

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

November 19, 2013 at 3:00 p.m.

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1. [11-43500-E-13](#) MICHAEL PANNELL AND LORI AMENDED MOTION TO MODIFY PLAN
ACW-3 CHERNEY 10-16-13 [[63](#)]
Andy C. Warsaw

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

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 16, 2013. By the court's calculation, 34 days' notice was provided. 35 days' notice is required.

Tentative Ruling: The Motion to Confirm the Plan has not been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(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 objects to the motion on the basis that Debtor has not provided proper service under the local rules, as they provided only 34 days notice.

Local Bankruptcy Rule 3015-1(d)(2) requires that notice be given under Federal Rule of Bankruptcy Procedure 3015(g) and Local Bankruptcy Rule 9014-1(f)(1). Therefore, to meet the requirements of Local Bankruptcy Rule 3015-1(d)(2), the hearing must be set on 35 days' notice (21 days' notice under Federal Rule of Bankruptcy Procedure 3015(g) and the 14-day deadline for written opposition required by Local Bankruptcy Rule 9014-1(f)(1)). By the court's calculation, only 34 days' notice has been provided in this case.

November 19, 2013 at 3:00 p.m.

The motion was not properly set for hearing. The motion is denied without prejudice and the Chapter 13 Plan is not confirmed.

Failure to Serve Internal Revenue Service

Further, the court notes that Local Bankruptcy Rule 2002-1 provides that notices in adversary proceedings and contested matters that are served on the Internal Revenue Service shall be mailed to three entities at three different addresses, including the Office of the United States Attorney, unless a different address is specified:

**LOCAL RULE 2002-1
Notice Requirements**

(a) Listing the United States as a Creditor; Notice to the United States. When listing an indebtedness to the United States for other than taxes and when giving notice, as required by FRBP 2002(j)(4), the debtor shall list both the U.S. Attorney and the federal agency through which the debtor became indebted. The address of the notice to the U.S. Attorney shall include, in parenthesis, the name of the federal agency as follows:

For Cases filed in the Sacramento Division:

United States Attorney
(For [insert name of agency])
501 I Street, Suite 10-100
Sacramento, CA 95814

For Cases filed in the Modesto and Fresno Divisions:

United States Attorney
(For [insert name of agency])
2500 Tulare Street, Suite 4401
Fresno, CA 93721-1318

. . .

(c) Notice to the Internal Revenue Service. In addition to addresses specified on the roster of governmental agencies maintained by the Clerk, notices in adversary proceedings and contested matters relating to the Internal Revenue Service shall be sent to all of the following addresses:

- (1) United States Department of Justice
Civil Trial Section, Western Region
Box 683, Ben Franklin Station
Washington, D.C. 20044
- (2) United States Attorney as specified in LBR 2002-1(a) above; and,
- (3) Internal Revenue Service at the addresses specified on the roster of governmental agencies maintained by the Clerk.

The proof of service lists only the following addresses as those used for service on the Internal Revenue Service:

Internal Revenue Service
Centralized Insolvency Operations
PO BOX 7346
Philadelphia, PA 19101-7346

Internal Revenue Service
PO Box 21126
Philadelphia, PA 19114

The proof of service states that the addresses used for service are the preferred addresses for the Internal Revenue Service specified in a Notice of Address filed by that governmental entity.

A motion is a contested matter. See Fed. R. Bankr. P. 9014. The proof of service in this case indicates service was not made on all three addresses, and service was therefore inadequate.

Default in Payments

The Trustee also opposes confirmation offering evidence that the Debtor is \$140.76 delinquent in plan payments. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

Misidentification of Plan

The Trustee also states he is unable to determine which plan the Debtor is proposing to confirm. Debtors' motion indicates they are proposing to confirm the modified plan filed September 3, 2013 and then later in the motion state they are proposing to confirm the modified plan filed August 5, 2013. Trustee states if Debtors are proposing to confirm the September 3, 2013 plan, the official record of the court does not reflect that this plan has been filed, as it was filed as an exhibit. Local Bankruptcy Rule 3015-1(d)(2) requires that the plan be filed and served together with the motion to confirm it.

Lastly, the Trustee objects on the basis that the Debtor has modified the plan form. Debtor inserted additional language in Section 6, not on a separate page as required in this District. The Debtor has the box indicating that additional provisions are appended to the plan, but none are attached.

The modified Plan complies does not comply with 11 U.S.C. §§ 1322, 1329 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.

2. [13-31900](#)-E-13 BENJAMIN/MARGARITA DUENAS MOTION TO VALUE COLLATERAL OF
TOG-1 Thomas O. Gillis GREEN TREE SERVICING, LLC
10-11-13 [[15](#)]

**APPEARANCE OF THOMAS GILLIS, COUNSEL FOR DEBTOR
REQUIRED FOR NOVEMBER 19, 2013 HEARING
TELEPHONIC APPEARANCE PERMITTED**

COUNSEL SHALL ADDRESS ALLEGATION IN THE MOTION THAT:

**"Green Tree Servicing, LLC has recorded Second Deed of Trust
securing a note for approximately \$28,000."**

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 11, 2013. By the court's calculation, 39 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to deny the Motion without prejudice.

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

Debtor seeks to value the collateral of "Green Tree Servicing, LLC." However, the court has not been presented with any evidence from the Debtor that a loan servicing company, such as Green Tree Servicing, LLC, is actually the creditor having a claim in this case. A creditor is defined by 11 U.S.C. § 101(1) (A), as relevant to this Motion, to be an "entity that has

a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." The term claim is defined by 11 U.S.C. § 101(5) (A), as relevant to this Motion, to be a "right to payment...."

Green Tree Servicing, LLC, has appeared in numerous other cases and has confirmed that it is not a creditor, but merely a loan servicer for the actual creditor. Further, Green Tree Servicing, LLC has also affirmed that it is not the agent for service of process or the authorized agent under a power of attorney to litigate the legal rights of such creditors for which it provides loan servicing services.

The Motion alleges that Green Tree Loan Servicing, LLC recorded a deed of trust which secures a claim in this case. No evidence has been presented to show that Green Tree Loan Servicing, LLC made a loan, recorded the deed of trust, is the owner or holder of the note upon which the claim is based, or that Green Tree Loan Servicing, LLC is the creditor with a claim in this case. Rather, it appears that Green Tree Loan Servicing, LLC is merely a loan servicer and the court is being asked to value an illusory claim for a third-party that is not a creditor.

This court has made it clear on many occasions that it can and will only issue orders against parties properly named in motions and for which there is a colorable basis for the court issuing an order effecting the rights of such party. The Debtor provides no evidence for the court to determine that this loan servicing company is a creditor in this case. Declaration, Dckt. 29. The Debtor does not testify that he borrowed money from, signed a promissory note naming, or that a promissory note was assigned or transferred to Green Tree Servicing, LLC. The Debtor does not provide the court with any discovery conducted to identify the creditor holding the claim secured by the third deed of trust. FN.1.

FN.1. The misidentification of creditors for purposes of § 506(a) motions continues to mystify the court. Obtaining an order valuing the "claim" of a loan servicing company does not value the claim of the creditor. No motion has been filed seeking to value the claim of the actual creditor, no service has been attempted on the actual creditor, and no effort made to afford the actual creditor any due process rights. Any order issued by the court would be void as to the actual creditor. After performing under a plan for 3 to 5 years, the debtor would then have a rude awakening that their still remains a creditor, having a debt secured by a third deed of trust (in this case) which has never been valued and for no lien-strip may be possible.

The court will not speculate and hope that it has named a real creditor and that it's order will have any legal effect. The Motion is denied without prejudice.

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

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

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

IT IS ORDERED that the Motion is denied without prejudice.

3. [13-31900-E-13](#) **BENJAMIN/MARGARITA DUENAS** **OBJECTION TO CONFIRMATION OF**
TSB-1 **Thomas O. Gillis** **PLAN BY DAVID CUSICK**
10-24-13 [23]

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 24, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending motion to value collateral of Green Tree Servicing, LLC. The court having denied the motion without prejudice, the Trustee's objection is sustained, the plan not having sufficient monies to pay the claim in full.

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.

4. [13-33601-E-13](#) ANA RODRIGUEZ MOTION TO EXTEND AUTOMATIC STAY
PGM-1 Peter G. Macaluso 10-29-13 [[11](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, Debtor, Chapter 13 Trustee, and Office of the United States Trustee on October 29, 2013. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2). Consequently, the 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:

Debtors seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 12-25917-E-13C) was dismissed on September 16, 2013, after Debtors defaulted on their plan payments. See Order, Bankr. E.D. Cal. No. 12-25917-E-13C, Dckt. 37, September 16, 2013. Therefore, pursuant to 11 U.S.C. § 362(c) (3) (A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

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

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

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

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed. Debtor states that her children required major dental care work that made her financial situation difficult. Debtor also states she lost her brother, who was half of her financial support. These circumstances were the cause of Debtor falling behind on plan payments. Declaration, Dckt. 13.

Debtor states her situation has changed as he is starting a full time job and a second job as of November 1, 2013. Debtor states that she is in a financial class to assist in managing her income and is not in the process of filing for child support. Declaration, Dckt. 13.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay. Debtor asserts that the circumstances which led her defaulting on plan payments have changed and she now has sufficient income that will allow her to perform under the new Chapter 13 plan.

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

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

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

The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review

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

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

5. [11-21303-E-13](#) **JAMES/TAMERRA WEAVER** **MOTION TO APPROVE LOAN**
RCO-1 **John A. Tosney** **MODIFICATION**
10-7-13 [55]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 7, 2013. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

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

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

Bank of New York Mellon FKA The Bank of New York, As a Trustee for the Certificationholder of CWALT, Inc. Alternative Loan Trust 2006-12CB, Mortgage Pass-Thru Certificates Series 2006-12CB ("Movant"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment to \$1,931.39 for the principal and interest payment plus \$268.11 estimated escrow payment amount. The modification will capitalize the pre-petition arrears and provides for interest rate at 6.750% over the next 270 months.

Debtors James and Tamerra Weaver join the motion to approve loan modification on October 18, 2013. Dckt. 64.

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

IT IS ORDERED that Bank of New York Mellon FKA The Bank of New York, As a Trustee for the Certificationholder of CWALT, Inc. Alternative Loan Trust 2006-12CB, Mortgage Pass-Thru Certificates Series 2006-12CB is authorized to amend the terms of their loan with James Edward Weaver and Tamerra Lee Weaver, Debtors, which is secured by the real property commonly known as 7908 Saybrook Drive, Citrus Heights, California, and such other terms as stated in the Modification Agreement filed as Exhibit "1," Docket Entry No. 58, in support of the Motion.

6. [10-36505-E-13](#) DONNA VICKS
PLC-4 Peter L. Cianchetta

MOTION FOR ORDER WAIVING
DEBTOR'S 11 U.S.C. SEC. 1328
CERTIFICATE IN GRANTING
DISCHARGE TO DECEASED DEBTOR
10-9-13 [[50](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on October 9, 2013. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Order Waiving Debtor's 11 U.S.C. § 1328 Certificate in Granting Discharge to Deceased Debtor has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Order Waiving Debtor's 11 U.S.C. § 1328 Certificate in Granting Discharge to Deceased Debtor is granted. No appearance required.

Debtor Michael Vicks, substitute after death of Donna Vicks, moves for an order waiving the requirement of Debtor's 11 U.S.C. § 1328 Certificate in granting a discharge to Donna Vicks, now deceased. Debtor asserts that prior to her death, Donna Vicks completed her Financial Management Course and filed the Certificate with the court, as well as making the final plan payment prior to her death. However, Debtor Donna Vicks died before being able to complete the Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate.

The Chapter 13 Trustee filed a non-opposition on October 31, 2013.

Local Bankruptcy Rule 5009-1(b) requires the filing with the court Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate. The Supreme Court has recognized the "broad authority granted to bankruptcy judges," pursuant to § 105(a) of the Bankruptcy Code. *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 374 (2007). This court can exercise its powers under 11 U.S.C. § 105(a) to "[i]ssue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

Here, Debtor Donna Vicks died before being able to satisfy this requirement. Debtor having completed all other requirements to obtain discharge, including completing her obligations under the confirmed chapter 13 plan, the court waives the requirement to complete the Form EDC3-190 Debtor's 11 U.S.C. § 1328 Certificate.

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 Order Waiving Debtor's 11 U.S.C. § 1328 Certificate filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted the requirement for Debtor Donna Vicks to complete Debtor's 11 U.S.C. § 1328 Certificate is waived.

7. [13-31916-E-13](#) **DALE/LEILANI MILLER** **OBJECTION TO CONFIRMATION OF**
TSB-1 **Pro Se** **PLAN BY DAVID CUSICK**
10-24-13 [34]

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) on October 24, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

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

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on November 8, 2013. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot and the plan is not confirmed.

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

Debtor Doreen M. Gastelum ("Debtor") moves for an order to show cause concerning the violation of discharge under 11 U.S.C. § 1328 against the City of Chicago, A Municipal Department, City of Chicago Office of the Mayor Rahm Emanuel, Markoff Kransy LLC, Law Offices of Talan & Ktsanes, City of Chicago Department of Buildings, City of Chicago Department of Police, City of Chicago Department of Streets and Sanitation, and the City of Chicago Department of Revenue ("City"). Debtor seeks (1) injunctive relief by the court to determine whether Debtor should be liable for the pre-petition liability arising from the complaints relating to the real properties located at 1517 W. 61st Street, Chicago, Illinois and 356 West 45th Street Chicago, Illinois; and (2) a determination of whether the City is in violation of 11 U.S.C. § 1328 by seeking a claim that runs with the land prior to the filing of the Chapter 13 bankruptcy.

Debtor alleges that the City began enforcement of both pre-petition and post-petition claims after the Chapter 13 case was filed, confirmed and discharged. Debtor asserts the claims in this case start pre-petition and have grown to staggering amounts. Debtor has filed a new Chapter 13 bankruptcy, Case NO. 13-311441-E-13C on August 30, 2013 to remedy any post-petition claims.

EVIDENCE

Debtor alleges the following pre-petition activity by the City:

1. On or about January 13, 2007, the City filed and noticed an Administrative Complaint regarding the 45 Street Property. (Exhibit 1, Dckt. 128);
2. On or about February 23, 2007, the City conducted a hearing of the Administrative Complaint regarding the 45 Street Property. (Exhibit 2, Dckt. 128);
3. On or about March 6, 2007, a Findings, Decisions & Order was entered concerning the 45 Street Property. (Exhibit 3, Dckt. 128);
4. On or about March 21, 2007, the City mailed a "Collection Notice" regarding the Administrative Judgment against the 45 Street Property. (Exhibit 4, Dckt. 128);
5. On or about May 25, 2007, the law firm of Wexler & Wexler, LLC, acting as Counsel on behalf of the City of Chicago, A Municipal Corporation, sent a collection letter advising Debtor that an Administrative Judgment had been entered, in the amount of \$532.25, which Debtor paid on June 4, 2007, with check #1004. (Exhibits 5 and 6, Dckt. 128);
6. On or about June 5, 2007, the law firm of Wexler & Wexler, LLC sent a collection letter advising Debtor that an Administrative Judgment had been entered. (Exhibit 7, Dckt. 128).

CITY'S OPPOSITION

The City argues that Debtor points to no pre-petition conduct to support the allegation that the discharge injunction was violated. The City alleges that the Debtor is without any evidence from which the court can conclude the City violated the discharge injunction. The City argues that it has pursued nothing other than post-petition, post-discharge fines imposed upon the Debtor in its exercise of police powers.

The City argues that Debtor has recognized in a variety of pleadings (from the related Adversary Proceeding) that the City's actions were post-petition.

As to the allegations of the City's pre-petition activity, the City argues that the pre-petition collection effort for the removal of an obstruction and repair to a defective house drain pipe was adjudicated and the judgment paid three months before the debtor sought Chapter 13 bankruptcy protection on September 4, 2007. The city states the debtor does not explain the relevance of these allegations to her claim that the City violated the discharge injunction for post-petition, post-discharge debts she incurred later.

The City also states that the violative property conditions, and the fines did not exist at either the filing of Debtor's petition, or at the time of the Debtor's discharge. The City claims it is not in dispute that the City did not begin conducting its investigation, or enforcing the various municipal code violations until after the debtor received her discharge on February 3, 2011. The City argues that its actions to ameliorate the debtor's illegal conduct occurring on her properties, post-petition and after discharge does not threaten the letter nor the spirit of the bankruptcy laws.

The City alleges that regardless, its collection efforts are exempt from discharge as fines due to government entities. The City cites 11 U.S.C. § 362(b)(4), the police power exemption, that excepts from the automatic stay the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police and regulatory power. The city argues that there is no dispute that the City's pursuit of municipal code violations at the debtor's properties was, and is, for the protection of its residents, and to protect public health and safety. The City further alleges that even if the fines had been entered pre-petition or for pre-petition violations, any pre-petition debt composed of fines or penalties payable to a governmental unit would have been excepted from the debtor's discharge under § 523(a)(7).

DEBTOR'S REPLY

Debtor responds to the City's opposition, stating that the pre-petition letters presented evidence actions taken by the City and that the amount claimed by the City could have in fact included these pre-petition claims. Debtor requests that this Motion should be continued to allow discovery as to the material disputed issues.

STANDARD

Motion for Contempt

"Civil contempt is the normal sanction for violation of the discharge injunction." *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002). 11 U.S.C. § 105 does not itself create a private right of action, but it does provide a bankruptcy court with statutory contempt powers in addition to whatever inherent contempt powers the court may have. Because these powers inherently include the ability to sanction a party, a bankruptcy court is authorized to invoke § 105 to enforce the discharge injunction and order damages for the debtor if appropriate on the merits. *Id.* at 506-507.

A contempt proceeding by the United States trustee or a party in interest in bankruptcy is a contested matter. *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189 (9th Cir. 2011). Contempt proceedings are not listed under Bankruptcy Rule 7001 and are therefore contested matters not qualifying as adversary proceedings. *Id.* Contempt proceedings for a violation of § 524 must be initiated by motion in the bankruptcy case under Rule 9014 and not by adversary proceeding. *Id.*

A creditor who attempts to collect a pre-petition discharged debt in violation of the discharge injunction is in contempt of the bankruptcy court that issued the order of discharge. *Eady v. Bankr. Receivables Mgmt. (In re Eady)*, 2008 Bankr. LEXIS 4696 (B.A.P. 9th Cir. 2008). In addition to the bankruptcy court's inherent power to impose an order for contempt only upon a showing of "bad faith," section 105 grants statutory contempt powers and a creditor may be liable under section 105 if it willfully violated the permanent injunction of section 524. *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002); *Walls*, 276 F.3d at 509.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contempnor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see also 11 U.S.C. § 105(a).

The party seeking contempt sanctions has the burden of proving by clear and convincing evidence that the contempnors violated a specific and definite order of the court. *Bennett*, 298 F.3d at 1069. The burden then shifts to the contempnors to demonstrate why they were unable to comply. *Id.* The movant must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction. *Id.* For the second prong, the court employs an objective test and the focus of the inquiry is not on the subjective beliefs or intent of the alleged contempnor in complying with the order, but whether in fact their conduct complied with the order at issue. *Bassett v. Am. Gen. Fin. (In re Bassett)*, 255 B.R. 747, 758 (9th Cir. B.A.P. 2000) (*rev'd on other grounds*, 285 F.3d 882 (9th Cir. 2002)).

