

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

November 25, 2014 at 2:00 p.m.

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1. [14-21801](#)-C-13 ROSE SPAHN MOTION FOR COMPENSATION BY THE
BLG-6 Chad M. Johnson LAW OFFICE OF BANKRUPTCY LAW
GROUP, PC FOR BRUCE C.
DWIGGINS, DEBTOR'S ATTORNEY(S)
10-31-14 [[64](#)]

Final Ruling: No appearance at the November 25, 2014 hearing is required.

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, parties requesting special notice, and Office of the United States Trustee on October 31, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion for Allowance of Professional Fees 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 non-responding parties 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 Allowance of Professional Fees is granted.

FEES REQUESTED

Bruce Dwiggins, the Chapter 13 Attorney ("Applicant") for Rose Spahn, the Chapter 13 Debtor ("Client"), makes an application for actual, reasonable, necessary, and unanticipated work in this Chapter 13 case. The period for which the fees are requested is for the period October 26, 2012 through September 8, 2014.

Debtor's plan was confirmed on May 2, 2014. Following confirmation,

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the following services were provided by counsel for which counsel now seeks approval:

1. Case Administration: speaking with client regarding inheritance, running payoff numbers, reviewing claims, and preparation of three objections to claims. Total hours spent were 7.1, but 5.9 of those were no-charge hours.
2. Debtor received an inheritance that enabled her to pay off her plan early and necessitated a modified plan. 2.3 hours charged, 1.6 no charge.
3. Preparation of fee and expense motion. No charge.

Counsel asserts that the work was necessary and beneficial to the success of Debtor's ability to complete her Chapter 13 plan.

Applicant is seeking compensation for 3.5 hours of post-confirmation for a total of \$857.50 in fees and \$15.05 in costs.

Statutory Basis For Professional Fees

Pursuant to Local Bankr. R. 2016-1(c)(3), if the fixed fee is not sufficient to fully and fairly compensate counsel for the legal services rendered, the attorney may apply for additional fees. The fixed fee is anticipated to fairly compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform to the claims filed. It is provided that "only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation.

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
- (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated

skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (I) unnecessary duplication of services; or
- (ii) services that were not--
 - (I) reasonably likely to benefit the debtor's estate;
 - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

CHAPTER 13 TRUSTEE

On November 5, 2014, the Trustee filed a statement of non-opposition to the request for additional attorneys' fees.

DISCUSSION

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Applicant is allowed, and the Chapter 13 Trustee is authorized to pay \$857.50 in additional compensation and \$15.05 in costs. The court shall issue an 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 Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Counsel for Chapter 13 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 Bruce Dwiggins is allowed the following fees and expenses as a professional of the Estate:

Bruce Dwiggins, Professional Employed by the Chapter 13 Debtors

Fees in the amount of \$857.50
Expenses in the amount of \$ \$15.05 ,

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in Chapter 13 cases, under the terms of the confirmed plan.

2. [14-30404](#)-C-13 ISRAEL FORBES MOTION TO AVOID LIEN OF CAPITAL
MMM-1 Mohammad M. Mokarram ONE BANK (USA), N.A.
10-24-14 [8]

Final Ruling: No appearance at the November 25, 2014 hearing is required.

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 24, 2014. Twenty-eight days' notice is required. That requirement was met.

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 non-responding parties 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 Lien is granted.

A judgment was entered against the Debtor in favor of Capital One Bank (USA), N.A. for the sum of \$3,550.90. The abstract of judgment was recorded with El Dorado County on September 25, 2014. That lien attached to the Debtor's residential real property commonly known as 961 Perkins Court, El Dorado Hills, 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 \$330,000 as of the date of the petition. The unavoidable consensual liens total \$261,520 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$75,000 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(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 judgment lien of Capital One Bank (USA), N.A., El Dorado County Superior Court Case No. PCL20140364, Document No. 2014003857500, recorded on September 25, 2014, with the El Dorado County Recorder, against the real property commonly known 961 Perkins Court, El Dorado Hills, 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.

3. [14-21205](#)-C-13 JOHN/PATRICIA MELMS MOTION TO CONFIRM PLAN
DBJ-5 Douglas B. Jacobs 10-6-14 [[98](#)]

CASE DISMISSED 10/14/14

Final Ruling: No appearance at the November 25, 2014 hearing is required.

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

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

Tentative Ruling: The Objection to Plan 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.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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 29, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, 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. At the hearing -----
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The court's decision is to continue the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the following basis:

1. Debtor did not appear at the First Meeting of Creditors held on October 23, 2014. Pursuant to 11 U.S.C. § 343, Debtor is required to appear at the meeting. Meeting is continued to January 8, 2015.
2. Debtor cannot afford to make the payments or comply with the plan. 11 U.S.C. § 1325(a)(6). Debtor's plan relies on the Motion to Value the secured claim of Wells Fargo Bank, N.A., which is set for hearing on November 18, 2014. If the court does not grant the Motion, the plan lacks sufficient monies

to pay the claim in full.

