided the Trustee with no information regarding his use of public transportation. The Trustee goes on to note several other inconsistencies, each of which result in money which should be added back into Line #59.

Second, the Trustee notes that Schedule J shows a significant surplus. It shows Debtor's monthly net income as being \$2,254. If the Debtor contributed all disposable income to the plan, the unsecured creditors would receive 100% in approximately 33 months, according to the Trustee's calculations. The Trustee also notes that Debtor has reported a monthly deduction for union dues of \$291, whereas his pay stub indicates that the correct figure is \$79.87.

Third, the Trustee argues that the proposed monthly dividend to secured creditor One Main Financial of \$258.33 is insufficient, because it

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reflects that the Debtor failed to consider interest. In order to pay the balance of the \$15,500 loan within 60 months, Debtor would need to make monthly payments of \$329.33. Finally, the Trustee observes-correctly-that the Debtor and counsel failed to sign each document in accordance with the strictures of Local Bankruptcy Rule 9004-1(c).

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.

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3. [11-47419](#)-C-13 BRUCE REID AND MINA  
SAC-3 RAHIMI-REID  
Scott CoBen

CONTINUED MOTION TO CONFIRM  
PLAN  
1-13-12 [[31](#)]

No tentative ruling.

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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 24, 2012. By the court's calculation, 43 days' notice was provided. 42 days' notice is required.

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

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

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 24, 2012 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.

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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 20, 2012. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The Trustee having filed an opposition, the court will address the merits of the motion. 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 objects to this Motion on the following grounds: First, the instant Motion to Confirm does not plead with particularity the facts upon which the request for relief is based, as is required by Federal Rule of Bankruptcy Procedure 9013. The motion alleges no significant factual matters under 11 U.S.C. § 1325(a)(1)-(9), and thus does not allege enough facts so as to make the claim for relief plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Further, the Trustee notes that dividends already paid to creditor Aqua Finance under the existing Plan are not authorized in the proposed modified Plan. Debtors reply that any order confirming the proposed modified Plan could contain language authorizing the dividends already paid to Aqua Finance. Debtors further submitted a supplemental to their Motion on October 29, 2012 (Item #40 in the court's Docket) which brings their Motion into compliance with Rule 9013.

In light of the Debtors' efforts to rectify the concerns addressed by the Trustee, the court concludes that 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 20, 2012 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.

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6. [12-35132](#)-C-13 SONIA DUFFOO  
TSB-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
10-4-12 [[22](#)]

This case was dismissed on October 29, 2012.

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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 7, 2012. 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 Trustee objects to confirmation of this Plan because all sums required thereby have not been paid as required by 11 U.S.C. § 1325(a)(2). The Debtor is \$380 delinquent in Plan payments to the Trustee, with another scheduled payment of \$380 due October 25, 2012. Thus far, Debtor has paid \$760 into the Plan. Debtor replies to the Trustee's objections by noting that he made one of the two delinquent payments, and that he intends to make the other payment at the hearing on the instant Motion on November 6, 2012.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed, provided the specified payment is indeed proffered to the Trustee at or before the scheduled hearing time.

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 June 27, 2012 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.

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

Notice and Service Appear to be Correct. 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 May 7, 2012. 14 days' notice is required. That requirement was met.

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

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

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond 30 days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case (No. 12-29775) was dismissed on June 11, 2012 for failure to timely file documents (See Court Docket No. 12-29775-C-13C). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtors did not perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

Here, Debtor states that the current case was filed in good faith, and the close of the prior one was not due to "willful inadvertence or negligence" on her part. Debtor believes that she may have been improperly advised of her rights and responsibilities. Debtor has secured new counsel in the instant case, indicating to the court that she is sincere in her desire to understand her rights and responsibilities with respect to this proceeding.

Debtors have provided sufficient information to rebut the presumption of bad faith. The Motion is granted.

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

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

The Motion to Extend the Automatic Stay 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 Extend the Automatic Stay as to the Debtors beyond the 30-day limit imposed by 11 U.S.C. Section 362(c)(3) is granted.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, United States Trustee, and all creditors on October 8, 2012. 28 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 respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

Movant Debtor requests that the court approve a modification of their mortgage with Bank of America N.A. concerning residential real property located at and commonly known as 920 Jordine Way, Galt, California. At the time of filing, Debtors aver that the value of the residence was \$210,000 and the amount owed to Bank of America was \$383,651. The terms of the modification are as follows: Debtors would have a new principal balance of \$295,390.82 with an interest-bearing balance of \$276,773.57; the commitment term would be 480 months; the monthly payment—beginning October 1, 2012—would be \$1,266.60; the interest rate would be 4.625%; the deferred principal balance would be \$118,617.25; the estimated monthly escrow payment would be \$388.93.