Automatic Stay and Governmental Entities

Filing a bankruptcy petition operates as a stay, applicable to all entities, of the commencement or continuation of a judicial, administrative,

or other action or proceeding against the debtor. 11 U.S.C. 362(a)(1); *In re Poule*, 91 B.R. 83, 85 (B.A.P. 9th Cir. 1988). An exception to the stay appears in § 362(b)(4) for the commencement or continuation of an action or proceeding by the governmental unit to enforce such governmental units' police or regulatory powers. *Id.*

There are two tests to determine if the government is acting within the ambit of 11 U.S.C. § 362(b)(4). First test is "pecuniary purpose" test which distinguishes between governmental actions which are aimed at obtaining a pecuniary advantage for the unit in question or its citizens, and those actions which represent a direct application of the unit's police or regulatory powers. *In re Thomassen*, 15 B.R. 907, 909 (9th Cir. BAP 1981). State and local governmental units cannot, by an exercise of their police or regulatory powers, subvert the relief afforded by the federal bankruptcy laws. When they seek to do so for a pecuniary purpose, they are automatically stayed, notwithstanding the exception found at 11 U.S.C. § 362(b)(4). The second test is the "public policy" test. The "public policy" test attempts to distinguish between those proceedings which fulfill a public policy and those which adjudicate private rights." *In re Charter First Mortgage, Inc.*, 42 B.R. 380,383 (Bankr. D. Or. 1984). Under this test, the court considers whether the administrative agency is exercising legislative, executive, or judicial functions. Where the agency's action affects only the parties immediately involved in the proceeding, it is exercising a judicial function and the debtor is entitled to the same protection from the automatic stay as if the proceeding were being conducted in a judicial form. *Id.* at 383-384. FN.1.

FN.1 The Debtor has provided the court with a letter sent by City of Chicago which indicates that the obligation at issue may be a consumer debt, as that term is defined by the Federal Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq.). Exhibit 20, a June 1, 2012 letter from lawyers who appear to represent the City of Chicago provides the FDCPA notice which is required only for consumer debts (as defined in the FDCPA). This same notice is provided by other "Special Assistant Corporation Counsel," Markoff Krasny, LLC, who sent a series of letters to the Debtor.

Though the Markoff Krasny, LLC letter says, "This firm has been retained by the CITY OF CHICAGO,...I have been retained by the above creditor to collection the balance of your account,...You must make payment or satisfactory arrangement for payment with us to avoid additional collection efforts against you on behalf of our client...;" the letter further states "At this time, no attorney with the firm has personally reviewed the particular circumstances of your account." Exhibit 19, Dckt. 128 at 66. Each of the 11 letter from the City of Chicago through its "Special Assistant Corporation Counsel" makes the same statements (each seeking payment of a different amount) which were sent over 13 month period state that no lawyer serving as the "Special Assistant Corporate Counsel" personally reviewed the "circumstances" for the debtors that the City of Chicago was collecting through its "Special Assistant Corporate Counsel."

Discharge and Governmental Entities

Pursuant to 11 U.S.C. § 524,

A discharge in a case under this title --

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived

However, 11 U.S.C. § 523(a)(7) provides, "A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss, other than a tax penalty..." Whether something is a "fine," a "penalty," or "restitution" as those terms are used in § 523(a)(7) is a question of federal law. In *Taggart*, the Ninth Circuit viewed the central question as whether discipline cost awards are "penal in nature." *State Bar v. Taggart (In re Taggart)*, 249 F.3d 987, 994 (9th Cir. 2001); *Findley v. State Bar (In re Findley)*, 387 B.R. 260, 266 (B.A.P. 9th Cir. 2008). Therefore, court must determine whether the debt is penal or compensatory in nature.

In order for a debt to be nondischargeable debt the following four requirements have to be met:

(1) debt must arise as a punishment or sanction for some type of wrongdoing by the debtor and not merely be an enhanced monetary remedy for what is essentially a breach contract,

(2) debt must not be compensation for actual pecuniary loss;

(3) debt must be payable to a governmental unit; and

(4) debt must be for the benefit of a governmental unit.

See 4 Collier on Bankruptcy P 523.13[3][4] (16th ed. 2013); *In re Taggart*, 249 F.3d at 987.

The key question in assessing nondischargeability of a civil liability under section 523(a)(7) is whether the obligation is compensation for actual pecuniary loss, that is, compensation for monetary injury actually incurred. *In re Caggiano*, 34 B.R. 449, 450 (Bankr. D. Mass. 1983). If so, debt is dischargeable. *Id.*; 4 Collier on Bankruptcy P 523.13[3] (16th ed. 2013). If penalty "serve[s] some 'punitive' or 'rehabilitative' government aim, rather than a purely compensatory purpose," it satisfies the penal requirement for the nondischargeability of a debt. *Id.*; *Whitehouse v. Laroche*, 277 F.3d 568, 573 (1st Cir. 2002). As long as government's interest in enforcing debt is penal, it does not matter than the injured persons may

thereby receive compensation for pecuniary loss. *United States HUD v. Cost Control Mktg. & Sales Mgmt.*, 64 F.3d 920, 928 (4th Cir. Va. 1995).

In determining whether fine is for benefit of governmental unit under 11 U.S.C. § 523(a)(7), court must consider whether fine imposed is to compensate party who was injured by violation, or to punish party found to be in contempt and to uphold dignity of court; only judgments which are penal in nature and are imposed to uphold dignity of court will be excluded from general discharge; in making determination of whether contempt judgment is actually type included in 11 U.S.C. § 523(a)(7), court must look at totality of circumstances surrounding imposition of fine, and not just whether fine is labeled as civil or criminal contempt. See *Kelly v. Robinson*, 479 U.S. 36, 107 S. Ct. 353 (1986); *In re Gedeon*, 31 B.R. 942, 945 (Bankr. D. Colo. 1983).

DISCUSSION

There appear to be several issues of disputed material fact. First, whether the City had a pre-petition claim. Second, what pre-petition amounts, if any, is the City holding Debtor personally liable for. Third, whether the actions taken by the city prior to the filing of the bankruptcy, if any, render the subsequent actions of the City a violation of the discharge injunction (and warrant civil sanctions). Fourth, if the City's actions were related to pre-petition claims, and thus subject to the discharge, whether the City's actions are excepted from discharge under 11 U.S.C. § 523(a)(7) (the City raised 11 U.S.C. § 362(b)(4), which appears to apply to the automatic stay, not the discharge injunction, which is the subject of this motion).

From the Motion and Opposition, the court is presented with a Yes It Is (the debt is a pre-petition claim) – No It Isn't (assertion that all of the debts arose post-petition) dispute. What the court cannot tell in simple plain language from the face of the pleadings is when is, and what is the basis of, each debt alleged to exist. The Bankruptcy Code defines a claim as follow.

(5) The term "claim" means--

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5). A "debt" is defined by the Bankruptcy Code, stating, "The term "debt" means liability on a claim." 11 U.S.C. § 101(12).

As is well established, the "claim" arises when the underlying conduct upon which the debt is based occurred, not when the cause of action

accrued or when the creditor subsequently sought to enforce the obligation. *Watson v. Parker (In re Parker)*, 313 F.3d 1267 (10th Cir. 2002), cert. den., 540 U.S. 965 (2003); *In re Cool Fuel*, 210 F.3d 999, 1006, (9th Cir. 2000), holding,

The bankruptcy court has jurisdiction to consider the Board's claim. It is well-established that a claim is ripe as an allowable claim in a bankruptcy proceeding even if it is a cause of action that has not yet accrued. See *In re Jensen*, 995 F.2d 925, 929 (9th Cir. 1993); *In re Remington Rand Corp.*, 836 F.2d 825, 831-32 (3d Cir. 1988) (holding that government claim was allowable in bankruptcy proceeding even though claim had not accrued under the Contract Disputes Act of 1978); 11 U.S.C. § 101(5)(A) (defining "claim" as any "right to payment," even if it is "contingent" or "unmatured"); 11 U.S.C. § 502(b)(1) (stating that bankruptcy court "shall determine the amount of [a] claim . . . and allow such claims . . . except to the extent that . . . such claim is unenforceable against the debtor . . . for a reason other than because such claim is contingent or unmatured"); see generally Lawrence P. King, 1 Collier Bankruptcy Manual Par. 101.05[1] at 101-9 & nn. 9,11 (3d ed. 1999) (noting that an allowable claim includes "a cause of action or right to payment that has not yet accrued or become cognizable").

A claim exists for purposes of the bankruptcy case when "[a] claimant can fairly or reasonably contemplate the claim's existence even if a cause of action has not yet accrued under nonbankruptcy law." *SNTL Corp. v. Centre Insurance Company*, 571 F.3d 826, 839, (9th Cir. 2009), citing *In re Cool Fuel*.

Before sending the parties to an evidentiary hearing, and possibly dropping on the court less than clear statements identifying the debts and the basis for contending that they are or are not claims, the court affords the parties reasonable discovery. Additionally, the court will set an Pre-Evidentiary Hearing Conference (which is similar to a pre-trial conference), for which the parties shall provide statements of undisputed facts, witnesses, and exhibits for the Evidentiary Hearing.

Based on these disputed material factual issues, the matter will be set for an Evidentiary Hearing Conference setting the following dates and deadlines:

- A. The court shall issue an Order to Show Cause for each of the parties named in the Motion to show cause why they should not be held in contempt for the conduct as set forth in the Motion.
- B. Each party shall make the Initial Disclosures specified in Federal Rule of Civil Procedure 26(a)(1) and Federal Rule of Bankruptcy Procedure 7026, 9014, on or before December 6, 2013.

- C. Each party shall make the Expert Witness Disclosures specified in Federal Rule of Civil Procedure 26(a)(2) and Federal Rule of Bankruptcy Procedure 7026, 9014, on or before January 23, 2013.
- D. Discovery, including the hearing of all Discovery Motions shall be completed by -----, 2014.
- E. The Pre-Evidentiary Hearing Conference shall be conducted at 2:30 p.m. on -----, 2014.

10. 13-31228-E-13 JOHN PAUL/KRISTINE LEE CONTINUED OBJECTION TO
 MDP-1 Scott A. CoBen CONFIRMATION OF PLAN BY
 CATERPILLAR FINANCIAL SERVICES
 CORPORATION
 10-10-13 [18]

CONT. FROM 11-5-13

Local Rule 9014-1(f)(2) Motion - Continued Hearing

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

The Objection to Confirmation was resolved and the Chapter 13 Plan was confirmed by an order filed on November 12, 2013. Dckt. 28. Caterpillar Financial Services Corporation confirmed the resolution of the objection by approving the form of the Confirmation Order and the treatment of its term in this case.

The Objection to Confirmation is dismissed as moot.

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

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

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

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

11. 13-24029-E-13 KEVIN GIPSON
SDB-3 W. Scott de Bie

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
10-7-13 [48]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 7, 2013. By the court's calculation, 43 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 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 3031 38th Avenue, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$70,000 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).

Wells Fargo Bank, N.A. filed a non-opposition to the motion on October 9, 2013. Dckt. 56.

The first deed of trust secures a loan with a balance of approximately \$171,277.51. Creditor Wells Fargo Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$44,350.18. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 3031 38th Avenue, 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 \$70,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

12. [13-29429-E-13](#) **MARK/EMILY GONZALES** **MOTION TO CONFIRM PLAN**
SDB-3 **W. Scott de Bie** **10-1-13 [41]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 1, 2013. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

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

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

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of

confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

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

13. [13-32829-E-13](#) **STEVEN/MARILYN SEALE** **MOTION TO VALUE COLLATERAL OF**
JDM-1 **John David Maxey** **BANK OF AMERICA, N.A.**
10-8-13 [[13](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 8, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

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

The Motion 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 730 Deer Park Drive, Lincoln, California. The Debtor seeks to value the property at a fair market value of \$273,000 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 \$329,586. Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$37,740. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 730 Deer Park Drive, Lincoln, 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 \$273,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

14. [13-31931](#)-E-13 TRAVIS/KARI MANHART
TSB-1 W. Steven Shumway

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
10-24-13 [[19](#)]

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 24, 2013. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

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

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on November 11, 2013. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot and the plan is not confirmed.

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

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

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

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

15. [13-31834-E-13](#) GARY/AMY CORNELLIER
PGM-1 Peter G. Macaluso

MOTION TO VALUE COLLATERAL OF
SIERRA CENTRAL CREDIT UNION
10-21-13 [18]

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 21, 2013. By the court's calculation, 29 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 is granted and creditor's secured claim is determined to be \$17,000.00. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of a 2010 Ford Taurus. The Debtor seeks to value the property at a replacement value of \$17,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the vehicle's title secures a purchase-money loan incurred on February 24, 2011, more than 910 days prior to filing of the petition, with a balance of approximately \$29,124.69. Therefore, the respondent creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$17,000.00. *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 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 Sierra Central Credit Union secured by an asset described as a 2010 Ford Taurus is determined to be a secured claim in the amount of \$17,000, 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 \$17,000 and is encumbered by liens securing claims which exceed the value of the asset.

16. [13-31834-E-13](#) **GARY/AMY CORNELIER** **OBJECTION TO CONFIRMATION OF**
TSB-1 **Peter G. Macaluso** **PLAN BY DAVID CUSICK**
10-24-13 [22]

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 24, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

The court's decision is to overrule the Objection. No appearance at the November 19, 2013 hearing is required.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending Motion to Value Collateral of Sierra Central Credit Union. The court having granted the motion, the Trustee's objection is overruled.

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

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

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

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

IT IS ORDERED that the Objection is overruled, Debtor's Chapter 13 Plan filed on September 9, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

17. [13-32435-E-13](#) **FRANCISCO TALAVERA** **OBJECTION TO CONFIRMATION OF**
APN-1 **Steele Lanphier** **PLAN BY AMERICAN HONDA FINANCE**
CORPORATION
10-24-13 [\[15\]](#)

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee and Office of the United States Trustee on October 24, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

American Honda Finance Corporation ("Creditor") objects to confirmation of the Chapter 13 plan on the basis that Debtor financed the purchase of a 2009 Honda Pilot and the proposed plan does not provide

interest, which must be the prime-plus or formula rate according to *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing postpetition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. Of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. The prime rate in effect at the commencement of the case, 3.25%, plus a 1.25% risk adjustment, for a 4.5% interest rate is common. Here, Debtor provided 0.00% in the proposed plan. The objection to confirmation of the Plan on this basis is sustained. See 11 U.S.C. §1325(a) (5) (B) (ii).

Creditor also objects to the monthly adequate protection payments of \$208.51 offered it under the proposed plan, as the value of the security will depreciate at a much higher rate than that at which it will receive payments. However, Creditor has not provided the court with evidence that this six model-year old vehicle is depreciating at such a rapid rate that the *Till* interest rate computed above does not properly provide for this claim.

Creditor also states that Debtor has not provided Creditor with valid, written proof of insurance on the subject property.

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.

18. [13-32435-E-13](#) FRANCISCO TALAVERA
TSB-1 Steele Lanphier

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
10-30-13 [[19](#)]

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 30, 2013. By the court's calculation, 20 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 proposed plan fails to provide for the secured judgment lien held by Discover Bank listed on Schedule D. It appears Debtor proposed to value the secured claim of Discover Bank, but has not filed or set a motion. Therefore, Debtor's plan does not have sufficient funds to pay the claim in full.

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. [13-32136-E-13](#) **ADAM SILBER** **OBJECTION TO CONFIRMATION OF**
TSB-1 **Peter G. Macaluso** **PLAN BY DAVID CUSICK**
10-30-13 [[15](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 30, 2013. By the court's calculation, 20 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 proposed plan is not Debtor's best effort. Debtor is reported as being below median income. Trustee states that Form 22C is not accurately completed and based on the paystubs provided to Counsel, the average income from the 6 months prior to filing should be \$5,143.21. This computes to an annual income of \$61,718.52. Debtor is a household of 1 and the current median income for this household size is \$48,415.00. Thus, it appears that Debtor is above median income. Trustee has provided copies of the paystubs provided to them as Exhibit A. They support the Trustee's position.

Trustee states that Debtor should be required to amend Form 22C to correctly state her income and report his monthly disposable income on line 59 of the form. The court agrees. The paystubs provided by the Trustee support the Trustee's contention that the Debtor is above median income, based on the average income from the six months prior to filing, computing to \$61,718.52.

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.

20. [10-28340-E-13](#) **SHELBY/ANICETA HALEY** **MOTION TO INCUR DEBT**
BLG-3 **Chad M. Johnson** **10-16-13 [46]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 16, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

The motion seeks permission to incur debt to obtain a reverse mortgage through One Reverse Mortgage, LLC, in the amount of 150% of the maximum claim at fixed interest rate of 4.99%. There is no loan term. Debtors are seeking to refinance their home, which is necessary to cover their ongoing living expenses. The reverse mortgage is a single loan encumbering the Debtor's residence commonly known as 2981 Gulf Drive, Fairfield, California. The First Modified Plan will propose a lump sum payoff of \$3,875.00 through this financing in month 45 to complete the plan.

The Chapter 13 filed a non-opposition statement to the Motion to Incur Debt for the purpose of a reverse mortgage. However, the Trustee noted that the Debtors are delinquent in the amount of \$526.00 with another payment due on October 25, 2013 in the amount of \$526.00 under the confirmed Chapter 13 plan. The Trustee notes that Debtors need to submit the First Modified Plan to propose a lump sum of \$3,875.00 through this financing in Month 45 to complete the Plan.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In *re* Gonzales, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Here, the proposed loan is sufficiently described in the motion and supporting pleadings and an agreement has been provided to the court. Dckt. 46, 49. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

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

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

IT IS ORDERED that Debtors Shelby Douglas Haley and Aniceta Pagalunan Haley are authorized to obtain reverse mortgage for the real property commonly known as 2981 Gulf Drive, Fairfield, California according to the terms stated in the HUD Agreement filed as Exhibit "A," Docket Entry No. 49, in support of the motion.

21. [10-45541-E-13](#) JULIE COLE
RAC-2 Richard A. Chan

MOTION TO MODIFY PLAN
10-8-13 [[32](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 8, 2013. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on October 8, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so

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

22. [11-48342-E-13](#) ALLEGRA SMOOTH MOTION TO MODIFY PLAN
PGM-6 Peter G. Macaluso 10-10-13 [[137](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 10, 2013. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

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

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

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

The Chapter 13 Trustee opposes the motion on the basis that it is not clear if the Debtor's plan has been proposed in good faith or is the Debtor's best efforts. The Debtor is seeking to reduce her plan payments from \$3,100.00 to \$2,200.00. The Trustee argues that the reason for the changes in this modification are the same for the prior modification attempt, and that the modification should be denied and the case dismissed. The Trustee states the Debtor's payments have been undependable.

The Trustee also objects to the additional provisions in the plan. Trustee states the creditor filed Proof of Claim No. 11 indicating the secured claim was \$350,057.72 which included \$9,837.06 in arrears. The creditor filed a notice of mortgage payment change on September 5, 2013 indicating a total monthly payment of \$1,641.25 effective November 1, 2013; \$368.56 of this monthly payment is for escrow.

Debtor is proposing an adequate protection payment of \$1,045.00 which includes escrow per the Updated Schedule J Dckt. 140. Thus, the actual adequate protection payment being proposed by the debtor excluding escrow is \$676.44 per month. Trustee states the debtor has not provided any evidence

of an attempted loan modification since filing, nor has the debtor objected to Proof of Claim No. 11 or to the Notice of Mortgage Payment Change. Trustee states that Debtor originally scheduled the property at a value of \$210,000.00, and the mortgage as more than that, which would require \$776.20 per month to service in the event the mortgage was a 30 year fixed loan at 2%.

Lastly, the Trustee contends that the declaration provided by Debtor is not sufficient. The explanation that the City School District no longer offers summer employment for regular education teachers so her income is reduced over the summer; based on the Debtor making no plan payments in June and July 2012, this explanation appears inadequate. The Trustee states he served interrogatories on Debtor, in which she stated a monthly net revenue of \$4,658.94 and that her sister and her family moved out as of February 2013.

DEBTOR'S RESPONSE

Debtor filed a supplemental declaration in response to the Trustee's objection. Debtor states the following:

1. In June 2013, I was contemplating surrendering the home, and used the income to pay the increased expenses from my sister and catchup on monthly expenses.

2. In July 2013, I spent the \$1,700 on pay day loans and Wells Fargo Advance payments.

3. In August 2013, I spent the \$1,700 on school shopping for my son who had outgrown all clothes and shoes.

4. In September 2013, I spent the \$1,700 on repaying payday Loans and Wells Fargo Advance payments.

DISCUSSION

The court notes that in the prior modification attempt, Debtor stated that the reason for modification was because her sister and her sister's family moved in with her. Civil Minutes, Dckt. 127. The Trustee states that the sister and her family moved out as of February 2013.