3. Debtor did not provide Trustee with a tax transcript or copy of his Federal Income Tax return with attachments for the most recent pre-petition tax year for which a return was required, or a written statement that no such document exists. 11 U.S.C. § 521(e) (2) (A); FRBP 4002(b) (3). This is required seven days before the date first set for the meeting of creditors. 11 U.S.C. § 521(e) (2) (A) (1).
4. Debtor cannot make the required payments. 11 U.S.C. § 1325(a) (6). Debtor lists income of \$450.00 on Schedule I from "family support;" however, Debtor does not indicate the specific source of this income and has not provided a Declaration from the source of the income.
5. Debtor's plan does not provide for Wells Fargo Bank, N.A.'s first deed of trust listed on Schedule D, and while treatment of all secured claims may not be required under 11 U.S.C. § 1325(a) (5), the failure to provide the treatment could indicate that Debtor either cannot afford the payments called for under the plan because they have additional debts, or that the Debtor wants to conceal the proposed treatment of a creditor.

DEBTOR'S RESPONSE

Debtor provides the following in response to the Trustee:

1. Debtor did not attend the 341 Meeting due to an unforeseen medical emergency. Debtor will appear at the continued meeting in January.
2. Debtor asserts that if the court does not grant the Motion to Value, she will either re-file the motion to notice for hearing an amended plan.
3. Debtor declares that her personal income situation is such that the filing of tax returns is not necessary.
4. Debtor asserts that on November 5, 2014, Johnie Williams filed a declaration concerning his support of Debtor in the amount of \$450.00 per month.
5. Debtor inherited the real property located at 106 Scotia Avenue, San Francisco, California from her mother. The property is listed on Schedule A. It is encumbered by a first deed of trust held by Wells Fargo Bank, N.A. Debtor asserts that the note and deed of trust are only in the name of Debtor's deceased mother and it is not an obligation of Debtor. At present, the mortgage is not being paid. Debtor included the obligation on Schedule D to reflect the lack of equity on the date of filing.

DISCUSSION

The court's decision is to continue the objection to January 13,

November 25, 2014 at 2:00 p.m.

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2015, to be heard after the continued meeting of creditor.

The court will overruled the remaining objections of the Trustee. The pending Motion to Value was granted at the hearing on November 18, 2014. The Declaration of Johnie Williams asserts that he resides with his mother and will continue contributing \$450.00 per month to assist with household expenses for the foreseeable future. Debtor provided a declaration (ECF-36) addressing the tax returns and secured claim of Wells Fargo. Debtor explains that she is not required to file tax returns due to her tax and income situation. Debtor further explains that the property secured by a Wells Fargo deed of trust is a property she inherited from her mother and any obligations on the property remain in her deceased mother's name.

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

IT IS ORDERED the Objection is continued to January 15, 2014 at 2:00 p.m.

Final Ruling: No appearance at the November 25, 2014 hearing is required.

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 12, 2014. Forty-two days' notice is required. That requirement was met.

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 court's decision is to grant the motion to confirm.

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

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

1. Trustee is uncertain of the proposed treatment for American Servicing Company ("Creditor"). Creditor is included in Class 1 of the confirmed plan with a contract installment payment of \$1,654.72. The Class 1 arrears claim is \$7,641.83. Debtor are proposing to add a Class 2 claim for Creditor for post-petition mortgage arrears, totaling \$1,522.12. Trustee has the following concerns with this treatment:
 - (A) Creditor was originally to be paid directly in the monthly amount of \$2,730.54 (Dkt. 15). Debtor's prior modified plan provided for the Creditor in the additional provisions as a Class 4 creditor for months one (1) through nineteen (19) and then Class 1 thereafter, with a dividend of \$226.00 for months twenty (20) through fifty-two (52), increasing to \$226 for month fifty-three (53). Trustee shows \$1,610.52 of past due payments on the

ongoing mortgage payment, where the Second Modified Plan provides for \$1,522.12.

- (B) Trustee is not certain the proposed amount of \$1,552.12 is correct. Creditor filed three Notices of Mortgage Payment Change in this case. The first was filed on October 26, 2012, and reports a change to \$1,610.52. The second was filed on June 5, 2013 and reflects a change to \$1,627.21. The third was filed on June 5, 2014 and reflects a change to \$1,654.72. The post-petition arrears amount is less than any of the payments specified by Creditor.
- (C) The Additional Provisions appear to set different monthly payments for Creditor. The payments are proposed as follows: \$200.00 for months twenty (20) through thirty-five (35); \$560.00 for months thirty-six (36) through thirty-seven (37); and \$560.03 for months thirty-eight (38) through sixty (60). Trustee believes some of the amounts are for the pre-petition arrears, but the Trustee is not certain.