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

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

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

**IT IS ORDERED** that the Motion to Approve the Loan Modification as it was set forth in Exhibit A accompanying the instant Motion is granted.

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10. [12-36146](#)-C-13 BRYN BARTON  
NLE-1 Julius Engel

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
10-10-12 [[16](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 10, 2012. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor did not attend the 341 meeting, the plan depends on Motions to Value which, to date, have been neither filed nor granted, the Plan contains conflicting information with respect to attorney fees, the Plan is not signed, and the Class 2 monthly dividends are insufficient. The Court shares the Trustee's concerns.

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.

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11. [11-45050](#)-C-13 RAYMOND/KRISTA STOWIE MOTION TO MODIFY PLAN  
DF-4 David Fillerup 9-28-12 [[37](#)]

Debtors withdrew this Motion on October 25, 2012 (see Court Docket No. 43).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 10, 2012. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the following grounds: First, the Debtors have inconsistently listed assets on their schedules, leading the Trustee to suspect that either they are double deducting for one of their vehicles or else not listing all of their assets accurately. Second, the Debtors schedules omit any mention of stock, which they admitted to owning at the 341 meeting. Next, all disposable income is not being devoted to the Plan. Further, the plan does not represent the Debtors' "best efforts" and it is not signed properly in accordance with Local Bankruptcy Rule 9004-1(c).

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.

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13. [12-35465](#)-C-13 JAMES/ANGEL LUTZ  
NLE-1 Michael Hayys

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
10-11-12 [[30](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 11, 2012. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Debtor failed to appear at the 341 meeting of creditors, the plan depends on motions to value which have not been granted, and the Debtors have filed multiple plans. The Court notes that the Debtors did appear at a rescheduled 341 meeting on October 18, 2012, ergo that objection is mooted. Further, the Motions to value have been filed, but not granted.

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.

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14. [12-36167](#)-C-13 FRANCISCO/HELEN HUERGAS  
NLE-1 Scott CoBen

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
10-10-12 [[25](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 10, 2012. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan is not the Debtors' "best efforts" as required by 11 U.S.C. § 1325(b). Debtors admitted at their 341 meeting that they pay \$240 per month less for life insurance than is indicated on Schedule J, which would allow for another \$240/month to be devoted to Plan payments. Debtors filed a response admitting this error and essentially stating that the proposed plan is indeed their best efforts. Debtors then filed an amended Schedule J reflecting the correct life insurance payment amount, but increasing other expenses (including, somewhat inexplicably, their mortgage payment) to cover the Change. The Trustee filed a reply on October 29, 2012, stating that this only raises new concerns about whether the proposed Plan constitutes the Debtors' best efforts.

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.

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15. [12-37467](#)-C-13 JOHN/MICHELE FLEMING  
CK-1 Catherine King

MOTION TO VALUE COLLATERAL OF  
MEMBERS 1ST CREDIT UNION  
10-5-12 [[14](#)]

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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 5, 2012. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

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

**The court's tentative decision is to set the matter for an evidentiary hearing.** 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 2184 Hemingway Street, Redding, California. The Debtor seeks to value the property at a fair market value of \$140,290 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$158,310. Members 1<sup>st</sup> Credit Union's second deed of trust secures a loan with a balance of approximately \$31,633. Therefore, Debtors argue, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized.

Creditor Members 1<sup>st</sup> Credit Union filed a response opposing the instant Motion, wherein they contend that the value of the subject property is actually between \$165,000 and \$175,000, in which case their claim would not be under-collateralized completely. Debtors replied with an amended valuation from real estate expert Cindy D. Young stating the value of the subject property to be closer to \$154,000.

In light of the conflicting evidence presented by both parties, the court cannot make a final determination with respect to the value of this property at this time. Accordingly, an evidentiary hearing must be held.

The court shall issue an evidentiary hearing order substantially in the following form:

1.) Evidence shall be presented according to Local Bankruptcy Rule 9017-1.

2.) Debtor shall clarify precisely the condition of the property.