The court raised issues of Debtor's credibility at the prior hearing on modification and the issues still appear. Debtor did not address the issues raised by the Trustee, but rather provides that she spent the plan payment money on pay day loans and advance payments. No explanation is provided as to why these expenses were paid, whether the loans and advances were entered into after the filing of the bankruptcy or these debts are part of the bankruptcy estate (and part of the plan).

Debtor does not appear to be prosecuting this case in good faith. Debtor provides "expenses" to the court, but then provides several other expenses that she has been paying for - including \$1,700 shopping sprees and paying on debts that have not been explained to the court. The "payday loan" attested to by the Debtor are post-petition credit which she

unilaterally obtained without court approval. It appears that this Debtor is desperate to achieve her goals, and will do whatever is necessary, say whatever is necessary, and present the court with whatever motion or pleading (without regard to its merit) she thinks is to her advantage.

The evidence provided by the Debtor that the plan is her best effort does not support confirmation. It does establish that her testimony is not credible and that she has not complied with the Bankruptcy Code.

Further, the adequate protection payment being proposed by the debtor excluding escrow is \$676.44 per month, which is clearly not a sufficient adequate protection payment, the creditor having filed a notice of mortgage payment change on September 5, 2013 indicating a total monthly payment of \$1,641.25 effective November 1, 2013 (\$368.56 of this monthly payment is for escrow). The Debtor has not provided any evidence of an attempted loan modification, has not objected to Proof of Claim No. 11, or objected to the Notice of Mortgage Payment Change. Instead, the Debtor merely asks the court to blindly violate the provisions of 11 U.S.C. § 1322(b)(2) - prohibition on modifying the rights of a creditor for a claim secured only by the Debtor's residence without the consent of the creditor.

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

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

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

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

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

23. [11-23943-E-13](#) JOHN/JEAN LECCESI
WW-1 Mark A. Wolff

MOTION TO INCUR DEBT
11-5-13 [[38](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on November 5, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion Incur Debt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (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 Incur Debt. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion seeks permission to incur debt to purchase real property commonly known as 10140 W. York House Road, Beach Park, Illinois through Fannie Mae, in the amount of 182,500.00 at fixed interest rate of 4.625%. The loan term is 360 months and the total monthly mortgage payment will be \$1,623.42. The down payment required is \$1,000.00. Debtors are seeking to purchase a new home, which is necessary due to their relocation to Illinois.

Debtors contend they will be able to afford the monthly mortgage payment. Co-Debtor John asserts his monthly income has increased and co-Debtor Jean will be receiving unemployment income of \$1,438.00 per month. The proposed mortgage payment will be less than the rent amount of \$1,800. Debtors assert they are current with plan payments and have updated their current income and expenses statements.

The Chapter 13 filed a non-opposition statement to the Motion to Incur Debt.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In re Gonzales, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement,

"including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Here, the proposed loan is sufficiently described in the motion and supporting pleadings and an agreement has been provided to the court. Dckt. 41. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

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

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

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

IT IS ORDERED that Debtors John Leccesi and Jean Leccesi are authorized to purchase the real property commonly known as 10140 W. York House Road, Beach Park, Illinois according to the terms stated in the Agreement filed as Exhibit "B," Docket Entry No. 41, in support of the motion.

24. 13-33049-E-13 JEANNE CHRISTENSON
JT-1 John A. Tosney

MOTION TO VALUE COLLATERAL OF
BANK OF AMERICA, N.A.
10-16-13 [14]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 16, 2013. By the court's calculation, 34 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 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 8129 Quartz Lane, Smartsville, California. The Debtor seeks to value the property at a fair market value of \$115,000.00 as of the petition filing date. As the owner, the value of the property is based on an appraisal conducted on or about August 6, 2013 (see Exhibit).

The first deed of trust secures a loan with a balance of approximately \$243,874.00. Creditor Bank of America, N.A.'s second deed of trust secures a loan with a balance of approximately \$48,967.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Bank of America, N.A. secured by a second deed of trust recorded against the real property commonly known as 8129 Quartz Lane, Smartsville, 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 \$115,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

25. [11-23451-E-13](#) **CLARENCE ISADORE AND DEATRA JONES-ISADORE** **MOTION FOR CONSENT TO ENTER INTO TRIAL LOAN MODIFICATION AGREEMENT**
PGM-2 **Peter G. Macaluso** **10-18-13 [45]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 18, 2013. By the court's calculation, 32 days' notice was provided. 28 days' notice is required.

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

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

Creditor JPMorgan Chase Bank, N.A., whose claim the plan provides for in Class 4, has agreed to a trial loan modification requiring a monthly

mortgage payment of \$1559.17 from November 1, 2013 through January 1, 2014 (three payments) paid directly to Creditor. FN.1.

FN.1. If a permanent loan modification is granted and the Trustee and the Debtor concur on the amount of modified payment, they can file an *ex parte* motion to reduce the plan payment by the lower direct payment being made by the Debtors. However, a noticed hearing would clearly be required to make other changes, if any, to the Chapter 13 Plan or amount of plan payment.

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 Trial 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 Clarence Junior Isadore and Deatra Lynn Jones-Isadore, 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 200 Home Acres Avenue, Vallejo, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 48, in support of the Motion.

26. [13-27151-E-13](#) **FRANK TERRAZAS**
SJJ-3 **Stephen J. Johnson**

MOTION TO VALUE COLLATERAL OF
U.S. BANK, N.A.
10-16-13 [55]

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 16, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

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 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 11492 Quartz Drive #2, Auburn, California. The Debtor seeks to value the property at a fair market value of \$66,076.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$122,595.00. Creditor U.S. Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$40,866.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is 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 U.S. Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 11492 Quartz Drive #2, Auburn, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$66,076.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

27. [13-29852-E-13](#) JOHN GLENN CONTINUED MOTION TO CONFIRM
KE-2 Karen Ehler PLAN
9-5-13 [[25](#)]

CONT. FROM 10-22-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 5, 2013. By the court's calculation, 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(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The court's decision is to grant the Motion to Confirm the Amended Plan. No appearance at November 19, 2013 hearing required.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Chapter 13 Trustee objects on the basis that the Debtor cannot afford to make the plan payment because the plan relies on a pending

Motion to Value Collateral of Yolo Federal Credit Union. The court denying the motion on October 8, 2013, the Trustee's objection is sustained.

The Trustee also objects on the basis that the plan calls for payment of attorney fees of \$500.00 per month, but Section 2.07 of the plan proposes \$0.00 per month toward administrative claims.

Debtor responded, stating that the issue of attorney's fees can be resolved in the order confirming with a monthly payment of \$20 per month in months 1 through 25. Debtor requests that the Motion be continued to be heard with the pending Motion to Value.

CONTINUANCE

The court continued the hearing to be heard in conjunction with the Motion to Value Collateral. The court having granted the motion, the Trustee's objection is overruled.

The amended Plan, as amended above, 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 5, 2013, as amended at the hearing, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

28. 13-29852-E-13 JOHN GLENN
KE-3 Karen Ehler

MOTION TO VALUE COLLATERAL OF
YOLO FEDERAL CREDIT UNION
10-10-13 [38]

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 10, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 13 Buckeye Street, Woodland, California. The Debtor seeks to value the property at a fair market value of \$149,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$204,956.56. Yolo Federal Credit Union's second deed of trust secures a loan with a balance of approximately \$30,790.20. 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 Yolo Federal Credit Union secured by a second deed of trust recorded against the real property commonly known as 13 Buckeye Street, Woodland, 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 \$149,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

29. [11-27453-E-13](#) **JEFFERSON/LESLIE SCHAR** **MOTION TO MODIFY PLAN**
WW-2 **Mark A. Wolff** **10-1-13 [37]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 1, 2013. By the court's calculation, 49 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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

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

30. [13-32453](#)-E-13 **KIM HALILOVIC** **OBJECTION TO CONFIRMATION OF**
PPR-1 **John A. Tosney** **PLAN BY UNITED GUARANTY**
RESIDENTIAL INSURANCE COMPANY
OF NORTH CAROLINA
10-31-13 [\[31\]](#)

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney and Chapter 13 Trustee on October 31, 2013. By the court's calculation, 19 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 continue the hearing on the Objection to 3:00 p.m. on December 10, 2013. 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:

United Guaranty Residential Insurance Company of North Carolina, holder of a secured lien on 300 Fayette Way, Folsom, California opposes the Motion to Confirm on the grounds that it opposes the Motion to Value Collateral. At the hearing on the Motion to Value, Creditor requested additional time to appraise the real property.

The court continued the hearing on the motion to 3:00 p.m. on December 10, 2013 for the Creditor and Debtor to obtain valuations and confer.

The court continues the hearing on the Objection to 3:00 p.m. on December 10, 2013.

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

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

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

IT IS ORDERED that hearing on the Objection to confirmation is continued to 3:00 p.m. on December 10, 2013.

31. [13-32453-E-13](#) KIM HALILOVIC
TSB-1 John A. Tosney

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
10-30-13 [[28](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 30, 2013. By the court's calculation, 20 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 continue the hearing on the Objection to 3:00 p.m. on December 10, 2013. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending motion to value collateral of Veripro Solutions. The court continued the hearing on the motion to 3:00 p.m. on December 10, 2013 for the Creditor and Debtor to obtain valuations and confer.

The court continues the hearing on the Objection to 3:00 p.m. on December 10, 2013.

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

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

The 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 hearing on the Objection to confirmation is continued to 3:00 p.m. on December 10, 2013.

32. [10-41154-E-13](#) J.C./JUDY SKINNER MOTION TO INCUR DEBT
MWB-4 Mark W. Briden 10-16-13 [64]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 16, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

The motion seeks permission to incur debt to purchase 2011 Toyota Camry for \$18,572.63 at 15.99% interest rate, with monthly payments of \$383.62 a month. Debtors state they will place \$1,000 down payment. The Retail Installment Sale Contract is secured by a purchase money lien. Debtor asks the Court to take Judicial Notice of the filed Amended Schedule for new monthly payment of \$383.62.

OPPOSITION

The Chapter 13 Trustee filed a opposition to Motion to Incur Debt for a purchase of vehicle. The Trustee argues that Debtors did not state if they checked with other dealership to compare prices and interest rate or if they tried to negotiate a lower interest rate. Additionally, Debtor has not explained what they have used for transportation in the last four months and did not explain the need for a vehicle.

DISCUSSION

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). In re Gonzales, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing

limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Here, the transaction is not best interests of the Debtor. The loan calls for a substantial interest charge – 15.99%. This interest rate is not much lower than the 18.25% Debtors proposed in a prior Motion to Incur Debt on September 10, 2013 (Dckt. No. 45), which the court had denied without prejudice (Dckt. No. 54). A debtor driven to seek the extraordinary relief available under the Bankruptcy Code is hard pressed to provide a good faith explanation as to how a "reward" for filing bankruptcy is to purchase a car and attempt to borrow money at a 16% interest rate.

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

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

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

IT IS ORDERED that motion is denied without prejudice.

33. [13-29155](#)-E-13 JERRY DESCHLER AND SALLY CONTINUED MOTION TO VALUE
LBG-1 HUI-DESCHLER COLLATERAL OF PMAC LENDING
Lucas B. Garcia SERVICES
8-15-13 [[15](#)]

CONT. FROM 9-24-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on August 15, 2013. By the court's calculation, 40 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 Motion to Value Collateral 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:

PRIOR HEARING

The Debtor is the owner of the subject real property commonly known as 2971 Great Egret Way, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$221,000.00 as of the petition filing date. Neither the motion nor the declaration by Debtors, Jerry James Deschler, Jr. and Sally Yukyu Hui-Deschler provide the exact and complete address of the subject rental property. It states that "rental property is located in Sacramento, California on Great Egret Way." The unit or house number is not included. The court obtained the rental property address from the Creditor's opposition.

Creditor's Opposition on September 10, 2013

PMAC Lending Services, Inc. filed a written opposition opposing Debtor's valuation of the subject property is \$221,000.00. Creditor intends to file its Proof of Claim and obtain an expert valuation of the subject property. Creditor requests additional time and continue the hearing to allow it to obtain its own valuation of the property.

CONTINUANCE

The court continued the hearing to allow the Creditor to obtain an appraisal of the subject real property.

Creditor's Opposition on October 22, 2013

PMAC Lending Services, Inc. filed a supplemental opposition opposing Debtor's valuation of the subject property at \$221,000.00. As evidence, the Creditor submitted a Uniform Residential Appraisal Report completed on October 14, 2013 by Justin U. Fatzer, a licensed real estate appraiser. According to Mr. Fatzer, the subject property is worth at least \$325,000.00.

Debtor's Response

Debtors respond, arguing that the Creditor's evidence lacks foundation as they provide an unauthenticated exhibit, the appraisal. The Creditor did not provide a declaration depicting any information about the appraiser. Debtors also argue that the valuation offered from the appraisal report is hearsay.

Additionally, Debtors argue that Creditors use the wrong valuation date. Debtors state the date of the appraisal is October 14, 2013, three months after the filing date, July 10, 2013. Debtors state the evidence should therefore be given no weight.

Lastly, Debtors assert that their valuation is most qualified. Debtors base this valuation on a property value basis of \$246,000.00 and subtracting a cost of sale and cost of repairs for the items they know to be in disrepair. Those repairs include a failing water heater, replacement of the irrigation system, failing air conditioner, broken window panes, broken master bathroom sink and general tenant related wear and tear.

However, the evidence provided with the Motion by the Debtors of valuation for the property consists of the following testimony by the Debtors,

"We believe and assert that the reasonable, replacement value of the ASSET is \$221,000.00."

Declaration, Dckt. 17. No testimony was provided as to any specific for this valuation or there being any damage to the Property at the time of the declaration. Only in a Reply declaration do the Debtors disclose, only one week before this hearing, all of the "deferred maintenance" which is alleged to reduce the value of the Property. Springing such testimony on the eve of the hearing does not enhance the credibility of these Debtors.

The Debtor also testify under penalty of perjury that the replacement cost for the Property includes a deduction for costs of sale of the Property. In their testimony under penalty of perjury, the Debtor offer no explanation how a replacement cost is reduced, and the buyer is allowed to pay a lower amount, when buying property for costs which are paid by the seller. This statement under penalty of perjury further impairs the credibility of the Debtors. The Debtor show no basis for having such "knowledge" and it appears that they are merely signing declarations which

say whatever may be of advantage to them - irrespective of the truth of their testimony.

The Debtors also include in their Reply a declaration from an appraiser. Dckt. 44. The Appraiser offers no testimony in the Declaration as to the value of the Property and does not authenticate and adopt any appraisal report filed as an exhibit. Rather, the Appraiser merely testifies,

- A. She has been a appraiser for 12 years.
- B. She is familiar with the area in which the Property is located.
- C. On November 3, 2013, she appraised the Property.
- D. She "has based my evaluation as instructed by debtors attorney to assess the value on the petition filing date of July 10, 2013."
- E. That bank owned or REO properties sell for lower prices depending on how long they stay on the market.
- F. If any unidentified repairs were made to the Property between July 10, 2013 and her inspection of the Property, the Appraiser is not aware of any repairs or any effect they would of had on the Property.
- G. Based on the Appraiser's knowledge, approximately 6% to 10% of the sales price goes to pay the costs of sale.

The Appraiser offers no opinion as to the value of the Property. Her reference to REO properties appears to indicate that she her approach to valuation, if any, was not based on what it would cost the Debtors to buy the home, but the value of foreclosed property to creditors.

DISCUSSION

Creditor does not provide an authenticated Appraisal Report. No declaration has been provided by the real estate appraiser who prepared the appraisal, stating his qualifications, the basis for his expert opinion, or authenticating the exhibit. The Debtors do not provide sufficient evidence of value for the court to grant the motion.

Upon review of the record there is disputed material factual issues and therefore an evidentiary hearing is required.

THE PARTIES ARE NOTIFIED that for the evidentiary hearing competent, admissible, properly authenticated evidence is required. Failure to do so constitutes not only a waste of the court's time, but causing the other party to incur otherwise unnecessary costs and expenses, which possibly could be the subject of sanctions awarded under Federal Rule of Bankruptcy Procedure 9011.

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

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

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

(3) PMAC Lending Services, Inc. shall lodge with the court and serve their direct testimony statement on or before -----.

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

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

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

34. [13-29155-E-13](#) **JERRY DESCHLER AND SALLY** **CONTINUED OBJECTION TO**
TSB-1 **HUI-DESCHLER** **CONFIRMATION OF PLAN BY DAVID**
Lucas B. Garcia **P. CUSICK**
8-21-13 [20]

CONT. FROM 9-24-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 21, 2013. 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, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to continue the hearing to xx:xx x.m. on _____, 201x. 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

35. [13-32258-E-13](#) ELLEN MACDONALD
CLH-1 Charles L. Hastings

MOTION TO VALUE COLLATERAL OF
WELLS FARGO BANK, N.A.
10-21-13 [18]

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 21, 2013. By the court's calculation, 29 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 is granted and creditor's secured claim is determined to be \$26,223.38. No appearance required.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject commercial real property commonly known as 23714 Hwy 88, Pioneer, California. The Debtor seeks to value the property at a fair market value of \$168,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$141,777.62. Creditor Wells Fargo Bank, N.A.'s lien has a balance of approximately \$33,085.13. Therefore, the respondent creditor's claim secured by a junior deed of trust is under-collateralized. The creditor's secured claim is determined to be in the amount of \$26,223.38. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

The Motion for Valuation of Collateral filed by Debtor(s) having been presented to the court, and upon

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Wells Fargo Bank, N.A. secured by a junior lien recorded against the real property commonly known as 23714 Hwy 88, Pioneer, California, is determined to be a secured claim in the amount of \$26,223.38, 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 \$168,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

36. [13-32258-E-13](#) **ELLEN MACDONALD** **MOTION TO VALUE COLLATERAL OF**
CLH-2 **Charles L. Hastings** **HOLT OF CALIFORNIA**
10-21-13 [23]

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 21, 2013. By the court's calculation, 29 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 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 23714 Hwy 88, Pioneer, California. The Debtor seeks to value the property at a fair market value of \$168,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$141,777.62. Wells Fargo Bank, N.A.'s senior lien has a balance of approximately \$33,085.13. Creditor Holt of California's lien secures a loan with a balance of approximately \$44,481.03. Therefore, the respondent creditor's claim secured by a junior lien is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Holt of California secured by a junior lien recorded against the real property commonly known as 23714 Hwy 88, Pioneer, 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 \$168,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

37. [13-32258-E-13](#) ELLEN MACDONALD
CLH-3 Charles L. Hastings

MOTION TO VALUE COLLATERAL OF
STEVE STOELK, CASCADE HEAD
DEVELOPMENT
10-21-13 [[28](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 21, 2013. By the court's calculation, 29 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 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 23714 Hwy 88, Pioneer, California. The Debtor seeks to value the property at a fair market value of \$168,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$141,777.62. Wells Fargo Bank, N.A.'s senior lien has a balance of approximately \$33,085.13. Creditor Cascade Head Development recorded an Abstract of Judgment in the amount of approximately \$45,889.88 against the subject real property. Therefore, the respondent creditor's claim secured by a junior lien is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Cascade Head Development secured by an Abstract of Judgment recorded against the real property commonly known as 23714 Hwy 88, Pioneer, 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 \$168,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

38. [13-32258-E-13](#) **ELLEN MACDONALD** **MOTION TO VALUE COLLATERAL OF**
CLH-4 **Charles L. Hastings** **PAPE MACHINERY, INC.**
10-21-13 [33]

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 21, 2013. By the court's calculation, 29 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 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 23714 hwy 88, Pioneer, California. The Debtor seeks to value the property at a fair market value of \$168,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$141,777.62. Wells Fargo Bank, N.A.'s senior lien has a balance of approximately \$33,085.13. Creditor Pape Machinery, Inc. recorded an Abstract of Judgment in the amount of approximately \$20,827.08. Therefore, the respondent creditor's claim secured by a junior lien is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Pape Machinery, Inc. secured by an Abstract of Judgment recorded against the real property commonly known as 23714 hwy 88, Pioneer, 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 \$168,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

39. [13-32258-E-13](#) ELLEN MACDONALD
CLH-5 Charles L. Hastings

MOTION TO VALUE COLLATERAL OF
COMMERCIAL EQUIPMENT LEASE
CORPORATION
10-21-13 [[38](#)]

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 21, 2013. By the court's calculation, 29 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 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 23714 hwy 88, Pioneer, California. The Debtor seeks to value the property at a fair market value of \$168,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$141,777.62. Wells Fargo Bank, N.A.'s senior lien has a balance of approximately \$33,085.13. Creditor Commercial Equipment Lease Corporation recorded an Abstract of Judgment in the amount of approximately \$75,053.54. Therefore, the respondent creditor's claim secured by a junior lien is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Commercial Equipment Lease Corporation secured by an Abstract of Judgment recorded against the real property commonly known as 23714 hwy 88, Pioneer, 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 \$168,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

40. [13-32258-E-13](#) **ELLEN MACDONALD** **MOTION TO VALUE COLLATERAL OF**
CLH-6 **Charles L. Hastings** **RAY KLEIN, INC.**
10-21-13 [\[43\]](#)

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 21, 2013. By the court's calculation, 29 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 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 23714 hwy 88, Pioneer, California. The Debtor seeks to value the property at a fair market value of \$168,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$141,777.62. Wells Fargo Bank, N.A.'s senior lien has a balance of approximately \$33,085.13. Creditor Ray Klein, Inc. recorded an Abstract of Judgment in the amount of approximately \$75,053.54. Therefore, the respondent creditor's claim secured by a junior lien is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Ray Klein, Inc. secured by an Abstract of Judgment recorded against the real property commonly known as 23714 hwy 88, Pioneer, 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 \$168,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

41. [13-32258-E-13](#) ELLEN MACDONALD
CLH-7 Charles L. Hastings

MOTION TO VALUE COLLATERAL OF
SUSQUEHANNA COMMERCIAL FINANCE,
INC.
10-21-13 [[48](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 21, 2013. By the court's calculation, 29 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 a discovery schedule and continue the hearing on the Motion to Value Collateral. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 23714 hwy 88, Pioneer, California. The Debtor seeks to value the property at a fair market value of \$168,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The Debtor further contends that after deducting the value of the First Deed of Trust held by Bank of Amador and an Abstract of Judgment recorded by Wells Fargo Bank, N.A., there will be insufficient equity to secure the Susquehanna Commercial Finance, Inc. The first deed of trust secures a loan with a balance of approximately \$141,777.62. Wells Fargo Bank, N.A.'s senior lien has a balance of approximately \$33,085.13.