DEBTORS' RESPONSE

Debtors assert that the amount set forth in the post-petition arrears for American Servicing was incorrect. Debtor is willing to add a special provision to the order modifying that will change the post-petition arrears to \$1,610.52. Post-petition mortgage arrears for American Servicing Company shall be listed as a Class 2a Creditor in months thirty-eight (38) through sixty (6) in the amount of \$71.00.

The current ongoing monthly payment for American Servicing should be \$1,654.72, per the most recent Notice of Mortgage Payment Change. Debtor consents to the Order Modifying clarifying the ongoing monthly payment.

The dividend to American Servicing for pre-petition arrears shall be as follows: \$200 per month for months twenty (20) through thirty-five (35); \$560.03 per month for months thirty-six (36) through thirty-seven (37); and \$145 per month for months thirty-eight through sixty (60).

HEARING

At the hearing on October 28, 2014, the court ordered the hearing continued and order Debtors to file a proposed plan amendments by November 7, 2014.

PROPOSED PLAN AMENDMENTS

On November 7, 2014, the Debtors filed the following, as proposed plan amendments:

1. The order modifying will clarify that the proper amount of arrears for American Servicing Company is \$1,610.52. The mortgage arrears will be listed as a Class 2A creditor in months thirty-eight (38) through sixty (60) in the amount of \$71.00.

2. The current ongoing monthly payment per the most recent Notice of Mortgage Payment Change is \$1,654.72. The current ongoing monthly payment for American service Company should be \$1,654.72.
3. The dividend to American Servicing Company for pre-petition arrears shall be as follows: in months twenty (20) through thirty-five (35) shall be \$200, in months thirty-six (36) through thirty-seven (37) shall be \$560.03, and in months thirty-eight (38) through sixty (60) shall be \$145.00.

CHAPTER 13 TRUSTEE REPLY

The Chapter 13 Trustee filed a reply and states that the Notice of Proposed Plan Amendments filed by Debtors resolves his objections.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on September 13, 2014 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.

Tentative Ruling: The Objection to Plan 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.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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 29, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, 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. At the hearing -----
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The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the following basis:

1. The plan does not provide all of the Debtor's projected disposable income for the applicable commitment period. 11 U.S.C. § 1325(b).

The Trustee is not certain that the "2 retirement loans" listed on Schedule D are reasonably necessary for the maintenance and support of the Debtor or a dependent. The Debtor listed the 2 retirement loans on Schedule D with an amount of \$1,100 owing and \$43.00 per month. The Debtor has not provided for these loans in the plan or on Schedule I as

a deduction or Schedule J as an expense. The plan payments do not increase after the retirement loans are repaid, and the Debtor has not furnished evidence to show why the repayment of these loans are reasonably necessary. The Debtor must disclose this as the plan payment may need to increase after the loan is repaid.

2. The Debtor cannot make the payments required under 11 U.S.C. § 1325(a)(6). Debtor lists income of \$350.00 per month from "future income tax refunds," however, Debtor has not disclosed any income received from refunds in either Checking or Savings accounts on Schedule B.
3. The plan does not reflect Debtor's best efforts under 11 U.S.C. § 1325(b). Debtor is under the median income and proposes plan payments of \$310 for 60 months with a 0% dividend to unsecured creditors.

Debtor lists a clothing expense of \$175.00 on Schedule J; however, line 24 of Schedule J states that "Skip Clothing expense while debtor is paying clerk filing fee and small amount remaining on retirement loans." It does not appear that the clothing expense is reasonably necessary for the maintenance and support of the Debtor or the Debtor's dependents, therefore, the Debtor can increase the plan payment by \$175.00.

Debtor lists a mini storage expense of \$209 per month on Schedule J, which appears to be for household items. It does not appear that this expense is reasonably necessary for the maintenance and support of Debtor or Debtor's dependents. If the Debtor paid this expense for the duration of the plan, the total amount would be \$12,540 that would go to unsecured creditors.

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

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

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

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

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

Final Ruling: No appearance at the November 25, 2014 hearing is required.

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 11, 2014. Forty-two days' notice is required. That requirement was met.

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.

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

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

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

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

IT IS ORDERED that the Motion is granted, Debtor's Chapter 13 Plan filed on October 11, 2014 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.

8. [11-37230](#)-C-13 MAGDALENA MONTES-LOERA MOTION TO APPROVE LOAN
SDH-1 AND FERNANDO LOERA MODIFICATION
Scott D. Hughes 10-22-14 [[36](#)]

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

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.

Below is the court's tentative ruling.

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

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 22, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The Motion to Approve Loan Modification is denied.

The Motion to Approve Loan Modification filed by Debtors seeks court approval for Debtor to incur post-petition credit. Nationstar Mortgage, LLC, whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to \$1,394.58 a month. The modification will capitalize the pre-petition arrears and provide for stepped increases in the interest rate from 2% for years one through five, up to 3% for year six, and then 3.5% for years seven through maturity.