3.) The Evidentiary Hearing shall be conducted at a time and date agreed upon by the parties and approved by the court, or, in the event that the parties cannot reach an agreement, at a time dictated by the court.

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16. [12-34773](#)-C-13 DENISE WILHELM  
TSB-1 Jina Nam

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
10-4-12 [[34](#)]

CASE DISMISSED 10/16/12

17. [12-35273](#)-C-13 DAVID FOYIL  
NLE-1 Pro Se

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
10-10-12 [[34](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on October 10, 2012. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the Plan depends on motions to value which have, to date, not been granted; that the Debtor has not filed tax returns for 2011; that the claim of the Amador County Tax Collector is not provided for; that the Debtor has provided insufficient proof of ability to make payment increase; and that the Debtor exceeds the limits for both secured and unsecured debt and is thus ineligible for Chapter 13 relief.

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.

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18. [12-35874](#)-C-13 ANTHONY/EUNICE LYLE  
NLE-1 Michael Croddy

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
10-11-12 [[25](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on October 11, 2012. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on multiple grounds. The Debtors filed a statement of non-opposition, conceding that the Plan as currently proposed is not confirmable at this time.

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.

19. [12-37674](#)-C-13 PATRICIA MORRISON MOTION TO VALUE COLLATERAL OF  
DNL-1 J. Russell Cunningham OLD REPUBLIC INSURANCE COMPANY  
10-9-12 [[17](#)]

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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 9, 2012. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2840 Barbell Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$175,000 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$225,000. Old Republic Insurance Company's second deed of trust secures a loan with a balance of approximately \$69,845.02. 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 Old Republic Insurance Company, secured by a second deed of trust recorded against the real property commonly known as 2840 Barbell Way, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$175,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 26, 2012. 35 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)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The 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 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 26, 2012 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.

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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 19, 2012. 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 respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

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

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 19, 2012 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.

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22. [12-36182](#)-C-13 CYNTHIA DUNCAN  
KE-1 Peter Macaluso  
**Thru #23**

OBJECTION TO CONFIRMATION OF  
PLAN BY CHARLES R. JENSEN  
10-11-12 [[20](#)]

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

Service and notice appear correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 11, 2012. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Charles R. Jensen opposes confirmation of the Plan on the basis that Debtor has not provided for payment to a secured creditor.

Second, Creditor argues that the plan does not provide for his unsecured claim in the amount of \$27,068.55 for attorney's fees and costs incurred in civil litigation.

The court's review of the Claims Registry indicates that Creditor filed Proof of Claim Number 4 and included as supporting documents a note and deed of trust. The court's review of the proposed plan indicates that Debtor has not provided for Creditor's secured claim.

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

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

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

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

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

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

Service and notice appear correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 10, 2012. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor did not report all income. Trustee states that at the meeting of creditors held on October 4, 2012 Debtor stated that she receives income of \$3,000 to \$6,000 per year from crops that grew on her land, yet this income is not reported on her Statement of Financial Affairs.

Second, Trustee argues that Debtor has not reported all assets and may not pass the liquidation analysis. Trustee states Debtor has not reported the alfalfa crop as an asset.

The court's review of the docket indicates Debtor amended her Statement of Financial Affairs, Schedule I, and Schedule J to report monthly income from farming of \$258. The court's review of the amended Summary of Schedules filed on October 31, 2012 indicates Debtor has increased her personal property assets from \$14,551 to \$15,486.31. It is not clear whether Debtor has accounted for the alfalfa crop as an asset. Debtor has not filed a declaration with the amended schedules. As a result, the court cannot determine whether Debtor has complied with the Trustee's request to disclose the alfalfa crop as an asset.

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)(2) Motion

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 23, 2012. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and Federal Rule of Bankruptcy Procedure 2002(a)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

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

The Bankruptcy Code permits the Debtor to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Here the Debtor proposes to sell her residence located at 8931 Giant Panda Drive, Sacramento, California. Debtor states that she has an offer to purchase the property for \$117,000, that she owes \$480,000 on the property, and that sale proceeds will cover the closing costs and liens on the property. Debtor states that the confirmed plan provides for this claim in Class 4 with the purchaser paying the loan directly.