CREDITOR'S OPPOSITION

Creditor Susquehanna Commercial Finance, Inc. ("Creditor"), filed opposition stating that the Debtor's "Motion to Avoid Judicial Lien" is invalid, since the Debtor have claimed \$0.00 exemption on said real property.

Creditor further alleges that the Debtor have undervalued the Real Property. Accordingly, the Creditor requests an evidentiary hearing as to

the value of the aforementioned property so that the Creditor may obtain an appraisal of the real property at issue.

Creditor offers no assertion as to the value of the Property.

DISCUSSION

Here, Debtor does not appear to be avoiding a judicial lien pursuant to 11 U.S.C. § 522(f). The motion seeks to value the claim of Pennsylvania Corporation at zero, as there is insufficient equity to secure the lien. Dckt. 48. Therefore, Debtor does not have to claim an exemption in the property.

It is clear that the parties must conduct discovery, including the appraisal of the Property. The court sets the following discovery and supplemental pleading schedule:

- A. On or before -----, 2013, Creditor shall provide a copy of the appraisal obtained, if Creditor intends to proceed with opposing the Motion, to counsel for the Debtor.
- B. On or before -----, 2013, Creditor shall file and serve supplemental pleadings, including the declaration of the appraiser and properly authenticated appraisal report, if Creditor continues to oppose the Motion.
- C. The court shall conduct a continued hearing on the Motion at 3:00 p.m. on -----, 20xx, to consider the evidence, determine if further discovery is necessary, and to set an evidentiary hearing if warranted.

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

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

The Motion to Value the Secured Claim of Susquehanna Commercial Finance, Inc. ("Creditor") filed by Ellen MacDonald having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that,

- A. On or before -----, 2013, Creditor shall provide a copy of the appraisal obtained, if Creditor intends to proceed with opposing the Motion, to counsel for the Debtor.
- B. On or before -----, 2013, Creditor shall file and serve supplemental pleadings, including the declaration of the appraiser and properly authenticated appraisal report, if Creditor continues to oppose the Motion.

C. The hearing on the Motion to Value the Secured Claim of Creditor is continued to 3:00 p.m. on -----, 20xx, to consider the evidence, determine if further discovery is necessary, and to set an evidentiary hearing if warranted.

42. [13-32258-E-13](#) ELLEN MACDONALD MOTION TO VALUE COLLATERAL OF
CLH-8 Charles L. Hastings ZACH TAYLOR
10-21-13 [[53](#)]

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 21, 2013. By the court's calculation, 29 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 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 23714 hwy 88, Pioneer, California. The Debtor seeks to value the property at a fair market value of \$168,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$141,777.62. Wells Fargo Bank, N.A.'s senior lien has a balance of approximately \$33,085.13. Creditor Zach Taylor dba Taylor Timber recorded an Abstract of Judgment in the amount of approximately \$18,865.60. Therefore, the respondent creditor's claim secured by a junior lien is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift*

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

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Zach Taylor dba Taylor Timber secured by an Abstract of Judgment recorded against the real property commonly known as 23714 hwy 88, Pioneer, 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 \$168,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

43. 13-32258-E-13 ELLEN MACDONALD
TSB-1 Charles L. Hastings

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
10-30-13 [60]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 2013. By the court's calculation, 20 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 continue the Objection to xx:xx x.m. on _____, 201x. 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's Plan relies on a total of eight Motion to Avoid Lien or Motions to Value, and cannot make the payments under the Plan or comply with the Plan under 11 U.S.C. § 1325(a)(6).

Debtor proposes to value the secured claim of Wells Fargo Bank, N.A., CLH-1, which is set for hearing on November 19, 2013, the same date as this hearing. Debtor also proposes to avoid the liens of the following creditors, which are listed along with their Docket Control Numbers: Holt of California, CLH-2; Stephen Stoelk, CLH-3; Pape Machinery, Inc, CLH-4; Commercial Equipment Lease Corp, CLH-5; Ray Klein, Inc., CLH-6; Susquehanna Commercial Finance, Inc. CLH-7; Zach Taylor dba Taylor Timber CLH-8.

All eight motions are set for hearing on November 19, 2013, which is the same date as the hearing for this Objection. The court having continued one of the Motions to Value for an evidentiary hearing (CLH-7), the court continues the hearing on the Objection to confirmation.

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

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

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

IT IS ORDERED that the hearing on the Objection to confirmation is continued to **xx:xx x.m. on _____, 201x.**

44. 10-31659-E-13 DONALD/THERESA SCHNEIDER MOTION TO MODIFY PLAN
DPR-5 David P. Ritzinger 10-5-13 [[80](#)]

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

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

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

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

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

Abstract of Judgement entered by the Fresno County Superior, showing that a judgment lien has been placed on Debtor's real property. But Creditor does not provide any evidence that the claim warrants "priority" status under 11 U.S.C. § 507. Creditor does not allege that the claim arises out of any domestic support obligations; wage, salary, or commissions earned; contributions to employee benefit plans; government taxes or penalties; administrative expenses, or other any other class of claims that would be given priority status pursuant to 11 U.S.C. § 507.

Thus, based on the evidence before the court, Commercial Trade, Inc.'s claim is disallowed as a priority claim. The Objection to the Proof of Claim is sustained. The claim will be allowed as a \$2,354.24 general unsecured claim.

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

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

The Objection to Claim of Commercial Trade, Inc. (Commercial Trade Bureau of California) filed in this case by Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the objection to Proof of Claim No. 2 of Commercial Trade, Inc. (Commercial Trade Bureau of California) is sustained, and that the claim will be disallowed as a priority claim and instead be treated as a general unsecured claim in the amount of \$2,354.24.

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

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

CONT. FROM 10-8-13, 7-23-13

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

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

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

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

PRIOR HEARINGS

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

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

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

DEBTOR'S RESPONSE

Debtor responds, stating she has amended her exemption to the amount reasonably necessary for the surviving spouse in the amount of \$29,113.01. Debtors state the wild card exemption has also been amended. Debtor

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

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

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

CONTINUANCE

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

SUPPLEMENTAL DECLARATION

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

FURTHER CONTINUANCE

The court continued the hearing to allow Debtor to further address the Trustee's and the Court's concerns.

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

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

These Debtors were, and the current Debtor is, well over median-income debtors. Though being over-median income Debtors, under their bankruptcy plan, they have "struggled" to eek out a 9.8% dividend to creditors holding general unsecured claims. Along the way the Debtors retained their BMW 530i, seek to lien strip a lien from their home, cure both a pre- and post-petition arrearage on their home, and maintain a

\$3,079.16 monthly mortgage payment. Notwithstanding obtaining these significant benefits under the Bankruptcy Code and freeing themselves from substantially all of their debt, the Debtor and her late spouse also sought to under pay taxes, divert those monies to other purposes, and then divert insurance money to family members rather than properly applying it to the little payment they were making to creditors.

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

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

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

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

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

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

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

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

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

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

Good Faith of Debtor

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

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

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

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

changed and significant post-petition taxes were incurred. The bankruptcy case appears to be one filed solely to preserve a residence for this over-median income debtor, with little, if any, other debt restructure - other than discharging the debts for a small dividend.

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

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

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

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

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

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

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

increased her exemptions to increase her monthly income beyond that testified to under penalty of perjury to the court and creditors to confirm prior plans in this case), remodel expenses (new carpet) for her home, and personal travel is before the court. If such a motion is filed, the Debtor will have the full and fair opportunity to address these concerns.

The court continued the hearing to allow Debtor to file supplemental pleadings.

DEBTOR'S SUPPLEMENTAL PLEADINGS

Debtor states that she is now in the 60th month of their Chapter 13 plan and have remitted a total of \$350,724.01 to the Trustee. Included in that sum is the amount of \$29,113.01 paid September 23, 2013 which was the determined "non-exempt" portion of the life insurance proceeds and the Debtors final two plan payments. The last two months the Debtor has paid \$40,393.01 for the benefit of unsecured creditors. Therefore, unsecured creditors will receive 18%. Debtors request the plan be modified an they be permitted to proceed to discharge.

This could be too little, too late for the Debtor. While the Debtor touts making more than \$350,000 in plan payments, the Debtor has really only paid the money to herself. Under the latest proposed modified plan, Dckt. 165, the monthly plan payment is divided among creditors as follows:

- a. \$4,163.31 for 48 months, \$3,079.16 for 12 months, \$18,723.84 for pre and post-petition arrearage (plus 7.5% interest on the post-petition arrearage) to creditor for claims secured by residence Debtor is retaining. See Loan Modification, Exhibit A, Dckt. 87. These payments total \$244,348.80;
- b. \$23,182.52, plus 6% interest paid through the plan for the 2006 BMW retained by the Debtor.
- c. \$53,460.00, estimate, (average of \$891 a month) for creditors holding general unsecured claims (18% dividend). This increase from the original 9.8% has occurred because of the court's disallowance of the Debtor's claim of exemption in the life insurance proceeds.

Thus, the "I've paid \$350,000 to creditors" is an illusory assertion by this Debtor. Actually, she has paid \$285,234.64 to retain her home and BMW. During this time, the Debtor increased her disposable income, apparently by intentionally under-paying her taxes. Then when "caught" by the taxing agencies, the Debtor diverted the insurance proceeds to pay the taxes, adopting a "sorry creditors, but I needed the money to maintain the standard of living to which I became accustomed but could not afford within in the law as provided for a Chapter 13 Debtor."

The good-faith test in § 1325(a)(3) is applicable at modification after confirmation. 11 U.S.C. § 1329(b)(1). Pursuant to 11 U.S.C. § 1325(a)(3) a plan must be proposed in good faith. Good faith, under 11 U.S.C. § 1325(a)(3), is determined based on an examination of the totality of the circumstances. *In re Warren*, 89 B.R. 87, 92 (B.A.P. 9th Cir. 1988)

(citing *In re Goeb*, 675 F.2d 1386, 1389-1390 (9th Cir. 1982)). Factors to consider include:

- 1) The amount of the proposed payments and the amounts of the debtor's surplus;
- 2) The debtor's employment history, ability to earn, and likelihood of future increases in income;
- 3) The probable or expected duration of the plan;
- 4) The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;
- 5) The extent of preferential treatment between classes of creditors;
- 6) The extent to which secured claims are modified;
- 7) The type of debt sought to be discharged, and whether any such debt is nondischargeable in Chapter 7;
- 8) The existence of special circumstances such as inordinate medical expenses;
- 9) The frequency with which the debtor has sought relief under the Bankruptcy Reform Act;
- 10) The motivation and sincerity of the debtor in seeking Chapter 13 relief; and
- 11) The burden which the plan's administration would place upon the trustee.

Warren, 89 B.R. at 93 (citing *In re Brock*, 47 B.R. 167, 169 (Bankr. S.D. Cal. 1985) (quoting *In re Estus*, 695 F.2d 311, 317 (8th Cir. 1982))). Furthermore, Chapter 13 debtor's prebankruptcy past is not immune from inclusion in totality of circumstances examination attendant to review under good faith standard of 11 U.S.C. § 1325(a)(3). *Id.* A debtor's postconfirmation misconduct in connection with a plan can result in inability to prove that a modified plan has been proposed in good faith. *In re Jock*, 95 Bankr. 75, 78 (Bankr. M.D. Tenn. 1989).

A Modified Chapter 13 plan has not been proposed in good faith as required under 11 U.S.C. §§ 1325 and 1329 where debtors elected, after their original plan was confirmed, to pay their children's' tuition rather than mortgage on their residence, which was not disclosed in connection with confirmation of original plan and would not have been authorized under § 1325(b)(2) and by making payments which were impermissible. *In re MC NULTY*, 142 B.R. 106 (Bankr. D.N.J. 1992).

Furthermore, courts have found that Chapter 13 plans are not filed in good faith where debtors, transferred assets to family members and

propose minimal payment to creditors. *In re Wall*, 52 B.R. 613 (Bankr. M.D. Fla. 1985). A debtor also fails to propose plan in good faith where record indicates that debtor made personal loan to a friend and permitting a family member, a copartner in business partnership, to divert income paid to debtor. *In re Robertson*, 84 B.R. 109 (Bankr. S.D. Ohio 1988)

The Ninth Circuit Court of Appeals has recently concluded that the proper inquiry under 11 U.S.C. § 1325(a)(3) is whether the debtor acted equitably in proposing their Chapter 13 plan and focus on whether the debtor had misrepresented facts in his plan, unfairly manipulated the Bankruptcy Code, or otherwise proposed his Chapter 13 plan in an inequitable manner. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1128 (9th Cir. 2013). The court stated that the good faith analysis is broad and far reaching (except for the narrow area of computing projected disposable income for over-median income debtors).

Corrective Action Forced by The Trustee

Only after court order sustaining the objection to the claim of exemption in the life insurance proceeds has the Debtor paid a portion of those monies into the Plan - \$29,113.01. That leave \$20,886.99 unaccounted for the estate and creditors. However, the Debtor has claimed \$20,950.00 as exempt (wildcard exemption) on her Amended Schedule C, Dckt. 172 at 4.

It appears that the Trustee and Creditors did not conclude that the Debtor's conduct and diversion of monies was sufficient to challenge the claim of the wildcard exemption. The court will not substitute its judgment for that of the Trustee and creditors - for this case. The Debtor and counsel should be aware that the court considers the Debtor's conduct so sufficiently in bad faith that denial of the Motion would be warranted.

The modified Plan, as amended to include the payment of the \$29,113.01 determined as not exempt, does comply with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Fourth Modified Chapter 13 Plan filed on June 18, 2013, as amended to provide for the payment of the additional \$29,113.01 in non-exempt insurance proceeds, 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.

47. [12-26563-E-13](#) YASWANT/KAMINI SINGH CONTINUED MOTION TO DISMISS
ADS-3 Peter G. Macaluso CASE
10-19-13 [[211](#)]

CONT. FROM 11-5-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 19, 2013. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

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

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

PRIOR HEARING

The court continued the hearing to allow opposition to be filed and served on or before November 12, 2013. No opposition has been filed to date.

Movants Rudolph and Evelyn Satterfield ("Movants") move for an order dismissing the case pursuant to 11 U.S.C. § 1307(c)(1) for unreasonable delay that is prejudicial to creditors. Movants state that the Debtors have been in bankruptcy for 18 months without a confirmed plan. Movant states the court has heard and denied four plans.

Movants also argue that dismissal is proper pursuant to 11 U.S.C. § 1307(c)(5) for denial of a plan. Movants also state that the Debtors are not current with their proposed plan payments.

At the hearing on the Motion to Confirm, the court noted that there appears to be several factual issues between the parties arising in this Motion to Confirm. First, the court must determine if Debtors made the payments to Creditors as purported in the loan modification and the proposed plan. Second, the loan modification was approved by the court on July 16, 2013, Dckt. 185, allegedly resolving the dispute between the parties. However, it appears the parties are still disputing the mortgage related fees related to a tax payment made by Creditors. The parties shall clearly and expressly state the payments which they assert are to be made under the settlement agreement, any additional amounts to be added thereto, and the defaults (or payments made for the alleged defaults) which exist. The fact that the court approved a settlement in July 2013 and by September 2013 the parties are squabbling about it may well be an indication that one or more of the parties are not proceeding in good faith. Further, the fact that neither party timely provided any evidence in support of their contentions may well indicate that they are not proceeding in good faith and significant correction sanctions may be warranted.

The Debtors have now demonstrated over the past 20 months that they are unable to confirm a Chapter 13 Plan. The Debtors and Movants have been engaged in a protracted running battle in this court. Though the Debtors purported to have settled the matter, within months they are again battling. In opposing confirmation of the Chapter 13 Plan, the Movant presented evidence of the Debtors' default under the Stipulation.

This not the Debtors' first foray into bankruptcy. They filed their first case as a Chapter 13, on August 22, 2011. Bankr. E.D. Cal. 11-40337. On January 9, 2012, the Debtors (represented by the same counsel as in the current case) elected to convert their case to one under Chapter 7. *Id.*, Dckt. 92. They received their discharge on July 10, 2012.

On April 3, 2012, after converting the first case to one under Chapter 7, the Debtors (in *pro se*) filed their second bankruptcy case (the present case) as a Chapter 13. On May 19, 2012, the Debtors' counsel from the first case substituted in as counsel for the Debtors. Dckt. 19.

These Debtors have existed in the warm embrace of bankruptcy without confirming a Chapter 13 Plan for 28 months. Though they purport to have entered into good faith with the Movants and the court approved a settlement, they offered no evidence to counter Movant's evidence that the Debtors were in default on the settlement and the proposed Fifth Amended Plan in this case. The Debtors have shown that they cannot prosecute a Chapter 13 case and confirm a plan.

The Motion is granted and the Chapter 13 case is dismissed. Under the procedures in the Eastern District of California, a subsequent case filed by a debtor is assigned to the judge who had the prior case. For the Debtors, that is the judge in Department E, Ronald H. Sargis. The court shall order the Debtors, and each of them, and any attorney representing both or either of the Debtors, in any future bankruptcy case filed in or transferred to the United States Bankruptcy Court for the Eastern District of California, on or before January 1, 2020, by either or both of the Debtors, shall notify the Clerk of the Court of the prior cases and that any

subsequent filed case is to be assigned to Ronald H. Sargis if he is then serving as a bankruptcy judge in this District.

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

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

The Motion to Dismiss Case filed by Creditors Rudolph and Evelyn Satterfield having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted and the bankruptcy case is dismissed.