The Motion is supported by the Declaration of Magdalena Montes Loera. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

TRUSTEE'S OPPOSITION

The Chapter 13 Trustee states that he has no objection to the terms of the modification where the unpaid principal balance is \$283,917.26, including amounts capitalized, \$34,858.52 of the unpaid principal balance deferred, and \$43,365.26 eligible for forgiveness, leaving an interest bearing principal balance of \$205,693.48.

Trustee is not certain if the loan modification agreement is being offered by the party who is the owner or holder of the existing note. The loan modification is offered as between Debtors and Nationstar Mortgage, LLC. Creditor HSBC Bank, USA, N.A., as Trustee for the Certificate-Holders of the MLMI Trust, Mortgage Loan Asset-Backed Certificates, Series 2005-WMC1 filed a secured claim on October 20, 2011 (Claim 8), which indicates that payments should be sent to Bank of America, N.A. Creditor's secured claim was for \$319,087.03, and concerned a property described as 5435 Ruhkala Road, Rocklin, California, reflecting arrearage of \$38,991.32.

Attached to Creditor's proof of claim is a copy of the original deed of trust, which indicates that the lender is WMC Mortgage Corp. Also attached is a Corporate Assignment of Mortgage/Deed of Trust, transferring the deed of trust to HSBC Bank USA, National Association as Trustee for the MLMI Trust Series WMC1.

On July 9, 2014, a Transfer of Claim Other than for Security was filed (ECF-33), transferring claim 8 to Nationstar Mortgage, LLC from HSBC Bank USA, N.A., Bank of America, N.A.

The Trustee is uncertain whether ownership of the claim has been transferred. The Transfer of Claim does not indicated whether the underlying obligation for the loan was transferred along with the deed of trust against Debtors' property. It would appear that only an interest has been transferred.

DISCUSSION

The court reiterates the Trustee's concerns regarding who is the proper beneficiary of the subject deed of trust. As the Trustee details, an assignment of the original deed of trust from WMC Mortgage to HSBC was attached to the original proof of claim; however, there is nothing evidencing an assignment of the deed of trust to Nationstar. Although a Transfer of Claim was issued between HSBC and Nationstar, the court still lacks conclusive evidence that Nationstar is the owner of the subject loan and has authorization to modify the terms of the loan under the proposed loan modification agreement.

The court lacks sufficient evidence to grant the Motion and the Motion to Approve the Loan Modification 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 Approve the Loan Modification filed by Debtors having been presented to the court, and upon review of the

November 25, 2014 at 2:00 p.m.

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

IT IS ORDERED that the Motion is
denied without prejudice.

Tentative Ruling: The Objection to Plan 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.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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 29, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan based on the following:

1. Debtor admitted at the first meeting of creditors that he had not filed all of his tax returns due during the four-year period preceding the filing of the petition. 11 U.S.C. §§ 1308 & 1325(a)(9).

Debtor provided the Trustee with the 2011 tax return; however, it is not clear if the tax return has been filed as it is self-prepared, and not signed by the Debtor. The Trustee continued the first meeting of creditors to November 20, 2014, to allow Debtor to file the returns.

2. Trustee is not certain that Debtor can make the payments required under 11 U.S.C. § 1322(a)(6). Schedule I reflects that Debtor is a student and self-employed part-time. Debtor lists \$2,600 gross income under wages and a deduction of \$800.00 for "Pay subcontractors to do much of the work," leaving combined monthly income of \$1,800.

Debtor's Statement of Financial Affairs provides for the following income:

- \$18,000, 2014 year-to-day income (\$2,250 per month)
- \$0.01 2014 year-to-date, no Pell grant income
- \$1,900 2013 income, Debtor BTI (insurance)
- \$25,000 2013 Debtor did not participate in wife's business, Pell Grant income only. Sale of 50% horse \$20,000 (check payable jointly to Husband and Wife).

Line 24 of Schedule J reads: "Rent is free, his parents allow Debtor to live in the residence. Rent will be due when he can afford to pay it. Student loan pays his tuition at UC Davis. Pell Grants cover books and supplies for college. First 4 payments are stepped down in order to pay court clerk filing fee. Dad has paid \$400 monthly as gift to board the horses."

Trustee notes that Debtor does not indicated how he will be able to afford rent when he has to start paying. According to the Statement of Financial Affairs, Debtor did not receive any Pell Grant income in 2014. It is not clear to the Trustee how Debtor can continue with his education without these funds and Trustee wants to know if Debtor will be seeking other employment if no longer a student.

3. Debtor lists an executory contract with Robert and Susan Stultz on Schedule G to sell a 50% interest in a horse. Debtor has not indicated whether this debt is secured or unsecured, although Debtor lists it on Schedule F.
4. Debtor's plan does not pass Chapter 7 Liquidation analysis. 11 U.S.C. § 132(a)(4). Debtor is proposing a 5% dividend to unsecured creditors, which totals \$1,998.00.

Debtor did not list the value of 1 Dog included on Schedule B, the current value listed at \$0.00. Debtor did not list any information about the dog.