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

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

**IT IS ORDERED** that the Debtor ("Debtor") is authorized to sell to Ghasan and Laura Orabi or nominee ("Buyers"), the residential real property commonly known as 8931 Giant Panda Drive, Sacramento, California("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyers for \$117,000, on the terms and conditions set forth in the Motion.
2. The Buyers and Sellers will split the escrow fee and the owner's title insurance fee.
3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. Proceeds of the sale will first go to pay closing costs and liens.
5. The Trustee be and hereby is authorized to pay a real estate broker's commission. The commission shall be paid to the Debtor's broker Corey Copeland of Golden State Realty.
6. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtor. Within fourteen (14) days of the close of escrow the Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 19, 2012. By the court's calculation, 18 days' notice was provided. 14 days' notice is required.

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

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

Debtors filed a motion titled "Motion for Authority to Refinance Property" requestion court approval for Debtors to incur debt with JPMorgan Chase Bank, N.A. in order to refinance the terms of an existing secured laon against the real property commonly known as 9788 Sheldon Road, Elk Grove, California. It appears that Debtors wish to modify their loan rather than incur debt. The court will treat Debtors' request as a motion to approve loan modification.

JPMorgan Chase Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtors' monthly mortgage payment from the current \$3,050.15 to \$2,334.47. The modification will capitalize the pre-petition arrears and provides for an interest rate of 4.25% over the next 30 years. Debtors propose to modify the loan amount to \$474,542.

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

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

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

The Motion to Approve the Loan Modification filed by 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 Debtors are authorized to amend the terms of their loan with JPMorgan Chase Bank, N.A., which is secured by the real property commonly known as 9788 Sheldon Road, Elk Grove, California, and such other terms as stated in the Modification Agreement filed as Exhibit "1," Docket Entry No. 32, in support of the Motion.

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

Correct Service and Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, and Office of the United States Trustee on September 20, 2012. By the court's calculation, 47 days' notice was provided. 42 days' notice is required.

**Final Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(c)(3),(d), and 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b).

**The hearing on Motion to Confirm the Amended Plan is continued to December 4, 2012.** No Appearance Required.

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

Chapter 13 Trustee filed an opposition stating that the plan relies on a motion to value claim of J.P. Morgan Chase Bank. The court's review of the docket indicates that the motion to value is set for hearing on December 4, 2012 at 2:00 p.m.

On October 16, 2012 the Debtors filed an amended notice of hearing for December 4, 2012.

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 hearing on Motion to Confirm the Plan is continued to December 4, 2012 at 2:00 p.m. to be heard in conjunction with the motion to value.

27. [12-36095](#)-C-13 EDWARD/ESTRELLITA OBJECTION TO CONFIRMATION OF  
NLE-1 BLACKMAN PLAN BY DAVID P. CUSICK  
**Thru #28** W. Scott de Bie 10-10-12 [[25](#)]

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

Service and notice appear correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on October 10, 2012. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending motion to value. The court's tentative decision is to grant the motion to value.

Second, Trustee argues that Debtors do not propose to contribute all disposable income to the plan. Trustee states Debtors have net disposable income of \$4,008.82, but only propose plan payments of \$2,115. Trustee states that if Debtors were to contribute all disposable income the plan would complete in 32 months. Trustee states that Debtors admitted they gambled in the past and are still gambling and that Debtors admitted to losing \$150,000 in two years of gambling. Trustee expresses concern that if Debtors are permitted \$2,000 in excess income they may continue to gamble and their plan may not succeed.

Third, Trustee states that the plan proposes to pay Class 2 creditor Capital One Auto finance three monthly payments of \$1,290. Trustee states that after this debt is paid in the third month of the plan Debtors might not have an incentive to continue to make plan payments.

#### **Debtors' Reply**

Debtors reply that they propose to pay creditors in full. Debtors state that they have received no opposition to the pending motion to value. Debtors state that even if the motion to value was denied, their plan payments would increase by only \$1.18.

Debtors state that they have not committed all disposable income to the plan because they can pay creditors in full without committing all of their disposable income. Debtors state that they are retaining funds to cover "vagaries that may occur during the course of their plan." (Dkt. 29, page 2). Debtors state that their excess income is derived from social security benefits two of their children receive. Debtors state these benefits will terminate over the next two years, reducing household income by almost \$800.

Debtors argue that the Trustee does not cite authority that the Trustee's uncertainty constitutes grounds to object to the plan. Debtors state that paying off their car loan within the third month of the plan ensures that interest does not accrue, increasing funds available to unsecured creditors.