IT IS FURTHER ORDER that Debtors, and each of them, and any attorney representing both or either of the Debtors, in any future bankruptcy case filed in or transferred to the United States Bankruptcy Court for the Eastern District of California, on or before January 1, 2020, by either or both of the Debtors, shall notify the Clerk of the Court of the prior cases and that any subsequent filed case is to be assigned to Ronald H. Sargis if he is then serving as a bankruptcy judge in this District. This order is made pursuant of the policy of in the Eastern District of California for subsequent cases to be assigned to the judge having the prior case to avoid the appearance of "judge shopping" in the federal court by one of the parties.

48. [12-26563](#)-E-13 YASWANT/KAMINI SINGH
[13-2007](#)
SINGH ET AL V. SATTERFIELD ET
AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
1-8-13 [[1](#)]

Plaintiff's Atty: Peter G. Macaluso
Defendant's Atty: Andrew David Smith

Adv. Filed: 1/8/13
Answer: 2/6/13

Nature of Action:
Declaratory judgment
Injunctive relief - other

Notes:

Continued from 9/4/13

Plaintiffs' Status Conference Statement filed 11/4/13 [Dckt 20]

49. [13-29064-E-13](#) TERRY/REBECA BRISTER
MET-3 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF
PNC BANK, N.A.
10-13-13 [[30](#)]

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 13, 2013. By the court's calculation, 37 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)(iii) 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 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 560 Mathews Drive, Vacaville, California. The Debtor seeks to value the property at a fair market value of \$189,180.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$312,000.00. Creditor PNC Bank, N.A.'s second deed of trust secures a loan with a balance of approximately \$76,751.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of PNC Bank, N.A. secured by a second deed of trust recorded against the real property commonly known as 560 Mathews Drive, Vacaville, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$189,180.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

50. [13-30969-E-13](#) **GENE TOWNSEND** **OBJECTION TO CONFIRMATION OF**
NLE-1 **Eamonn Foster** **PLAN BY DAVID CUSICK**
10-15-13 [20]

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 15, 2013. By the court's calculation, 35 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:

1. The Plan appears to attempt to modify a debt secured by Debtor's principal residence, under 11 U.S.C. § 1322(b)(2). Neither Debtor's Schedule J or the Plan call for ongoing mortgage payments on the \$248,256.77 debt to the Abel Trust for the Deed of Trust (starting at page 10 of Debtor's Schedule D).
2. It appears the Debtor cannot make the lump sum payment required by the Plan under 11 U.S.C. § 1325(a)(6). The Additional Provisions section fo the Plan state that "Debtor will sell the real property located at 23456 Richfield Road, Corning, California within 18 months, and will use the proceeds of that sale to pay 100% of the balance of the approved administrative fees and claims of all secured creditors, with the remaining going to the unsecured creditors, pro rata. Should he fail to find a buyer by the 18th month, Debtor will surrender the real property."

Debtor admitted at the First Meeting of Creditors held on October 10, 2013, however, that he listed the same property for sale last year and was unable to sell it. He does not provide any specifics regarding the sale of the real property. Trustee cites a case from the U.S. Bankruptcy Court in the District of Minnesota, in which the court determined that in order for a proposed cure-by sale to pass muster, a debtor must specify the terms in which the debtor proposes to market the property, including "the listing price and the length and commencement date of the listing agreement," along with incorporations of default remedies, evidence as to past market efforts, the state of the market for the subject asset, current sales prospects, and more.

Debtor does not include this information on his current Plan. Debtor only lists income from his business on Schedule I (in the amount of \$435.77 per month, and businesses of \$406.50 on Schedule J, which leaves Debtor with a profit of \$29.27 per month). Debtor's Statement of Financial Affairs #1 states that Debtor's year to date income from the business is \$1,629.00, at approximately \$203.63 per month.

3. The Plan does not meet the Chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4). Debtor is a Farmer and according to the Statement of Financial Affairs #18, Debtor lists the nature of his business as "Beekeeper, Honey and Prunes." Debtor admitted at the First Meeting of Creditors that he had failed to disclose two bee hives on Schedule B.
4. Debtor on Schedule I shows income of \$435.76 from operation of business profession or farm. As Debtor only has two hives and 9+ acres of prunes that have not been harvested, Debtor does not appear to receive this income, and cannot afford the monthly plan payments.

As it stands, Debtor's 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.

51. [12-31671-E-13](#) CHRISTIAN NEWMAN CONTINUED MOTION TO CONFIRM
PGM-5 Peter G. Macaluso PLAN
8-8-13 [[118](#)]

CONT. FROM 9-24-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on August 8, 2013. 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 and a creditor having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

PRIOR HEARING

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

Trustee's Opposition

The Chapter 13 Trustee objects on the basis that Debtor's plan may not be the Debtor's best effort because it appears not all income has been reported. Trustee states he has raised this objection on three previous occasions.

The Trustee also states the plan should be 60 months, but Debtor proposes payments of 59 months.

The Trustee also states there is conflicting dividend amount to general unsecured creditors. Section 2.15 of the plan proposes to pay not less than 2.44% to general unsecured claims, but Debtor's Motion states the plan will be 60 months with no less than 40% to be paid to general unsecured claims.

Additionally, the Trustee argues that he is unable to determine whether the Debtor can make plan payments or the feasibility of the plan because Debtor's Schedule I shows all of his income (\$42,750) is from a significant other contribution. The August 12, 2012 (now more than a full year stale) Declaration of Mrs. Blackmer states she is willing to contribute \$2,200.00 per month toward the plan. Declaration, Dckt. 20. Trustee states this declaration fails to state how she will be able to make the payment.

This stale declaration also raises the issue as to whether the Debtor's family unit is one person or two persons. Does his significant other live on the Property which secures the U.S. Bank, N.A. claim. The court is not provided with this information or the income of the significant other.

Lastly, the Debtor states the plan does not comply with the law as it does not authorize prior disbursements that the Trustee has made under the terms of the Debtor's prior plan.

Creditor's Objection That Plan Modifies its Debt

Creditor U.S. Bank, N.A., as trustee for Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2007-EQ1, objects to the plan on the basis that Debtor fails to pay any pre-petition arrears and attempts to illegally modify their first lien on the Debtor's primary residence.

Creditor states its objection on these grounds as follows.

"2. Secured Creditor objects to the treatment as to its first lien on Debtor's principal residence as described in the Additional Provisions of Debtor's Amended Plan as any modification would be in violation of 11 U.S.C. 1322(b)(2). Debtor proposes to (a) not pay any pre-petition arrears and (b) to modify the post petition payment amount to \$1075.00 per month. Debtor does not explain in the plan where the \$1075.00 figure comes from but states that it "shall be applied first to post petition insurance and then principal, or as specified in the modification." Debtor is modifying the terms of the loan in violation of the Bankruptcy Code, therefore confirmation of the plan should be denied."

Objection, Dckt. 125.

The Creditor misstates the Plan provisions and any confirmation order of the court. With respect to this Creditor's claim, the plan expressly states [Emphasis Added],

"6.04. Adequate Protection Payment

The Debtor has in process a HAMP Application for modification of the loan upon which the **U.S. Bank, N.A. shall be paid \$1,075.00 a month as an adequate protection payment for its secured claim**, pending determination on the loan modification. The monthly adequate protection payment shall be applied first to the post-petition interest accruing on this claim and then principal, or as a specified in a loan modification.

The Chapter 13 Plan does not modify the rights of U.S. Bank, N.A. for this secured claim, but provide adequate protect payments during the loan modification process."

The Plan terms also provide a very straightforward process by which this Creditor may seek termination of the automatic stay and foreclose on the Property. It merely requires that the Creditor either have denied the loan modification or show that the Debtor is not prosecuting the loan modification as required under the applicable laws, rules, and regulations.

Rather than putting Creditor, other creditors, the Debtor, and the Chapter 13 limbo of no confirmed plan because the Debtor and Creditor are negotiating in good faith a possible loan modification, during which period nobody is paid anything, the Debtor's proposed Chapter 13 Plan in good faith provides a payment to the Chapter 13 Trustee to fund the plan and provides an adequate protection payment to this Creditor - who otherwise would be receiving \$0.00 while it and the Debtor wound through the process of a possible loan modification. FN.1.

FN.1. The court noted several things when first addressing the loan modification dance of a creditor and debtor in connection with a bankruptcy plan. First, some debtors sought to use "loan modification negotiations" as a canard to just not make any payments on the secured claim. Second, some creditors and their bankruptcy attorneys used the "pending loan modification" as a misdirection to kill any possible reorganization because it was more profitable based on the fees paid to counsel than having the creditor engage in a good faith loan modification discussion.

The process for making "pending loan modification negotiations" part of a confirmed Chapter 13 Plan and the plan terms at issue were developed over more than two years with the input of knowledgeable debtor counsel and sophisticated creditor counsel and creditors. Requiring a substantial adequate protection payment quickly separated the canard debtors with no intention of making any payments from the debtors proceeding in good faith (whether or not they had a realistic financial plan for modification). It also provided the creditor with a substantial adequate protection payment,

as well as creating a track record of payments (which in some cases has replaced three months of trial loan modification payments).

The plan terms also provide the protection to the creditor of getting the stay terminated so that it can foreclose on the collateral if the loan modification is not approved or the debtor does not proceed in good faith. The plan terms, which require only that the creditor shows that specific information was requested and not timely applied (the 30-day period used by the court was pulled from the HAMP loan modification procedure), protects the creditor.

Creditor Objection That Chapter 13 Is in Bad Faith

Creditor also raises another objection as to the good faith of a debtor filing bankruptcy and seeking to modify a loan as part of a Chapter 13 rehabilitation. Creditor states this objection as follows.

3. Secured Creditor further objects on the basis that Debtor is misusing the bankruptcy system, imposing additional burdens on other parties, and provisions 6.02-9.08 are unnecessary because there are state laws in place to protect Debtor during the loan modification process. Debtor has structured her plan to not repay any pre-petition arrears and make a modified payment while she applied to Secured Creditor for a loan modification with regard to the first lien on the subject property. Reading between the lines, Debtor is using the automatic stay as protection from foreclosure proceedings against her principal residence; however this is a misuse of the Chapter 13 Bankruptcy system, places unnecessary burdens on Secured Creditor (and possibly the Chapter 13 Trustee trying to administer the plan), and is unneeded due to the California Homeowner's Bill of Rights.

The basic purpose of a Chapter 13 is essentially to repay debt; however **Debtor is not proposing to repay the pre-petition arrears to Secured Creditor and is proposing to underpay the post petition payments.** Debtor does not need to hide behind the automatic stay due to the California Homeowner's Bill of Rights which protects any borrower in California from foreclosure while they are in the process of applying for a loan modification. The California Homeowner Bill of Rights became law on January 1, 2013 to ensure fair lending and borrowing practices for California homeowners. One aspect of this law is the restriction on "dual tracking" which is when foreclosure actions continue while a borrower is also applying for a loan modification. Mortgage servicers are now restricted from advancing the foreclosure process if the homeowner is working on securing a loan modification. When a homeowner completes an application for a loan modification, the foreclosure process is essentially paused until the complete application has been fully reviewed. Therefore, Debtor does not have a need to revamp the Eastern

District Chapter 13 Plan form and add provisions 6.02-6.08 which imposes additional obligations on all parties.

Opposition, Dckt. 125.

The gist of this argument is a contention that California having enacted the California Homeowner Bill of Rights due to the misconduct of lenders, such as may be alleged of Creditor, has effectively pre-empted the Bankruptcy Code because the consumer has that alternative. No authority is provided for how the enactment of this State Act has rendered the Bankruptcy Code as enacted by Congress pursuant to Article I of the United States Constitution a nullity.

No legal authority is presented in support of Creditors' arguments. The court believes that no authority is presented because no legal authority exists for portion of the objection. If the Plan was not confirmed and the adequate protection payments not authorized, creditor would be receiving \$0.00 during the post-petition period while it processed the Debtor's loan modification application in good faith. There is no "reading between the lines necessary" as to the provisions of the Plan or the protection of Creditor's interests while it processes the Debtors loan modification in good faith. There is no hiding behind the automatic stay and not pay the creditor during the loan modification process.

The proposed Fourth Amended Plan provides not only for the adequate payments while the creditor processes the Debtor's loan modification in good faith, but providing for the following claims,

River City Commons, HOA Dues	\$21,510.97 repaid through the Plan
Marine One Acceptance Corporation	\$21,148.00 Claim Provided for by Class 3 Surrender of Collateral
Internal Revenue Service Priority Unsecured Claim	\$3,047.18 Provided for Through the Plan
California Franchise Tax Board Priority Unsecured Claim	\$481.51 Provided for Through the Plan
General Unsecured Claims	No Less Than 2.44% Dividend on \$16,530.73 in Claims.

The Debtor has very limited income, now relying on \$2,750.00 in income from his "significant other." On Form 22C the Debtor reports that he had \$0.00 average monthly income during the six month period preceding the plan. While other grounds may exist to deny confirmation (see Chapter 13 Trustee's Opposition to Motion, Dckt. 123), that does not render the above argument by Creditor valid.

The California Law was enacted to provide protection for consumers from lender, who in the same position as Creditor, who were financially abusing consumers. The enactment of that law does not make a consumer who has a home loan filing bankruptcy a "misuse of Chapter 13." Further, the plan terms do not create additional burden on the parties, but reduces them

for Creditor. If the plan terms were not included, then Creditor, while not receiving an adequate protection pay, would have to provide to the court grounds for relief from the stay under 11 U.S.C. § 362(d)(1) or (2), including providing that it was engaging in good faith loan modification negotiations. Rather, the Plan terms simplify that process for Creditor and putting in its hands the ability to (1) deny the loan modification and obtain an order granting relief from the automatic stay, (2) simply show the court that the Debtor was not providing the necessary information requested and obtain relief from the automatic stay, or (3) after engaging in good faith negotiations, granting a loan modification.

The Opposition as stated by U.S. Bank, N.A., Trustee, is without merit and overruled.

While the opposition presented by U.S. Bank, N.A., Trustee, is without merit, the opposition of the Chapter 13 Trustee is meritorious. The amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed. The Debtor wants to compartmentalize his finances, having no income and disclosing only \$2,200.00 a month in "contributions" from his significant other. The Debtor contends that he can keep his house and obtain a loan modification when he has no income. There is no credible evidence presented as to the ability of the Debtor to prosecute such a loan modification or fund the proposed plan. Rather, it appears that the Debtor and his significant other are attempting to slide some debts by creditors through this bankruptcy case and slide income by the court in keeping it undisclosed.

CONTINUANCE

The Court continued the hearing to allow the parties to file supplemental pleadings in support of the motion.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a supplemental declaration of Georgia Blackmer, Debtor's significant other, stating that she will contribute up to \$2,200.00 per month for plan payments. Dckt. 131.

TRUSTEE'S SUPPLEMENTAL RESPONSE

The Trustee filed a supplemental response, stating the Debtor has not properly addressed the Trustee's concerns regarding all sources of income. On September 26, 2013, Debtor's counsel emailed the Trustee Debtor's 2012 Tax Return, which showed net business income of \$9,332.00 and gross business income of \$28,000.00. The Debtor apparently has unreported business income.

Trustee states that the declaration provided by Ms. Blackmer states she is only willing and able to contribute \$2,200.00 per month. Based on this it appears the Debtor cannot afford the plan as proposed as Schedule I requires \$2,750.00 per month.

Trustee also states on October 16, 2013, Debtor provided the Trustee with paystubs for Ms. Blackmer. The paystubs dates range from 12/5/11 to

6/5/12 and show that Ms. Blackmer works for Lumberjacks, Inc. and earns an average of \$1,902.27 per month. This is figured by adding gross pay for each stub (\$9,657.64), divided by the number of paystubs (11) (\$877.97) then multiplied by 26 (\$22,827.22) as paystubs are received bi-weekly and then divided by 12, the number of months in a year (\$1,902.27). The paystubs further reflect that Ms. Blackburn cannot afford the proposed contribution of either \$2750 (Schedule I) or \$2,200 (declared amount).

The Trustee argues that the budget does not appear to include Ms. Blackmer's personal living expenses and the Trustee or the Court have not been provided with an itemization of her own expenses. If Ms. Blackmer wants to give the Debtor all or substantially all of her income, she cannot continue to do so unless her necessary expenses are paid.

The Trustee now objects to the allowance of attorney fees without a separate noticed motion. This case was filed on June 21, 2012 and to date has not filed a confirmable plan. The debtor has filed 4 plans, to which the Trustee has filed various objections and oppositions. In addition, the same concerns have been raised by the Trustee in each objection and not yet responded to by Debtor or his counsel. The trustee request that counsel be required to file a motion itemizing his time and efforts as the Trustee has concerns regarding the level and quality of the work put into the case.

DEBTOR'S SUPPLEMENTAL DECLARATION

Debtor filed a supplemental declaration, stating that at the start of this bankruptcy in June 2012, he was not making any money as a self-employed person and was dependent on his girl-friend to support him. Now Debtor makes money as a handyman, with profit of \$700-800 per month with most of the costs going to parts and materials. Debtor testifies that his girl-friend clears about \$2,200 per month, she has about \$250-300 in personal care expenses which allows them to be able to afford the monthly payments required under the plan.

DISCUSSION

The supplemental declarations provided by Debtor and his significant other do not appear to support confirmation of the plan. Ms. Blackmer states she will commit substantially all of her income to the Chapter 13 plan. However, the paystubs provided by the Trustee do not support her declaration. It does not appear she can afford the promised \$2,200 per month based on the paystubs. Further, Ms. Blackmer cannot provide all of her income to the plan unless her necessary expenses are paid. The court has no evidence of Ms. Blackmer's expenses. It appears that the Debtor, despite the promised assistance from his significant other, cannot afford the proposed plan payment.

The proposed Fourth Amended Chapter 13 Plan fails to comply with 11 U.S.C. §§ 1322 and 1325, the Motion is denied, 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 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.

52. [13-31871-E-13](#) SYLVIA CARUSO **OBJECTION TO CONFIRMATION OF**
TSB-1 Peter G. Macaluso **PLAN BY DAVID CUSICK**
10-24-13 [[18](#)]

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 24, 2013. By the court's calculation, 35 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:

1. The Plan does not represent Debtor's best effort under 11 U.S.C. § 1325(b).
 - a. Debtor is over the median income and is proposing Plan payments of \$350.00 for 12 months and \$50.00 for 24 months. Debtor has proposed a 15% dividend to unsecured creditors, which totals \$6,611.00. Form B22C reflects monthly disposable income on line #59 of -\$25.41.

Debtor may have not properly completed the Form B22C. Trustee objects to deductions on the form based on the information Debtor provided in the Schedules. According to Trustee's calculations, Line #59 of the Form should be positive at least \$2,474.59. Line #47a lists Bank of America in the amount of \$2,500.00. According to Class 3 of Debtor's plan, she proposes to surrender her residence located at 7623 Southbreeze Drive.

- b. Debtor's income is understated by \$1,559.76, based on the information she has supplied in her Schedule I. Debtor lists her income has "Unemployment, \$810 Biweekly" at "1,620.00 per month. On a bi-weekly basis there are approximately 2.17 pay periods per month (\$810.00 times 2.17 equals \$1,727.70), resulting in a difference of \$147.00. Debtor lists severance pay as \$1,661 bi-weekly, providing a "Severance Benefits Estimate/Summary" which states that from April 26, 2013 to April 30, 2013, Debtor will receive a total of \$56,841.00 in benefits. There are approximately 52 weeks per year of \$1,093.10 per week. According to Trustee's calculations, Debtor should be receiving \$4,744.06 per month from this benefit, not the \$3,322.00 per month listed. Trustee asserts that Debtor has underestimated her gross income by a total of \$1,559.76.
- c. Trustee characterizes certain expenses on Schedule J as "elevated" for a single debtor, citing Debtor's values listed for food (\$800), laundry/dry cleaning (\$350), and transportation (\$500) as problematic, and a \$350 property tax expense as concerning because Debtor has proposed to surrender her residence at 7623 Southbreeze Drive.