Debtor lists a value of \$20,000 for two horses on Schedule B; however, Debtor did not provide the purchase price of the horses and how the Debtor determined the value of the horses.

Debtor has not submitted pleadings responding to the Trustee's objections. 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 Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

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

Tentative Ruling: The Motion to Value 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).

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.

Below is the court's tentative ruling.

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

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 28, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value 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 defaults of the non-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 is denied without prejudice.

The Motion is accompanied by the Debtors' declaration. The Debtor is the owner of the subject real property commonly known as 550 W. Broad Street, Nevada City, California. The Debtor seeks to value the property at a fair market value of \$241,000.00 as of the petition filing date. As the owner, the Debtors' opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (n re Enewally)*, 368 F.3d 1165, 1173 (9 Cir. 2004).

The first deed of trust secures a loan with a balance of approximately \$189,350.53. See Proof of Claim 3. First US Community Credit Union's second deed of trust secures a loan with a balance of approximately \$49,914.

Creditor's Objection

First U.S. Community Credit Union ("Creditor") oppose Debtor's Motion to Value based on the following:

1. Based on preliminary discussions with Terry Kennington of River Valley Appraisals, the value of the home could be significantly higher than \$241,000. See Declaration of Terry Kennington, ECF 22.
2. Creditor will file a proof of claim asserting that it is secured and owed no less than \$55,885.12. ECF 23. Creditor argues it is entitled to the protections of 11 U.S.C. § 1322(b)(2) because it is, at least, partially secured.

CREDITOR'S SUPPLEMENTAL OBJECTION

Creditor filed a supplement to its Objection on November 20, 2014. The supplement contains the appraisal conducted by Terry Kennington, that values the subject property at \$340,000. See ECF-28 & 29.

Creditor also points out that Central Mortgage, the first deed of trust holder, filed proof of claim 3, asserting a secured claim of \$189,350.53. With this first deed of trust, Creditor will have an at least partially secured claim based on either valuation.

DISCUSSION

The court's decision is to deny the Motion. The Debtor's opinion of value for the subject property is \$241,000. The first deed of trust secures a loan with the balance of \$189,350.53. There is equity remaining for Creditor's second deed of trust to attach and the claim cannot be valued as unsecured.

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

IT IS ORDERED that the Motion is denied without prejudice.

11. [14-29550](#)-C-13 TRISHA MEJIA DONNELL
MET-2 Mary Ellen Terranella

MOTION TO VALUE COLLATERAL OF
CALIFORNIA PACIFIC FEDERAL
CREDIT UNION
11-5-14 [[27](#)]

Tentative Ruling: The Motion to Value 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.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, respondent creditor, and Office of the United States Trustee on November 5, 2014. Fourteen days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing -----
-----.

The Motion to Value secured claim of California Pacific Federal Credit Union, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2400 Woolner Avenue, Fairfield, California. The Debtor seeks to value the property at a fair market value of \$183,500.00 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 \$223,511.00. California Pacific Federal Credit Union's second deed of trust secures a loan with a balance of approximately \$85,000.00. 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 California Pacific Federal Credit Union secured by a second deed of trust recorded against the real property commonly known as 2400 Woolner Avenue, Fairfield, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$183,500.00 and is encumbered by senior liens securing claims which exceed the value of the Property.

Tentative Ruling: The Motion to Sell Property 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.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, and Office of the United States Trustee on November 11, 2014. Twenty-one days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.) That requirement was not met.

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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. At the hearing -----.

The Motion to Sell Property is denied without prejudice.

INSUFFICIENT NOTICE

Pursuant to Fed. R. Bankr. P. 2002(a)(2), a Motion to Sell must be set on twenty-one (21) days' notice. Here, Debtor's Notice of Hearing was issued on November 11, 2014. With the hearing date set for November 25, 2014, Debtor only gave fifteen (15) days' of notice. Debtor did not file a Motion to Shorten Time.

The court is denying the Motion without prejudice for insufficient notice.

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

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

The Motion to Sell Property filed by 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 Sell is denied without prejudice.

13. [14-28261](#)-C-13 JAVIER CAMPOS LOPEZ AND CONTINUED OBJECTION TO
DPC-1 IRMA CAMPOS CONFIRMATION OF PLAN BY DAVID
Thru #14 Peter L. Cianchetta P. CUSICK
9-24-14 [[17](#)]

Tentative Ruling: The Objection to Plan 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.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on September 24, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, 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. At the hearing -----
-----.

The court's decision is to sustain the Objection.

PRIOR HEARING

The court continued the hearing on the Objection from October 28, 2014. The court is granting the Motion to Value the secured claim of Deutsche Bank Trust Company, which is serviced by Ocwen Loan Servicing, LLC.