#### **Trustee's Reply**

Trustee states that Debtors have not addressed the central issue of Debtors' gambling. Trustee states that the Statement of Financial Affairs indicates Debtors have earned \$952,063.40 in employment income from 2010 to the time the petition date. Trustee states that Debtors have earned/withdrawn from 401ks a total of \$1,378,537.40 from 2010 to the petition date. Trustee states Debtors admitted they lost \$150,000 while gambling and that Debtors have not disclosed this information on the Statement of Financial Affairs.

Debtors have not addressed Trustee's concerns regarding their gambling debt and have not amended their schedules to reflect statements made at the meeting of creditors.

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.

28. [12-36095](#)-C-13 EDWARD/ESTRELLITA MOTION TO VALUE COLLATERAL OF  
SDB-1 BLACKMAN HSBC RETAIL SERVICES, INC.  
W. Scott de Bie 9-26-12 [[18](#)]

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

Notice and Service Appear to be Correct. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on September 26, 2012. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Value Collateral is granted and creditor's secured claim is determined to be \$400.00.** No appearance required.

The motion is accompanied by the Debtors' declaration. The Debtors are the owners of a TV and Computer. The Debtors seek to value the property at a replacement value of \$400 as of the petition filing date. As the owner, the Debtors' 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).

Debtors state that the TV and Computer were purchased more than a year prior to filing for bankruptcy. The court's review of the Claims Register indicates that Creditor HSBC Retail Services, Inc. has not filed a proof of claim. Debtors list the claim of Creditor on Schedule D in the amount of \$3,306. Therefore, the respondent creditor's claim secured by the collateral is under-collateralized. The creditor's secured claim is determined to be in the amount of \$400.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by 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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of HSBC Retail Services, Inc. secured by an asset described as TV and Computer is determined to be a secured claim in the amount of \$400.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the asset is \$400 and is encumbered by liens securing claims which exceed the value of the asset.

29. [12-35397](#)-C-13 CESAR/ALICIA JANA  
NLE-1 Peter Macaluso  
**Thru #30**

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
10-11-12 [[32](#)]

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

Service and notice appear correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtors and Debtors' Attorney on October 11, 2012. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on the motion to value claim of Bank of America and the motion to avoid lien of Riverwalk Holdings. The court's tentative decision is to grant the motion to value.

Second, Trustee states that the Debtors have not filed a motion to avoid lien of Riverwalk Holdings.

Third, Trustee states that Debtors do not propose to contribute all disposable income to the plan. Trustee states that Debtors list a 401k loan but do not specify when the loan was incurred or when it will be paid off, nor do Debtors provide for increased plan payments once the loan is paid off. Trustee states that payments should increase by \$199.38 after the 401k loan is paid off on November 9, 2016.

Trustee states that Debtors do not provide for increased plan payments after their car loan is paid off. Trustee states that this loan will be paid off in 34 months.

Trustee states that Debtors list a monthly childcare expense of \$800 on Schedule J, but have not provided information with regard to this expense, despite the Trustee's request for additional information on September 25, 2012. Trustee questions whether the childcare deduction is an actual expenses of the Debtors.

Fourth, Trustee contends that Debtor Alicia Jana has not reported all income since her gross income from two jobs total \$1,191.83. Trustee states that Debtor Alicia Jana has not provided information as to her job title at employer Datatel and does not disclose tips for her second job as a server for Cascada. Trustee states that Debtor Alicia Jana only nets \$200 in monthly net income after expenses for her working are deducted from her monthly income.

Fifth, Trustee states that the plan is not Debtors' best effort since Debtors are above median income and propose to pay a 1% dividend on general unsecured claims.

Trustee states Debtors make the following deductions that should be added back into line #55 on Schedule I:

1. \$102.53 401k deduction;
2. \$199.38 401k loan;
3. \$800 child care;
4. \$536.35 health care;
5. \$75 internet;
6. \$600 education expenses;
7. \$102.53 retirement deduction.

#### **Debtors' Reply**

On October 30, 2012 Debtors replied that the motion to value claim of Bank of American, N.A. is set for hearing on November 11, 2012. Debtors state that they received a forgiveness of their home equity account in the amount of \$256,895.42. Debtors state that the step up payments are reasonable.

Debtors concur that the 401k loan payments will end on November 9, 2016 and that plan payments will increase by \$200 starting on December 25, 2016 until the plan ends on September 25, 2017.

Debtors state that their car loan will be paid off in 34 months, allowing for an increase in plan payments of \$200 per month for the remaining 26 months of the plan starting on August 25, 2015 until the plan ends on September 25, 2017.