- 2. The Plan does not meet the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4); under the updated aggregate figures for C.C.C.P Sections 703,140(b)(1) and (5), there is a total of \$26,936.00 claimed under the "wild card" exemption, leaving \$5,100.00 available to be used. Amended Schedule B lists Debtor's severance pay as \$1,661.00. Schedule C has exempted \$1,307.77 of this amount. The severance benefits summary shows that Debtor is to receive approximately \$56,841.00 in severance pay between April 26, 2013 to April 30, 2013. To date, Debtor has received approximately 25 weeks, or \$27,325.79 of severance pay, leaving a total of approximately \$29,515.21 in severance pay Debtor is supposed to receive. It does not appear that Debtor has fully exempted her severance pay on the Amended Schedules B and C; according to Trustee's calculations, there is still \$28,213.44 left in non-exempt severance pay.

Debtor also has \$1,500 in non-exempt equity in a 2011 Nissan Rogue, valued at \$8,000.00 by Debtor and exempted at \$6,500.00 and \$3,500 in non-exempt funds from a traditional IRA valued as such on Amended Schedule B, but not exempted on Amended Schedule C.

Given that Debtor has an available \$5,100.00 in "wild card" exemption funds remaining, the total non exempt equity equals \$28,113.44. Debtor lists a total of \$44,750.00 in unsecured debt in Class 7, however, to be a paid a 15% dividend, or a total of \$6,712.50.

The Plan does not currently 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.

53. [13-32373-E-13](#) **STEVEN/KAREN LLANES** **MOTION TO EXTEND DEADLINE TO**
MG-1 **Michele Garfinkel** **FILE SCHEDULES OR PROVIDE**
REQUIRED INFORMATION
10-7-13 [[11](#)]

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

Correct Notice Not Provided. No Proof of Service was filed with this Motion. It is unclear whether the Chapter 13 Trustee and other parties in interest were served and given timely notice of the motion.

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

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

Debtor seeks an order extending time to file schedules, statements and other necessary documents in this case to November 21, 2013. However, the Debtor failed to provide a proof of service. The court is unable to determine if the proper parties were served.

Furthermore, Federal Rule of Bankruptcy Procedure 1007(c) provides that all of the schedules, statements and other necessary documents must be filed within 14 days after filing the petition. The court has the authority to extend the deadline for cause shown and on notice to the United States Trustee. Fed. R. Bankr. P. 1007(c). First, Debtor requested relief after the 14 day period passed. The Motion was filed October 7, 2013, 15 days after the petition was filed. Second, no evidence was submitted in support of the motion providing cause to extend the deadline. Therefore, the court has no evidence before it to determine if cause is sufficient to extend the deadline.

Finally, it is now November 13, 2013. This is 59 days after the bankruptcy case was commenced and the missing documents have not been filed with the court. In substance, by filing the Motion on October 7, 2012, and not setting it for hearing until November 19, 2013 (43 days later, when the motion could have been set on 14-days notice), the Debtors are attempting to grant themselves a *de facto* extension. This is not proper. No reason is shown for why these Debtors need more than two months to file the basic documents disclosing their assets, creditors, and financial information. The Motion is denied. If the Debtors can prosecute a case, prepare the basic documents required, and advance a Chapter 13 Plan, they can file a new bankruptcy case.

Based on the foregoing, the motion is denied without prejudice.

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

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

The Motion to Extend Deadline to File Schedules or Provide Required Information 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 is denied without prejudice.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 7, 2013. By the court's calculation, 43 days' notice was provided. 35 days' notice is required.

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

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

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

Chapter 13 Trustee objects to the Motion on the following grounds:

1. It appears that Debtors cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtors are delinquent \$3,610.00 under the terms of the proposed modified Plan. According to the proposed modified Plan, payments of \$118,920.00 have become due. Debtors have paid a total of \$115,210.00 to Trustee with the last payment posted on October 7, 2013, in the amount of \$3,660.00.
2. Debtors' modified Plan proposes to decrease the minimum percentage to unsecured creditors from 8% to 3%, where the Plan estimates the total unsecured at \$257,250.70 and thus dividend would be \$7,720.52, although Trustee shows the amount as \$236,116.15. To date, Trustee has disbursed up to 7.30%, which is \$17,156.58, so \$9,436.06 has been disbursed over and above the dividend proposed in the modified Plan. Trustee does not oppose the modified Plan percentage as a minimum, provided that Debtor is not attempting to limit the prior disbursements. Because the plan percentage is only a minimum amount, and not a maximum, the Trustee's point is correct.
3. Debtor's Declaration, filed as Dckt. No. 113, indicates that Debtors need to budget more funds in paying their property taxes. They

purport to attach a copy of the summary of their real property taxes is attached as Exhibit D; Exhibit D, however, is actually Debtors' monthly auto insurance bill and not a summary of Debtors' real property taxes.

4. According to Trustee's calculations, the Plan will complete in more than the 60 months proposed, which exceeds the maximum amount of time allowed under 11 U.S.C. § 1322(d). Because unsecured claims have received more than the 3% proposed based on the prior confirmed Plan, the Plan payment needs to increase either by a lump sum payment, or increase in monthly payment, or both—and proof of the ability to make this payment must be provided to the court.

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

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

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

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

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

55. [13-31975-E-13](#) JACK/LINDA GANAS
TSB-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
10-24-13 [[14](#)]

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 24, 2013. By the court's calculation, 35 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:

1. Debtor did not appear at the meeting of creditors held pursuant to 11 U.S.C. § 341 on October 17, 2013. Appearance is mandatory. See 11 U.S.C. § 343. To attempt to confirm a plan while failing to appear and be questioned by the Trustee and any creditors who appear represents a failure to cooperate. See 11 U.S.C. § 521(a) (3). Debtor has not presented any evidence to the court as to why the did not appear.

The continued meeting of creditors was held on November 7, 2013, and the Trustee's Report indicates the Debtor appeared. The Trustee has filed nothing further, and the court therefore determines the Debtor's appearance has resolved his objection.

2. Trustee alerts the court that Debtors' current case is one out of five cases that have been filed. The cases were all filed by Debtors' current attorney of record, Peter Cianchetta. Trustee is uncertain if Debtor's Plan has been proposed in good faith under 11 U.S.C. § 1325(a) (3), and if Debtor can make the payments called for

November 19, 2013 at 3:00 p.m.

under the Plan or comply with the Plan pursuant to 11 U.S.C. § 1325(a)(4). Debtor has filed four other bankruptcy cases, with the same attorney of record, that have been dismissed for the reasons stated below:

- a. Case #11-46632 was filed on November 10, 2011, and dismissed on January 17, 2012 for Debtors' non-attendance of the First Meeting of Creditors and failure to provide payment advises and current tax returns.
- b. Case #12-21591 was filed on January 27, 2012, and was dismissed on June 26, 2012 for Debtors not filing an amended plan for confirmation.
- c. Case #12-33377 was filed on July 20, 2012, and was dismissed on February 25, 2013 after Trustee's Countermotion to Conditionally Dismiss the Case.
- d. Case #13-27895 was filed on June 10, 2013, but was dismissed on September 23, 2013, after Debtors did not file an amended plan and set a confirmation hearing, which was ordered after Trustee's objection to their Plan was sustained. Debtor did not comply with the order and the case was dismissed.

In reviewing the Chapter 13 Final Report and Account on PACER and printed inquiry from Trustee Johnston's office, Trustee calculates that since Debtor filed his first case and through the dismissal of the 4th case, Debtor has paid \$16,648.48; their counsel, Cianchetta, has received \$5,589.00, while \$804.24 was disbursed to Capitol One Auto Finance, and Wells Fargo received \$9,440.48.

Trustee questions the accuracy of Debtors' Plan statements, the frequency with which Debtors have sought relief, and the motivation and sincerity of Debtors in seeking Chapter 13 relief under the rubric set by the United States Bankruptcy Appellate Panel of the Ninth Circuit in *In re Warren*, 89 B.R. 87 (B.A.P. 9th Cir. 1988), which provides factors for courts in determining whether a debtor is proposing a Chapter 13 Plan in good faith.

3. Trustee objects to attorney fees being paid with a no look fee schedule. Trustee requests that counsel file a motion itemizing his time and efforts, as Trustee is concerned with the level and quality of work being invested into this case. To date, \$5,589.00 has been disbursed by Trustee to counsel Cianchetta through Debtors' 4 dismissed cases. Debtors did not disclose any fees or payments made to Cianchetta. Trustee requests that the court disallow the further payment of attorney fees, until counsel has filed a separate motion for attorneys' fees, itemizing his time and efforts in this case.
4. Debtors cannot afford to make the payments or comply with the Plan under 11 U.S.C. § 1325(a)(6) because Debtors' Plan relies on a Motion to Value Collateral of Capitol One Auto Finance, listed in Class 2C. This motion has not yet been filed.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed. Furthermore, the court grants Trustee's request for an order requiring Debtors' counsel, Peter Cianchetta of the Law Office of Peter Cianchetta, to file a separate motion for compensation for services rendered in this bankruptcy case. The court is similarly unsettled by Debtors' multiple bankruptcy filings, and the initiation of proceedings that are repeatedly dismissed for Debtors' inability to fulfill basic responsibilities and take the required steps to complete the Chapter 13 adjustment process.

Therefore 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.

IT IS FURTHER ORDERED that Debtors' counsel, Peter Cianchetta of the Law Office of Peter Cianchetta, file a separate motion for compensation--which itemizes the time and tasks performed on this case--to obtain attorneys' fees associated with this case.

56. [08-29676-E-13](#) JOHN/ROXANNE CLEMENT
MAS-3 Michael A. Scheibli

MOTION TO VALUE COLLATERAL OF
HSBC MORTGAGE SERVICES
10-16-13 [[108](#)]

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 17, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The Motion 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 2957 Yana Avenue, Redding, California. The Debtor seeks to value the property at a fair market value of \$150,000 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). In addition, a Real Estate Broker, Lari Gibson did a historical valuation of the debtor's property and set the value at \$150,000.00 in or about April 2003.

The first deed of trust secures a loan with a balance of approximately \$189,765.68. Creditor HSBC Mortgage Services, Inc.'s second deed of trust secures a loan with a balance of approximately \$48,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See* 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of HSBC Mortgage Services, Inc. secured by a second deed of trust recorded against the real property commonly known as 2957 Yana Avenue, Redding, 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 \$150,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

57. [08-29676-E-13](#) **JOHN/ROXANNE CLEMENT** **MOTION TO AVOID LIEN OF HSBC**
MAS-4 **Michael A. Scheibli** **MORTGAGE SERVICES**
10-16-13 [\[114\]](#)

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 creditors, and Office of the United States Trustee on October 17, 2013. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to deny the Motion to Avoid Lien. 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 "strip the lien" of HSBC Mortgage Services pursuant to 11 U.S.C. § 522(f) (1) (A). However, 11 U.S.C. § 522(f) (1) provides that "the debtor may avoid the fixing of a lien on an interest of the debtor in

property to the extent that such lien impairs an exemption." 11 U.S.C. § 522(f)(1). This applies to judicial liens and nonpossessory, nonpurchase-money security interest in several items. *Id.* Here, the Debtor has not provided any claim of exemption in the subject property in the Motion (or appear to apply to correct formula). Further, the lien attempted to be stripped is a deed of trust, not a judicial lien. Therefore, the Motion to Avoid Lien is denied.

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

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

The Motion to Avoid Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

58. [09-42376-E-13](#) TRY/LILY KHOU MOTION TO MODIFY PLAN
DCN-5 Peter L. Cianchetta 9-18-13 [67]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 18, 2013. By the court's calculation, 62 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, Chapter 13 Trustee is objecting to Debtor's Motion on the following grounds:

1. Section 2.06 of Debtors' modified plan proposes attorney's fees of \$1,161.00 paid prior to the filing of the case, and \$1,889.00 to be paid through the plan. Under the confirmed Plan, attorneys' fees are \$1,161.00 paid prior to the filing of the case, and \$2,339.00 paid through the plan. Trustee has disbursed \$2,339.00 in attorney's fees. Trustee would have no objection regarding fees if this were corrected in the confirmation order.
2. Debtors have not filed updated income and expense statements to reflect his current budget, so Trustee cannot determine if Debtors can afford the payments under 11 U.S.C. § 1325(a)(6), or if Debtor can reasonably afford higher payments. Debtor's Declaration (Dckt. No. 69) indicates that Debtor has obtained a new job and relocated to Southern California. Debtor's Amended Schedules I and J, however, are based on his prior employment expenses and former residence, and do not reflect this change.

Debtor's proposed payment under the modified plan remains \$808.14, even after obtaining a new job and relocating. The petition was filed on October 15, 2009, so October, 2013 is month 48 of Debtor's plan.

The modified Plan does not currently comply with 11 U.S.C. §§ 1322 and 1325(a) and as such, 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.

59. 13-22477-E-13 JOSE AGUILAR AND ROSA MOTION TO CONFIRM PLAN
TOG-6 ALCALA 9-28-13 [[114](#)]
Thomas O. Gillis

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 28, 2013. 35 days' notice is required. That requirement was met.

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtors' Chapter 13 Plan filed on September 28, 2013 is confirmed, and counsel for the Debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and

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

60. [13-32179-E-13](#) **DIANA LECOMPTE** **OBJECTION TO CONFIRMATION OF**
TSB-1 **Richard A. Chan** **PLAN BY DAVID CUSICK**
10-30-13 [18]

Final Ruling: The Trustee filed a "Notice of Withdrawal" on November 7, 2013, Dckt. 27, stating that the Motion to Dismiss was withdrawn. The court construes this "Notice" as an election to dismiss the Motion to Dismiss the Chapter 13 Case without prejudice Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. No opposition to the Motion was filed. **The Motion having been dismissed without prejudice, the matter is removed from the calendar.**

61. [10-44680-E-13](#) **JEFFREY JELLSEY** **MOTION TO MODIFY PLAN**
JT-2 **John A. Tosney** **10-1-13 [49]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 1, 2013. By the court's calculation, 49 days' notice was provided. 35 days' notice is required. That requirement was met.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors.

The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

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

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

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

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

62. [13-30580-E-13](#) **CHARLEE SHAW** **MOTION TO CONFIRM PLAN**
JRH-1 **John R. Harrison** **10-5-13 [22]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 5, 2013. By the court's calculation, 45 days' notice was provided. 42 days' notice is required.

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

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

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

1. Debtor is \$280.00 delinquent in plan payments to Trustee, and the next scheduled payment of \$2,390.00 is due on November 25, 2013. Section 1.01 of Debtor's Plan calls for payments to be received by Trustee no later than the 25th day of each month, beginning on the month after the order for relief has been entered.
2. Debtor cannot make the payments under the Plan or comply with the Plan under 11 U.S.C. § 1325(a)(6). Debtor lists on Schedule E, a priority claim for the Franchise Tax Board in the amount of \$4,000; this debt, however, it is not provided for in the Plan. This claim should be paid in Class 5 of the Plan. On October 18, 2013, the Franchise Tax Board filed Court Claim #6, which indicates that Debtors have \$6,990.19 in priority taxes.
3. Debtor's Plan relies on pending motions to value. Debtor proposes to value the secured claim of Citimortgage in Class 2, and has filed a Motion to Value the Collateral of Citimortgage. The docket, however, reflects that the Motion to Value was withdrawn by Debtor's counsel on October 31, 2013, for failure of the service of process upon the correct Chapter 13 Trustee (Dckt. No. 38). A new motion has not been filed to value Citimortgage's security interest.

Debtor's First Amended Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

63. [13-29181](#)-E-13 SAM/DAYNA CROWLEY
TSB-1 Stanley P. Berman

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
P. CUSICK
8-21-13 [[18](#)]

CONT. FROM 9-17-13, 9-24-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on August 21, 2013. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c) (4). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's tentative decision is to overrule the Objection to Confirmation. No appearance at the November 19, 2013 hearing is required.

PRIOR HEARING

The Chapter 13 Trustee opposed confirmation of the Plan on the basis that Debtor has failed to file motions to value collateral. Debtor subsequently filed the necessary motions and Trustee requested that the court continue the Objection in order to be heard with the motions to value.

The court continued the hearing on the Objection to Confirmation in order to be heard with the pending Motions to Value Collateral.

The pending Motions to Value were granted on October 22, 2013. Dckts. 64, 66. Therefore, the Trustee's objections are overruled.

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

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

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

IT IS ORDERED that the hearing on the Objection to confirmation is overruled, Debtor's Chapter 13 Plan filed on July 10, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for

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

64. [12-24882-E-13](#) JOSE AVALOS MOTION TO VACATE DISMISSAL OF
TJW-2 Timothy J. Walsh CASE
10-24-13 [[37](#)]
CASE DISMISSED 9/5/13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 25, 2013. By the court's calculation, 25 days' notice was provided. 14 days' notice is required.

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

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

Debtor seeks an Order vacating the Order to Dismiss the Case entered on September 4, 2013. The case was dismissed for failure to include the priority claim of the Franchise Tax Board in the amount of \$1,311.02 and unsecured claim of \$278.51. Debtor does not provide an explanation for why he did not oppose the Motion to Dismiss. Instead Debtor states that he filed First Modified Plan and a Motion to Confirm the First Modified Plan on August 30, 2013, which included the priority claim of the Franchise Tax Board. This Motion to Confirm the First Modified Plan was denied on October 22, 2013 as moot, the Chapter 13 Bankruptcy case having already been dismissed. Debtor believes that if the court grants the Motion to Vacate the Dismissal, Debtor can pay modify the Chapter 13 Plan and pay the Franchise Tax Board's claim. The original and modified plan provides for a period of 36 months. The debtor only has 19 months to complete the Chapter 13 case.

TRUSTEE'S OPPOSITION

The Trustee filed a response, asserting that Debtor did not file an opposition to the Trustee's Motion to Dismiss the case (Dckt No. 23), which was granted on September 5, 2013 (Dckt. No. 24). The Trustee provided an adequate notice to Debtor regarding the Local Rule 9014(1) (f) (1) (B)'s requirement that a written opposition must be filed by August 21, 2013. However, no opposition was filed (Dckt. No. 32), and therefore, no appearances were required at the hearing. Trustee states that the Debtor has not provided an explanation for why he did not reply to the Trustee's Motion to Dismiss. The Trustee also notes that if Amended Plan was filed on August 30, 2013 then it was filed on a Friday, and Monday, September 2, 2013 was a Court Holiday.

DISCUSSION

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

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

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

A condition of granting relief under Rule 60(b) is that the requesting party show that there is a meritorious claim or defense. This does not require a showing that the moving party will or is likely to prevail in the underlying action. Rather, the party seeking the relief must allege enough facts, which if taken as true, allows the court to determine

if it appears that such defense or claim could be meritorious. 12 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶¶ 60.24[1]-[2] (3d ed. 2010); *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984).

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

Here, Counsel asserts that the prior order dismissing the case should be vacated because he can modify the Chapter 13 plan, make the payment on the priority claim by the Franchise Tax Board and move forward with the Plan. A review of the docket shows that the Notice of Default (Dckt. No. 24) was clear in its directions to Debtors regarding their case. The Debtor knew that lack of opposition to the Motion will result an order dismissing the case without an hearing. The Debtor elected not to respond, ignoring the motion of the Chapter 13 Trustee. From the Motion to Dismiss (Dckt. No. 23), Debtor was aware that delinquent payments had to be made to the Trustee prior to the hearing date and a failure to make the payments by the stated deadline. Proper grounds existed to dismiss the case, and dismissal is proper. The Debtor, now wiser, may file a new case if he is able to make the promised payments in the plan and prosecute his case in good faith.

For more than three years this court has made it clear to all counsel that it is necessary to respond to motions and state oppositions. Here, the Debtor does not explain why he chose not to respond to the Motion to Dismiss and instead filed an Amended Plan. That is not an excusable mistake, nor is it a situation where the court should exercise its equitable powers to grant relief for such other grounds as justice requires.

Further, the Debtor's and counsel's inaction in not (1) being proactive and addressing the default and (2) not responding to the motion to dismiss, and now in prosecuting the motion to vacate, has caused the Chapter 13 Trustee to waste time and expend resources for what now is a "just kidding, I don't want my case dismissed" request of the Debtor. The court attributes 3 hours of time in connection with the motion to dismiss and 2 hours of time in connection with the present motion (including hearing) having been incurred by the Chapter 13 Trustee for counsel. At a modest \$250.00 an hour, the failure of counsel to respond to the motion to dismiss.