OBJECTION

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

1. Debtors cannot make the payments under the plan or comply with the plan under 11 U.S.C. § 1325(a)(6). Debtors propose to value the secured claim of Ocwen Loan Servicing on a second deed of trust on Debtors' rental property located at 1045 Carrie Street, West Sacramento, California. Debtors have not filed a Motion to Value as of the date of the Trustee's Objection.
2. Debtors' plan does not provide for the secured debt of Specialized Loan Servicing on a deed of trust on property located at 9572 Wadena Way, Elk Grove, California. Debtors list the debt on Schedule D for \$45,262, but indicate the entire debt is unsecured. While treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5), failure to provide the treatment may indicate that Debtor either cannot afford the plan payments because of additional debts, or that Debtors wish to conceal the proposed treatment of a creditor. In the alternative, Debtors may be proposing to pay the creditor in full outside the plan, in which case Debtors are unfairly discriminating against unsecured creditors under 11 U.S.C. § 1322(b)(1).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). Debtors have not filed a Motion to Value the secured claim of Ocwen Loan Servicing and have not proposed alternative treatment for the secured claim of Specialized Loan Servicing. The court is prepared to grant the Motion to Value the secured claim of Deutsche Bank Trust Company, the second deed of trust holder on 9572 Wadena Way, Elk Grove, California. 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 the Objection to confirmation of the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

14. [14-28261](#)-C-13 JAVIER CAMPOS LOPEZ AND MOTION TO VALUE COLLATERAL OF
PLC-1 IRMA CAMPOS DEUTSCHE BANK NATIONAL TRUST
Peter L. Cianchetta COMPANY
10-27-14 [[21](#)]

Final Ruling: No appearance at the November 25, 2014 hearing is required.

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 27, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value 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 non-responding parties 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 secured claim of Deutsche Bank National Trust Company, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 9572 Wadena Way, Elk Grove, California. The Debtor seeks to value the property at a fair market value of \$355,000 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 \$395,691. Deutsche Bank National Trust Company's second deed of trust secures a loan with a balance of approximately \$41,383. 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

November 25, 2014 at 2:00 p.m.

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holding that:

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

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

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Deutsche Bank National Trust Company secured by a second deed of trust recorded against the real property commonly known as 9572 Wadena Way, Elk Grove, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$355,000 and is encumbered by senior liens securing claims which exceed the value of the Property.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 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).

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.

Below is the court's tentative ruling.

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

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 14, 2014. Forty-two days' notice is required. That requirement was met.

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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Chapter 13 Trustee opposes confirmation of the plan based on the following:

1. Debtors are \$104.48 delinquent in plan payments to the Trustee to date and the next scheduled payment of \$718.37 is due on November 25, 2014. Debtors have paid \$2,769.00 into the plan to date.
2. Debtors' plan is not their best effort under 11 U.S.C. § 1325(b). Debtors are reported as being below median income. The Trustee is uncertain whether Debtors completed the forms properly because William Hamilton indicated that he received a one-time settlement of \$10,686 from workers compensation for back pay. This money was received in June 2014 but not reported on CMI or Statement of Financial Affairs.

Debtor is proposing plan payments of \$718.37 for 60 months with a 0% dividend to unsecured creditors. Debtors filed an Amended

Schedule I on October 14, 2014 and added Tabitha Hamilton's employment income of \$4,040. Original Schedule I listed her as unemployed with no income (Dkt. 11). Debtors also amended Schedule I, increases various expenses without explanation. Overall, expenses were increased by \$1,655.

3. The plan proposes to pay counsel attorneys' fees of \$1,250.00 through the plan, pursuant to LBR 2016-1(c). However, the Disclosure of Compensation of Attorney for Debtors lists that services do not include some services required under the local rules. The Trustee believes that counsel is effectively opting out of 2016-1 and will oppose attorneys' fees being granted under that section. Counsel will have to file a separate motion for any attorneys' fees.

Debtors provided no response to the valid objections outlined by the Trustee. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 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).

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.

Below is the court's tentative ruling.

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

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 14, 2014. Forty-two days' notice is required. That requirement was met.

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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

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

1. Debtor's plan payment is insufficient to fund the plan because on August 22, 2014, the Franchise Tax Board filed a priority claim for \$1,039.73 and the claim is not provided for in Class 5.
2. Debtor's plan payment is insufficient to fund the plan because on July 29, 2014, the Internal Revenue Service filed a priority claim for \$116,881.36. Debtor proposes to pay this claim in Class 5 of the plan. In Section 6.01, Debtor indicates that he has made an arrangement with the Irs to pay \$450 per month, through the plan, Debtor has not supplied evidence supporting an agreement with the IRS. and the claim is not provided for in Class 5.
3. Debtor's plan payment is insufficient to fund the plan. Debtor lists Rush Financing in Class 2 of the plan and provides, in the

additional provisions, that interest only payments of \$366.67 will be paid, with the principal balance due and payable on or before completion of the fourth year of the plan. The plan language of the plan states that Class 2 is for secured claims that are modified by the plan, or that have matured or will mature before the plan is complete. It appears this claim will be paid in full prior to completion of the 60 months proposed plan and; therefore, should be provided for in Class 2 of the plan.