Debtors state that they will provide proof of child care to the Trustee. Debtors state that their childcare deduction is correct and nothing should be added back to line 59.

Debtors state that they amended Schedule I to provide the following details regarding Debtor's employment at Datatel: Debtor answers phones and makes cold calls to set up appointments. Debtors state that, contrary to the Trustee's assertion, the paystubs include tips. Debtor states that she recognizes that she only brings a small amount of money home, but states that she is remaining in the job market during difficult financial times.

Debtors state that they amended the CMI to remove the cable deduction. Debtor states that only the internet deduction remains resulting in \$3.24 of disposable income.

Debtors state that \$102.53 and the \$199.38 for the 401k loan deductions are reported in their checks. Debtors state that there is nothing to add back in line 59.

Debtors state that their household consist of four children and two adults. Debtor state that a healthcare expense of \$200 per month is reasonable.

Debtors state that they have claimed a deduction for educational expenses for four children at \$150 per child. Debtors state that they will provide proof of the expenses.

Debtors state that they are not required to add any amount back into line 59.

### **Analysis**

The court's review of the docket indicates that the Debtors have not addressed the following concerns of the Trustee:

First, Debtors have not filed a motion to value the claim of Riverwalk Holdings. The court's review of the docket indicates that Debtors filed a motion to value claim of Bank of America, N.A. but have not filed a motion to value the claim of Riverwalk Holdings.

Second, Debtors have not provided proof of the childcare expenses to the Trustee.

Third, Debtors do not explain why they propose to pay unsecured creditors a 1% dividend when Debtors are above median income. Debtors do not address Trustee's good faith argument.

Finally, Debtors have not addressed the discrepancies between the Statement of Financial Affairs and Form B22C. Debtors list deductions on Form B22C but do not list the same expense on the Statement of Financial Affairs. Debtors list a deduction of \$200 for medical and dental expenses, but on Line 24B of Form B22C list \$360 for healthcare expenses. Debtors have not addressed Trustee's concerns regarding the discrepancies from amounts stated in Form B22C and the amounts listed in the schedules/Statement of Financial Affairs. With regard to the 401k loan Debtors state that they should not be required to add the \$102.53 back to Line 59 of Form B22C as the Trustee has requested because the deduction is reasonable and will only total \$6,151.80 over the length of the plan. The court finds this argument unconvincing given that unsecured creditors will only receive a 1% dividend.

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 - No Opposition Filed.

Notice and Service Appear to be Correct. The Proof of Service states that the Motion and supporting pleadings were served on the Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 5, 2012. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Value Collateral has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Value Collateral is granted and creditor's secured claim is determined to be \$0.00.** No appearance required.

The motion is accompanied by the Debtors' declaration. The Debtors are the owners of the subject real property commonly known as 2301 Fieldstone Drive, Placerville, California. The Debtors seek to value the property at a fair market value of \$300,000 as of the petition filing date. As the owner, the Debtors' 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 \$389,000. Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$260,000. 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 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 pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 2301 Fieldstone Drive, Placerville, 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 \$300,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

31. [12-35598](#)-C-13 TATYANA BESSONOV  
MBB-1 Pro Se  
**Thru #33** 9-19-12 [[27](#)]

OBJECTION TO CONFIRMATION OF  
PLAN BY BANK OF AMERICA, N.A.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (pro se), Chapter 13 Trustee, and Office of the United States Trustee on September 19, 2012. By the court's calculation, 48 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 court's review of the docket indicates that Debtor filed an amended plan and motion to confirm amended plan on October 23, 2012. This objection pertains to the plan filed on August 27, 2012. The filing of a new plan is a *de facto* voluntary dismissal of the Motion to Confirm the Original Plan in this case.

Creditor Bank of America, N.A. opposes confirmation of the Plan on the basis that the proposed pay off period to cure arrearages is not reasonable given Debtor's history of nonpayment. Creditor states that it must receive monthly payments of \$097.89 to cure pre-petition arrearages. Creditor states that \$54,473.39 was due on its secured claim as of the petition date. Creditor states that Debtor filed two prior Chapter 13 cases that were dismissed and the instant case is Debtor's third filing.

#### **Debtor's Reply**

Debtor states that Creditor Bank of America, N.A. is the holder of a second deed of trust on the property commonly known as 2903 Tilbury Way, Roseville, California. Debtor states that the value of Creditor's secured claim is \$0 and Debtor will provide an analysis of comparable property values at the hearing on motion to value. Debtor states that she amended the plan to value Creditor's claim at \$0 and that the amended plan provides for the claim as a secured debt.