Bankruptcy courts have jurisdiction and the authority to impose sanctions, even when the bankruptcy case itself has been dismissed. *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384,395 (1990); *Miller v. Cardinale (In re DeVille)*, 631 F.3d 539, 548-549 (9th Cir. 2004). The bankruptcy court judge also has the inherent civil contemp power to enforce compliance with its lawful judicial orders. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see 11 U.S.C. § 105(a).

Federal Rule of Bankruptcy Procedure 9011 imposes obligations on both attorneys and parties appearing before the bankruptcy court. This Rule covers pleadings file with the court. If a party or counsel violates the obligations and duties imposes under Rule 9011, the bankruptcy court may impose sanctions, whether pursuant to a motion of another party or *sua*

sponte by the court itself. These sanctions are corrective, and limited to what is required to deter repetition of conduct of the party before the court or comparable conduct by others similarly situation.

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

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

If the court were to grant this Motion, corrective sanctions in the amount of \$1,250.00, to be paid by counsel for the Debtor is required. This amount is reasonably necessary to compensate the Trustee for the damages caused by the Debtor's and counsel's inaction. Counsel appears regularly in this court and it is no surprise to him that a party must file an opposition to a motion. FN.1.

FN.1. While the court does not just grant a motion because no opposition is filed, the court's review of the motion and evidence to see if proper grounds exists for granting the relief does not include canvassing the docket and all pleadings filed, and thereon constructing a possible opposition for the party against whom relief is requested. The preparation of the opposition, and determining what grounds, if any, may exist are the duty of the party against whom the relief is requested and his or her counsel.

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

IT IS ORDERED that the Motion to vacate the Dismissal is denied.

65. 10-46083-E-13 JUANITA MARTINEZ
MOH-5 Michael O'Dowd Hays

MOTION TO AVOID LIEN OF
DISCOVER BANK
10-24-13 [[92](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditors, and Office of the United States Trustee on October 24, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

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

The court's tentative decision is to grant the Motion to Avoid a Judicial Lien. 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:

A judgment was entered against the Debtor in favor of Discover Bank for the sum of \$8418.85. The abstract of judgment was recorded with Colusa County on December 2, 2009. That lien attached to the Debtor's residential real property commonly known as 662 Waterflow Way, Williams, California.

The motion is granted pursuant to 11 U.S.C. § 522(f) (1) (A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$125,000.00 as of the date of the petition. The unavoidable consensual liens total \$386,769.97 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b) (1) in the amount of \$1,000.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C.

§ 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Discover Bank, Colusa County Superior Court Case No. C4617, recorded on December 2, 2009 (Document Number 2009-0004715), with the Colusa County Recorder, against the real property commonly known as 662 Waterflow Way, Williams, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

66. [12-34286-E-13](#) RONALD HOWE AND SHERRY MOTION TO MODIFY PLAN
PGM-4 BYARD-HOWE 10-4-13 [[71](#)]
Peter G. Macaluso

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 4, 2013. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on October 4, 2013, is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

67. [13-31986-E-13](#) **ASHLEY BAKER**
PLC-1 **Peter L. Cianchetta**

**MOTION TO AVOID LIEN OF
RIVERWALK HOLDINGS, LLC
10-16-13 [18]**

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 creditors, and Office of the United States Trustee on October 16, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

The court's tentative decision is to deny the Motion to Avoid a Judicial Lien. 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 denied. Here, the Debtor described the Abstract of Judgment as being provided in the Exhibit 4. However, the Court cannot find a record of the Exhibit 4 supporting the Motion. Without a record of the Abstract of Judgment, the Court cannot make a determination on a Motion to Avoid Judicial Lien. Therefore, the motion is denied for insufficient evidence.

Debtor testifies that a judgment was entered against the Debtor in favor of Riverwalk Holdings LLC. That lien attached to the Debtor's residential real property commonly known as 816 Persifer Street, Folsom, California.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$202,764.00 as of the date of the petition. The unavoidable consensual liens total \$366,783.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$100.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property.

However, Debtor failed to provide a copy of the judicial lien or the requisite information on the lien for the court to identify it in its order (such as the county it was recorded in, the document number, recording date, or the case number). Therefore, the court does not have sufficient information to properly identify the lien in the order.

ALTERNATIVE RULING - IF LIEN INFORMATION PROVIDED PRIOR TO OR AT HEARING

However, if the moving party has included the information or documents filed in support of the motion or can provide a copy of the abstract of judgment with the recording information at the hearing, the tentative ruling is as set forth below in the Alternative Tentative Ruling:

The Debtor seeks to avoid the lien created by the abstract of judgment which encumbers real property commonly known as 816 Persifer Street, Folsom, California. Debtor testifies that a judgment was entered against the Debtor in favor of Riverwalk Holdings LLC. That lien attached to the Debtor's residential real property commonly known as 816 Persifer Street, Folsom, California. The judgment was granted in California Superior Court, County of xxxxxx, Case No., and was recorded with the Sacramento County Recorder, xxxxxx[recording information]xxxx.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$202,764.00 as of the date of the petition. In the absence of other testimony, the court accepts this statement under penalty of perjury as the Debtor's "testimony" of the value of the Property. The unavoidable consensual liens total \$366,783.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$100.00 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property.

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) 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 judgment lien of Riverwalk Holdings LLC, xxxx County Superior Court Case No. xxxx, Document No. Xxxx, recorded on xxxx, 2011, with the xxxx County Recorder, against the real property commonly known as 816 Persifer Street, Folsom, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

68. [13-31986-E-13](#) **ASHLEY BAKER**
PLC-2 **Peter L. Cianchetta**

**MOTION TO AVOID LIEN OF CAVALRY
PORTFOLIO SERVICES
10-16-13 [23]**

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 creditors, and Office of the United States Trustee on October 16, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

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

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

A judgment was entered against the Debtor in favor of Cavalry Portfolio Services for the sum of \$8,697.00. The Deed of Trust was recorded with Sacramento County Recorder's office on August 1, 2005. That lien attached to the Debtor's residential real property commonly known as 816 Persifer St, Folsom, California.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$202,764.00 as of the date of the petition. The unavoidable consensual liens total \$358,627.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$100 in Schedule C. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the Debtor request the Court to decide that the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Calvalry Portfolio Services, LLC, Sacramento County Superior Court Case No. 34201100098564, Book 20120313 Page 1778, recorded on March 13, 2012, with the Sacramento County Recorder, against the real property commonly known as 816 Persifer Street, Folsom, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

69. [13-31986-E-13](#) **ASHLEY BAKER** **MOTION TO VALUE COLLATERAL OF**
PLC-3 **Peter L. Cianchetta** **CHASE**
10-16-13 [28]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on October 16, 2013. By the court's calculation, 34 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 continue the Motion to xx:xx x.m. on _____, 201x . 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 816 Persifer St, Folsom, California. The Debtor seeks to value the property at a fair market value of \$202,764.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor contends that the first deed of trust secures a loan with a balance of approximately \$215,098.00 and Creditor JPMorgan Chase Bank's second deed of trust secures a loan with a balance of approximately \$143,529.00.

CREDITOR'S OPPOSITION

Creditor filed an opposition disputing the subject property's value. Creditor submits its own Broker's Price Opinion, evidencing the value of the subject property at \$310,000.00. Creditor requests that this matter be continued for 45 days so Creditor can obtain a verified appraisal of the subject property. Further, Creditor requests the cooperation of the Debtors in permitting it to obtain a verified appraisal of the subject property as it requires access to the Subject Property to conduct an interior inspection.

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 hearing on the Motion is continued to **xx:xx x.m. on _____, 201x.**

70. [13-31986-E-13](#) ASHLEY BAKER
TSB-1 Peter L. Cianchetta

OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK
10-24-13 [[35](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 24, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

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

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

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's Plan relies on pending motions and that Debtor cannot make the Plan payments required under 11 U.S.C. § 1325(a) (6).

Trustee asserts that Debtor cannot afford to make the payments or comply with the Plan pursuant to 11 U.S.C. § 1325(a) (6), as Debtor's Plan relies on the Motion to Value Collateral of Chase and Motion to Avoid Liens on Calvary Portfolio and Riverwalk Holdings, which are set for hearing on the same day of this motion. The court is tentatively set to grant most of the motions, rendering Trustee's concerns regarding the status of the motions and their impact on Debtor's ability to make Plan payments under 11 U.S.C. § 1325(a) (6) moot. However, one motion is continued for discovery.

Trustee also objects, however, on the additional basis that it does not appear that Debtor can make the payments required by 11 U.S.C. § 1325(a) (6) because of issues surrounding Debtor's listed income. On Schedule I, Debtor's income of \$3,200.00 as stated on Line #10 is income from spousal support. Line #17 describes a spousal support change, which will take effect when ex-husband retires in January of 2013. It is unclear whether Debtor will or will not continue to receive the \$3,200.00 in support income.

Thus, 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.

71. [11-30989-E-13](#) AMORSOLO/MARILYN TANGONAN MOTION TO MODIFY PLAN
NUU-2 Chinonye Ugorji 10-3-13 [58]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 3, 2013. By the court's calculation, 47 days' notice was provided. 35 days' notice is required.

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

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. In this instance, the Chapter 13 Trustee has filed an opposition to Debtors' Motion. Trustee objects to the Motion to Confirm on the following grounds:

1. Trustee is uncertain of the treatment proposed for Class 2 creditor Serrano El Dorado Owner's Association. The Creditor is included in Class 3 of the Plan confirmed on June 26, 2012, but was granted relief on October 12, 2013, per the court's order on their Motion for Relief from Stay. Debtor has not filed a motion to vacate this order.
2. Trustee disbursed \$6,2092.80 in arrears dividends and \$36,747.04 in monthly contract installments to the Class 1 Creditor in the plan confirmed on June 23, 2011, which were not authorized.
3. Debtors incorrectly state in Section 6 that \$90,814.00 has been paid into the Plan as of September 25, 2013. Debtors had only paid \$89,039.00 as of that date, and Trustee has received an additional payment of \$1,952.00 on October 8, 2013. Debtors have paid a total of \$90,991.00 prior to the October 25, 2013 payment becoming due.
4. Debtors are delinquent \$2,361.00 under the terms of the proposed Plan. Debtors have not made the \$2,361.00 due October 25, 2013.

5. Trustee is uncertain if Debtor's Plan represents their best effort under 11 U.S.C. § 1325(b) or has been proposed in good faith, under 11 U.S.C. § 1325(a)(3) as Trustee believes that Debtors can reasonably pay more under the Plan.
- a. The original Plan called for the ongoing mortgage payments to be paid through the Plan at a rate of \$4,062.00 per month. The First Modified Plan filed May 11, 2012, however, called for surrender of the residence. The most recent plan, filed on October 3, 2013, calls for the residence to be paid directly in the amount of \$3,168.01 per month. Trustee does not believe that Debtors made any rent or home mortgage payments in the amount of \$2,000 as provided in their Schedule J. Debtors have not supplied evidence of where the \$2,000 went for the sixteen (16) months spanning from May 2012 to September 2013, which would result in \$32,000 not accounted for by Debtor.
 - b. Debtors had various deductions claimed on their previous Schedule I and current Schedule I. Without explanation, Debtor spouse is claiming \$1,200,36 for a 401K/TSR that was not claimed before.
 - c. Trustee calculates that based on Debtors' Amended Schedule I, filed in support of the Motion to Modify, Debtors have underreported their monthly income by \$633.24. The schedule reflects an average monthly income of \$4,843.00 for Debtor and \$7,419.44 average monthly income for the spouse. Combined average monthly income amounts come to a total of \$12,262.44. Debtors also submitted current earning statements. Trustee conducted an analysis of the earnings statements for the advice dated on September 27, 2013, and concluded that Debtors have underreported their monthly net income by \$633.24.

Debtors' Reply

Debtors propose to enter a joint stipulation, subject to Creditor Serrano El Dorado Owner's Association's consent, to accept payment of the secured claim through the Plan (notwithstanding the relief from stay order that was already entered in favor of the creditor on October 12, 2013). Debtors also request that the Motion to Modify be granted, with language about the re-classification of mortgage creditor Ocwen Loan Servicing's secured interest to be inserted in the court's order confirming the Plan.

It appears, however, that Debtors have not corrected all the deficiencies of their Plan. Debtors have not amended their schedules to more accurately reflect their financial situation, and clarify the current state of their rent and mortgage payments, and 401K Loan Contributions. Specifically, Debtors state that their incomes have decreased over the course of this year due to the reduction in work hours, explaining Trustee's calculations that Debtors are not accounting for \$633.24 in income.

Debtors state that Debtor's more current pay advices for pay periods October 25, 2013 and November 8, 2013, reflect an average monthly net income of \$4,606.62 for Debtor Amorsolo and \$7,046.93 for Debtor Marilyn. These figures are less than the figures listed in the Amended Schedule I. Debtors state that because of these trends, the year to date averages appear to show a higher net income than what Debtors' income amounts are now, and Debtors' proposed Plan payments does actually represent their best efforts.

On the mortgage and rent payments issue, Debtors admit to not making any rent or mortgage payments between May 2012 through May 2013. Debtors did not spend the \$2,000.00 designated under the Confirmed Plan for rent because they were unable to save up this sum of money due to Debtor Marilyn's ill health, and college expenses for Debtors' Children.

Lastly, Debtors state that they have always deducted contributions for 401K/TSR, as evidenced by Debtor Marilyn's pay advices from 2011 marked as Exhibit "B". Debtors claim that this is not a new deduction, but there is a need to increase Debtor wife's contribution, considering her recent diagnoses with cancer and age.

Debtors acknowledge that certain expenses and that their incomes have changed in the period between the filing of their Plans, but these changes are not reflected on the most recently filed Plan. Moreover, Debtors have not updated their Schedules to provide for their decrease in income, their continuous 401K loan contributions, and their inability to make their ongoing mortgage and rental payments. Thus, as it stands, Debtors' modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329, 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 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 Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

72. [11-30989-E-13](#) AMORSOLO/MARILYN TANGONAN MOTION TO APPROVE LOAN
NUU-3 Chinonye Ugorji MODIFICATION
10-3-13 [[65](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on October 3, 2013. By the court's calculation, 47 days' notice was provided. 28 days' notice is required.

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

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

Owcen Loan Servicing, LLC, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce the Debtor's monthly mortgage payment from the current \$4,062.00 to \$3,168.01 including property taxes and insurance. The modification will capitalize the pre-petition arrears and provides for interest rate at 2.00% until August 1, 2035.

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, Amorsolo C. Tangonan and Marilyn C. Tangonan are authorized to amend the terms of

their loan with Creditor, Owcen Loan Servicing, LLC, which is secured by the real property commonly known as 4648 Village Green Dr, El Dorado Hills, California, and such other terms as stated in the Modification Agreement filed as Exhibit "A," Docket Entry No. 68, in support of the Motion.

73. [09-33790-E-13](#) **JAMES/CHRISTINA HERRMAN** **MOTION TO SELL**
LC-5 **Lorraine W. Crozier** **11-4-13 [74]**

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

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, and Office of the United States Trustee on November 4, 2013. By the court's calculation, 15 days' notice was provided. 21 days' notice is required.

Tentative Ruling: The Motion to Sell Property has not been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f) (1) and Federal Rule of Bankruptcy Procedure 2002(a) (2). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f) (1) (ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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

Debtor seeks to sell the residential real property commonly known as 2545 Sleepy Hollow Drive, Shingle Springs, California. However, Federal Rule of Bankruptcy Procedure 2002(a) (2) requires that twenty-one day notice is provided to all parties in interest of a proposed sale of property of the estate. Here, only 15 days notice was provided. This is cause to deny the motion.

Should the court approve a motion to shorten time, the court will issue the following tentative ruling:

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

Here, the Debtor proposes to sell the real property commonly known as 2545 Sleepy Hollow Drive, Shingle Springs, California. The sales price is \$410,000.00 and the named buyer is Miles C. Vanleuvan. The terms are set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 77.

The Chapter 13 Trustee filed a non-opposition to the motion.

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

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

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

IT IS ORDERED that James W. Herrman Jr. and Christina H. Herrman, the Debtors ("Debtor"), is authorized to sell pursuant to 11 U.S.C. § 363(b) to Miles C. Vanleuvan or nominee ("Buyer"), the residential real property commonly known as 2545 Sleepy Hollow Drive, Shingle Springs, California ("Real Property"), on the following terms:

1. The Real Property shall be sold to Buyer for \$410,000.00, on the terms and conditions set forth in the Purchase Agreement, filed as Exhibit A in support of the Motion. Dckt. 77.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Debtor be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.
4. The Trustee be and hereby is authorized to pay a real estate broker's commission in an amount no more than six percent (6%) of the actual purchase price upon consummation of the sale.
5. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Debtors. Within fourteen (14) days of the close of escrow the Debtors shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

74. [13-30990-E-13](#) EVELYN WHITE
NLE-1 Stephen J. Johnson

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY DAVID
CUSICK
9-26-13 [[23](#)]

CONT. FROM 10-22-13

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 26, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Upon review of the Motion and supporting pleadings, no opposition having been filed, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The court's decision is to overrule the Objection. No appearance at the November 19, 2013 hearing is required.

PRIOR HEARING

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that the plan relies on a pending motion to Value Collateral. The Debtors motion to value collateral was heard September 24, 2013 and was denied. The Debtor has not re-filed the motion. If the motion is not re-filed and granted, Debtor's plan does not have sufficient monies to pay the claim in full. No Motion to Value has been filed or set for hearing to date.

The court continued the hearing to allow Debtor's Motion to Value to be heard. The court having granted the motion, the Trustee's objection is overruled.

The Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

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

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

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

IT IS ORDERED that Objection to confirmation the Plan is overruled Debtor's Chapter 13 Plan filed on August 21, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

75. [13-30990-E-13](#) **EVELYN WHITE** **MOTION TO VALUE COLLATERAL OF**
SJJ-1 **Stephen J. Johnson** **BENEFICIAL FINANCIAL, INC.**
10-16-13 [30]

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 16, 2013. By the court's calculation, 34 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 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 129 Murphy Street, Grass Valley, California. The Debtor seeks to value the property at a fair market value of \$151,728.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$267,111.00. Creditor Beneficial Financial I Inc.'s second deed of trust secures a loan with a balance of approximately \$16,500.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be

made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Financial I Inc. secured by a second deed of trust recorded against the real property commonly known as 129 Murphy Street, Grass Valley, 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 \$16,500.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

76. [12-21291-E-13](#) HERBERT/IMELDA MULIPOLA
BLG-5 Chad M. Johnson

MOTION TO MODIFY PLAN
9-25-13 [[120](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 25, 2013. By the court's calculation, 55 days' notice was provided. 35 days' notice is required.

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

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

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on September 25, 2013 is confirmed, and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

77. [10-25692-E-13](#) JAMAL JAMMAL

STATUS CONFERENCE RE: CHAPTER

Debtor's Atty: W. Steven Shumway

Notes:

Set by court order dated 10/18/13 [Dckt 64] for the court to review the status of the filing and hearing on any motion for entry of discharge in accordance with Local Bankruptcy Rule 5009-1(f).

[WSS-2] Motion for Entry of Chapter 13 Discharge filed 10/24/13 [Dckt 67], set for hearing 12/10/13 at 3:00 p.m.

Final Ruling: The Debtor having filed a Motion for Entry of Discharge, **the Status Conference is continued to 3:00 p.m. on December 10, 2013.** No appearance at the November 19, 2013 Status Conference is required.

78. [13-31392-E-13](#) **MANUEL HERNANDEZ**
TSB-1 **Timothy J. Walsh**

**OBJECTION TO CONFIRMATION OF
PLAN BY DAVID CUSICK**
10-24-13 [[35](#)]

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

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on October 24, 2013. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

Final Ruling: The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. The court has determined that oral argument will be not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Objection is overruled as moot, the proposed plan no longer being presented to the court for confirmation. No appearance required.

Subsequent to the filing of this Motion, the Debtor filed a first amended Plan on November 8, 2013. The filing of a new plan is a *de facto* withdrawal of the pending Plan. The objection is overruled as moot and the plan is not confirmed.