4. Debtor's plan calls for Debtor to refinance the claim of Sterling Bank and Trust by April 2015 due to a balloon payment that comes due. In support of this, Debtor attached a conditional offer by Capital Alliance to loan Debtor \$375,000 at 11% interest for a 24 month term. The terms of the proposed refinancing would expire during the life of the plan. The proposal does not state what is to occur at the end of the 24 month term. It does not appear that the current refinancing proposal will cure the Debtor's mortgage difficulties.

DEBTOR'S RESPONSE

Debtor admits that Trustee's objection to the FTB claim not being included in the plan is accurate and will require a further Amended Plan to account for that claim.

Debtor does not object to the court denying the Motion to Confirm and allowing Debtor the opportunity to incorporate the FTB claim into an Amended Plan.

STIPULATION WITH STERLING BANK & TRUST, FSB

On November 18, 2014, Debtor and Sterling Bank & Trust, FSB ("Sterling") submitted a Stipulation concerning treatment of Sterling's secured claim. The claim is also the subject of Trustee's objection. Debtor provides for Sterling in Class 1 of the plan and in the additional provisions section states that Debtor will continue making ongoing mortgage payments to Sterling and refinance the trust deed obligation prior to its maturity date, after which, Debtor will modify the plan to remove the debt owing to Sterling.

The Stipulation recognizes that the only evidence in support of the refinance is the proposal letter from Capital Alliance offering \$375,000, an amount which is insufficient to repay the obligation owed to Sterling.

The Stipulation provides that Sterling will have relief from the automatic stay, effective April 2, 2015, to commence or complete its foreclosure upon the subject property and thereafter pursue any action in order to gain possession of and dispose of the real property in accordance with applicable non-bankruptcy law. Further, Sterling will support confirmation of Debtor's amended plan.

DISCUSSION

Neither Debtor's response nor the Stipulation resolved any of the Trustee's objections. The Debtor acknowledges that a further amended plan is necessary. The court's decision is to sustain the objection and deny

confirmation. The court urges Debtor to consider each of the objections raised by the Trustee and to incorporate into the next Amended Plan information and provisions that resolve the outstanding issues of noncompliance.

While the Stipulation with Sterling resolved Sterling's objection to confirmation, the Stipulation does not demonstrate to the court that proposed refinance is feasible on the state terms.

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

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

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

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

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

Tentative Ruling: The Objection to Plan 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.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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 29, 2014. Fourteen days' notice is required. That requirement was met.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, 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. At the hearing -----
-----.

The court's decision is to continue the Objection.

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that it relies on the pending Motion to Value the secured claim of GMAC Mortgage, which is set for a continued hearing on December 9, 2014 at 2:00 pm. If the Motion is not granted, Debtor's plan lacks sufficient funds to pay the claim in full.

The court's decision is to continue the Objection to December 9, 2014 at 2:00 p.m. so it can be heard in conjunction with the continued hearing on the Motion to Value.

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

IT IS ORDERED that the hearing on the Objection to confirmation is continued to December 9, 2014 at 2:00 p.m.

18. [14-27884](#)-C-13 KENNETH CARPENTER AND MOTION TO VALUE COLLATERAL OF
DPR-2 NANCY GRIMALDY TRAVIS CREDIT UNION
David P. Ritzinger 10-22-14 [[46](#)]

Final Ruling: No appearance at the November 25, 2014 hearing is required.

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 22, 2014. Twenty-eight days' notice is required. That requirement was met.

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

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of 2005 Chevrolet Silverado 1500 Crew Cab LS Truck. The Debtor seeks to value the property at a replacement value of \$15,157.50 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 in 2011, more than 910 days prior to the filing of the petition, with a balance of approximately \$17,972.00. 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 \$15,157.50. *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.

November 25, 2014 at 2:00 p.m.

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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 Travis Credit Union secured by a 2005 Chevrolet Silverado 1500 Crew Cab LS Truck, is determined to be a secured claim in the amount of \$15,157.50, 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 \$15,157.50 and is encumbered by liens securing claims which exceed the value of the Property.

Final Ruling: No appearance at the November 25, 2014 hearing is required.

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, parties requesting special notice, and Office of the United States Trustee on October 27, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion for Allowance of Professional Fees 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 non-responding parties 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 Allowance of Professional Fees is granted.

FEES REQUESTED

Peter G. Macaluso, the Chapter 13 Attorney ("Applicant") for Steven and Suzan Povey, the Chapter 13 Debtors ("Client"), makes an application for actual, reasonable, necessary, and unanticipated work in this Chapter 13 case. The period for which the fees are requested is for the period October 26, 2012 through September 8, 2014.