The court's review of the docket indicates that Creditor has not filed a proof of claim. Creditor filed exhibits in support of its objection, but did not provide a declaration. As a result, the exhibits are not authenticated.

Creditor has not provided sufficient evidence in support of its 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 Creditor Bank of America, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is overruled and the proposed Chapter 13 Plan filed on August 27, 2012 is not confirmed.

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

Service and notice appear correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on October 11, 2012. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 Wells Fargo Bank, N.A. opposes confirmation of the Plan on the basis that the plan does not propose to cure all pre-petition arrearages. Creditor states that the plan proposes to pay only \$120,000 in arrears while arrears total \$134,324.26. Notwithstanding the absence of a requirement in 11 U.S.C. § 1322(a) that a plan provide for a secured claim, the fact that this Plan does not provide for the respondent creditor's secured claim, raises doubts about the Plan's feasibility. See 11 U.S.C. § 1325(a)(6). This is reason to sustain the objection.

Second, Creditor argues that Debtor will not be able to make plan payments once the full amount of the arrears are added in. Creditor states that Debtor only has a monthly income of \$3,200, an amount insufficient to cure arrears.

#### **Debtor's Reply**

Debtor states that she has amended the plan to provide for the claim of Wells Fargo N.A. in the amount of \$134,324.26. Debtor states that she will repay the amount owed on the loan if her loan modification is not approved. Debtor states that she requested a loan modified six months ago, has not yet received approval, and is prepared to make plan payments during the loan modification process.

The court's review of the docket indicates that Creditor has not filed a proof of claim and has not provided evidence in support of its

objection. The court does not have sufficient evidence to warrant sustaining the objection.

The court's review of the docket indicates that Debtor filed an amended plan and motion to confirm amended plan on October 23, 2012. This objection pertains to the plan filed on August 27, 2012. The filing of a new plan is a *de facto* voluntary dismissal of the Motion to Confirm the Original Plan in this case. Nevertheless, Creditor has not provided evidence that would warrant sustaining its objection. The objection is overruled and the plan filed on August 27, 2012 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 Wells Fargo Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is overruled and the Chapter 13 Plan filed on August 27, 2012 is not confirmed.

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

Service and notice appear correct. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on October 11, 2012. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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 court's review of the docket indicates that Debtor filed an amended plan and motion to confirm amended plan on October 23, 2012. This objection pertains to the plan filed on August 27, 2012. The filing of a new plan is a *de facto* voluntary dismissal of the Motion to Confirm the Original Plan in this case.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor is \$3,100 delinquent in plan payments and has paid \$100 into the plan.

Second, Trustee argues that Debtor may not be able to make plan payments since her income is derived from her non-filing spouse. Trustee states that Debtor has not provided proof of income for the 60 days preceding the filing for the non-filing spouse.

Third, Trustee states that he cannot determine whether the plan is feasible since Debtor has not provided a Business Budget detailing business income and expenses. Trustee states that Debtor lists business expenses of \$500 but has not provided an itemized list.

Fourth, Trustee argues that the plan may not pass the liquidation analysis. Trustee states that Debtor has not filed a spousal waiver and that a hearing on Trustee's objection to exemptions is set for November 13, 2012. Trustee states that if the objection is sustained Debtor will have non exempt equity.

**Debtor's Reply**

Debtor states that she amended her plan to propose a monthly payment of \$100 for October through January 2013. Debtor states that she is working with her lender regarding a mortgage loan modification. Debtor states that once the modification is approved she will amend her Chapter 13 plan to reflect the modified mortgage payment. Debtor states that, in the event her plan is not modified, her proposed plan payments will be \$4,530 for 56 months starting February 2013.

Debtor provided a copy of her spouse's monthly income. It appears that Debtor's non-filing spouse received approximately \$1,937.32 net every two weeks.

Debtor provided a list of business income and expenses for January 2012 through September 2012. Debtor's expenses since January 2012 are \$54,634.63, her income is \$67,293, and her profit is \$12,659.

Debtor provided a copy of the filed spousal waiver.

The court's review of the docket indicates that Debtor has not addressed Trustee's concern that Debtor is \$3,100 delinquent in plan payments. 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 filed on August 27, 2012 is not confirmed.