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

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

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

IT IS ORDERED that Objection is overruled as moot, and the proposed Chapter 13 Plan is not confirmed, having been withdrawn by the Debtor.

79. [13-32693-E-13](#) **PATRICIA JENSEN** **MOTION TO VALUE COLLATERAL OF**
MMM-1 **Mohammad M. Mokarram** **JPMORGAN CHASE BANK, N.A.**
10-9-13 [15]

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 10, 2013. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

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

The Motion 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 5481 49th Street, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$102,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$156,149.00. Creditor JPMorgan Chase Bank's second deed of trust secures a loan with a balance of approximately \$63,000.00. Therefore, the respondent creditor's claim secured by a junior deed of trust is completely under-collateralized. The creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments shall be made on the secured claim under the terms of any confirmed Plan. *See 11 U.S.C. § 506(a); Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th

Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

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

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of JPMorgan Chase Bank secured by a second deed of trust recorded against the real property commonly known as 5481 49th Street, 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 \$102,000.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

80. [13-32094-E-13](#) **ANGELA HUGHES** **OBJECTION TO CONFIRMATION OF**
TSB-1 **Andy C. Warshaw** **PLAN BY DAVID CUSICK**
10-30-13 [25]

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 30, 2013. By the court's calculation, 20 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 he is unable to determine whether Debtor's plan is filed in good faith or whether the Debtor will be able to make plan payments.

Trustee states that Debtor is not a party to the only debt listed in this case, Reverse Mortgage Solutions, Inc., the subject of the claim being Debtor's father's real property located at 4128 Ernestine Way, North Highlands, California. Debtor resides at the property and indicates that she is the Trustee for the Hughes Family Trust, which holds the subject property. The only creditor listed in this case is the reverse mortgage on the father's property. The Trustee is concerned whether the Debtor has a privity of contract in this circumstance and whether the Debtor having no interest in the property has a basis to administer the claim in a Chapter 13.

Debtor has no income of her own and has not had any income in the last 10 years according to Schedule I, Dckt. 9. The only source of income is contribution from her father of \$433.00. The Statement of Financial Affairs reveals no income from any source. The Trustee states he has concerns regarding the source of income.

The Trustee also notes that the Debtor indicated at the 341 meeting that her father suffers from dementia, but filed a declaration after the filing of this case. Trustee states he is unable to determine if the declaration was signed with sound mind. The declaration also appears to be defective, as it does not state that the information is true and correct pursuant to 28 U.S.C. § 1746, but that it is to the best of his knowledge and belief.

The Trustee argues that Debtor does not qualify for relief under 11 U.S.C. § 109(e), as she does not have regular income.

DISCUSSION

Subsection (e) requires that the chapter 13 debtor be an "individual with regular income." This phrase is defined in 11 U.S.C. § 101 to mean an individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan. While income from a spouse or parent is meant to be encompassed within the term "regular income," it must be reasonably predictable and sufficient to make the proposed plan payments. 2 COLLIER ON BANKRUPTCY ¶ 109.06[1] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). Here, while Debtor receives "income" from her father in the amount of \$433.00 per month, the court still has several concerns.

First, there appears to be a dispute as to whether Debtor has standing to administer the reverse mortgage on the property in her Chapter 13, which is held in trust. Further, even if Debtor did have an interest, the proposed plan payment is not sufficient to cure the default to Creditor.

Second, the court is not satisfied with the declaration provided by Debtor's father, as it is not properly signed under penalty of perjury. Dckt. 18.

Third, the court agrees with the Trustee's concerns regarding Debtor's eligibility under 11 U.S.C. § 109(e) as she does not appear to have regular income according to Schedule I and the Statement of Financial Affairs.

Review of Plan

The Plan requires that payment be made on a claim for a debt secured by property owned by a Trust. Schedule B does not list any rights of the Debtor in the Trust. Dckt. 9 at 4-7. There is nothing in the Schedules to indicate why the real property owned by the trust would be property of the bankruptcy estate or why a debt secured by that property would be a claim in this case. 11 U.S.C. § 101(5).

The Plan requires monthly plan payments of \$433.00. Of that, \$387.10 is to be paid to the creditor who has a lien on the trust property. This is to cure an "arrearage" of \$12,000.00. No other creditors are to be paid.

Review of Schedules

On Schedule I the Debtor states under penalty of perjury that he has been unemployed for 10 years and has no income other than a \$433.00 "contribution" from his father, Lee A. Hughes. Dckt. 9 at 14. On Schedule J the Debtor states under penalty of perjury that he has no expenses. He pays nothing for: (A) rent or mortgage, (B) food, (C) utilities, (D) clothing, (E) medical and dental expenses, (F) recreation, (G) transportation, (H) taxes, (I) auto insurance, or (J) health insurance. Schedule J does state,

"No expenses are listed because other individuals within the household provide Debtor's health and well being by purchasing necessities such as food, clothing, and shelter."

To the extent that others are providing with money or goods, then such is income to the Debtor.

The Debtor's response to the Trustee's objection spends much effort explaining that the Debtor may be a bankruptcy debtor. It asserts that the property owned by the Trust is the Debtor's residence. However, no interest in the trust is asserted by the Debtor or a basis for the trust property being property of this bankruptcy estate as provided in 11 U.S.C. § 541.

Though the Debtor has filed this case, the response discusses how Lee Hughes, is an incompetent (with dementia) and the Debtor could be his "next friend" for purposes of this bankruptcy case. Further, that if the court finds the Debtor not sufficiently a debtor for what she is attempting to do in this case, then the court should just substitute in the incompetent father.

The Debtor goes further, citing the court to Federal Rule of Bankruptcy Procedure 1004.1 for the contention that she can file a bankruptcy case for her incompetent father. No evidence has been shown that the Debtor has been appointed as the conservator or legal guardian for her incompetent father, Lee Hughes. Rule 1004.1 states that if there is a representative for an incompetent person, such as a general guardian, committee, conservator, or similar fiduciary, then the fiduciary

representative may file a voluntary petition on behalf of the incompetent person. If such a fiduciary does not exist, the court may appoint a guardian ad litem, or such other order as necessary to protect the incompetent person. See Federal Rule of Civil Procedure 25 and 17(c); Federal Rule of Bankruptcy Procedure 7025, 9014.

Purpose of the Bankruptcy Case

The Schedules, Plan, and response make it clear that this bankruptcy case was filed as a litigation strategy against a creditor having a debt secured by the real property owned by the trust. In the response, the Debtor says the plan is feasible because the trust disputes that the creditor of the trust can foreclose on the real property owned by the trust. The response blends the obligations of the trust, rights of the creditor having a lien on the trust property, the Debtor in her fiduciary capacity as trustee of the trust, and the individual debtor.

Reverse Mortgage Solutions, Inc. has filed its own objection to confirmation of this Plan. Dckt. 21. This objection provides some additional information. No evidence is provided as part of the objection, but the alleged facts appear consistent with what the Debtor has stated.

It is alleged by Reverse Mortgage Solutions, Inc.,

- A. Lee and Rose Hughes obtained \$444,000.00 through a reverse mortgage, which is secured by a deed of trust against the property now owned by the trust.
- B. The property securing the \$440,000.00 reverse mortgage was transferred into the trust, with the Debtor as trustee.
- C. A notice of default has been issued and a sale under the deed of trust was scheduled for September 16, 2013.
- D. The Debtor commenced this bankruptcy case three days before the scheduled foreclosure sale.

The Debtor wanting to litigate trust issues under the guise of a personal Chapter 13 case is not proper. A trust cannot be a bankruptcy debtor. 11 U.S.C. §§ 109, 101(41) [defining person].

This bankruptcy case and response raise several significant, and concerning, issues. The first is why and how the Debtor has come to this court seeking to bring a trust asset, hide her other assets, hide her income, and hide her expenses, while trying to tie up a creditor of the trust. The Debtor has stated under penalty of perjury that she has no beneficial interest in, right to, or interest in any property of the trust. Schedule B.

The Debtor purports to have a power of attorney for her incompetent father. By this power of attorney, she purports to be giving money to herself, pay money to fund the plan, have trust assets be the subject of her personal bankruptcy, and take trust property for her own use and benefit. The response admits that "Debtor's counsel believes that the power-of-attorney is potentially flawed..." It continues, however, "[t]he intention of the power-of-attorney was for Angela Hughes to have the power to control

all of Lee Hughes' financial affairs, including the ability to file bankruptcy protection on his behalf." Response, Dckt. 37.

In substance, the Response is saying that there is no "legal basis" for what the Debtor is doing, but because the Debtor thinks that it is right, the court on an ad hoc basis should allow the Debtor to act as if she had the right and power to do what she wants to do. California law is clear that the incompetency of the person granting the power of attorney terminates the power of attorney. California Probate Code § 4152(a)(7). In such a situation the person seeking to be the personal representative of the incompetent must seek court appointment, whether as a conservator or personal representative for specific legal proceedings.

The court orders the Chapter 13 Trustee to forward a copy of this decision and the order thereon to the U.S. Trustee for review of the conduct of the Debtor and counsel in the filing and prosecution of this bankruptcy case. Further, whether, in the opinion of the U.S. Trustee, whether the purported exercise of the power of attorney, payments purportedly for Lee Hughes to the Debtor monthly, and the expense information provided warrant referral of the matter to adult protective services for review and possible investigation.

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.

IT IS FURTHER ORDERED that the Chapter 13 Trustee shall forward a copy of this decision and the order thereon to the U.S. Trustee for review of the conduct of the Debtor and counsel in the filing and prosecution of this bankruptcy case. Further, whether, in the opinion of the U.S. Trustee, whether the purported exercise of the power of attorney, payments purportedly for Lee Hughes to the Debtor monthly, and the expense information provided warrant referral of the matter to adult protective services for review and possible investigation. The court does not order the U.S. Trustee to conduct any investigation or referral of any matters by this order, but has it transmitted for informational purposes.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on October 29, 2013. By the court's calculation, 21 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:

Movant Reverse Mortgage Solutions, Inc. ("Movant") states it is the current beneficiary under the deed of trust on the real property commonly known as 4128 Ernestine Way, North Highlands, California. Movant asserts that on June 8, 2005, Lee A. Hughes and Rose Hughes obtained a reverse mortgage. The property was subsequently transferred to Angela Hughes, as Trustee to the Hughes Family Trust dated June 30, 2005. Movant recorded a Notice of Default and Election to Sell as well as a Notice of Trustee's Sale, set to occur three days after the bankruptcy case was filed.

Movant objects to the plan on the grounds that Debtor has not debt obligation with Movant to reorganize in this Chapter 13 bankruptcy case proceeding and has commenced this case in bad faith to hinder and delay Movant's foreclosure efforts.

Movant argues that if the court allows the case to proceed, the plan cannot be confirmed because it lacks feasibility. Movant states the amount in default is \$317,538.63 and Debtor proposes to pay \$433.00 for 36 months. This does not appear to be sufficient to cure the default.

DISCUSSION

Debtor filed this Chapter 13 petition as an individual, not as the Trustee for the Hughes Family Trust dated June 30, 2005. Dckt. 1. Debtor does not appear to be a borrower on the underlying loan secured by the

Movant's deed of trust. Debtor has not provided any evidence that she is obligated under the note or deed of trust. Therefore, there appears to be no privity of contract between Debtor and Movant.

Movant appears to be the only creditor in this case. Dckt. 1. The only debt to be administered is the obligation to Movant. Furthermore, it appears Debtor may not have regular income as required by 11 U.S.C. § 109(e).

Subsection (e) requires that the chapter 13 debtor be an "individual with regular income." This phrase is defined in 11 U.S.C. § 101 to mean an individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan. While income from a spouse or parent is meant to be encompassed within the term "regular income," it must be reasonably predictable and sufficient to make the proposed plan payments. 2 COLLIER ON BANKRUPTCY ¶ 109.06[1] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). Here, there appears to be a dispute as to whether Debtor can administer the debt in a Chapter 13, as Movant argues that she is not a party in interest. Further, even if Debtor did have an interest, the proposed plan payment is not sufficient to cure the default to Movant.

Reverse Mortgage Solutions, Inc. has filed its own objection to confirmation of this Plan. Dckt. 21. This objection provides some additional information. No evidence is provided as part of the objection, but the alleged facts appear consistent with what the Debtor has stated.

It is alleged by Reverse Mortgage Solutions, Inc.,

- A. Lee and Rose Hughes obtained \$444,000.00 through a reverse mortgage, which is secured by a deed of trust against the property now owned by the trust.
- B. The property securing the \$440,000.00 reverse mortgage was transferred into the trust, with the Debtor as trustee.
- C. A notice of default has been issued and a sale under the deed of trust was scheduled for September 16, 2013.
- D. The Debtor commenced this bankruptcy case three days before the scheduled foreclosure sale.

The Debtor wanting to litigate trust issues under the guise of a personal Chapter 13 case is not proper. A trust cannot be a bankruptcy debtor. 11 U.S.C. §§ 109, 101(41) [defining person].

The court has addressed in greater detail the defects in this Plan and bankruptcy case in the Civil Minutes for the Chapter 13 Trustee's Objection to Confirmation (DCN:TSB-1), and incorporates herein the ruling on that Objection by this reference.

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.

82. [09-43495-E-13](#) KEVIN/JACI BRYANT MOTION TO MODIFY PLAN
WW-5 Mark A. Wolff 10-8-13 [[66](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 8, 2013. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

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

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

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

The Trustee opposes confirmation offering evidence that the Debtor is \$45.00 delinquent in plan payments, under the proposed plan. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

The Trustee also states that the proposed modified plan no longer provides for the secured purchase money security interest creditor Kay Jewelers, Creditor filed a secured claim on November 9, 2009 in the amount

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

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Chapter 13 Trustee opposes the motion on the grounds that the proposed plan does not authorize payments made to creditor Everhome Mortgage.

The Trustee also opposes confirmation offering evidence that the Debtor is \$2,847.00 delinquent in plan payments under the proposed plan. This is strong evidence that the Debtor cannot afford the plan payments or abide by the Plan and is cause to deny confirmation. 11 U.S.C. §1325(a)(6).

Debtors' Response

Debtor responded, stating that they have been instructed to bring the plan current before the hearing. Also, Debtors have no objection to providing the authorization to the Trustee in the order confirming.

The Debtor not having provided evidence that they are in fact current under the proposed plan, the motion is denied. Further, the Debtors provide no explanation as to why they have defaulted under the Plan, why they have monies to cure the defaults, and why it is not likely that future defaults will occur. Merely saying "we have defaulted, but we'll 'find some money' to cure the default and 'promise' we will not default again is not sufficient. The Debtors have demonstrated that they cannot perform the modified plan. FN.1.

FN.1. No declaration was provided in opposition to the Trustee's Objection. The opposition filed by Debtors' counsel is respected for its candor - stating that Debtors have been instructed to cure the defaults. However, that does not replace the need to explain the reason for default, why it will not reoccur, and the Debtors' ability to perform going forward.

The justification given for modifying the plan is that the Debtors are in a trial loan modification. Declaration, Dckt. 63. The Debtors are concerned that the Trustee cannot make the trial modification payments by the first of each month due to the Trustee's plan disbursement schedule. While such concerns may be valid, modifying the plan for a trial modification for which final approval has not been obtained does not justify modifying the plan. Rather, in such a situation the authorization to enter into the trial loan modification (post-petition credit agreement) can further authorize the Debtors to make the trial payments directly to the lender, and reduce the plan payment to the Trustee for those months. Then when the Debtor obtains court approval of a final loan modification, the plan can be amended (often by an ex parte motion).

If the court were to accept the Debtors' attempt to modify the plan, it would be altering treatment of the claim based on an unapproved trial loan modification and a non-existent permanent loan modification. The financial basis for modifying the plan is illusory.

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

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

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

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

IT IS ORDERED that Motion to Confirm the Plan is denied without prejudice and the proposed Chapter 13 Plan is not confirmed.

84. [13-25399-E-13](#) **ROLANDO SANTIAGO** **MOTION TO CONFIRM PLAN**
WW-1 **Mark A. Wolff** **9-30-13 [33]**

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 30, 2013. By the court's calculation, 50 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 and a creditor having filed an opposition, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

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

CREDITOR'S OPPOSITION

Creditor Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificateholders of the CWALT, Inc. Alternative Loan Trust 2006-OA2 Mortgage Pass-Through Certificates, Series 2006-OA2 ("Creditor") objects to the proposed plan on the basis that the plan fails to provide for the treatment of Creditor's arrears. The pre-petition arrears total \$117,031.08.

Creditor also states that while the Debtor states he is in the process of obtaining a loan modification, Creditor sent a letter on October 2, 2013 that the loan modification application was rejected.

TRUSTEE'S OBJECTION

The Chapter 13 Trustee objects to the plan on the basis that the Debtor cannot afford the plan. The plan calls for the Debtor to pay Bank of America directly on the mortgage but does not disclose what amounts the Debtor is supposed to be paying.

The Trustee also states that there is insufficient proof of income and expenses. Schedule I asserts monthly income of \$3,135.00, \$900 coming from commissions and help from family, leaving \$2,235.00 from other sources. The Statement of Financial Affairs discloses monthly income of only \$1,606.67 for 2012.

Lastly, the Trustee states the Debtor is below median income, but where Debtor has made the mortgage payment for three months prior to filing, the Debtor may have more income than disclosed.

DEBTOR'S RESPONSE

Debtors state they appealed the denial of the loan modification, which was also denied. Debtors state pursuant to the provisions of the proposed plan allow Creditor to pursue its remedies, including foreclosure. Debtors do not address the Trustee's objections.

DISCUSSION

Debtor has addressed the Creditor's concerns in his reply, confirming that the Loan Modification has been denied and that the Creditor may exercise its rights in the collateral securing the claim. This is accepted by the court as an amendment to the Chapter 13 Plan removing the contingency to enforcement of the rights in the collateral. That amendment may be stated in the order confirming the Plan, which shall be approved as to form by counsel for Creditor before the proposed order is transmitted to the Chapter 13 Trustee.

However, Debtor did not address the Trustee's concerns for failure to provide sufficient proof of income and expenses. Debtor has not provided a source for \$2,235.00 of income, when the Statement of Financial Affairs discloses monthly income of only \$1,606.67 for 2012.

Debtor's declaration merely states that his current projected disposable income is as has been computed by his attorney. Declaration, Dckt. 35. No attempt is made in the current declaration to show how the projected disposable income is computed or that the Debtor confirms that the amounts used by the attorney are truthful and accurate. Further, there is no showing that Debtor's attorney has any personal knowledge of the Debtor's income and expenses.

Debtor's Schedule I lists him having income of \$1,449.00 a month from Social Security. An additional \$786.00 a month in income is listed for the non-debtor spouse. This total \$2,235.00 a month in income for the Debtor and non-debtor spouse. Schedule I, Dckt. 1 at 22. For the non-debtor spouse additional income of \$900.00 a month is show for "commissions & help from family." No information is provided as to the source of the "commissions," the help" or the family members being able to and willing to fund the Chapter 13 Plan for the Debtor.

Schedule J lists \$2,390.00 a month in expenses, which does not include any expense for mortgage or rent. Dckt. 1 at 23. However, the expenses include \$411.00 a month for real property taxes. This totals \$4,932.00 a year. The California Constitution, Article XIII A § 1, limits the maximum amount of real property taxes to 1% of the cash value of the real property. The expense listed indicates real property with a value of \$493,200.00. Schedule A lists real property owned by the Debtor with a value of \$225,000.00 (subject to liens of \$615,544.47). Dckt. 1 at 10. The Schedule J expenses include: (A) \$160.00 for telephone, (B) \$250.00 for transportation, and (C) \$0.00 for homeowner's or renter's insurance.

Taken on its face, the Debtor's family unit income of \$2,235.00 is insufficient to fund the \$2,390.00 in expenses, much less any Chapter 13 Plan payment. The court has no credible evidence presented that the "family help" and "commissions" exist to fund the Plan.

Under the Amended Chapter 13 Plan, no payments are made to any creditors. No provision is made for paying any secured or unsecured claims. It appears that the Amended Chapter 13 Plan exists for no reason other than paying Debtor's counsel for a plan which makes no payment for any claims.

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

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

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

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

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