Debtors' plan was confirmed on March 7, 2012. Following confirmation, the following services were provided by counsel for which counsel now seeks confirmation:

1. Confer with Debtors regarding loan modification letter from mortgage holder, Citimortgage.
2. Prepare Motion to Approve Loan Modification, respond to opposition, and appear at the hearing. The court approved the Motion to enter into the Loan Modification on April 12, 2013.
3. Review Chapter 13 Trustee's Motion to Dismiss and respond.
4. Formulate a modified plan based on the proposed loan modification, including responding to Trustee's response.

November 25, 2014 at 2:00 p.m.

Motion was granted on May 14, 2013.

5. Inclusion of 2012 taxes into the plan.
6. Preparation of Motion to Approve the Permanent Loan Modification. Review opposition to the motion and prepare response. Filed supplemental declarations in support of the Motion. Granted on August 26, 2014.
7. Formulation of modified plan with the permanent loan modification. Review opposition to the Motion and prepare response. Appear for the hearing, it was continued. Granted on August 26, 2014.
8. Appeared for an Order to Appear issues on the mortgage company subject to the Loan Modification.

Applicant is seeking compensation for 21.5 hours of post-confirmation work at a rate of \$200.00 per hour.

Statutory Basis For Professional Fees

Pursuant to Local Bankr. R. 2016-1(c)(3), if the fixed fee is not sufficient to fully and fairly compensate counsel for the legal services rendered, the attorney may apply for additional fees. The fixed fee is anticipated to fairly compensate the debtor's attorney for all pre-confirmation services and most post-confirmation services, such as reviewing the notice of filed claims, objecting to untimely claims, and modifying the plan to conform to the claims filed. It is provided that "only in instances where substantial and unanticipated post-confirmation work is necessary should counsel request additional compensation.

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

- (I) unnecessary duplication of services; or
- (ii) services that were not--
 - (I) reasonably likely to benefit the debtor's estate;
 - (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A).

CHAPTER 13 TRUSTEE

On November 5, 2014, the Trustee filed a statement of non-opposition to the request for additional attorneys' fees.

DISCUSSION

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Applicant is allowed, and the Chapter 13 Trustee is authorized to pay \$4,300.00 in additional compensation.

The court shall issue an 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 Allowance of Fees and Expenses filed by Peter G. Macaluso ("Applicant"), Counsel for Chapter 13 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 Peter G. Macaluso is allowed the following fees and expenses as a professional of the Estate:

Peter G. Macaluso, Professional Employed by the Chapter 13 Debtors

Fees in the amount of \$4,300
Expenses in the amount of \$0.00,

IT IS FURTHER ORDERED that the Chapter 13 Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in Chapter 13 cases, under the terms of the confirmed plan.

Tentative Ruling: The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 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).

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.

Below is the court's tentative ruling.

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

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 10, 2014. Forty-two days' notice is required. That requirement was met.

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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

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

The Chapter 13 Trustee opposes confirmation based on the following:

1. The plan relies on a Motion to Value the secure claim of RC Willey and if the Motion is not filed and granted, the Debtor lacks sufficient monies to fund the plan. 11 U.S.C. § 1325(a)(6).
2. The plan proposes to pay counsel attorneys' fees of \$2,000 through the plan, pursuant to LBR 2016-1(c). However, the Disclosure of Compensation of Attorney for Debtors lists that services do not include some services required under the local rules. The Trustee believes that counsel is effectively opting out of 2016-1 and will oppose attorneys' fees being granted under that section. Counsel will have to file a separate motion for any attorneys' fees.
3. The plan does not pass Chapter 7 Liquidation analysis. 11 U.S.C. § 1325(a)(4). Debtor's non-exempt equity totals \$16,929 and Debtor proposes to pay unsecured creditors a zero percent

dividend.

4. Debtor's plan does not provide for the secured portion of the Internal Revenue Service's claim. Treatment of all secured claims may not be required under 11 U.S.C. § 1325(a)(5); however, not providing treatment could indicate that Debtor either cannot afford the payments called for under the plan or that Debtor is attempting to conceal the proposed treatment of a creditor.

Debtor did not respond to the Trustee's concerns and the objections remain outstanding. The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

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

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

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

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

Final Ruling: No appearance at the November 25, 2014 hearing is required.

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 27, 2014. Twenty-eight days' notice is required. That requirement was met.

The Motion to Value 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 non-responding parties 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 secured claim of Brian Keller, "Creditor," is granted.

The motion is accompanied by the Debtor's declaration. The Debtor is the owner of the subject real property commonly known as 2609 Butano Drive, Sacramento, California. The Debtor seeks to value the property at a fair market value of \$219,000 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 \$292,188.50. Brian Keller holds a judgment lien against the property in the amount of \$16,930.38. The claim secured by a properly recorded judgment lien is completely under-collateralized. *See Claim 4, Case No. 13-22111*. 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 Brian Keller secured by a second deed of trust recorded against the real property commonly known as 2609 Butano Drive, Sacramento, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is \$219,000 and is encumbered by senior liens securing claims which exceed the value of the Property.